



# Office of the Ohio Public Defender

*Timothy Young, State Public Defender*

## **Testimony in Support of HB394 Juvenile Justice Omnibus Bill Sponsor Representative Rezabek**

Chairman Manning, Vice Chair Rezabek, Ranking Member Celebrezze and members of the House Criminal Justice Committee, thank you for the opportunity to testify on behalf of the Ohio Public Defender in support of House Bill 394.

As Representative Rezabek stated in his sponsor testimony, HB394 has four main components. The bill makes all bindovers from juvenile court to adult court discretionary, and it makes all serious youthful offender designations discretionary. Second, HB394 clarifies that a juvenile is to receive confinement credit for any time spent in any locked and secure facility or in any community corrections facility, and the bill extends the juvenile court's jurisdiction to allow for corrections of confinement credit errors. Third, under the bill, juvenile courts can consider restorative justice options as opposed to being restricted to monetary restitution. Finally, the bill establishes timelines for parole eligibility for juvenile offenders serving extended prison sentences. OPD strongly encourages this committee to support HB394.

The elimination of mandatory SYO and mandatory bindover is all about providing juvenile court judges more discretion – as they are in the best position to determine appropriate sentences for juveniles. HB394 allows juvenile court judges to make the substantive decision whether a youth will be tried as an adult for certain offenses, by requiring an amenability hearing before transfer. It will also allow juvenile court judges to decide whether a juvenile charged as serious youthful offender should receive a blended juvenile adult sentence. Under the bill, juvenile courts will be able to make an independent determination based on the specifics of

each case. Not all crimes are created equal, especially when the perpetrator is a minor. Ohio Supreme Court Chief Justice O'Connor wrote that, "minors are less mature and responsible than adults...they are lacking in experience, perspective, and judgment, and...they are more vulnerable and susceptible to the pressures of peers than are adults."<sup>1</sup> Many children accused of crimes have developmental disabilities or mental health issues. Additionally, it is not unusual to have instances where a child was manipulated by an adult in the course of a serious offense. Since each case is distinct and each child is unique, every case should be considered by a judge before the determination is made that a child should be bound over to adult court or given a SYO designation.

In the past 7 years, the U.S. Supreme Court and Supreme Court of Ohio have held certain sentences for children are unconstitutional. Those sentences include a child sentenced to life in prison without the possibility of parole for a non-homicide offense; a term-of-years prison sentence that exceeds the child's lifetime; and, in homicide cases, sentencing children to mandatory life without parole.<sup>2</sup> States are now required to offer all but "those rare children whose crime reflect irreparable corruption" a reasonable opportunity for release.<sup>3</sup> An opportunity for release can either be through a new sentencing hearing or a parole review hearing.<sup>4</sup> Without legislation to bring Ohio's law into compliance with state and federal case law, Ohio will be encumbered by long and expensive litigation to resentence every juvenile who received life without parole or lifelong sentences and to further define vague terms like what "exceeds a child's lifetime." Providing parole hearings, as is proposed in HB394, will save Ohio from the heavy burden of a landslide of litigation.

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<sup>1</sup> *State v. Aalim*, 2017-Ohio-2956, ¶109 (O'Connor, dissenting), quoting *State v. Long*, 138 Ohio St.3d 478, ¶33 (O'Connor, concurring).

<sup>2</sup> *Graham v. Florida*, 560 U.S. 48, 82, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010); *State v. Moore*, 149 Ohio St.3d 557, 2016-Ohio-8288, 76 N.E.3d 1127, ¶ 48 (2016); and *Miller v. Alabama*, 567 U.S. 460, 489, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).

<sup>3</sup> *Montgomery v. Louisiana*, \_\_\_ U.S. \_\_\_, 136 S.Ct. 718, 734, 193 L.Ed.2d 599 (2016).

<sup>4</sup> *See id.* at 735-736.





Passage of HB394 will ensure that most children given adult sentences have the opportunity for parole review. Under the bill, children incarcerated for a non-homicide offense will have a parole hearing after serving 18 years in prison, and children serving prison time for homicide offenses will have a parole hearing after serving 25 years. Allowing children sentenced as adults the opportunity for release is a trend happening nationwide. Twenty states have eliminated life without parole as a sentencing option for children. These states represent the diversity of our country—they are red states and blue states, in the Midwest, Northeast, South, and Pacific Coast. They include our neighbors like Kentucky and West Virginia. Ohio should join these states by passing HB394 which recognizes that children, even those convicted of serious crimes, have the potential for rehabilitation.

It is extremely important to note that a parole hearing does not guarantee release. From 2014-2016, the Ohio Department of Rehabilitation and Correction Parole Board release rate was only 7.57%.<sup>5</sup> A parole hearing is simply an opportunity for that individual to present to the Parole Board the ways in which they have grown, changed, and been rehabilitated since they were a juvenile.

Although OPD strongly supports the passage of HB394, I would remiss if I did not mention some concerns OPD has with the bill. The bill allows a juvenile court restitution order to be reduced to a civil judgement enforceable by the victim. The juvenile justice system is confidential, and, unlike the adult court system, most cases in juvenile court can be expunged. These protections exist because we do not want the mistakes of youth to define the rest of a child's life. By allowing restitution orders to be automatically reduced to civil judgements,

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<sup>5</sup> Department of Rehabilitation and Corrections 2014 – 2016 Calendar Year Reports, Links available at <http://drc.ohio.gov/reports/parole> (accessed February 1, 2018).



children will be saddled with the debts well into adulthood. Their credit will be ruined before they even had a chance to set themselves up for success.

OPD has also made the bill sponsor aware of some issues with the drafting of the substitute bill that may have the unintended consequence of limiting the number of children who will benefit from this bill. First, the bill does not address the parole eligibility of children convicted of aggravated murder, other than those who would fall into the “aggravated homicide offense” carve out. The carve out ensures that children who were convicted of being the principal offender of an offense or offenses that resulted in the killing of three or more persons are not eligible for parole. Under the bill, however, children convicted of aggravated murder where there was a single victim are not eligible for parole because the bill does not include the offense of aggravated murder in the definition of a “homicide offense.”

Second, the bill does not include parole eligibility for any child who received a definite sentence, meaning the child received a sentenced of a set number of years. For the most part, the children that received definite sentences are children who committed a non-homicide offense, and are arguably the most deserving of a parole hearing. In 2016, the Ohio Supreme Court held in *State v. Moore*<sup>6</sup> that de facto life sentences for juveniles, like sentences of 100 years, are unconstitutional for non-homicide offenses. If these children are not provided relief under the bill, they will be forced to litigate their unconstitutional sentences.

As a society we have long recognized that kids are not little adults. They require laws aimed at protecting them from certain people and activities. It is these same vulnerabilities that necessitate that children receive special recognition in our criminal justice system. Children are less culpable than adults; they have less control over their environments; they are more

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<sup>6</sup> *State v. Moore*, 149 Ohio St.3d 557, 2016-Ohio-8288.



susceptible to peer pressure; and their brains are not fully developed to weigh long-term consequences.<sup>7</sup> The U.S. Supreme Court has acknowledged that juveniles' personalities are not as "well formed" as adults<sup>8</sup>, and they have greater capacity for change.<sup>9</sup> They are therefore, constitutionally different from adults. Even children that commit a crime can grow, change, and benefit from education, treatment, and rehabilitation.<sup>10</sup> Passage of HB394 will ensure that juveniles are given individual consideration before entering the adult court system and access to a parole hearing where their growth and rehabilitation can be considered.

Thank you for the opportunity to testify in support of HB394. I am happy to answer any questions.

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<sup>7</sup> *Roper v. Simmons*, 543 U.S. 551, 569-570, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).

<sup>8</sup> *Roper v. Simmons*, 543 U.S. 551, 570, 125 S.Ct. 1183 (2005).

<sup>9</sup> *Graham v. Florida*, 560 U.S. 48, 77, 130 S.Ct. 2011 (2010).

<sup>10</sup> *Montgomery* at 726, 736-737.







# JUVENILE LIFE SENTENCES IN OHIO

## Supreme Court precedent

*In the past seven years, the U.S. Supreme Court and the Supreme Court of Ohio have held certain sentences for children to be unconstitutional, including:*

- A child sentenced to life in prison without the possibility of parole for a non-homicide offense.<sup>1</sup>
- A term-of-years prison sentence that exceeds the child's lifetime.<sup>2</sup>
- In homicide cases, sentencing children to mandatory life without parole.<sup>3</sup>

*What else has the Court said on juvenile sentencing?*

- In 2016, the U.S. Supreme Court held its decision in *Miller* applies retroactively.<sup>4</sup>
- States are now required to offer all but "those rare children whose crimes reflect irreparable corruption" a reasonable opportunity for release.<sup>5</sup> This can be accomplished through new sentencing hearings, or parole review.<sup>6</sup>

## A national call to action

*What is happening in the rest of the country?*

- 20 states have passed legislation eliminating life without parole sentences for children in the past 5 years.<sup>7</sup>
- 25 states and D.C. now ban or do not use life without parole sentences for children.<sup>8</sup>
- In the last 5 years, the number of states banning life without parole sentences for children has quadrupled.<sup>9</sup>



**JUSTICE  
DELAYED  
IS JUSTICE  
DENIED**

*William E. Gladstone*

## The importance of legislation

*Offering parole review to children through legislation will provide the necessary remedy demanded by the U.S. Supreme Court and the Supreme Court of Ohio in a way that is cost effective, efficient, and uniform throughout the state.*

- Because there is no clear line defining when a sentence exceeds "a child's lifetime," parole review will save taxpayers and stakeholders from countless resentencing hearings, the cost of expert testimony, and appeals.

<sup>1</sup>*Graham v. Florida*, 560 U.S. 48, 82, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). <sup>5</sup>*Id.* at 734.

<sup>2</sup>*State v. Moore*, 149 Ohio St.3d 557, 2016-Ohio-8288, 76 N.E.3d 1127, ¶ 48.

<sup>3</sup>*Miller v. Alabama*, 567 U.S. 460, 489, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).

<sup>4</sup>*Montgomery v. Louisiana*, \_\_\_ U.S. \_\_\_, 136 S.Ct. 718, 732, 193 L.Ed.2d 599 (2016).

<sup>6</sup>*See Id.* at 735-736.

<sup>7</sup>Campaign for the Fair Sentencing of Youth, <https://www.fairsentencingofyouth.org/does-your-state-use-juvenile-life-without-parole-jlwop/>.

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*



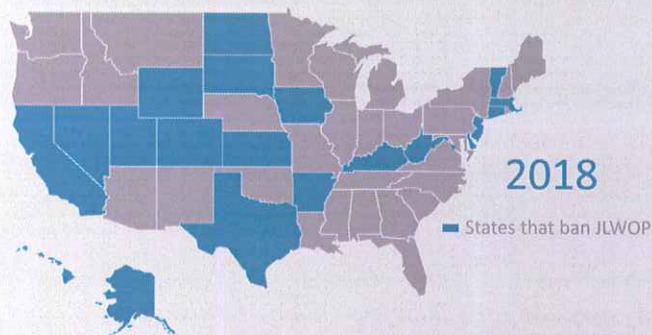




# OHIO MUST ACT NOW

## What do we know about children serving life-long sentences?<sup>10</sup>

- Ohio has been keeping data on children transferred for criminal prosecution since 1998. Therefore, there is no immediate data set for those sentenced prior to 1998, yet still serving life-long prison sentences in Ohio's DRC.
- Ohio has 9 individuals serving life without parole sentences, all subject to further litigation after *Montgomery*.
- Since 1998, Ohio has at least 11 individuals serving more than 30 years; 4 of these serving more than 80-year prison sentences; and 14 serving sentences with a maximum of life, all for non-homicide offenses, all subject to further litigation after *Moore*.
- Since 1998, Ohio has at least 15 individuals serving more than 30 years-to-life for a homicide offense.

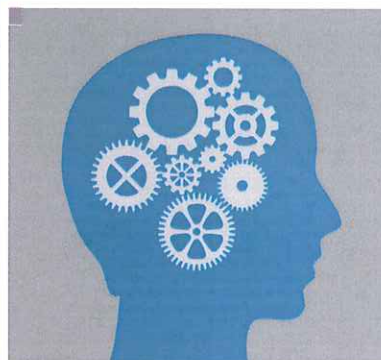


## What did the Ohio Criminal Sentencing Commission recommend?

- Children serving life without parole should receive parole review upon turning age 40. All other children should receive parole review after serving 15 years.
- The OCSC recognized the Ohio Parole Board will give fair consideration to these cases by weighing the nature of the offense; the characteristics of the offender, both past and present; and the harm caused to the victims.
- Offering parole consideration is not a ticket to freedom. For calendar years 2014-2016, the 3-year average parole release rate is 7.57%.<sup>11</sup>

## Why should children receive special parole review?

- Children are different from adults in ways that reduce their culpability and increase their likelihood of rehabilitation.
- Children are categorically less culpable than adults; they have less control over their environments; they are more susceptible to peer pressure; and their brains are not fully developed to weigh long-term consequences.<sup>12</sup>
- Yet, these qualities also mean children are more likely to continue to grow and change; and are more susceptible to education, treatment, and rehabilitation.<sup>13</sup>



**Each of us  
is more than  
the worst thing  
we've ever done.**

*Bryan Stevenson*

<sup>10</sup>Ohio Public Defender website—<https://tinyurl.com/ya6slpl8>.

<sup>11</sup>Department of Rehabilitation and Corrections 2014–2016 Calendar Year Reports, available at <http://drc.ohio.gov/reports/parole> (accessed Feb. 1, 2018).

<sup>12</sup>*Roper v. Simmons*, 543 U.S. 551, 569-570, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).

<sup>13</sup>*Montgomery* at 726, 736-737.