

**JUVENILE SENTENCING PROJECT
Legal Clinic
Quinnipiac University School of Law**

April 24, 2019

House Judiciary Committee

Written Testimony in Support of SB 1008

Dear Chair Williamson, Vice Chairs Sprenger and Gorsek, and Members of the House Judiciary Committee:

The Juvenile Sentencing Project, a project of the Legal Clinic at Quinnipiac University School of Law, provides information about long sentences imposed on children for use by advocates, courts, and legislatures nationwide.¹

We are grateful for the opportunity to express our **strong support** of a juvenile justice bill currently under your consideration: SB 1008, which would ensure that children do not spend the bulk of their lives behind bars and are instead granted, as the U.S. Constitution requires, a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Graham v. Florida*, 560 U.S. 48, 75 (2010).

In the last decade, states across the country have moved swiftly on juvenile criminal justice reform, implementing numerous reforms to ensure that kids are not funneled into the adult system and locked up for life but instead treated—as adolescent brain science shows they should be—like children capable of rehabilitation. Our recent national progress in this area is grounded on the consensus that children are “different from adults,” have “diminished culpability and greater prospects for reform,” and “are less deserving of the most severe punishments.” *Miller v. Alabama*, 567 U.S. 460, 471 (2012) (citing *Graham*, 560 U.S. at 68). The bill under consideration is in keeping with this understanding, and we commend the Committee for its evidence-based focus on prevention and rehabilitation. Below, we note the substantial merits of the bill’s four proposals.

End Juvenile Life Without Parole: Ending life without parole for those under 18 is a fundamental step that would place Oregon in good company. Today, 21 states and the District of Columbia bar life without parole sentences for juveniles.² Nineteen of these jurisdictions have acted in the past seven years, since the U.S. Supreme Court’s decision in *Miller*.³ For example, in 2014, West Virginia made juvenile offenders eligible, after 15 years, for a parole hearing.⁴ In

¹ For additional resources, please see www.juvenilesentencingproject.org.

² They are: Alaska, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Iowa, Kansas, Kentucky, Massachusetts, Nevada, New Jersey, North Dakota, South Dakota, Texas, Utah, Vermont, Washington, West Virginia, and Wyoming.

³ Kansas and Kentucky abolished the sentence before *Miller*. See Ky. Rev. Stat. § 640.040(1); Kansas Stat. Ann. § 21-6618. Alaska has never allowed the sentence.

⁴ H.B. 4210, 81 Leg., 2d Sess. (W.Va. 2014) (enacting W. Va. Code §§ 61-11-23, 62-12-13b).

2015, Nevada made those convicted of crimes occurring when they were children eligible for parole after 15 or 20 years, depending on the offense.⁵ And in 2017, North Dakota provided that those convicted as adults for offenses that occurred before the age of 18 may petition for a sentence reduction after serving at least 20 years.⁶

These state efforts are grounded in a modern understanding of adolescent brain psychology. As the U.S. Supreme Court recognized, children have “a lack of maturity and an underdeveloped sense of responsibility leading to recklessness, impulsivity, and heedless risk-taking,” “are more vulnerable . . . to negative influences and outside pressures,” “have limited control over their own environment and thus lack the ability to extricate themselves from horrific, crime-producing settings,” and have a character that “is not as well formed as an adult’s” such that their actions are “less likely to be evidence of irretrievable depravity.” *Miller*, 567 U.S. at 471 (internal citations omitted).⁷

This reduced culpability and greater capacity for reform mean children should not, and cannot, be locked up for life—instead, they must be provided a meaningful opportunity to show that they have rehabilitated, and are fit to re-enter society. *Graham*, 560 U.S. at 75, 82; *Montgomery*, 136 S. Ct. at 733. We urge Oregon to embrace this mandate.

Second Look Hearings: This process makes good on the Supreme Court’s directive that a juvenile offender who is not incorrigible must receive a “chance for fulfillment outside prison walls” and a “chance for reconciliation with society.” *Graham*, 560 U.S. at 79. Per this proposal, halfway through their sentences, people who committed crimes as juveniles will go before a judge to determine whether they have taken responsibility and been rehabilitated—and if so, they could serve the remainder of their sentences under community-based supervision.

Second look hearing are a measured reform that balance the need for accountability with children’s very real capacity for change. This would give a person a chance—nothing more, nothing less—to go before a judge after serving a significant portion of his sentence and show that he is no longer the same person he was as an adolescent. At that point, it is up to the court to do its job: determine whether that person has reformed to the point where it no longer serves any purpose to keep him behind bars, and if so, allow him to begin reintegration as a productive member of society.

⁵ A.B. 267, 78th Reg. Sess. (Nev. 2015) (amending Nev. Rev. Stat. §§ 176.025, 213.107 and enacting new sections in chs. 213 & 176).

⁶ N.D. H.B. 1195, 65th Leg. Assemb. (N.D. 2017) (amending N.D. Cent. Code § 12.1-20-03 and enacting a new section in ch. 12.1-32).

⁷ See also, e.g., L. Steinberg, *Adolescent brain science and juvenile justice policymaking*, 23:4 *Psychology, Public Policy, and Law*, 410 (2017) (summarizing relevant psychological and neurobiological evidence relevant to juvenile sentence); Alexandra O. Cohen & B.J. Casey, *Rewiring Juvenile Justice: The Intersection of Developmental Neuroscience and Legal Policy*, 18:2 *Trends in Cognitive Sciences* 63 (Feb. 2014) (describing brain development and neurobiological changes during adolescence and behavioral effects, concluding “[g]iven the evidence that juveniles are fundamentally different from adults, fair sentencing should take on different meaning” and explaining that “[a]n incarceration model, in effect, prevents an adolescent from developing into a prosocial, independent adult”).

Hearing Before Transfer to DOC: This proposal would allow a judge to determine if a 25-year-old serving a long sentence for a crime committed under the age of 18 has been sufficiently rehabilitated to warrant transfer to community-based supervision, rather than adult prison.

By prohibiting the incarceration of children under 18 in adult prisons under any circumstances,⁸ Oregon has already recognized that youth in adult prison are especially vulnerable.⁹ Not only are children in juvenile facilities at less risk for sexual victimization and five times less likely to commit suicide than children in adult facilities,¹⁰ but they are also much more likely to receive the training and education they need to succeed upon release.¹¹

This proposal recognizes the immense value in allowing someone who committed a crime as a child to come before a factfinder and demonstrate rehabilitation. It also offers an opportunity to assess whether a juvenile facility—which is intended to provide age-appropriate, therapeutic, holistic treatment aimed at rehabilitation—has done its job. Some states have already begun to institute a process akin to the one outlined here. For example, West Virginia mandates that, prior to transfer from juvenile to adult facilities at the age of 18, a child be returned to the sentencing court for reconsideration and modification of the sentence based on review of post-conviction rehabilitation.¹²

End Automatic Waiver into Adult Court: This proposal helps ensure that youth are adjudicated in a rehabilitation-focused system that treats children holistically and age appropriately. The positive effects of adjudicating juveniles in juvenile court are many: In contrast to the adult criminal justice system, the juvenile justice system can use a range of less restrictive, evidence-based options that incorporate both therapeutic and educational programming. The juvenile justice system also gives children the chance to keep proceedings confidential, thus avoiding the collateral consequences and stigma of a permanent criminal record.

These effects are underscored by research showing that transferring youth to the adult system only increases recidivism.¹³ In one meta-analysis, children transferred to the adult court

⁸ Or. Rev. Stat. § 137.124(5).

⁹ See, e.g., Campaign for Youth Justice, *Youth Facilities Are Better than Adult Facilities*, available at <http://www.campaignforyouthjustice.org/images/factsheets/WhyYouth%20Facilities%20Are%20Better%20Than%20Adult%20Facilities.pdf>.

¹⁰ Campaign for Youth Justice, *Let's Get Children Out of Adult Courts, Jails, and Prisons* 1 (2018) (citing data); see also Jessica Lahey, *The Steep Costs of Keeping Juveniles in Adult Prisons*, *The Atlantic* ¶ 3 (Jan. 8, 2016) [hereinafter “*Steep Costs*”], available at <https://www.theatlantic.com/education/archive/2016/01/the-cost-of-keeping-juveniles-in-adult-prisons/423201/>.

¹¹ *Steep Costs* ¶ 12; *All Children Are Children: Challenging Abusive Punishment of Juveniles* 10 (2017), available at <https://eji.org/sites/default/files/AllChildrenAreChildren-2017-sm2.pdf>.

¹² W. Va. Code § 49-4-720.

¹³ U.S. Dept. of Health and Human Services, Centers for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services*, 56

system from the juvenile system were found to be 34 percent more likely to reoffend.¹⁴ Youth tried as adults are also more likely to reoffend with more serious offenses than youth charged with similar conduct in the juvenile justice system.¹⁵ Finally, data consistently show that transfer statutes that channel children into the adult criminal justice system disproportionately affect children of color.¹⁶

This proposal closely aligns with other states' recent reforms. Recognizing the important role courts may play in discerning whether transfer is appropriate in a particular case as a matter of discretion, most states have eliminated prosecutorial direct file, the process by which a prosecutor may directly bring charges against a juvenile in adult court.¹⁷ At the same time, numerous states have also expanded opportunities for "reverse waiver," the process by which cases in adult court can be returned to juvenile court upon judicial review of the transfer decision.¹⁸

In addition, over the past decade, many states have limited—or altogether eliminated—mandatory transfer to adult court and have curtailed provisions that statutorily exclude youth from the juvenile justice system for certain offenses. For example, Rhode Island ended mandatory transfer in 2018,¹⁹ Illinois recently restricted the range of offenses that trigger

Morbidity and Mortality Weekly RR-9 (Nov. 30, 2007), available at <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>.

¹⁴ *Id.* at 6-7.

¹⁵ *Id.*

¹⁶ See, e.g., Campaign for Youth Justice & National Association of Social Workers, *The Color of Youth Transferred to the Adult Criminal Justice System: Policy & Practice Recommendations* (2017) (conducting case studies of Oregon, Florida and Missouri). In Florida, for example, data show that although 27.2 percent of boys arrested in 2014 were black, 51.4 percent of boys transferred to adult court were black; meanwhile, white boys made up 28 percent of children arrested and accounted for only 24.4 percent of youth tried in adult court. Human Rights Watch, *Branded for Life: Florida's Prosecution of Children as Adults under its "Direct File" Statute* (2014), <https://www.hrw.org/report/2014/04/10/branded-life/floridas-prosecution-children-adults-under-its-direct-file-statute>. While fewer youth are now transferred overall, the percentage of those transferred who are black continues to rise. See National Juvenile Court Data Archive, *Easy Access to Juvenile Court Statistics: 1985-2016* (2018), available at <https://www.ojjdp.gov/ojstatbb/ezajcs/> (indicating that 1,790 of 3,500 youth, or about 51 percent, of youth transferred in 2016 were African-American, compared with 2,473 of 6,400, or 38.6 percent, in 2005).

¹⁷ Campaign for Youth Justice, *Fact Sheet: Direct File* (February 2018), available at http://www.campaignforyouthjustice.org/images/factsheets/Direct_file_fact_sheet_Final_1_2.pdf.

¹⁸ Currently, more than half of states have reverse waiver provisions. See generally Campaign for Youth Justice, *Reverse Waiver Factsheet*, available at <http://www.campaignforyouthjustice.org/images/factsheets/Reverse%20Waiver%20fact%20sheet%20-CED.pdf>; see also Office of Juvenile Justice and Delinquency Prevention, *Statistical Briefing Book: Juvenile Justice System Structure and Process* (2016), available at https://www.ojjdp.gov/ojstatbb/structure_process/qa04115.asp.

¹⁹ 11 SB 2458, 2018 Leg. Sess. (R.I. 2018) (amending R.I. Gen. Laws § 14-1-3 and 14-1-5), <http://webserver.rilin.state.ri.us/BillText/BillText18/SenateText18/S2458.pdf>. The legislation eliminated the remaining mandatory transfer provisions in the state, which required the mandatory transfer of 17-year-olds to adult court for murder, first degree assault, first degree child molestation, and assault with intent to commit murder.

automatic prosecution of older juveniles in adult court,²⁰ and Utah reduced the number of charges that are statutorily excluded from juvenile court jurisdiction.²¹

Finally, numerous states have moved to minimize the number of children transferred to adult court and increase judicial oversight of the transfer decision.²² For example, several states have recently codified individual, child-focused factors that judges must consider in the transfer decision, including age, maturity, and sophistication of the child; effectiveness of services and dispositional alternatives in the criminal versus juvenile justice systems; familial and community support networks; and history of trauma.²³

Once again, we appreciate the opportunity to show our support for this bill, and we thank you for your consideration.

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²⁰ HB 3718, 99th Gen. Assembly (Ill. 2015) (amending 705 Ill. Comp. Stat. 405/5-130, 5-407, 5-805, and 5-810), <http://www.ilga.gov/legislation/billstatus.asp?DocNum=3718&GAID=13&GA=99&DocTypeID=HB&LegID=89922&SessionID=88>.

²¹ SB 167, 2015 Gen. Sess. (Utah 2015) (amending Utah Code § 78A-6-701), <https://le.utah.gov/~2015/bills/static/SB0167.html>.

²² See *Trends in Juvenile Justice State Legislation 2011-2015*, National Conference of State Legislatures 4-6 (Sept. 2015) (describing national trends in returning jurisdiction to the juvenile justice system through reforms to transfer, waiver, and direct file laws and raise-the-age initiatives), available at https://www.ncsl.org/documents/cj/Juvenile_Justice_Trends.pdf; Campaign for Youth Justice, *Raising the Bar: State Trends in Keeping Youth Out of Adult Courts (2015-2017)* (2017), available at http://www.campaignforyouthjustice.org/images/StateTrends_Report_FINAL.pdf.

²³ See, e.g., Proposition 57 (Ca. 2016) (amending Cal. Welf. & Inst. Code § 707) (requiring judges to consider a robust list of factors in making a transfer decision and to make findings on the record); Mo. Rev. Stat. § 211.071(6)(10) (requiring judges to consider 10 enumerated factors, including racial disparity in certification, when deciding whether to transfer the case to adult court); S2003/A4299, 2014-2015 Leg. Sess. (N.J. 2015) (amending N.J. Stat. Ann. § 2A:4A-26.1) (creating an expansive list of factors that prosecutors must consider for the purposes of transferring a juvenile to the adult system). For a detailed overview of recent reforms, see: Campaign for Youth Justice, *Youth Transfer: The Importance of Individualized Transfer Review* (March 2018), available at http://www.campaignforyouthjustice.org/images/20180314_CFYJ_Youth_Transfer_Brief.pdf.