



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Support of SB256 Parole Eligibility for Juveniles Sentenced as Adults Sponsors Senators Lehner and Manning

Chair Eklund, Vice Chair Manning, Ranking Member Thomas and members of the Senate Judiciary Committee, thank you for the opportunity to testify on behalf of the Office of the Ohio Public Defender (OPD) in support of Senate Bill 256 (SB256).

SB256 establishes timelines for parole eligibility for juvenile offenders serving extended prison sentences, it abolishes the sentence of juvenile life without the possibility of parole, and it requires the sentencing court and parole board to consider youth and its characteristics as mitigating factors. OPD strongly encourages this committee to support SB256. Passage of SB256 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. The bill creates an exception for children convicted of an “aggravated homicide offense,” defined in the bill as the killing of three or more victims as the principal offender. Individuals convicted of this offense will not receive parole eligibility.

In the past seven 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.¹ Federal caselaw requires states to offer all but “those rare children whose crime reflect irreparable corruption” a meaningful opportunity for release.² Furthermore, in 2016, the Ohio Supreme Court, in a decision written by Justice Pfeiffer, held in *State v. Moore*³ that de facto life sentences for juveniles, like sentences of 100 years, are unconstitutional for non-homicide offenses.

A “meaningful opportunity for release” can either be through a new sentencing hearing or a parole review hearing.⁴ Without legislation to bring Ohio’s law into compliance with state and federal caselaw, Ohio will be encumbered by long and expensive litigation to address the resentencing of juveniles who received life without parole or lifelong sentences, and to further define vague terms like what “exceeds a child’s lifetime.” If these children are not provided relief under the bill, they will be forced to litigate their unconstitutional sentences. Providing parole hearings and allowing these children a “meaningful opportunity for release,”⁵ as is proposed in SB256, will save Ohio from the heavy burden of a plethora of litigation.

Allowing children sentenced as adults the opportunity for release is not only a decision of economics and efficiency, it is also a moral imperative. That is why bills like SB256 are passing nationwide. Twenty-three 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 SB256

¹ *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).

² *Montgomery v. Louisiana*, 577 U.S. ___, 136 S.Ct. 718, 734, 193 L.Ed.2d 599 (2016).

³ *State v. Moore*, 149 Ohio St.3d 557, 2016-Ohio-8288.

⁴ See *id.* at 735-736.

⁵ *Miller v. Alabama*, 567 U.S. 460, 489, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).



which recognizes that children, even those convicted of serious crimes, have the potential for rehabilitation.

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."⁶ 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.

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 susceptible to peer pressure; and their brains, specifically the frontal lobe which is responsible for executive functioning, are not fully developed to weigh long-term consequences.⁷ The U.S. Supreme Court has acknowledged that juveniles' personalities are not as "well formed" as adults⁸, and they have greater capacity for change.⁹ They are therefore, constitutionally different from adults. Even children that commit a crime can grow, change, and benefit from education, treatment, and rehabilitation.¹⁰ That is why this bill is supported by a broad coalition of groups and individuals. As you can see from the individuals that submitted proponent testimony, this bill is supported by legal experts, formerly incarcerated individuals, the friends

⁶ *State v. Aalim*, 2017-Ohio-2956, ¶109 (O'Connor, dissenting), quoting *State v. Long*, 138 Ohio St.3d 478, ¶33 (O'Connor, concurring).

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

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

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

¹⁰ *Montgomery* at 726, 736-737.



and family members of incarcerated individuals, friends and family members and victims of juvenile offenders, and judges who have expertise in this area. SB256 is supported by the people who best understand the impact of incarcerating juveniles for life.

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%.¹¹ A parole hearing is simply an opportunity for that individual to present to the Parole Board the ways in which he or she has grown, changed, and been rehabilitated since they were a juvenile.

Ohio law has permitted, or mandated, certain children be tried as adults for over 50 years. As result, we recently determined, in collaboration with the Ohio Parole Board, that as many as 17% of individuals reviewed for parole every month was under 18 at the time of their offense. That is why SB256 includes guidance from the Supreme Court to the Parole Board, including the meaningful opportunity for release standard and mitigating factors of youth.

Passage of SB256 will ensure that juveniles are given individual consideration at the time they are sentenced in the adult court system and access to a parole hearing where their growth, maturity, and rehabilitation can be considered.

Thank you for the opportunity to testify in support of SB256. I am happy to answer any questions.

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

