

Challenging Mass Incarceration Clinic  
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**Testimony of the Challenging Mass Incarceration Clinic at Yale Law School  
In Support of S.B. 978: An Act Concerning Parole Opportunities for Individuals Serving  
Lengthy Sentences for Crimes Committed Before the Individual Turned Twenty-Five  
Years of Age.**

Judiciary Committee Hearing, March 10, 2021

Senator Winfield, Representative Stafstrom, and esteemed members of the Judiciary Committee,

We write to express our **strong support for S.B. 978**, providing those serving long sentences for crimes committed before the age of 25 a chance of release on parole.

In the Challenging Mass Incarceration Clinic, we represent clients serving long sentences for crimes they committed while under the age of 25. In this work, we see first-hand the severe consequences of long sentences on young adults, as well as the huge potential these individuals have to contribute positively to society. What we see in our clients is supported by research that has been adopted by courts and legislatures in other jurisdictions. Connecticut can, by aligning policy with this evidence, address racial disparities and mitigate the high fiscal and social costs that result from incarcerating young adults without the possibility of parole. Allowing all people sentenced as young adults an opportunity for parole is an important step in that direction.

This bill would extend parole eligibility to many people who are incarcerated for crimes that they committed as young adults, including crimes that caused real and significant harm to victims. But the question for this Committee is not whether these individuals deserve to be punished: every one of them will serve at least twelve years in prison before even being considered for parole. The question for this Committee is also not “who should stay in prison.” The question for this Committee is “who should decide who stays in prison.”

When we categorically deny parole to a group of people, we cannot consider individual evidence about each person, or hear directly from their victims. Instead, we make that decision based on assumptions about what a typical member of that group is like, or what a typical victim wants or needs. In addition, many people convicted as young adults serving long sentences in Connecticut were sentenced decades ago, before young adult neuroscience research was as robust as it is today. Their sentences were based on outdated information. All this bill does is empower the parole board to decide, on a case-by-case basis, whether the benefits of continuing to incarcerate somebody are worth the costs. That is it.

We support this bill because we believe that it will promote public safety, save taxpayer money, reduce racial disparities in Connecticut’s prisons, and better align our parole practices with science.

## **Brain science and psychology support giving young adults chances to demonstrate their rehabilitation.**

The Supreme Court of the United States has recognized that youth under age 18 are different from adults in ways relevant to criminal sentencing: adolescents are more impulsive, more susceptible to peer pressure, and more capable of achieving rehabilitation than are adults.<sup>1</sup> In *Miller v. Alabama*, the Court determined that mandatory life-without-parole sentences for adolescents violate the U.S. Constitution. In 2015, Connecticut responded to this precedent by providing an opportunity for parole for all people sentenced to long sentences before the age of eighteen.

However, adolescents do not turn into fully developed adults on their eighteenth birthdays. Neuroscientific and psychological research shows that young adults, like adolescents, are fundamentally different from older adults.<sup>2</sup> As the U.S. Department of Justice’s National Institute of Justice concludes, “young adult offenders ages 18-24 are more similar to juveniles than to adults.”<sup>3</sup>

Brain development research shows that human brains are not fully developed until at least age 25. This underdevelopment has implications for both the culpability of young adults and their capacity to be rehabilitated. During this developmental period, the limbic system, the part of the brain controlling emotion and sensation-seeking, dominates, causing emerging adults to act more impulsively and take more risks.<sup>4</sup> At the same time, the prefrontal cortex—which controls perceptions of risk and reward, planning, and impulses—continues to develop into a person’s 20s.<sup>5</sup>

Particularly in stressful and emotionally-charged situations, this imbalance in the brains of young adults impairs their judgment and self-control, similar to adolescents and unlike older adults.<sup>6</sup> Psychological research bolsters the evidence from neuroscience; researchers have established that young adults are less able to understand consequences, evaluate options before acting, and resist peer pressure than older adults.<sup>7</sup> Young adults’ impulsive actions are therefore more likely to reflect innate features of youth than they are to represent permanent character traits.

Young adult brains also have more plasticity than those of older adults, meaning they have great capacity to change based on their environment and experiences.<sup>8</sup> Consequently, young adults are prime targets for rehabilitation. Providing an opportunity for young adults to demonstrate their rehabilitation through parole hearings would bring policy in line with this scientific evidence.

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<sup>1</sup> *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005); *Graham v. Fla.*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), as modified (July 6, 2010); *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012); *Montgomery v. Louisiana*, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016), as revised (Jan. 27, 2016).

<sup>2</sup> See e.g. John H. Blume et. al., *Death by Numbers: Why Evolving Standards Compel Extending Roper’s Categorical Ban Against Executing Juveniles from Eighteen to Twenty-One*, 98 Tex. L. Rev. 921 (2020).

<sup>3</sup> *From Juvenile Delinquency to Young Adult Offender*, National Institute of Justice (2014), available at: <https://nij.ojp.gov/topics/articles/juvenile-delinquency-young-adult-offending>

<sup>4</sup> Alexandra O. Cohen et. al., *When Does A Juvenile Become an Adult? Implications for Law and Policy*, 88 Temp. L. Rev. 769 (2016).

<sup>5</sup> Id.

<sup>6</sup> Samantha Buckingham, *Reducing Incarceration for Youthful Offenders with A Developmental Approach to Sentencing*, 46 Loy. L.A. L. Rev. 801 (2013).

<sup>7</sup> Id.

<sup>8</sup> Elizabeth S. Scott et. al., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L. Rev. 641 (2016).

**Affording parole hearings to those sentenced for crimes they committed as young adults could help to reduce the racial disparities in Connecticut’s prison system and would capitalize on the fruits of justice investments Connecticut has already made.**

It is a sad fact that Connecticut’s prisons have the sixth-highest Black/white racial disparity in the country, ranking higher than every state that was part of the Confederacy.<sup>9</sup> The numbers are even worse for youth. Black youth in Connecticut are 13.5 times as likely as white youth to be incarcerated, the second greatest Black/white racial disparity in youth incarceration in the country.<sup>10</sup> While there are no available data on the disparities in incarceration for people aged 18-24 in Connecticut, it is likely that these disparities are likewise significant. Nationally, “one in five people in prison for at least 10 years is a black man incarcerated before age 25.”<sup>11</sup>

Expanding parole eligibility would allow people convicted of crimes when they were young adults to be considered for release based on their record of rehabilitation and an assessment of their ability to succeed in society outside prison. Thanks to the significant investments that the state has made in implicit bias training and similar programs, led by the Commission on Racial and Ethnic Disparity in the Criminal Justice System, these individualized assessments could help reduce the lingering influence of implicit bias and stereotypes on extant criminal sentences. Additionally, extending parole eligibility to people who are incarcerated for crimes that they committed as young adults would allow the state to capitalize on the success of its successful young adult rehabilitative programming, including the nationally-renowned TRUE program at Cheshire Correctional Institution and the WORTH Unit at York Correctional Institution.<sup>12</sup>

**Affording parole hearings to those sentenced for crimes they committed as young adults would save taxpayer money while also promoting public safety.**

Every day that someone spends in prison is a loss. Incarcerated individuals lose precious moments with their loved ones. Their kids’ first words, first steps, or first days of school. An anniversary. A time when their partner needed them, and they could not lend a hand or a shoulder to cry on. Their families and loved ones lose time with them, and their communities lose the contributions they would make. Taxpayers also suffer a loss: incarcerating somebody for a year in Connecticut costs a whopping \$65,233.<sup>13</sup>

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<sup>9</sup> *State-by-State Data*, Sentencing Project (2019), available at: <https://www.sentencingproject.org/the-facts/#rankings?dataset-option=BWR>

<sup>10</sup> *Racial Disparities in Youth Incarceration Persist*, Sentencing Project (2021), available at:

<https://www.sentencingproject.org/wp-content/uploads/2021/02/Racial-Disparities-in-Youth-Incarceration-Persist.pdf>

<sup>11</sup> Leigh Courtney, et al., *A Matter of Time: The Causes and Consequences of Rising Time Served in America’s Prisons*, Urban Institute (2017), available at: <https://apps.urban.org/features/long-prison-terms/a-matter-of-time.pdf>

<sup>12</sup> See e.g. Erik Ofgang, “How Scott Semple Helped Turn Connecticut’s Prisons Into a Nationally Recognized Laboratory of Reform,” *Connecticut Magazine* (May 21, 2019), [https://www.connecticutmag.com/issues/features/how-scott-semple-helped-turn-connecticut-s-prisons-into-a-nationally-recognized-laboratory-of-reform/article\\_e6e733cc-78af-11e9-b468-87e688e6aae5.html](https://www.connecticutmag.com/issues/features/how-scott-semple-helped-turn-connecticut-s-prisons-into-a-nationally-recognized-laboratory-of-reform/article_e6e733cc-78af-11e9-b468-87e688e6aae5.html)

<sup>13</sup> This number was calculated using the same method as the Vera Institute’s prison spending report but with data from 2020. Specifically, the total general fund expenditure of the DOC for FY2019-20 (\$648,743,933) was divided by the total 2020 incarcerated population on the DOC website (9,945 people). See *Prison Spending in 2015*, Vera Institute of Justice (n.d.), available at: <https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends-prison-spending>

Parole is a tool that allows the state to decide whether the losses connected with continuing to incarcerate somebody are justified. If this bill is enacted, nobody will be released automatically. The bill merely affords individuals who committed crimes as young adults an opportunity to demonstrate to the parole board that the costs of incarcerating them exceed the benefits. If the parole board disagrees, it can refuse to grant parole. In this process, both victims of the applicant's crime and the state's attorney are afforded a meaningful role. Conn. Gen. Stat. 54-125a(f)(3). Connecticut's parole system is among the strictest in the country,<sup>14</sup> and ensures the protection of public safety.

If the bill does not pass, nearly all of the people to whom it would expand parole will be released from prison anyway, though they will be released after spending more time in prison and without having had the same incentives to engage in rehabilitative programming and keep out of trouble. There is strong causal evidence that spending more time in prison makes people more likely to commit crime. Much of the rehabilitative programming has also been shown to be effective in reducing rates of reoffending, and the TRUE and WORTH programs have been especially effective.<sup>15</sup> This is why expanding parole should actually reduce crime.

This intuition is backed up by significant evidence. Although some hold the incorrect belief that harsh sentences deter crime, the DOJ's National Institute of Justice has explained that "prison sentences (particularly long sentences) are unlikely to deter future crime. Prisons actually may have the opposite effect."<sup>16</sup> Indeed, eliminating parole is estimated to both increase crime and increase the prison population by approximately ten percent, imposing unjustifiable costs on both crime victims and taxpayers.<sup>17</sup> Relatedly, "after a reform that eliminated parole for certain offenders, they accumulated a greater number of disciplinary infractions, completed fewer prison rehabilitative programs, and recidivated at higher rates than inmates unaffected by the reform."<sup>18</sup>

Expanding parole eligibility for people who were convicted of crimes when they were young adults should lead to the reverse of these harmful effects: reduced disciplinary infractions, increased participation in rehabilitative programming, and lower rates of recidivism when the affected people are eventually released (whether on parole or at the end of their sentences). This is especially true for those sentenced as young adults because, as explained above, rehabilitative programming is more effective for them than for older adults. Additionally, there is ample evidence that people tend to age out of crime.<sup>19</sup> For these reasons, expanding parole should both decrease crime and save taxpayer money.

California's experience bears out these recidivism predictions. In 2013, California enacted a statute similar to S.B. 978, since expanding the statute twice to now include people who committed crimes while under the age of 26. After the first expansion, which covered people who offended while under the age of 24, the California Department of Corrections and Rehabilitation estimated that

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<sup>14</sup> Jorge Renaud, *Parole Grades Table*, Prison Policy Initiative (2019), available at: [https://www.prisonpolicy.org/reports/parole\\_grades\\_table.html](https://www.prisonpolicy.org/reports/parole_grades_table.html)

<sup>15</sup> Ofgang, *supra* at 12.

<sup>16</sup> *Five Things About Deterrence*, National Institute of Justice (2016), available at: <https://www.ojp.gov/pdffiles1/nij/247350.pdf>

<sup>17</sup> Ilyana Kuziemko, How should inmates be released from prison? An assessment of parole versus fixed-sentence regimes, *The Quarterly Journal of Economics*, Volume 128, Issue 1, February 2013, Pages 371–424, <https://doi.org/10.1093/qje/qjs052>

<sup>18</sup> *Id.*

<sup>19</sup> National Institute of Justice, *supra* note 3.

only 0.6% of people released under that program were re-convicted within two years,<sup>20</sup> compared to 35% for all people released from California prisons around that same time. Put another way, the risk of reoffending was 98.3% lower for people released through young adult parole than it was overall. Young adult parole worked.

## **Summary**

If this bill is enacted, the parole board will have opportunities to review applications from people who are incarcerated for crimes they committed when they were young adults. When it does this, it may decide that, for some particular people, the costs of continuing to incarcerate them outweigh the benefits. Allowing this individualized consideration would be life-changing for people who, like many of our clients, have reflected on their past mistakes, changed the way they live their lives, and now deserve a chance to demonstrate their growth and earn their freedom without posing a risk to public safety. This bill would also save taxpayer money and reduce racial disparities in Connecticut prisons. For all of these reasons, we urge you to vote to pass S.B. 978.

Thank you for your consideration.

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<sup>20</sup> Natalie Behr, *Specialized Parole and Resentencing Laws Focused on Emerging Adults New and proposed reforms in CA, IL, CO, D.C., and FL*, Emerging Adult Justice Project (2020), available at: [https://static1.squarespace.com/static/5c6458c07788975dfd586d90/t/5f7498fbed48091d1d13a65c/1601476860538/20200930+EJP\\_Specialized+Parole+and+Resentencing+Laws+Focused+on+EAs.pdf](https://static1.squarespace.com/static/5c6458c07788975dfd586d90/t/5f7498fbed48091d1d13a65c/1601476860538/20200930+EJP_Specialized+Parole+and+Resentencing+Laws+Focused+on+EAs.pdf)