



BILL: Senate Bill 521

SHORT TITLE: Under 18-indefinite/life sentence-special parole eligibility

DATE: Wednesday, May 11, 2016

POSITION: **SUPPORT**

COMMITTEE: Senate Government Oversight and Reform Committee

CONTACT: Xavier McElrath-Bey

Chair Coley, Vice Chair Seitz, Ranking Member Yuko, and Government Oversight and Reform Committee members:

I, Xavier McElrath-Bey, respectfully submit this testimony for the official record in **support of Senate Bill 272**. I currently serve as the Youth Justice Advocate for the Campaign for the Fair Sentencing of Youth and I co-founded and currently coordinate the Incarcerated Children's Advocacy Network, or ICAN. I am grateful to the Ohio Legislature for your leadership in calling for this hearing and your willingness to address this important constitutional and human rights issue concerning the extreme sentencing of Ohio children.

The Incarcerated Children's Advocacy Network is a national network of individuals formerly incarcerated for crimes committed as children. We endeavor to champion the cause for age-appropriate and trauma-informed alternatives to the extreme sentencing of America's youth—with a focus on abolishing juvenile life without parole. We do this work by speaking publicly about our stories to provide living examples of positive change, mentoring at-risk youth, highlighting success stories of formerly incarcerated youth for the media to change the narrative about youth offenders, and advocating for criminal justice reform. Collectively, we are living examples that no child is born bad and every child possesses the capacity for positive change. The Incarcerated Children's Advocacy Network's vision is to help create a fair and just society which recognizes the developmental differences between adolescents and adults and never loses sight of children's unique capacity for positive change and rehabilitation, a society which nurtures all children and provides them with an equal opportunity for positive development and success. It is our hope that the individuals who are serving these sentences in Ohio will someday have the same opportunities that we had to come out and be an asset in their communities.

I believe SB 272 holds children accountable for serious crimes while providing them with an incentive to mature and change. As someone who is acutely aware of the passage of time while serving a lengthy prison term as a child, SB 272's promise of review no later than 15 years for most children and review at age 40 for the most serious cases provides enough time for youth to



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develop remorse for their actions, mature and better themselves, and have time to contribute meaningfully to their communities after their release.

My early childhood in the Back of the Yards neighborhood on the south side of Chicago was horrific to say the least. Born to an abusive alcoholic father and a mother who struggled with mental health issues, I grew up in a home filled with violence and abuse. It was a home that was short on food, clothing and love. When I was 6 years old, the Department of Children and Family Services placed my siblings and me into foster care because of the abuse by my little sister's father. Unfortunately, our foster mother picked up where he left off in abusing us. She hit my mentally disabled brother and me with extension cords, belts or whatever she could get her hands on whenever we made a mess or too much noise in our room. After years of pleading, my siblings and I were returned to the care of my mother; only to find that my mother's new boyfriend was also abusive.

In response to these harsh conditions I began to act out at an early age. Perhaps because we lived in dire poverty, my first arrest was for trying to steal a candy bar from a grocery store when I was 9 years old; within months I was arrested twice more for trying to steal quarters from city parking meters. Then at age 11, while looking for love, safety and belonging, I found myself involved with a gang in my neighborhood. Soon after I joined the gang, my best friend shot me in my face by accident, and I almost died. I made up a story to protect my friend, and this resulted in my first incarceration in the Juvenile Temporary Detention Center. When I was released from the detention center my life only propelled further into the gang.

Not only did I feel safer in the streets than within my own home, but I really felt like no one cared for me but my gang. I would have done anything to retain the love I received from my peers. While looking for love and acceptance in the only place I knew I often took risks and paid the price for my poor decisions and mistakes. By the time I was 13, I had accumulated 19 arrests and seven convictions—for multiple armed robberies, batteries, gun charges and other violent and non-violent offenses. I was labeled as "incorrigible" by my probation officer -- a word I had never heard before.

The final and most regrettable mistake I made as a child occurred when I was 13. I participated in the killing of a 14-year-old rival gang member. Although I did not physically kill the victim, I helped lure him into an abandoned building where he was beaten to death. Shortly afterward, I began experiencing guilt, but even then I couldn't imagine myself disregarding the orders from my gang. Two weeks later, the police raided my mother's house and found two guns I possessed. I was charged with weapons possession; and when a juvenile court judge released me over to homicide detectives during my court appearance, I was charged with first degree murder.



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Two years later, at age 15, I pled guilty and was convicted of first degree murder. One of my co-defendants received a 40-year sentence, but the judge saw in me the potential for rehabilitation and sentenced me to a 25-year sentence (which meant with “good time” I could be released after 12.5 years). Although I was placed in segregation several times for fights and other gang-related incidents early in my incarceration, I was still lost and didn’t fully understand the consequences of my actions. It wasn’t until I was 18 that I began to wake up. While I sat in my cell during that year, I finally began to face myself. I thought about all the people I had hurt. I thought about the 14-year-old kid who died partly because of my destructive behavior. I thought about his family and my family, and eventually I just broke down in tears. It was then, with my growing maturity, that I began to think about the deeper meaning of life. It was then that I began to contemplate the tragedy of what had occurred and how I was so deceived by the illusions of love that came with the gang life. At that time I had committed to take responsibility for my actions and change for the better.

When I was released from segregation, I renounced my gang in exchange for the opportunity to obtain an education. I came to believe that I could be someone in life once I was released, and I made it my purpose to gear my educational studies in the direction of someday being able to work with at-risk youth in free society. Within four years I had attained multiple academic achievements, including an Associate of Arts, Associate of General Education, a certificate in Computer Technology and a bachelor’s degree in Social Science from Roosevelt University with a 4.0 GPA. I was inducted into the Franklin Honor Society for outstanding scholarship. I had also worked in Galesburg Correctional Center as an Academic Office Clerk in order to help inmates attain their GEDs and improve their chances of a better future.

I earned my release from prison in 2002 after serving 13 years of my sentence. Soon after my release, I re-enrolled at Roosevelt University and earned a Master of Arts from the counseling and human services program. For the past 12 years I have worked in various positions that were designed to help keep children out of the justice system. I worked as an outreach worker for Ceasefire, an anti-violence program aimed at reducing street violence; as a street intervention specialist with Catholic Charities, mentoring and providing to at-risk youth and their families; as the juvenile justice diversion program coordinator with Alternatives Inc., where I mentored juvenile court referred youth and collaborated with DCFC to find alternate living arrangements for abused and neglected children; and as a clinical research interviewer for the Northwestern University Juvenile Project, a government funded longitudinal study of the mental health needs and outcomes of formerly incarcerated youth. I currently work as a Youth Justice Advocate for the Campaign for the Fair Sentencing of Youth and coordinate the Incarcerated Children’s Advocacy Network, a national network of formerly incarcerated youth that are living examples of children’s capacity for change.



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I am 40 years old today, and I have dedicated my life to the victim and his family as I push forward as a youth advocate trying to deter youth from making the same mistakes that I once made. My personal goal of reaching out and helping children will never end because I know firsthand that children do change and have great potential to someday contribute to society when they are rehabilitated.

Today we know from brain and behavior development experts that youth are fundamentally different from adults. Children are less capable than adults of considering the long-term impact of their actions, controlling their emotions and impulses, and evaluating risks and reward. They also are more vulnerable and susceptible to peer pressure. However, children possess a unique capacity for change, and as neurological and behavior development occurs, children grow and mature psychologically and developmentally. Numerous studies have shown that the vast majority of children who commit crimes age out of criminal behavior and no longer pose a threat to society in adulthood. This highlights the need for sentencing policies that reflect the scientific and developmental realities of children and ensure that meaningful and periodic opportunities for sentencing reviews exist for individuals who commit serious crimes as children.

By providing parole eligibility to most youth after serving no more than 15 years, and those in the most extreme cases, at age 40, SB 272 strikes a strong balance between holding youth accountable for their crimes in a meaningful way while still allowing them the chance to be contributing members to their communities. By the time I was 24 years old I was no longer the same person I had been, not physically, not mentally and certainly not morally or ethically. At that age I had just earned my Bachelor Degree and was constantly day dreaming of getting out in a couple years and starting a family and a new and positive life. When I was released from prison at age 27, I had to learn how to drive, get my first ID, figure out how to use public transportation and acquaint myself with my family from whom I had been separated for years.

Because I was given the opportunity to earn my release 13 years after my incarceration, I was still able to build a life for myself and give back to my community in a meaningful and positive way. At 27, I was able to finish my education, earn a Master's Degree, launch my career, and start a family. If I had been much older when I started my prison term or if the amount of time I was required to serve without parole eligibility was dramatically greater, it would have been very difficult for me, if not impossible, to finish my education or start a career or a family.

This is why it is imperative that any juvenile sentencing reform gives children convicted of serious crimes the same opportunity for release that I was given. We know that children have a unique capacity to become rehabilitated and to change. When they do and have been held accountable for the harm they have caused, they should be met with forgiveness of their past mistakes as children and be given a second chance at life. They need a chance to earn an



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education, a chance to start a career, a chance to raise a family, and a chance to make their communities a better place. The only way for that to happen is for our juvenile sentencing laws to ensure that every child convicted of a serious crime has an opportunity for parole eligibility after serving no more than 10 to 15 years.

My story is not unique. I am one of many people who went to prison as children after they were convicted of serious crimes who are now dedicating their lives to strengthening our communities, our states and our country. Still others are living quiet lives in which they go to work, support their families and spend time with their friends. Without question, children must be held accountable when they commit serious crimes. Yet, my story and ones like it demonstrate that with maturity and opportunities, we can become more than the worst thing we have ever done. Therefore, I encourage this committee to give the children of Ohio the chance to show that they can in fact change and be rehabilitated, just as I and many others were once given another chance and are now living positive and productive lives.

Thank you for your consideration.

Sincerely,

Xavier McElrath-Bey, MA

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