Connecticut Sentencing Commission

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TESTIMONY IN SUPPORT OF SB 796

AN ACT CONCERNING LENGTHY SENTENCES FOR CRIMES COMMITTED BY A CHILD OR YOUTH AND THE SENTENCING OF A CHILD OR YOUTH CONVICTED OF CERTAIN FELONY OFFENSES

By Andrew Clark
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Good afternoon Chairs Coleman and Tong, Ranking Members Kissel and Rebimbas, and members of the Judiciary Committee. I am Andrew Clark, Acting Executive Director of the Connecticut Sentencing Commission. I am here to testify in support of Committee Bill No. 796, An Act Concerning Lengthy Sentences For Crimes Committed By A Child Or Youth And The Sentencing Of A Child Or Youth Convicted Of Certain Felony Offenses. With me today representing the Commission's workgroup on matters relating to this bill is Chief State's Attorney Kevin Kane, Atty. Robert Farr, and Professor Sarah Russell of Quinnipiac University Law School.

I'd first like to give you some brief background about the Sentencing Commission. We are a permanent commission created about four years ago, consisting of all of the stakeholders in the criminal justice system of Connecticut. Our membership includes the commissioners of Corrections, Emergency Services and Public Protection, and Mental Health and Addiction Services; the Chief State's Attorney; the Chief Public Defender; the Victim Advocate; Judges; representatives of the business community; community activists interested in the criminal justice system; the chair of the Board of Pardons and Paroles; a municipal police chief; the undersecretary of the criminal justice policy and planning division; as well as others vitally engaged in the criminal justice system. We have adopted a policy of making consensus recommendations to you. So the bill we are supporting today is the direct result of that consensus process.

And now to Committee Bill No. 796. This bill mirrors the Sentencing Commission's consensus proposal for the 2014 and 2015 sessions. It brings Connecticut law into line with the reasoning of two recent United States

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Supreme Court decisions, which I will refer to as the Graham and the Miller decisions. The virtue of this bill is that it addresses the difficult issues raised by those decisions legislatively—and now--so that all cases are treated consistently, rather than leaving their resolution to the delays and uncertainties of litigation.

Both these decisions were based upon the results of brain science and sociological studies that show (1) a lack of maturity and an underdeveloped sense of responsibility in youth—defined by the Supreme Court as persons under the age of eighteen at the time of the commission of a crime—that often leads to impetuous and ill-considered actions and decisions, (2) a greater susceptibility to negative influences and outside pressures, including peer pressure, and (3) fundamental differences between the juvenile and adult brains, especially in the parts of the brain involved in behavior control. As a result, the Court stated that, because the character of a juvenile (again, defined as under the age of 18) is not as well formed as that of an adult and because juveniles are more capable of change than adults, even the commission of a serious crime by a juvenile cannot ordinarily be considered as evidence that he or she is of a permanent bad character and incapable of reform.

In Graham, the Court held that the U.S. Constitution prohibits a sentence of life without parole for a youth convicted of a non-homicide offense. The state must give the offender the opportunity for a second look at his sentence—in the words of the Court, a "meaningful opportunity" to obtain release before his maximum sentence "based on demonstrated maturity and rehabilitation." In Miller, the Court extended this principle to homicide offenses, and added that, at the time of sentencing, the trial court must take into account the differences between the juvenile and adult brains.

We emphasize that this bill does not ensure the release at any time of any serious offender. It merely provides that a youth given a lengthy sentence be afforded a distinct parole hearing at which the parole board would consider whether the offender has demonstrated the necessary maturity and rehabilitation to afford him parole release.

The Graham, or second look, part of the bill applies to any youth who received a sentence of 10 years or more. More specifically, if the sentence

imposed is 50 years or less, the offender would be eligible for parole consideration after serving 60 percent of the sentence or 12 twelve years, whichever is greater. If the sentence imposed is more than 50 years, the offender would be eligible for parole consideration after serving 30 years. We estimate that this will apply to approximately 200 people, of whom approximately 50 are serving sentences of 50 years or more, most with no current eligibility for parole.

The Miller, or sentencing, part of the bill applies prospectively to any youth who is transferred from the juvenile docket to the regular criminal docket and is convicted of a class A, B or C felony. At the time of sentencing, the court must take into account the science regarding the differences between the juvenile and adult brains and, if it proposes to impose a sentence under which it is likely that the youth will die in prison, consider how that science counsels against such a sentence. In this regard, the Judicial Branch is required to establish reference materials to assist courts in sentencing such youths.

We would also like to comment on Raised Bill 6926, An Act Concerning Lengthy Sentences for Crimes Committed by a Child or Youth. This bill would make changes to the Sentencing Commission's consensus proposal which, as we mentioned earlier, is reflected in Committee Bill 796. In particular, in Section 1 (f) 1, "aggregate sentence" would be changed to "total effective sentence". Additionally, in Section 2 (a), the Miller factors would apply only to A and B felonies, and not C felonies, as in the Commission's original proposal. We believe these changes are not only consistent with the Commission's consensus proposal, but help to clarify it as well. Additionally, we believe there is an interest in clarifying that the victim or victim's family would be notified whenever a person became eligible for release pursuant to the Graham part of the bill. We also believe this to be consistent with the Commission's proposal.

As for Sections 10 and 11 of HB 6926, which refer to victim notification of the defendant's possible release dates, at both the plea bargaining and sentencing phases, our understanding is that this language is a work in progress and may not reflect a final proposal. Members of the Commission's work group on this matter are in agreement with the concept, as we believe the Commission would be, but would want the opportunity to vet these changes with the full Commission to ensure all aspects of the system are able to weigh in so as to make it as sound and comprehensive as possible. Section 12 addresses the Earned Risk Reduction program. This was not part of the Commission's proposal, but we have agreed to recommend the Commission examine this program with the intent of presenting a proposal for any recommended legislative or executive actions in time for the next legislative session.

We thank you for your consideration of this testimony. We will be glad to answer any questions you might have.