

**Testimony of Jenny Flynn and Farah C. Hage-Sleiman
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Testimony before the Judiciary Committee in Support of SB 18

March 23, 2016

Dear Members of the Judiciary Committee:

We submit this testimony in support of SB 18, An Act Concerning a Second Chance Society. The Juvenile Sentencing Project at Quinnipiac University School of Law supports SB 18's provisions that would raise the age of the juvenile justice system's jurisdiction through age 20 by July 1, 2019. The proposal is supported by a well-established body of research in developmental psychology and neuroscience that shows that the brains of these young adults are not fully developed. Moreover, the bill recognizes that young adults who make mistakes should not pay for their mistakes for the rest of their lives. The Civil Justice Clinic at Quinnipiac represents individuals who have been denied public housing, licenses, and employment based on convictions that occurred when they were young adults. Our clients continue to face barriers based on these convictions even years later when they have fully turned their lives around.

We respectfully ask that the Committee consider amending SB 18 to give judges the discretion, where good cause exists, to depart from a mandatory minimum sentence when sentencing a child who has been transferred to adult court. In the 2015 legislative session, this Committee held a public hearing on SB 1127, which proposed to amend section 46b-127 of the general statutes to provide that the "court may, for good cause shown, sentence such child to a term of imprisonment that is shorter than the prescribed mandatory minimum term." We ask that the Committee consider incorporating the language from last session's SB 1127 into this year's SB 18.

Under current law, if a child is transferred to adult court and convicted of an offense carrying a mandatory minimum sentence, the judge may not impose a sentence less than the mandatory minimum—even if there are compelling mitigating circumstances. Notably, Public Act 15-84 provides new parole rules for juveniles, and requires courts to consider youth when sentencing juveniles convicted of A and B felonies. However, the Act does not permit judges to depart from mandatory minimum sentences. As the U.S. Supreme Court and Connecticut Supreme Court have recently recognized, children are "constitutionally different from adults for purposes of sentencing" because they are less culpable for their crimes and more capable of change. Sentencing judges in Connecticut should have discretion to consider the mitigating circumstances of youth when fashioning an appropriate sentence.

I. PROPOSED LEGISLATION AND CURRENT CONNECTICUT LAW

Under current Connecticut law, children ages 15 to 17 who are charged with certain offenses can be transferred to adult court, tried, and sentenced as adults.¹ Children are automatically transferred for some offenses without judicial review of their individual circumstances. Once transferred to the adult criminal court, children are exposed to the same

¹ Conn. Gen. Stat. § 46b-127.

sentencing schemes as adults, including mandatory minimums. If the offense carries a mandatory minimum sentence, a judge is powerless to sentence below the minimum—even where there are compelling circumstances that warrant a lesser sentence for the child.

The proposed amendment would permit the judge, when sentencing a child convicted in adult court, to depart from a mandatory minimum term and impose a lesser sentence if the child demonstrates good cause for doing so. The departure would be within the judge's discretion. This amendment would not eliminate mandatory minimums altogether or impact the range of sentences that can be imposed. Nor would it prohibit a judge from imposing the mandatory minimum sentence or a term that is greater in any case.

Connecticut currently has one law that recognizes that a mandatory minimum sentence is not appropriate for children and creates an exception for youth.² The statute, relating to certain drug offenses, provides that the “court may suspend the execution of such mandatory minimum sentence if at the time of the commission of the offense . . . such person was under the age of eighteen years” All of Connecticut’s mandatory minimum sentencing laws should recognize the differences between children and adults.

II. Children are Constitutionally Different From Adults for Purposes of Sentencing

Regardless of the severity of the offense, courts should consider youth and its attendant circumstances when sentencing children to prison. The Supreme Court’s recent juvenile sentencing decisions, *Roper v. Simmons*,³ *Graham v. Florida*,⁴ *Miller v. Alabama*,⁵ and *Montgomery v. Louisiana*⁶ have recognized that “youth is more than a chronological fact” and “children are constitutionally different from adults for purposes of sentencing.” These decisions place Eighth Amendment limits on sentences for children and require sentencing courts to give mitigating effect to youth.

The decisions were based not only on common sense and what “any parent knows.” The Court relied on science that shows the differences between adults and juvenile offenders. Youth have lessened culpability, lack of maturity, and an underdeveloped sense of responsibility that leads to increased recklessness, impulsivity, and risk-taking.⁷ Significantly, the Court noted juveniles have a greater capacity for change than adults.⁸ The Court also considered external life circumstances that juveniles are unable to control or remove themselves from and their increased susceptibility to negative influences.⁹

The decisions have created great support for changes to juvenile sentencing. Recent decisions by the Connecticut Supreme Court have recognized the importance of treating juveniles differently in the criminal system and stressed the importance of considering the mitigating

² Conn. Gen. Stat. § 21a-278 (formerly Sec. 19-480a).

³ 543 U.S. 551 (2005).

⁴ 560 U.S. 48 (2010).

⁵ 132 S. Ct. 2455 (2012).

⁶ 136 S. Ct. 718 (2016)

⁷ *Miller*, 132 S. Ct. at 2464-65; *Roper*, 543 U.S. at 569.

⁸ *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 569-70).

⁹ *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012)

circumstances and characteristics of youth when sentencing juveniles.¹⁰ Indeed, our Supreme Court has recognized that “[a] mandatory sentencing scheme . . . renders these factors irrelevant.”¹¹

Youth and its attendant circumstances must be considered when sentencing juveniles facing harsh penalties.¹² The Connecticut Supreme Court held that a ten-year mandatory minimum sentence for a juvenile was not automatically unconstitutional. However, a concurring opinion stressed that “the legislature may wish to revisit the question of whether such mandatory prison terms are appropriate for juveniles, as a matter of sound public policy, in light of the marked differences between juveniles and adults.”¹³ A dissenting opinion would have struck the mandatory minimum as unconstitutional because of “the need for individualized, full discretionary sentencing of all juvenile offenders.”¹⁴

III. Nationwide Efforts to Eliminate Mandatory Minimums for Juveniles

Nationally, states are reforming sentencing schemes to protect juvenile offenders from the harms of mandatory minimum sentences. Policymakers, now equipped with scientific proof that juveniles are fundamentally different from adults, are enacting well-reasoned sentencing reforms.¹⁵ There have been bipartisan efforts nationwide to ensure that judges have discretion to consider youth in sentencing.¹⁶ State courts have also weighed in and provided greater protection for juveniles than is required by federal law. Reforms in Iowa and Washington illustrate successful judicial and legislative action to protect juveniles from the harms of mandatory minimums.

A. Iowa

The Iowa Supreme Court recently prohibited mandatory minimums for juveniles. In *State v. Lyle*, the Iowa Supreme Court held that juveniles tried as adults cannot be sentenced under a mandatory minimum sentencing scheme.¹⁷ With the decision, the court identified a new category of unconstitutional sentences: those which prohibit a judge from considering the mitigating factors of youth when sentencing a juvenile as an adult. The court emphasized the importance of judicial discretion in juvenile cases so that judges can take into account the characteristics of youth and the best interests of the child. The court did not broadly prohibit imprisonment for juveniles nor did it disallow the use of minimum terms of imprisonment for adults. Rather, the court stated that mandatory minimums “are simply too punitive for what we know about juveniles.”¹⁸

B. Washington

¹⁰ See *State v. Riley*, 315 Conn. 637, 653 (2015); *Casiano v. Comm’r of Corr.*, 317 Conn. 52 (2015); *State v. Taylor G.*, 315 Conn. 734 (2015).

¹¹ *Id.* at 60.

¹² *Riley*, at 653-544, 658; *Casiano*, 317 Conn. at 62.

¹³ *Taylor G.*, 315 Conn. at 774 (Palmer, J., concurring).

¹⁴ *Id.* at 785, 802-07 (Eveleigh, J., dissenting).

¹⁵ *Id.*

¹⁶ Nat’l Conf. of State Leg., *Trends in Juvenile Justice State Legislation 2011-2015* (Sept. 2015),

http://www.ncsl.org/documents/cj/Juvenile_Justice_Trends.pdf.

¹⁷ *State v. Lyle*, 854 N.W.2d 378, 380 (Iowa 2014). The court based its holding on the cruel and unusual punishment clause of the Iowa Constitution.

¹⁸ *Id.* at 401.

In 2005, Washington State enacted legislation that gives judges discretion to depart from mandatory minimum sentences for juveniles.¹⁹ In enacting the statute, the legislature acknowledged adolescent development and distinguished juveniles from mature adults.²⁰ The legislature did not eliminate the possibility of juveniles being tried as adults. Rather, they eliminated the application of mandatory minimums to juveniles because such sentences do not permit the appropriate consideration of youth.

IV. National Trends Against All Mandatory Minimum Sentences

Nationally, there are bipartisan reform efforts aimed at remedying the negative impacts of decades of “tough on crime” policies. As flaws in mandatory minimum sentences are being recognized, demands for change have gained momentum. Groups across the political spectrum including the Sentencing Project, Right on Crime, and Families Against Mandatory Minimums have supported more judicial flexibility in sentencing.²¹

Enacted with the goal of cutting down on crime, mandatory minimums have only exacerbated the problem.²² Mandatory minimums do not reduce crime; rather, the statutory schemes contribute to harm by disrupting families and communities.²³ Mandatory minimum reform efforts reflect the understanding that the United States is incarcerating too many offenders, for long durations, and spending too much money doing so.²⁴

Repairing the harm from mandatory minimums is not strictly a liberal issue. Republican support includes Senators Rand Paul and Rick Perry.²⁵ Safety valve statutes have been enacted to grant judges the discretion to bypass mandatory sentences under certain circumstances.²⁶ This past fall, a bipartisan federal compromise was reached with the Sentencing Reform and Corrections Act of 2015, which proposes expanding safety valves and discretion to depart from mandatory minimums for certain offenses.²⁷ “The bill reflects a recognition that the harsh penalties adopted by lawmakers in recent years have been overly broad, costly to taxpayers, and have produced diminishing returns for public safety.”²⁸

¹⁹ Wash. Rev. Code Ann. § 9.94A.540 (West). The statute provides: “Except to the extent provided in subsection (3) of this section, the following minimum terms of total confinement are mandatory and shall not be varied or modified under RCW 9.94A.53.” Subsection 3 provides that “(1)(a) through (d) of this section shall not be applied in sentencing of juveniles tried as adults pursuant to RCW 13.04.030(1)(e)(i).”

²⁰ HB 1187 (Wash. 2005).

²¹ *Momentous Legislation Suggests “Tough on Crime” Days are Over*, THE SENTENCING PROJECT (Oct. 1, 2015), http://www.sentencingproject.org/detail/news.cfm?news_id=1963&id=184; Michael Haugen, *Survey: Substantial Public Support Exists for Judicial Flexibility in Sentencing*, “Good Time” Credits, RIGHT ON CRIME (Feb. 12, 2016), <http://rightoncrime.com/2016/02/survey-substantial-public-support-exists-for-judicial-flexibility-in-sentencing-good-time-credits/>.

²² See *Turning Off the Spigot: How Sentencing Safety Valves Can Help States Protect Public Safety and Save Money*, FAMM (March 2013), <http://famm.org/Repository/Files/Turning%20Off%20the%20Spigot%20web%20final.pdf>.

²³ Lizzie Buchen, *OP-ED: Keep Mandatory Minimums Out of the Juvenile Justice System* (June 16, 2014), <http://jjie.org/op-ed-keep-mandatory-minimums-out-of-the-juvenile-justice-system/>.

²⁴ Marc Levin & Jason Pye, *No more costly mandatory minimums*, CONGRESS BLOG, <http://thehill.com/blogs/congress-blog/judicial/250999-no-more-costly-mandatory-minimum-sentences> (Aug. 14, 2015).

²⁵ Ben Wolfgang, *Obama calls for overhaul of prison system, end of mandatory minimum sentences*, WASHINGTON TIMES (July 14, 2015), <http://www.washingtontimes.com/news/2015/jul/14/obama-calls-for-overhaul-of-prison-system-end-of-m/?page=all>;

Conservative Criminal Justice Reform: End Mandatory Minimums?, (Aug 3 2015) <http://conservativeintel.com/2015/08/03/conservative-criminal-justice-reform-end-mandatory-minimums/>;

²⁶ FAMM, *Turning Off the Spigot*, *supra* note 31.

²⁷ Justice Reform Bill Announced in Senate, <http://rightoncrime.com/2015/10/federal-compromise-on-criminal-justice-reform-bill-announced-in-senate/> (October 1, 2015).

²⁸ The Sentencing Project, *supra* note 22 (the bill was introduced by “Senate Judiciary Chairman Chuck Grassley (R-IA), Minority Whip Dick Durbin (D-IL), Republican Whip John Cornyn (R-TX), Senator Sheldon Whitehouse (D-RI), Senator Mike Lee (R-

States are also engaged in efforts to remedy the harm of mandatory minimums. In 2013, an estimated one-third of states had enacted some type of safety valve provision.²⁹ States that have made progress or are attempting to return the sentencing discretion to judges include Georgia, Louisiana, Maryland, Massachusetts, Missouri, Nebraska,³⁰ Colorado,³¹ Oregon,³² Iowa³³, and Oklahoma.³⁴

Connecticut is starting to progress with the national trend. The Malta Justice Initiative published an analysis of Connecticut's criminal justice and corrections system in 2014.³⁵ The examination revealed the flaws inherent in mandatory sentencing schemes.³⁶ Significantly, under mandatory minimum schemes, judges cannot take into account any mitigating circumstances or individual characteristics in sentencing. Among reform recommendations, Malta Justice Initiative has asserted that Connecticut's mandatory minimum sentencing needs an overhaul. Particularly, greater discretion should be provided to judges to consider the circumstances of an offense and the individual's history.³⁷

Connecticut lawmakers have started moving forward in accordance with national trends. In July 2015, Connecticut repealed mandatory 2-year minimum sentences for possession offenses committed within a drug-free school zone.³⁸ The legislation, which also reclassified many drug offenses to misdemeanors, was passed with broad bipartisan support. Connecticut law also includes a safety valve for drug-related offenses involving non-violent first time offenders.³⁹ A judge may depart from mandatory minimums in such cases if there is a showing of "good cause" for doing so.

We respectfully urge the Committee to consider amending SB 18 to give judges discretion to depart from mandatory minimums for juveniles when good cause for doing so exists.

UT), Senator Chuck Schumer (D-NY), Senator Lindsey Graham (R-SC), Senator Cory Booker (D-NJ), and Senator Tim Scott (R-SC).")

²⁹ FAMM, *Turning off the Spigot*, *supra* note 23.

³⁰ *States Continue to Lead Way on Mandatory Minimum Reform* (May 1, 2015), <http://fammm.org/states-continue-to-lead-way-on-mandatory-minimum-reform/>; THE STATE OF SENTENCING 2011: DEVELOPMENTS IN POLICY AND PRACTICE, THE SENTENCING PROJECT (Feb. 2012), at 8.

³¹ See *Colorado state bill would get rid of mandatory minimum sentences*, CBS DENVER (Feb. 22, 2016, 3:33 pm), <http://kltfy.com/2016/02/22/colorado-state-bill-would-get-rid-of-mandatory-minimum-sentences/>

³² See Conor Friedersdorf, *Oregon and the Injustice of Mandatory Minimums*, THE ATLANTIC (Jan. 5, 2016), <http://www.theatlantic.com/politics/archive/2016/01/oregon-mandatory-minimums/422433/>

³³ See Kathy Bolten, *Bill: Reduce mandatory sentences for some offenses*, THE DES MOINES REGISTER (Feb. 8, 2016), <http://www.desmoinesregister.com/story/news/crime-and-courts/2016/02/04/mandatory-minimum-sentence-time-served-iowa-prisons/79790238/>

³⁴ See Mireya Garcia et al., *Gov. Fallin proposes teacher pay raises, lowering mandatory minimums in 'State of State'*, FOX25, <http://okcfox.com/news/local/state-of-the-state-address-today>

³⁵ MALTA JUSTICE INITIATIVE, THE JUSTICE IMPERATIVE: HOW HYPER-INCARCERATION HIJACKED THE AMERICAN DREAM 2014.

³⁶ *Id.* at 34.

³⁷ *Id.*

³⁸ Public Act 15-2, June Special Session (Conn. 2015).

³⁹ See Conn. Gen. Stat. § 21a-283a (providing that if the offense "did not involve the use, attempted use or threatened use of physical force against another person or result in the physical injury or serious physical injury of another person, and in the commission of which such person neither was armed with nor threatened the use of or displayed or represented by word or conduct that such person possessed any firearm, deadly weapon or dangerous instrument . . . the court may, upon a showing of good cause by the defendant, depart from the prescribed mandatory minimum sentence, provided the provisions of this section have not previously been invoked on the defendant's behalf and the court, at the time of sentencing, states in open court the reasons for imposing the particular sentence and the specific reason for imposing a sentence that departs from the prescribed mandatory minimum sentence").