

QUINNIPIAC UNIVERSITY

SCHOOL OF LAW

Legal Clinics

TESTIMONY OF THE CIVIL JUSTICE CLINIC QUINNIPIAC UNIVERSITY SCHOOL OF LAW

Connecticut Sentencing Commission

JUVENILE SENTENCING PROPOSAL

November 29, 2012

Dear Members of the Sentencing Commission:

The Civil Justice Clinic at Quinnipiac University School of Law submits this testimony regarding the Sentencing Commission's juvenile sentencing proposal. We greatly appreciate the time and attention that the Commission has devoted to this important issue.

As you know, under Connecticut law, children as young as 14 years old charged with certain crimes are automatically transferred to adult court and subject to adult penalties. Many juvenile offenders serving long prison sentences are entirely ineligible for parole. Even when they have matured and changed in prison, these individuals have no hope of review and a second chance. There is now a consensus among medical and mental health experts that the brains of adolescents are not fully formed, and teenagers act more impulsively and with less foresight than adults. The experts also tell us that children are capable of extraordinary change over time.

Below, we describe current law and data in Connecticut on this issue, review relevant scientific evidence and modern understandings of adolescent development, offer information about model statutes and practices in other states, and discuss the impact of relevant U.S. Supreme Court cases.

I. Connecticut Law and Data on Juveniles Serving Adult Sentences

Currently in Connecticut, children ages 14 to 17 charged with certain serious crimes are automatically tried as adults and subject to adult penalties, including mandatory minimum sentences and parole ineligibility rules.¹ For example, a 14-year-old child charged with felony murder or murder is automatically transferred to adult court and, if convicted, subject to a mandatory minimum sentence of 25 years imprisonment and a maximum possible sentence of 60 years.²

Individuals are entirely ineligible for parole if sentenced for certain offenses including felony murder, murder, capital felony, and aggravated sexual assault in the first degree.³ Juvenile offenders convicted of other violent felonies are eligible for parole after serving 85% of the sentence.⁴ There are people in Connecticut serving sentences of 50 years or more for crimes committed as young as age 14 who are ineligible for parole.⁵

Children under the age of 18 charged with capital felony⁶ are automatically tried as adults and, if convicted, subject to a mandatory sentence of natural life without the possibility of release.⁷

In Connecticut, there are five juvenile offenders currently serving mandatory LWOP sentences as a result of capital felony convictions.⁸ There are 272 individuals serving sentences of more than 10 years for crimes committed when they were under the age of 18. Forty-eight of these juvenile offenders are serving sentences of 50 years or more. Many are ineligible for parole.

II. A “Second Look” at Long Prison Sentences Imposed on Children

A. A “Second Look” Procedure is Supported by Scientific Evidence and Modern Understandings of Adolescent Development.

1. “Adult time” for “adult crime” was based on mistaken and outdated science.

¹ Conn. Gen. Stat. §§ 46b-127 (transfer statute), 54-125a (parole statute). Under current law, children charged with Class A felonies must be tried in adult court: neither the prosecutor nor the judge have discretion to keep the case in juvenile court. *Id.* § 46b-127(a)(1). Children charged with Class B felonies are automatically transferred to adult court, and the prosecutor may file a motion to transfer the case to juvenile court. Judges lack discretion to keep Class B offenses in juvenile court. *Id.* § 46b-127(a)(2).

² *Id.* § 53a-35a (applicable penalties).

³ *Id.* § 54-125a(b)(1).

⁴ *Id.* § 54-125a(b)(2).

⁵ Data from the Department of Correction (2011).

⁶ After the repeal of the death penalty in 2012, “capital felony” is now called “murder with special circumstances.”

⁷ Conn. Gen. Stat. §§ 53a-35a(1)(A), 53a-35b.

⁸ Data from the Department of Correction (2012).

In 1995, John DiIulio, Jr., Professor at Princeton University, warned of a new breed of juvenile super-predators, mostly young black men, reared by violent and abusive parents in crack-filled inner-cities, who were “remorseless” “stone-cold predators.” DiIulio suggested that we were sitting on a “demographic crime-bomb.” “By 2005,” DiIulio predicted, “the number of males in this age group will have risen about 25 percent overall and 50 percent for blacks.” He warned: “And make no mistake. While the trouble will be greatest in black inner-city neighborhoods, other places are also certain to have burgeoning youth-crime problems that will spill over into upscale central-city districts, inner-ring suburbs, and even the rural heartland.”⁹ The message in 1995, in short, was that dangerous and amoral young black men were soon going to be rampaging through our suburbs, and we had to stop them.

Though Dilulio’s proposed solution was to build more churches, not to build more jails, the public heard only the message of imminent doom. Many states reformed criminal sentencing to give “adult crime” “adult time,” including Connecticut. In Connecticut, there was a particular concern about gangs and drug dealers using children to commit violent acts because they would escape harsh penalties.¹⁰ Rather than helping these children escape these exploitive situations, we decided in the mid-1990s to subject them to automatic adult penalties.

The “demographic crime-bomb” never materialized. Frank Zimring, a criminologist at the University of California, Berkeley, argued in the late 1990’s that Dilulio was just flat wrong to equate crime rates with demographics. And Zimring was proved right, as DiIulio himself now acknowledges.¹¹ As we now know, juvenile crime did not rise, despite the greater percentage of juveniles in the population, but youth crime instead fell, along with adult crime, as the crack epidemic receded and policing policies changed. In fact, the states with the greatest *decrease* in juvenile confinement between 1997 and 2007 saw the biggest declines in violent crime rates among juveniles.¹² Texas incarcerated more kids; California incarcerated fewer, but juvenile crime dropped at about the same rate in both.¹³ In 2007, Texas changed course and cut its juvenile population by half. Juvenile crime has not increased.¹⁴ There is also no correlation between the rate at which states incarcerate kids for life without parole and the crime rate.

⁹ *The Coming of the Super-Predators*, Weekly Standard, Nov. 27, 1995.

¹⁰ Julie Miller, *A Case of Murder by a Youngster*, N.Y. Times, Oct. 12, 1995.

¹¹ John J. Dilulio, Jr., *Rethinking Crime – Again*, Democracy Journal, Spring 2010, at 46, 52-53; Rachel Aviv, *Annals of Justice: No Remorse: Should a Teen-Ager Be Given a Life Sentence?* New Yorker, Jan. 2, 2012, at 57; Elizabeth Becker, *As Ex-Theorist on Young ‘Superpredators,’ Bush Aide Has Regrets*, N.Y. Times, Feb. 9, 2001, A19. James Alan Fox, another supporter of the “superpredator” theory, has also recanted. See James Alan Fox, *A Too-Harsh Law on Juvenile Murder*, Boston Globe, January 25, 2007, A11.

¹² Richard A. Mendel, Annie E. Casey Foundation, *No Place for Kids: The Case for Reducing Juvenile Incarceration 26* (2011), available at

http://www.aecf.org/~media/Pubs/Topics/Juvenile%20Justice/Detention%20Reform/NoPlaceForKids/JJ_NoPlaceForKids_Full.pdf.

¹³ *Id.* at 26–27.

¹⁴ *Id.* at 26.

In other words, draconian sentencing laws did not affect the crime rate.¹⁵ For kids that live in the present, long sentences don't deter. Police practices have a greater effect on the recidivism rates of this population than long sentences do.¹⁶

Now, not only do we know that we are not suffering from a “demographic crime bomb,” we also know that adult time policies ignore the obvious fact that a kid who seems remorseless at 14 can change. Dilulio’s “super-predators” were described as being “driven by two profound developmental defects” (1) “liv[ing] entirely in and for the present moment; they quite literally have no conception of the future” and (2) being “radically self-regarding.” He presumed that these “defects” were permanent and indelible – and unusual. But we know better. *All* teenagers’ brains are oriented to the present, rather than the future. They are biologically triggered to bind themselves to peer groups – take risks and leave home.¹⁷ When teens have no one else to turn to, these *ordinary* teenage developmental characteristics (which are neither “defects” nor “indelible”) can lead to crime. But when teens get out of a violent environment, grow up and gain perspective, they can and do change.

2. *Youth crime is usually impulsive and peer-driven, not the product of sociopathy or a settled disposition to harm others.*

We also know that teen crime tends to be impulsive, peer-driven, drug-related and unpremeditated, not normally the result of an evil mind that is permanently damaged. Consider the following types of teenage criminal conduct (taken from actual cases in Connecticut and elsewhere):

- Two teenagers get into a fight; one has a gun, the other doesn't. The fight escalates and one of them is shot. Self-defense is not an option, because under existing law, you cannot use lethal force against someone who is using non-lethal force against you. So, the kid left standing is a murderer, perhaps even, and ironically, guilty of a capital felony for the intentional killing of a person under 16.
- A kid, frequently abandoned by a drug-addicted mother and beaten by his step-father, may look to an uncle for protection and support. The uncle asks the kid to ride along on a burglary or robbery or revenge mission. And if someone in the group is trigger-happy and shoots, the kid gets felony murder along with everyone else. The kid may even be more likely to be blamed for the shooting by other co-felons, because they believe he will get less time than they would have. But they are wrong. The kid is guilty of felony murder and the going rate is 40 years without parole.

¹⁵ *Id.* at 26–27.

¹⁶ Steven N. Durlauf & Daniel S. Nagin, *Imprisonment and Crime: Can Both Be Reduced?* 10 *Criminology & Pub. Pol'y* 8 (2011) (for youths, increase in risk of arrest deters more than long sentences).

¹⁷ For an extensive bibliography of juvenile brain research, see the amicus brief filed in *Jackson v. Hobbs*, http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/10-9646_petitioner_amcu_aber_et_al.authcheckdam.pdf.

- At a football game, a 13-year-old boy is knifed and nearly dies. His older 16-year-old brother shoots the assailant several days later. Now he has a murder conviction and a sentence of more than 40 years.
- Five teenagers are home alone, drinking and doing drugs. They are getting rowdy, egging each other on. They decide to call for pizza delivery and rob the delivery person. As the delivery person is leaving, someone shoots off a gun and hits the pizza deliverer in the back, killing him. Everyone is guilty of felony murder.
- A young girl is raped and prostituted by a pimp and later, shoots him. Since there was no imminent danger, her act is murder and she gets life without parole.

3. *Criminal law designed for adults doesn't sift juvenile culpability well.*

Juveniles' options for escaping or avoiding situations like these are not the same as they might be for an adult. A fourteen or fifteen-year-old is too young to legally drive, get a job, or rent an apartment – in short, too young to get away from abusive or criminogenic environments. Mandatory minimum sentences designed for adults who have more control over their environment and their circumstances should not be applied to these sorts of cases, and legal categories like “felony murder” don't do a good job of distinguishing the more culpable youths from the less culpable. “Adult time” sentencing prevents mitigating circumstances peculiar to teenagers from being taken into account, except perhaps at the prosecutorial charging stage. But prosecutors around Connecticut do not have consistent charging practices and there is no review of those discretionary decisions.

4. *Kids grow up, atone, and reform, even in prison, if they have hope.*

Take a kid who was never safe and give him safety, and he can grow. Teach him self-control, give him drug treatment, education, stability, marriage, religious community, and a job, and recidivism statistics bear out that he will make better choices.¹⁸ We all know that recidivism rates plummet after offenders “age out” of impulsive youth between ages 25 and 35. Those who work in prisons confirm that people who commit crimes as kids are not “cold blooded predators” 20 years later, but may grow up to become compassionate and insightful peer mentors, hospice workers, hospital aides, students, educators, and role models—if they don't commit suicide first.

¹⁸ Magda Stouthamer-Loeber et al, *Desistance From Persistent Serious Delinquency in the Transition to Adulthood* 16 *Development and Psychopathology* 891 (2004); Robert J. Sampson & John H. Laub, *Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70*, 41 *Criminology* 301, 334 (2003) (cannot predict adult criminal behavior from childhood); Robert J. Sampson & John H. Laub, *Crime and Deviance over the Life Course: The Salience of Adult Social Bonds*, 55 *Am. Soc. Rev.* 609, 625 (1990) (youths change delinquent behavior when they get married and have stable jobs.)

Suicide rates among juveniles who are incarcerated are already high – nearly 31% of confined youth report suicide attempts, as compared with estimates that .2% of youths not in prison attempt suicide.¹⁹ Risk factors include solitary confinement, isolation, death of a family member, failure in a program, and “fear of waiver to adult system or transfer to a more secure facility.”²⁰ Ashleigh,²¹ incarcerated for 50 years without parole in Connecticut for a crime she committed at 14, wrote:

Tears started running from my eyes thinking of that night [when I tried to hang myself in the prison shower]. It’s not the first time I have tried to kill myself but again someone came in the nick of time. I am alive and I don’t really want to be. I have nothing to live for. I have a life sentence. Well, a fifty-year sentence without the possibility of parole and that might as well be a life sentence. I will never leave this place and the thought of that forces any sliver of hope out of me. . . . I haven’t ever lived and now I am supposed to *live* in jail for thirty-eight more years. I’ll be sixty-eight years old when I get out, and what could I possibly do with my life then? All of my family will be dead.

A second chance statute allows incarcerated kids to hope.

B. The harsh treatment of children in Connecticut disproportionately impacts youth of color.

Racial disparities in charging and sentencing are, if anything, more pronounced in juvenile sentencing than in adult sentencing. African-American children tend to bear the brunt of harsh adult punishments and are disproportionately likely to be transferred to adult court. For example, studies showed that African Americans in Connecticut accounted for 40% of juveniles transferred to adult court between 1997 and 2002.²² A later study found racial imbalances in both transfer decisions and secure confinement decisions, even when controlling for risk factors.²³

¹⁹ Rate of teen suicides in Connecticut is 8.6 per 100,000 in 2009. Estimates place suicide attempts at 25 times the suicide rate, or about 215 per 100,000. American Association of Suicidology, http://www.suicidology.org/c/document_library/get_file?folderId=228&name=DLFE-496.pdf

²⁰ Office of Juvenile Justice Detention Prevention, *Juvenile Suicide in Confinement* (Feb. 2009), Department of Justice.

²¹ This is not her real name.

²² Spectrum Associates, Market Research Incorporated, *A Study of Juvenile Transfers in Connecticut, 1997 to 2002, Final Report*, Apr. 3, 2006, at 16, available at <http://www.housedems.ct.gov/jjppcc/JuvenileTransfersReport2006.pdf>.

²³ Spectrum Associates, *A Second Reassessment of Disproportionate Minority Contact in Connecticut’s Juvenile Justice System, 2009*, at 39, available at http://www.ct.gov/opm/lib/opm/cjppd/cjjjyd/jjydpublishations/final_report_dmc_study_may_2009.pdf (“In 2006, Black and Hispanic juveniles charged with an SJO were more likely than similarly charged White juveniles to be transferred to adult court. While the multivariate analysis showed that factors other than race/ethnicity also played a significant role in the decision, race/ethnicity remained a significant factor. Due to the small number of transfers in the prior studies, it was not previously identified as an area of disparity.”).

Connecticut has serious racial disparities in its overall prison population. As of 2007, our State had the fourth highest discrepancy in the nation between the incarceration rates of African American and White individuals.²⁴ Currently, although Connecticut's population as a whole is 71% White, the prison population is 68% African American or Hispanic.

These disparities get much worse when the population of incarcerated juvenile offenders is examined. Eighty-eight percent of individuals serving adult sentences of more than ten years for crimes committed under the age of 18 are African American or Hispanic.²⁵ The disparity increases still further as the sentence gets longer. African Americans and Hispanics represent 92% of juvenile offenders serving sentences of 50 years or more. All of the juvenile offenders serving LWOP sentences in Connecticut are African American.

C. Allowing a "Second Look" is consistent with recommendations contained in the most recent draft Model Penal Code.

This idea of taking a "second look" at long sentences imposed on children is supported by the American Law Institute's recommendations contained in its most recent draft of the Model Penal Code ("MPC") on Sentencing.²⁶ A significant recommendation is the so-called "second look" provision. In particular, Section 305.6 of the MPC recommends that states create a sentence modification procedure to allow courts to modify lengthy sentences after a significant portion of the sentence is served.

The MPC recommends a second look procedure for *all* offenders, regardless of the age of the individual at the time of the crime.²⁷ However, because of the differences

²⁴ Marc Mauer & Ryan S. King, *Sentencing Project, Uneven Justice: State Rates of Incarceration by Race and Ethnicity* (July 2007).

²⁵ Data received from the Connecticut Department of Correction (9/28/11). Nationwide, youth of color are disproportionately serving adult sentences. As of 2002, nearly three-quarters of youth admitted to adult prisons nationwide were youth of color; for every 10 youth admitted to adult prison, six were African-American. Hilary O. Shelton, Neelum Arya and Ian Augarten: Campaign for Youth Justice, *Critical Condition: African-American Youth in the Justice System*, Sept. 25, 2008, at 28 (citing The National Council on Crime and Delinquency, *And Justice for Some: Differential Treatment of Youth of Color in the Justice System* (Jan. 2007)).

²⁶ Since 1999, the American Law Institute ("ALI") has been working to develop a Model Penal Code ("MPC") for sentencing. The original Model Penal Code, written by the ALI more than 40 years ago, was enormously influential around the country. Many states, including Connecticut, reformed their criminal codes using the MPC as a model. The American Law Institute also writes other influential documents including the Uniform Commercial Code, and the Restatements of Law. The most recent draft of the Model Penal Code on Sentencing was approved by the ALI membership at its 2011 Annual Meeting. American Law Institute, *Model Penal Code: Sentencing, Tentative Draft No. 2* (Draft of March 25, 2011) (approved at May 17, 2011 Annual Meeting, subject to the discussion at the meeting and to editorial prerogative), available at:

<http://www.ali.org/00021333/Model%20Penal%20Code%20TD%20No%202%20-%20online%20version.pdf>.

²⁷ *Id.* § 305.6. The MPC recommends that states create a procedure allowing at least those who have served 15 years in prison the opportunity to request sentence modification. The MPC states that 15 years should be the outer-limit of the time frame for an initial review, and an individual should have the right to

between adult and juvenile offenders, the MPC states that juvenile offenders should become eligible for sentence modification “substantially earlier” than adults because “adolescents can generally be expected to change more rapidly in the immediate post-offense years, and to a greater absolute degree, than older offenders.”²⁸ Thus, while the MPC recommends an opportunity for sentence modification after 15 years for adult offenders, the draft states that review of juvenile sentences should come after no more than 10 years is served. The current MPC draft also recommends absolute caps on juvenile sentences that are below adult maximums.²⁹

D. Many other states allow more flexibility in the treatment of juvenile offenders.

In Connecticut, children under the age of 18 charged with certain offenses are automatically transferred to adult court and subject to adult penalties, including mandatory minimum sentences. Children convicted of capital felony are subject to a mandatory sentence of life without the possibility of release.

Many states give judges greater discretion than Connecticut in determining whether a child’s case should proceed at all in adult court.³⁰ Several states have recently exempted juvenile offenders from mandatory minimum sentences.³¹ Other states place caps on sentences that can be imposed on children. For example, in Louisiana, children who commit crimes at the age of 14, regardless of the seriousness of the crime, cannot be imprisoned past their 31st birthday.³²

Some states prohibit sentences of life without parole (“LWOP”) for individuals who commit crimes under the age of 18. Currently, eight states and the District of Columbia prohibit LWOP sentences for juvenile offenders.³³ Five additional states do not explicitly prohibit LWOP sentences for juveniles, but no one in these states is

re-petition for sentence review at intervals not exceeding 10 years. *Id.* § 305.6(1), (2). The goal of such review hearings is to determine “whether the purposes of sentencing . . . would better be served by a modified sentence than the prisoner’s completion of the original sentence.” *Id.* § 305.6(4). Sentences could be modified below mandatory minimum requirements. *Id.* at § 305.6(5).

²⁸ *Model Penal Code: Sentencing*, 6.11, cmt. The current draft recommends the opportunity for modification of sentences imposed on juvenile offenders after no longer than 10 years. *Id.* 6.11A(h).

²⁹ *Id.*

³⁰ *See, e.g.*, MO. ANN. STAT. § 211.071 (West 2004 and Supp. 2008) (requiring the court to consider factors such as whether a child can benefit from the treatment or rehabilitative programs available to the juvenile court before transferring a case to adult court); MICH. COMP. LAWS ANN. § 712A.4 (West 2009); MD. CODE ANN., CTS. AND JUD. PROC. § 3-8A-06 (West 2006); WYO. STAT. ANN. § 14-6-237 (2007); HAW. REV. STAT. § 571-22(c)(5) (LexisNexis 2008 and Supp. 2010); DEL. CODE ANN. TIT. 10, § 1011(b) (West 1999); S.D. CODIFIED LAWS §§ 26-11-3.1 (1999).

³¹ MONT. CODE ANN. § 46-18-222(1) (2007); WASH. REV. CODE ANN. § 9.94A.540 (West 2009).

³² LA. CHILD. CODE ANN. art 857 (1992).

³³ These states are Colorado, Kentucky, Texas, Montana, Alaska, Kansas, New Mexico, Oregon, and the District of Columbia. *See* Sentencing Juveniles, N.Y. TIMES, Apr. 20, 2011, at <http://www.nytimes.com/interactive/2011/04/20/us/juveniles.html> (relying on 2008-10 reports by Human Rights Watch, Amnesty International, and Equal Justice Initiative). The prohibitions in at least Texas and Colorado apply prospectively only from the date of recent legislation (from 2009 in Texas and from 2006 in Colorado).

actually serving a LWOP sentence for a crime committed under the age of 18.³⁴ Some states subject juvenile offenders to LWOP sentences, but do so only after they have reached the age of 16.³⁵

E. Current Connecticut law does not provide adequate review.

In *Graham v. Florida*, the United States Supreme Court held that states must give juvenile offenders “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Graham* concluded that a sentence of life without this “meaningful opportunity for release” violates the Eighth Amendment’s ban on cruel and unusual punishment—at least when the crime is a non-homicide crime.³⁶

In 2012, in *Miller v. Alabama*, the Court held that the Constitution forbids a mandatory sentence of life without parole even for children convicted of homicide.³⁷ Instead, juvenile homicide offenders facing possible life sentences must receive “individualized sentencing” and a chance for a sentence that allows a meaningful possibility of release. Following *Graham* and *Miller*, some state courts have held that “effective” LWOP sentences fall within the scope of these decisions.³⁸

In light of *Miller*, Connecticut must amend its capital felony/murder-with-special circumstances statute. This statute imposes a mandatory LWOP sentence for juvenile offenders in direct violation of *Miller*. The five juvenile offenders serving LWOP sentences should be resentenced. Connecticut must also ensure that judges have the ability to impose sentences on juvenile offenders that allow a meaningful opportunity to obtain release.

Connecticut’s sentencing and parole system currently lacks a mechanism to guarantee juvenile offenders a meaningful opportunity to obtain release after they have the chance to grow up and change.

There are two executive-discretion options that could theoretically reduce sentence length: sentence modification and clemency/sentence commutation. Sentence modification is currently available only with the permission of the state’s attorney. Clemency and sentence commutation is granted in only extremely rare circumstances by the Board of Pardons and Paroles. Sentence modification and clemency are purely discretionary mechanisms, and no standards govern the exercise of this discretion. They do not provide a meaningful opportunity for release for juvenile offenders serving long

³⁴ These states are Maine, New Jersey, New York, Vermont, and West Virginia. *Id.*

³⁵ CAL PENAL CODE § 190.5 (2010); IND. CODE ANN. § 53-50-2-3(b)(2).

³⁶ *Graham v. Florida*, 130 S. Ct. 2011 (2010).

³⁷ *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

³⁸ *See, e.g., People v. Caballero*, 282 P.3d 291 (Cal. 2012) (vacating a sentence of 110-years to life for a nonhomicide offense); *Adams v. State*, 2012 WL 3193932 (Fl. 1st Dist. App. Ct. Aug. 8, 2012) (sentencing requiring defendant to serve at least 58.5 years in prison was a de facto life sentence under *Graham*).

sentences. Indeed, *Graham* rejected executive-discretion options as not “meaningful” opportunities for release.

Finally, “Sentence Review” is available only shortly after the original sentencing and cannot take into account the consequences of maturity and rehabilitation.³⁹ Thus, the Sentence Review process serves a different purpose than what is contemplated by a “second look” procedure and by *Graham*. *Graham* requires, for at least some categories of juvenile offenders, a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”⁴⁰ Thus, it is important that there be an opportunity to seek release after a significant period of time has passed. In addition, it is crucial that the reviewing body consider how the offender has changed and rehabilitated since the offense—rather than simply looking at whether the original sentence was appropriate at the time it was imposed, based on information existing at that time.

In sum, in light of the Supreme Court’s decisions in *Graham* and *Miller*, Connecticut now needs to change its laws with respect to juvenile sentencing. There is likely to be extensive litigation in the Connecticut courts about the scope of these decisions unless the legislature enacts a comprehensive “second look” procedure for cases involving juvenile offenders serving long sentences. Moreover, there is a compelling argument that if the five juvenile offenders serving LWOP sentences for capital felony are entitled to a “second look” hearing, then juvenile offenders serving lengthy sentences for less serious offenses (like felony murder), should also receive a second look.

F. Appointed counsel is necessary to ensure a meaningful opportunity for review under *Graham* and *Miller*.

Finally, appointed counsel is necessary to ensure a “meaningful opportunity” for review. Inmates serving sentences for crimes committed under the age of 18 are uniquely situated. Some of these individuals have been incarcerated since they were 14 years old. Rather than growing up in the care of loving and supportive parents, they grew up in an institutional and punitive environment. They often suffer from serious deficits in education and self-confidence. Worse, some of these children suffered from severe neglect, trauma, and abuse as young children before they committed their offenses. Some have mental illnesses.

Evaluation of the suitability of these individuals for release is complex. Although the crimes are all serious, there may have been mitigating circumstances present because of the young age of the offenders. There is the potential that some of these inmates have undergone remarkable rehabilitation in prison. An adequate presentation at a hearing

³⁹ A defendant who was sentenced to more than three years may apply for review of a sentence in front of the Sentence Review Division, a panel of three judges. CONN. GEN. STAT. § 51-195. The application must be filed within 30 days of sentencing, and a defendant may not seek review more than once. The Review Division does not consider post-sentencing rehabilitation in reviewing the appropriateness of the sentence. See *State v. Harris*, 159 A.2d 188, 21 Conn. Supp. 448 (Conn. Sup. Ct. 1958); *Miller v. Warden*, No. 556724, 2002 WL 1724044, at *11 (Conn. Sup. Ct. June 26, 2002).

⁴⁰ *Graham*, 130 S. Ct. at 2030.

would require an account of the inmate's background before the offense, an explanation of the offense and expression of remorse, an account of how the inmate has changed and rehabilitated, an explanation for why recidivism is unlikely, and a release plan that will provide supportive services necessary for successful integration into the community. Counsel for the inmate could greatly assist the court or the BOPP and any expert called upon to evaluate an inmate by providing a full picture of the inmate's background before the offense. Because all of these inmates have been incarcerated for long periods of time since they were children—and they do not often have reliable parents who keep files or scrapbooks—relevant documents like decades-old school records, archived DCF records, micro-fiched medical records or records of their parents' or guardian's activities during their youth will not be readily available or easy to locate. Nor will these documents be easily organized or their significance obvious. Counsel would play an extremely important role here in collecting this information, organizing it, and correlating documents from various agencies to a timeline and comprehensible narrative. Were the inmate to try to present this material in person, the presentation could well become confused and dilute the inmate's efforts to express remorse and will to change. Allowing counsel to summarize factual information at a hearing would increase efficiency and accuracy and allow inmates to focus on their own personal message to the court or BOPP.

Given all of these circumstances, appointed counsel is necessary to ensure the opportunity for review is meaningful under *Graham* and *Miller*.

Thank you for your time and consideration of this issue.

Respectfully Submitted,

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