

March 4, 2015

Testimony of
Jacob Wasserman

242 Elm Street, Suite L43A
New Haven, CT 06511

Ward One Co-Chair,
New Haven Democratic Town Committee

Vice President,
Yale College Democrats

In favor: S.B. 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

My name is Jacob Wasserman, Ward One Co-Chair of the New Haven Democratic Town Committee, Vice President of the Yale College Democrats, and Chair of the Juvenile Justice Committee of the College Democrats of Connecticut, and I am proud to testify in favor of S.B. No. 796. At issue here are two groups of people: those who recognize a past wrong and seek to better it and those who do not. The sincere desire for reform among the first group is clear. Many other testimonies—from family, from advocates, and from former convicts themselves—can attest to this better than I can. For instance, a moving profile of the rehabilitated juvenile offender Nick Aponte, sentenced to an unfairly long and unreviewable sentence, appeared in the *New Haven Independent* recently and is attached to this testimony. I urge you to read it and reflect upon it.

But it is the second group that I can speak to: those who realize that their past actions have harmed others but refuse to do anything to change it. Here, though, I am not referring to juvenile offenders. In this case, the group who has failed to right a past wrong is none other than the Connecticut General Assembly.

The failure to pass juvenile sentencing reform last session—and the session before that, and the session before that—is a shame upon our state. Surely, there is plenty enough blame to go around. Refusing to take such a vote during an election year, the Senate lauded its retiring members for hours on the last day of the session, while juvenile offenders languished unconstitutionally in prison for want of a bill the General Assembly refused to pass. But if these young men and women have been able to remediate their lives, I have every hope that the General Assembly can remediate its laws in turn.

Because of the very sentencing rules I seek to change, rehabilitated people like Nick Aponte cannot come to tell their stories before this committee. And I am not attempting to either recommend this man's release or continued imprisonment. Rather, I only implore you to give prisoners like him a parole hearing. Not to offer a review—a mere chance of a reformed life after prison—is both immoral and unconstitutional. Without a doubt, criminal offenders must be punished to the fullest extent of the law, according to their culpability—and nothing in this bill would change that. But to offer periodic review of someone's lifetime or lengthy imprisonment is simply common sense. To do otherwise would be to deny the very reformatory purpose of the justice system.

Life or lengthy sentences without parole for youth are harmful not just for the prisoners themselves. With no possibility of release, the incentive for good behavior in prison disappears, creating the potential for prison violence, costly additional security measures, and a tension at prison facilities which can spread to other inmates. However, the mere possibility of a

shortened sentence encourages becoming a productive and reintegrated member of society for a developing young mind.

Scientific studies have shown time and again that juveniles differ vastly from adults in areas like risk assessment, control of impulses, susceptibility to peer pressure, and mature judgment skills. To hold them to the same standards of culpability and sentencing as adults would be unjust. Indeed, in three cases within seven years, the Supreme Court has ruled that these differences between juveniles and adults must be accounted for in the criminal justice system. The “mitigating qualities of youth,” a “condition of life when a person may be most susceptible to influence and to psychological damage” led the justices to strike down mandatory life sentences without chance of parole for juveniles as unconstitutional “cruel and unusual punishment” in their opinion in *Miller v. Alabama*. Juveniles, they agreed, are “less deserving of the most severe punishments” due to their “diminished culpability and greater prospects for reform.”

Of the youths affected by this law, a huge majority are African-American or Hispanic. Many of the incarcerated come from abusive and neglectful homes. Domestic violence, poverty, and lack of education are common problems facing these juveniles. However, there is hope: adolescent brain development studies have shown that juveniles have a greater ability to reform as productive members of society. Mandatory sentencing laws which deny even the possibility of parole take away any chance for successful rehabilitation to occur. Indeed, it is astonishing that our nation is the sole democracy in the world where life sentencing without chance of parole for juveniles is allowed.

In the recent ruling in the case *State of Connecticut v. Ackeem Riley*, the Connecticut Supreme Court put off a final decision on juvenile sentencing reform “in deference to the legislature’s authority over such matters.” The ball is thus in the General Assembly’s court. I urge you to take up the Court’s commission and pass this bill. As a young person myself, I can hardly imagine juveniles younger than myself imprisoned for so much of their lives, mandatorily and without a possibility of release. The General Assembly needs to pass this bill as soon as possible. The moral, financial, and societal costs of such incarcerations are too pressing to let stand any longer.

Should Nick Get A “Second Look”?

BY **Michelle Hackman** | MAR 3, 2015 3:40 PM

Posted to: [Legal Writes](#), [State](#)



Inmates like Aponte, shown in jail, have a lot riding on a “Second Look” bill coming up for a hearing Wednesday.

On a humid, overcast evening in July 1996, four teenaged boys sat on a front porch drinking malt liquor and playing spades. Early in the evening, one of the boys, 16-year-old Jason Casiano, confided in the others that he badly needed money and was contemplating robbing a store. Would they be willing to help? he asked.

“We were like, ‘I don’t think so,’” recalled his cousin Nick Aponte, one year Jason’s senior. But as the night drew on and the boys grew more intoxicated, “we loosened up to the idea.”

Jason kept pressing. He suggested that the extra money could help fund Nick’s son’s first birthday, coming up that Saturday. “He assured us that nothing bad would happen,” Nick said. Nick trusted his cousin; Jason, who had escaped family strife in Florida to live with Nick several months earlier, projected a self-possessed machismo that Nick envied. “There were no other male figures in my life. I looked up to him,” Nick said.

Nick knew that while Jason was still living in Florida, he had successfully carried out acts of theft without significant repercussions. And so it was that Nick and the other boys – 14-year-old Miguel Rodriguez, Nick’s

little brother, and 15-year-old Adam Strong, Miguel’s friend – willingly followed Jason into Nick’s bedroom, where they would begin sketching out the crime.

At the time, Nick could not know that the robbery would deviate from their plan, and take a turn toward something far worse. Nick had never proven particularly prone to making smart choices: he partied, he drank, he was promiscuous. But for all his self-perceived faults, Nick had never before dreamed he could be tried as an adult on felony charges, and if found guilty, spend most of his life in prison.

On a recent frigid morning, sitting in a prison conference room, Nick recalled to me the details of that fateful August night. At 36, Nick still appeared young for his age, tall and buff, with full brown hair and prominent golden features. He sat at one end of a white Formica coffee table, dressed in an orange jumpsuit, facing a locked door and a watchful corrections officer.

His message now was simple: over time, Nick has grown immensely remorseful of the events that unfolded that night. But, though he has reformed himself in prison, due to the state’s arcane legal code, he will never become eligible for parole – for a second chance at life 19 years after a childhood mistake.

Nick is one of 275 inmates in the state who are serving sentences longer than ten years for crimes they committed under the age of 18, according to the state’s Department of Corrections. Of those, approximately 50 are serving sentences of 50 years or more, most with no eligibility for parole.

A bill pending before the state legislature this year, [SB 796](#), a proposed so-called “[Second Look](#)” law, aims to change that. If passed, the bill—whose sponsors include New Haven State Sens. Martin Looney and Gary Winfield—would make inmates like Nick eligible for a “second look” that can result in parole. ([Click here](#) to read the bill.) Under the bill, convicts who committed their crimes as minors—and who have served 12 years or 60 percent of their sentences—could come before the Board of Pardons and Paroles for a new hearing. The Judiciary Committee is scheduled to hold a hearing on the bill Wednesday, it comes amid a mandate to revise the state’s juvenile sentencing laws as well as a new “[Second Chance Society](#)” initiative by Gov. Dannel P. Malloy to reform Connecticut’s criminal-justice

system.

“Bad Choices”

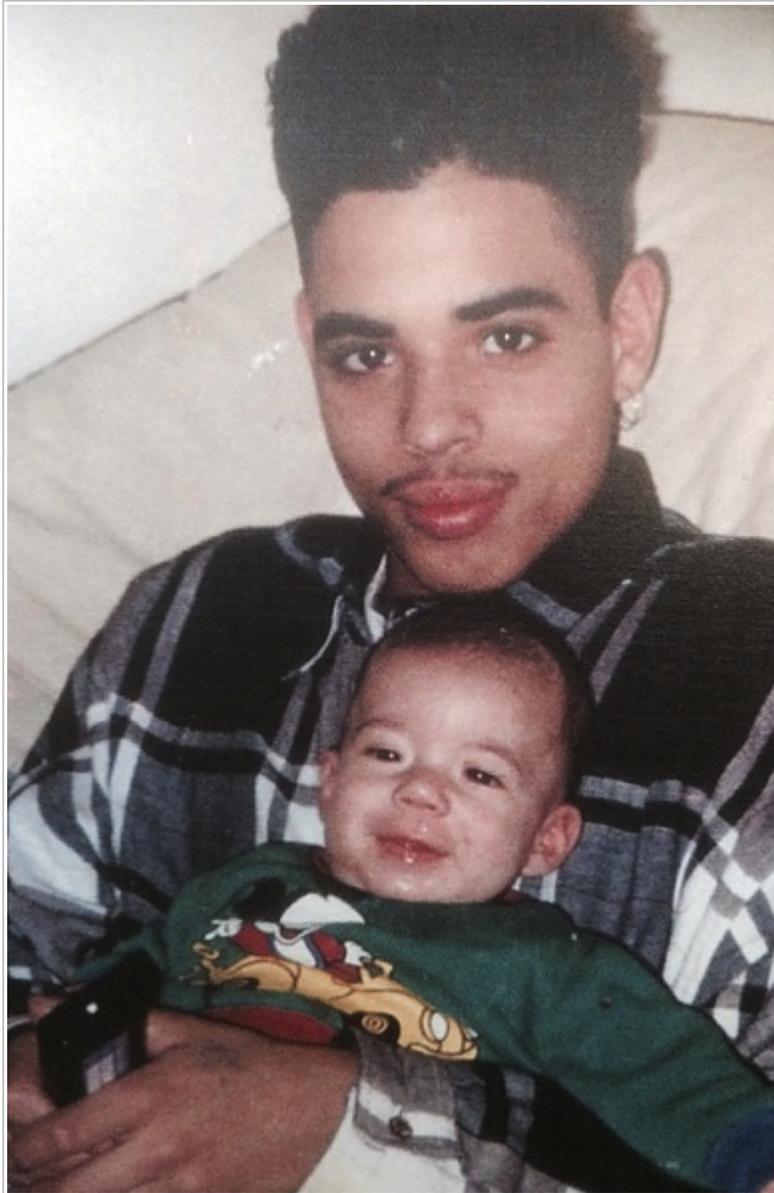
Even before Jason came to live with Nick’s family, Nick had already faced hardships. One year earlier, Nick had impregnated a fellow 16-year-old named Carey Coppola. In anticipation of his son’s birth, he had dropped out of high school and taken two jobs, one as a “food preparer” at a truck stop in Southington and the other flipping burgers at a Burger King near his home in Waterbury. But Nick dreamed of one day improving his lot: of giving his son more hands-on care, of perhaps returning to school and earning his G.E.D. “Anybody who knew me back then—I made bad choices as a teenager, but nothing to that extent,” he said.

Several months after his son Devin was born, Nick took a trip to Florida to visit his maternal grandmother. Things were not going well with Carey, and Nick thought that, by taking some time away to work, he could save up some money for his son.

Nick’s grandmother warned him repeatedly not to hang around with Jason, who was living nearby at the time. “But my son just – I don’t know. He didn’t really listen to my mom,” recalled Nick’s mother, Leslie Aponte. “And Jason started showing him around Florida.”

The two grew exceedingly close. Though Jason was a year younger than Nick, his brash charisma and sympathy for Nick’s plight – he, too, was a young father who had suffered abuse as a child – inspired Nick to look up to his younger cousin. “He was kind of a tough guy, and I admired that,” he said. “There’s not a lot of good role models where I grew up.” Just before Nick was due to return to Connecticut, Jason robbed the home of a nearby drug dealer, an ordeal that did not go as smoothly as he’d hoped. He confided in Nick that if he were to stay in Florida, the drug dealer would likely come after him. And so it was that, with Leslie’s blessing, the two returned to Waterbury months before the night of the crime.

Nick’s house was empty on the night of the crime; Nick’s mother had gone out with her new partner. The moment the bedroom door clicked shut, Jason began directing. He would need a lookout, Nick, to stand guard as he robbed the store. The other boys would tag along to watch. At around 11 in the evening,



Nick at 16 with Devin.

they set off in Carey's car, which he had borrowed the day before, with Jason occupying the driver's seat.

They drove to a nearby subway sandwich shop in North Haven. Jason considered the spot ripe for robbing. It was located in a secluded neighborhood with little foot traffic, especially at that time of evening. To be sure, Jason directed Adam to check for bystanders while the others waited in the car. Adam returned to report that, other than an employee, two customers were lingering inside.

The boys stalled for nearly an hour inside the car, awaiting the customers' exit. As the minutes drifted past, Nick remembers feeling the first distinct flickers of doubt. "I was scared, very scared. My brother started to talk about, 'Maybe we shouldn't be here.'"

Their second-guessing triggered Jason, who was already more intoxicated than the rest and who, Nick thinks, was also under the influence of cocaine at the time.

To ease tension, Nick suggested that the boys return another night. "Because if we could save it for another day, it wouldn't happen," Nick recalled thinking. "Because I could be in a better state of mind and say 'no.'"

His suggestion only inflamed Jason further. Suddenly, Nick saw a gun flash in his cousin's hand. "We're here now, it's got to happen," Jason said. "You promised. You gave me your word." Nick hesitated. After a moment, his brother Miguel offered to accompany the two older boys into the restaurant. "That's what gave me the courage to say, 'OK, we'll go in there.'"

3 Shots

The restaurant was now deserted but for a lone employee. Jason entered with Nick and Miguel trailing several steps behind. Leaving his cousins at the door, Jason moved forward and demanded the employee hand him cash from the register. The employee, visibly frightened, blustered that the register contained hardly any cash. Jason then demanded that the employee show him to the restaurant's safe, and, with a forceful hand on the employee's upper arm, the two disappeared around a corner behind the serving area, out of Nick and Miguel's sight.

They heard yelling. Suddenly the two reappeared, and the employee, now quaking with fright, explained that he did not know the combination to open the safe. And, without so much as a pause, Jason once more lifted his weapon and shot the employee blankly in the face.

Nick and Miguel froze. The employee fell to his knees, and Jason shot twice more, sending bullets ricocheting through the employee's torso.

"I felt totally separated from the situation, like I was watching it but not watching it," Nick recalled. "I was so young. I didn't know if the shots had hit him. I mean, I heard the shots, but ..." Against all odds, the employee rose to his feet and bolted for the back door. Nick and Miguel promptly followed. Jason stayed behind; Nick later learned that, as the scene unfolded around him, his cousin was attempting to force open the mouth of the cash register.

A few minutes later, Jason emerged through the front door of the restaurant and joined the others waiting in the car. They sped off. Several blocks down, they spotted a huddle of people standing on a street corner surrounding a body lying on the ground. They kept driving.

The Morning After

When the boys returned to Nick's home around 1 a.m., Nick took the car to see Carey. He drove the ten minutes to her home, nearly pulling into her driveway before reversing course.

"I didn't have the heart to tell her what had just happened," he said. That night, sleep came to Nick in fitful bursts, as though his slumber had shattered into jagged shards of glass.

The next morning, he arose with the bullets ricocheting through his memory, hoping against hope that each shot had missed. But he turned on the television in his living room, and the truth was spelled out before him: The previous evening, a 28-year-old Subway sandwich shop employee named David Horan had been shot dead.

Nick yelled for Jason, who was sleeping in another room, to come watch. “That’s when we knew,” Nick said.

Nick demanded that Jason leave the house immediately. He once more drove his son’s mother’s car to her home, this time successfully visiting her. He did not mention the events of the previous evening; their son’s birthday party was scheduled for the next day, a Saturday, and the two still needed to plan.

When Nick returned home on Friday evening, Jason still had not left. The descriptions of the suspected robbers on television did not match their profiles, he informed Nick. He believed the discrepancy would give him enough time to make a break for Florida. Jason called members of his family and confided what he had done, in the hopes one would wire him enough cash for the journey.

Nick began refusing to speak to Jason. He attempted to go about daily routines as normally as he could. He exercised, took shifts at the nearby Burger King. On Saturday afternoon, he attended his son’s first birthday party without issue.

But on Sunday morning, at about 8, as Jason was readying himself to catch a cab, two detectives ascended the steps of Nick’s front porch. Within minutes, the boys were handcuffed in the back seat of a police car, racing to the nearby Waterberry police headquarters.

They had denied any involvement in the robbery – “I was here, I was home!” Nick had insisted – but he knew, from the details the detectives had supplied, that he could not feign innocence for much longer.

Still, Jason assured Nick that he could handle the situation, asking his older cousin to leave the explaining to him. Nick, feeling powerless, once more trusted him. “I thought I was a man, and I thought he was a man,” Nick recalled, “and if he said, he’s ‘got it under control,’ then he’s got it under control.”

The two cousins were interrogated separately for over six hours. Adhering to their plan, Nick continued to deny his involvement. “They kept saying, ‘Nick, I know you were there,’” he remembered. “I just denied it the whole time.” A little after 6 p.m.g, word came that Jason had signed a confession admitting that he had shot the Subway employee.

Nick asked to speak to his cousin, and they let him. Once they were in a room alone, Jason turned to Nick and told him, “You have nothing to worry about, Nick. I took full responsibility. Just answer their questions and sign a confession. They’re not going to charge you with the heavy crimes.”

A Felony Rap

Nineteen years later, Nick can still recite these words from memory, because as he put it, “that is exactly what happened.”

At the age of 17, Nick was charged with felony murder for the death of David Horan – which in Connecticut meant he would be tried as an adult and, if found guilty, given a lengthy sentence without the possibility of parole.

In Connecticut, as in many other states, the state can charge adolescents above the age of 14 as adults. A “Raise the Age” law that took effect in 2010 required that most 16 and 17-year-old be charged as juveniles, not adults. However, prosecutors can still charge minors as adults for certain serious crimes—like the felony murder charge against Nick—under the law. (The “second chance” bill before the legislature would allow inmates like Nick a chance at a review to be granted parole, and it would eliminate minors charged in the future from facing sentences without parole.)

Several towns in Connecticut first established juvenile courts during the early 1920s, later than in most

other states. The idea for such courts was born out of a reformist impulse to treat criminal behavior rather than punish it, by intervening in the lives of children whose homes had failed them. The establishment of a separate court system for juveniles mirrored other legal changes in the early 1900s meant to recognize adolescence as a stage of development, such as the extension of compulsory secondary education or the implementation of laws meant to protect teenagers from harsh labor conditions.

The juvenile system expanded state-wide in 1942, and for three decades, it housed children in separate facilities and released them when they had reached the age of 21. But by the 1960's, many legal experts had come to view these courts' uneven application of the law - a product of their paternalistic outlook - as capricious. A new generation of children's advocates sought to redefine the role of courts as liberating rather than protecting youths. Adolescents, they argued, deserved many of the same due-process rights as adults proceeding through the criminal justice system, such as access to a lawyer and the right to remain silent. As a result, during the 1970's, Connecticut, in concert with states across the country, eased the process of transferring juvenile cases to adult courts.

Amidst a wave of rising crime in the 1980s and 1990s, most visibly through the formation of gangs, reformers argued that the modern generation of adolescents had somehow matured faster than generations past. These claims grew increasingly sensational, culminating in news reports about a growing generation of adolescent "super predators" who perpetrated emotionless crimes in traveling packs. John Dilulio, then a professor of politics at Princeton University, championed the idea as a "demographic crime bomb," giving the issue more credence.

Dilulio has since recanted and apologized for this theory, saying his predictions never bore fruit. But at the time, all this hysteria fed into a trend of transferring more youths to adult courts, and, by extension, to greater numbers of youths serving out prison sentences well into their adult lives.

When Nick's case reached court, the prosecutor offered him a plea bargain: a sentence of 35 years in prison. Nick thought the bargain unfair. "I'm willing to take my responsibility, but I can't take the 35-year plea bargain," he told his court-appointed defense attorney, Beth Merkin. "I didn't pull the trigger. I didn't have a gun. I didn't want nobody to get hurt."

From there, the trial progressed quickly; Jason had already accepted a plea bargain of 50 years in prison without parole, a sentence that set the bar high for Nick's own. The prosecutor spent much of his presentation equating Nick's presence at the crime scene with the sandwich shop employee's death. Nick's brother, Miguel, testified against him in a negotiation with the prosecutor that would reduce his own sentence.

Within a matter of days, the trial had concluded with a guilty verdict. When the decision was announced, Nick wept openly on the stand. He wept because he had not been carrying a weapon; because it felt as though he was sacrificing himself for another person's will; because the guilty judgment would all but rob him of his adulthood.

"He was a very nice kid," Nick's lawyer, Merkin, recalled. "But you know, he was a kid, and I don't think he appreciated how serious this was."

In 1998, following a lengthy pre-sentencing investigation in which the court gathered more information on Nick's personality and circumstances, the judge handed down his sentence: 38 years in prison without the possibility of parole. At the age of 20, Nick had already served three years behind bars; the sentence all but ensured that he would not emerge until the age of 55. (Miguel, who accepted a plea bargain, was sentenced to 14 years and paroled after seven; Adam was sentenced to three and served out two.)

From Couch To Couch

In recent years, the pendulum of public opinion has once more swung in the other direction. Today's child advocates, echoing the reformers of a century past, point to lagging brain development and

socioeconomic disadvantages as reasons to consider the cases of adolescent offenders with more lenience. Their position was bolstered by a trio of Supreme Court decisions that culminated in a 2012 case,

Miller V. Alabama, which declared that sentencing minors to life without the possibility of parole constitutes cruel and unusual punishment. The ruling more broadly outlawed state mandates that predetermined sentences for juveniles, because, as Justice Elena Kagan explained in her majority opinion, judges must take into account “the mitigating factors of youth,” such as immaturity or the inability to evaluate the consequences of one’s actions, when deciding an appropriate sentence for a minor.

Many of the adolescents sentenced to long stays in prison tend to come from low-income and minority backgrounds; In Connecticut, 88 percent of juveniles given sentences of 10 years or longer are either African-American or Latino. They are more likely to have dropped out of high school and have other relatives who have gone to prison. Research shows, moreover, that a higher than average number have experienced physical and sexual abuse, emotional neglect or other psychological trauma.

“I think you develop more adult-type coping skills if you’re in a better setting,” said Andrew Lustbader, a clinical professor at the Yale Child Study center and the president of the Connecticut chapter of Child and Adolescent Psychiatry. “Parents who are not able to provide a level of stability or provide a floor for the kids to walk on – their kids will not feel prepared to make informed choices.”

Research shows, moreover, that judges and juries tend to view these structural disadvantages as adding to the unsavory profile of the defendant they are sentencing, often causing them to result in longer, rather than shorter, prison terms. That is why, according to Marisa Masolo Halm, the director of juvenile justice advocacy at the Center for Children’s Advocacy, it is especially important to consider the effects of such disadvantages on a youth’s decision-making. “I think there is no bright line that can be drawn in making such a determination,” she said. “There is too much at stake for these youth.”

Nick’s profile matches those of many of the juvenile offenders who came before and after him: Born to a low-income family in urban Connecticut to an overworked mother and a physically abusive father, he spent much of his youth raising himself. Nick’s father would often refuse him money, so to pay his way through his teenage years – “when you’re that age, you want sneakers” - he babysat, delivered newspapers and performed janitorial odd jobs.

Growing up, Nick showed unusual compassion for a child his age. His mother Leslie recalled times in kindergarten and first grade when Nick would return home from school, sobbing. “I’m thinking, ‘Oh my god, he got bullied,’” she said. “But it was because one of his friends got bullied. He would say, ‘One of my friends, they pushed him, and they called him names!’” Unlike many other children, he loved to read whatever he could find: his textbooks for school; novels; even the tombstones of a graveyard near his home, which he liked examining to imagine the lives of the people buried there.

Neither of Nick’s parents had finished high school. Though they urged him to stay, Nick would soon follow in their footsteps. “I was told, ‘Do right, do good in school,’” Nick recalled. “But education wasn’t ever fostered in my home.”

When Nick entered ninth grade, his family life deteriorated. One evening, in a fit of anger, his father confessed to him, against Leslie’s wishes, that they were not biologically related. After that, “he kind of lost the person who he was,” Leslie said. He joined a gang – the Latin Kings – and had the group’s insignia, a crown atop the letters “ADR,” short for “Amor de Rey” or “love of the king,” tattooed on the back of his right hand. He stopped caring as much about his schoolwork. His fights with his father grew only more contentious.

One day, Nick sold several of his father’s most beloved rings and chains to a pawn shop. In retaliation, his father ousted him from their home. Leslie wanted to protest, but her religion at the time – she was a practicing Jehovah’s Witness – prevented her from overruling her husband, she said. Instead, she would prepare food for Nick each night and drive around until she found him. Nick jumped from couch to couch.

Amongst this turmoil, he dropped out of high school and fathered his son with Carey. “Before prison, all I had ever wanted was to get a job, put my son through school and repeat the cycle of my parents,” Nick said. “I could only take things week by week.”

Leslie said she could not tolerate watching her son live like this for long. She eventually separated from her husband and bought an apartment in Waterbury, where Nick and Miguel went to live.

Were Nick’s trial to have been adjudicated adhering to the essence of *Miller*, the most recent Supreme Court precedent, it would likely have resulted in a much lighter sentence, Halm, of the Center for Children’s advocacy, said. “He exemplifies the situation of a youth who was involved in a serious crime as an accessory because of those unique characteristics of being a youth. He engaged in an act that was impulsive in nature, an act he was goaded into through peer pressure, and with a complete lack of understanding of the risk of harm and the potential consequences.”

Instead, Nick said, “I was treated as an adult. I was treated as a person who knows better – who had the foresight to realize I was getting into a situation where someone could get killed.”

A “Second Look”

So far, at least 10 states have reformed their criminal codes through legislation to comply with *Miller*. But in Connecticut, defendants under the age of 18 convicted for capital murder – the state’s equivalent of murder in the first-degree - are still required to serve life sentences without the possibility of parole, a direct violation of *Miller*. In response, the Connecticut Sentencing Commission formulated a recommendation for the legislature to take up. This recommendation is the basis for the juvenile sentencing bills that failed to clear both chambers of the state legislature the last two years, as well as the bill being debated in Wednesday’s hearing.

Not only would their recommendation undo the requirement to sentence a minor to life without parole. It would go one step further, allowing inmates with lengthy sentences for crimes they committed as minors to become eligible for a parole hearing 60 percent of the way into their sentence, a modification that proponents of the recommendation have dubbed “a second look.”

It is the “second look” aspect of this legislation that has proved controversial: While *Miller* does not require states to offer juvenile felons a chance to reduce their sentences, proponents insist that this aspect of the reform is a matter of equity. “If legislation provided a ‘second look’ at only the very longest sentences, it would lead to irrational results,” said Sarah Russell, a law professor at Quinnipiac University and an integral member of the juvenile sentencing reform movement in Connecticut.

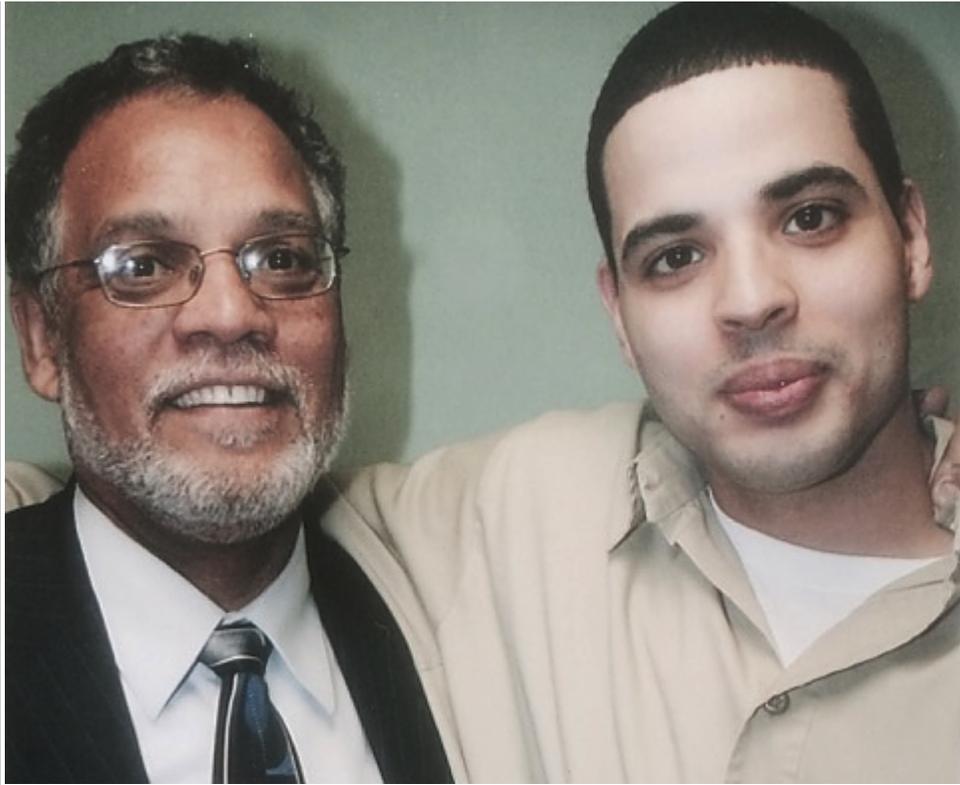
“Those serving longer sentences are often more culpable: Often those serving the longer sentences were the direct actors - triggerman who intended physical harm - whereas those serving somewhat shorter sentences were the lookouts or drivers in felony murder cases and intended no physical harm,” she said. “It does not make sense for more culpable individuals to have a chance for parole while those less culpable, like Nick Aponte, do not.”

But the prospect of mitigating this broad swath of sentences understandably does not sit well with the families of crime victims, making it a delicate issue for lawmakers to address.

“If you can’t believe a judge’s final decision in a courtroom, who can you believe?” said John Cluny, whose wife and teenaged son were murdered by the son’s 15-year-old friend Michael Bernier in 1995, during a House hearing on the bill in March 2013.

Though, like Aponte, Bernier has reportedly grown remorseful and more mature in prison, Cluny told the assembled legislators that he should still not be entitled to a second chance. “You’re in prison for what you did,” he pronounced, “not what you’ve become.”

A Letter From Another Father



Nick, right, during a clergy visit.

Nick spent the first several years of his sentence caught in a miasma of bitterness. He attempted to fill his days with work at an eyeglass shop and later a license plate production shop, with intense daily workouts, with weekly visits from his mother Leslie, who would bring along Nick's toddler son. But none of it could crowd out the bitterness he harbored toward his sentence. He got into fights with other inmates, the few instances of misbehavior that color an otherwise spotless disciplinary record. He left a box of letters that his lawyer, Merkin, had given him from the pre-sentencing investigation, including one the victim's father had written Nick, languishing in a crate under his steel bed frame. He was simply attempting to exist, suspended in time, devoid of goals or motivation to set them.

What energy Nick did have, he channeled into thinking of ways to challenge his sentence. He appealed his sentence to the State Supreme Court; he contemplated suing the state for due process violations, alleging that he had not been read his Miranda rights when he was first arrested. At the time, these strategies served as Nick's only mental escape. But now, he regards the effort as a painful saga that delayed his personal growth, he said. "I messed up. I was there. I shouldn't have been there."

Still, even then, shimmers of the remorseful person Nick would become had begun to emerge. A cell mate in the New Haven County jail, where Nick was housed for the remainder of 1995, warned him that were other inmates to see his gang mark, they would force him to join his former gang's prison affiliate or risk being killed. Eager to avoid trouble, Nick purchased black ink and used various sharp objects in his cell to blot over the tattoo, so that it came to resemble a dark cloud hovering on the back of his hand. Later that year, word came that Jason, who was housed in the same facility, had put a hit on Nick for fear that he would testify in Jason's trial. Rather than strike back – a typical prison tactic, according to Karen Martuchi, the acting director of the state's Department of Corrections – Nick requested to be transferred to a different facility.

As his first year bled into a second, and a second into a third, Nick withdrew further into himself, determined to avoid the near-daily confrontations that characterized his earlier days in jail. He started writing letters to reconnect with old family members on the outside. He would plead with his mother to purchase him novels, which he read at first to transport his mind to more pleasant surroundings, but which, he soon realized, could also help him remold his own personality. "I spoke so much slang—I had

to clean that up,” he recalled. With financial assistance from his brother Miguel, now a CVS district manager in San Diego, he started taking correspondence courses in hopes of perhaps completing his G.E.D.

One morning in 1998, after Nick had been formally sentenced, he retrieved the dusty box of letters that his lawyer Merkin had given him years earlier from underneath his bed. He rifled through the stack of papers until he found what he had been looking for: the note from David Horan’s father. Nick unfolded it with trembling hands. “It took a long time to get through the stages of grief” to be able to do so, he said.

The letter appealed to Nick’s sensibility as a father. He was still angry, the victim’s father wrote, but he was also willing to forgive Nick. He implored Nick to pursue ways of giving back, of serving others – so that Nick’s life would not go to waste just as David’s had. “Reading all that,” Nick recalled, “I was able to comprehend at that young age, if he can say these kind things to me, I realized there’s a chance at change.”

The letter inspired Nick to redouble his focus on education. He completed his G.E.D. and in 2001 moved onto an associate degree in psychology, a field he said he chose to better understand what had motivated his path to prison. Psychology opened his eyes to the ways in which his own youth and background had informed his decision-making. It taught him that, as a teenager, his brain had not yet reached full maturity. “The best thing that’s ever happened to me was understanding my mind state by reading ‘Les Guilty by reason of adolescence,’” he recalled, referring to a 2003 academic paper that summarized the social and biological factors that differentiate youth from adults. ([Click here](#) to read the paper.)

Psychology also helped Nick discover Buddhist meditation. After reading several books that his family had purchased him on the subject, Nick began adapting meditative sits into his daily routine. Several years into his independent practice, Tollie, a meditation teacher from Hartford (whose name is being withheld here in accordance with prison rules), began teaching a weekly two-hour meditation class on Friday mornings. According to Tollie, Nick is the class’s most devoted participant.

“I identify with Buddhism,” Nick said, because Buddhists “concentrate on the inner self, which is exactly what I needed.” Through meditation, Nick learned the concept of equanimity, a Buddhist tenet that teaches its adherents to focus their minds in the present, rather than vesting hope in the future. “He really sets a powerful example of doing the work that you need to do to live a life of integrity and growth,” Tollie said.

In 2006, after several years of training alongside his psychology coursework, Nick began working as a certified nursing assistant in the infirmary at the men’s prison facility in Suffield, where he has been moved specifically for the job. Without an actual nursing degree, Nick could not practice medicine. The job instead called for Nick to spend his shifts holding balmy hands and swapping out bedpans filled with defecation and vomit, tasks he treated with gusto. “I think it’s a gift to me—I love it,” Nick said of his work. “It gave me a depth of perception I didn’t know existed.” He said he hopes that one day, when he is released from prison, he can become a full nurse. That task may prove difficult with a felony on his record, but the prison officials and activists who work with Nick say that, in his case, this dream is certainly possible. “I just hope there will be a really smart person who will hire him,” Tollie said. “I would be proud to have him as a member of my family, as my neighbor.”

A couple years later, Nick also started taking shifts at the prison hospice, a volunteer position that just five other members of his 2,000-inmate facility were handpicked to take on. Martuchi, the Department of Corrections’ acting director, said that inmates had to come forward and volunteer themselves in order to be admitted to the hospice program. “There’s no pay; it doesn’t help you get points toward release,” she said. Hospice work is thankless; the inmates transferred there from the infirmary typically come without any family, and they often direct their bitterness at Nick about watching their lives drawing to a close amidst such pitiful conditions.

Yet nothing kept Nick as grounded as the devoted family members who visited him week after week.

Most often, Leslie would come with Devin in tow; when she could, she would also bring her younger children along. Each visit, held in a large meeting room lined with security guards, would open with a hug and a kiss – prison rules prevent family members from any further touch throughout the visit. They would gather to frantically catch Nick up on the goings-on outside the prison walls. During a recent visit, Leslie confessed to Nick that she had fallen behind on her bills. “He says, Mom, ‘what did I tell you? You really have to get your stuff together,’” she recalled him chiding her.

Devin and Leslie’s daughter Jodi, also Devin’s age, would clamber to talk about their classes, their friends and other important events. When they were younger, Leslie recalled, Nick would challenge the two children to spelling or math competitions. Nick did what he could from inside prison to encourage his son to appreciate his education and avoid activities, especially gang membership, that might lead him astray. Nick felt it was particularly important to remain completely honest with his son; Devin knows all the details of his father’s crime, but also all the details of his father’s attempts at self-betterment.

“We’re close beyond anything I could have imagined,” Nick said. “He’s had to live with his story for a long time. He’s learned to embrace it.”

Today, Devin cannot visit his father as often as in previous years – but with good reason. He is a sophomore at the University of Connecticut’s Waterbury campus, looking to transfer to the university’s main campus. Though he has not yet declared a major, he consults with his father on many of his classes and paper topics. Recently, he has expressed a desire to pursue a career in criminal justice reform.

Teenaged vs. Adult Males

Nick’s voice crescendoed with pride when he spoke of his son. But he cautioned not to think of Devin as a fully-developed adult at age 20. It was only in recent years, he said, that seeing his son reach the age at which he had entered the prison system made him appreciate truly how young he himself had been.

“Especially teenaged males. We all think at that age, we think we understand the world,” Nick said. “We think we are men, but the fact is, we’re at about our peak in immaturity.”

Science is just now catching up to Nick’s realization. Ample evidence exists to support the fact that numerous structures in the brain, particularly the prefrontal cortex – responsible for regulating behavior and making constructive choices – do not fully develop until age 25, the likely reason why poor judgment and brash decision-making often characterize the teenage years. Still, though judges now more readily acknowledge the issues inherent in forcing a person with mental illness to stand trial, the same judges do not often consider findings that suggest minors may be similarly unfit.

“The idea of consequences are not really known to adolescents. They are obviously experiential learners more than adults are,” Lustbader, the adolescent psychiatrist, said. “Someone might tell them that something is a bad idea, but if the kid next to them is doing it, they’ll want to try it. And that thing might be disrespectful or annoying, or it might be dangerous.”

Late last week, the Connecticut Supreme Court released its decision in *State of Connecticut v. Ackeem Riley*, a case in which the defendant, who had been found guilty of murder at the age of 17, challenged the legality of his life sentence under *Miller*. The court ruled in his favor, stating that Riley’s sentence did not take his youth into account. But in deference to the legislature’s pending bill on the matter, it left the details of reducing Riley’s sentence to be determined.

Proponents of “second look” say that its passage is far preferable to court-mandated solutions because, by definition, the courts would have to undo every existing lengthy sentence case-by-case, determining arbitrary thresholds in deciding which to reduce and which to leave untouched. “In situations where the liberty of individuals is at stake, particularly when that liberty is more likely to be infringed given the color of a youth’s skin, I think a clear legislative rule that will be applied equally is by far preferable,” Halm said.

Still, little is likely to change in Connecticut unless the state legislature passes a version of “second look.” In the past two years, though nearly identical bills have passed through the House with overwhelming support – most recently clearing the chamber by 134-4 – the Senate has failed both years to adopt the legislation. In its second attempt, at the end of the legislative session last May, Democratic leadership in the Senate decided not to bring the sentencing bill up for a vote for fear that Republicans would introduce a host of unrelated, controversial criminal justice measures, such as reinstating the death penalty, that would force Democrats to debate controversial issues they would prefer to avoid.

“If an amendment would have asked whether it should be 70 or 75 percent rather than 60 percent, I think that’s reasonable. I think it’s subject to debate,” said new Senate President Martin Looney, who was Senate majority leader at the time.

Counting On A Homecoming

Nick consented to a several-hours-long interview because, whether or not the bill passes this year, his future, as well as that of hundreds of others in his situation, hangs in the balance.

Nick’s mother Leslie, counting on the bill’s passage, has already prepared for her son’s return home. She has been saving him a room, she said, where she is keeping an ever-growing stack of nursing textbooks she has been purchasing him.

For his part, drawing on the teachings of equanimity, Nick trains his mind as much as possible on the present. He rises each morning, meditates, exercises and completes college homework. At 2:30, seven days per week, he begins an eight-hour shift at the prison infirmary.

“I’ve found my place in life,” Nick said. “Service. Exactly what Mr. Horan wanted me to do.” When time permits, he writes letters – to his family, to the victim’s family, and to the lawyers and politicians fighting to secure his release.

He has found the strength to dream – of one day earning his bachelor’s degree, of working as a full-time nurse, of spending unrestricted time with his family, of perhaps even speaking face-to-face with David Horan’s father.

But as it now stands, by the time Nick will be able to realize these dreams, he will be 55 – the age at which most Americans outside of prison begin contemplating their retirement. He does not know whether his mother, Leslie, will still be alive when he is released or how many family members will once more embrace him. He does not know how he will find work in a hospital with a felony on his record. He only knows that when he is 55, still 19 years away, a lonely bus will pick him up from prison and deposit him on the steps of city hall, with no plan or built-in support. He will be expected to resume his place as an adult in productive society, though he will have spent his entire adult life so far behind bars.

Was what happened to Nick fair?

He pondered the question for several moments before responding. “Well, in the eyes of the law, it’s fair—because if I committed a crime, it’s black and white,” he said slowly. “But now I understand – I think we all know—that life is lived in the gray.”

For now, Nick will keep on – keep on studying, keep on working, keep on believing that his chance at parole is just around the next corner. Because if he stops to think, he will be forced to ponder his life fading away – 19 years already gone, 19 more surely to go.