

# the CAMPAIGN for the FAIR SENTENCING of YOUTH



July 28, 2014

Chief Judge Patti B. Saris  
Chair, United States Sentencing Commission  
Office of Public Affairs  
One Columbus Circle, NE  
Suite 2-500, South Lobby  
Washington, DC, 20002-8002

CC: Chief Judge Ricardo H. Hinojosa, Judge Ketanji Brown Jackson, Judge Charles R. Breyer, Ms. Dabney Friedrich, Ms. Rachel Barkow, Judge William H. Pryor, Jr., Mr. Isaac Fulwood, Jr., Mr. Jonathan J. Wroblewski,

## **RE: Necessary distinctions between youth and adult sentencing**

Dear Chairwoman Saris,

I am writing to you today on behalf of the Campaign for the Fair Sentencing of Youth (CFSY) to ask that the United States Sentencing Commission make youth sentencing a priority for the amendment cycle in 2015. The current U.S. Sentencing Guidelines have not yet been revised to account for recent advancements in our understanding of adolescent brain and behavioral development, as well as recently decided cases before the U.S. Supreme Court. In some cases, where youth face life sentences in the federal system, application of the U.S. Sentencing Guidelines is now unconstitutional.

Studies have shown that children's brains are not fully developed. As a result, children are less capable than adults to consider the long-term impact of their actions, control their emotions and impulses, or evaluate risks and reward. They also are more vulnerable and susceptible to peer pressure. We also know from experience and from behavioral and brain development experts that children possess a unique capacity for change. Studies show that the vast majority of children who commit crimes age out of criminal behavior. This highlights the need for sentencing policies that reflect the scientific and developmental realities of children.

In light of the updated science, there has been a significant shift in federal law related to the punishment of young people under the age of 18. The United States Supreme Court, in a series of decisions during the last decade, has said that children, as compared to adults, are less blameworthy and have greater potential for rehabilitation. These decisions have begun to bring the United States in line with the international consensus that children should not be subject to the harshest penalties.

In *Roper v. Simmons* (2005), the Court struck down the death penalty for children, finding it to be a violation of the 8<sup>th</sup> Amendment's prohibition on cruel and unusual punishment.<sup>1</sup> In that opinion, the Court emphasized the brain and behavioral development science showing that children are fundamentally different than adults in their development and that they have a unique capacity to grow and change as they mature.<sup>2</sup> In *Graham v. Florida* (2010), the Court struck down life-without-parole sentences for non-homicide offenses, holding that states must give

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<sup>1</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>2</sup> *Id.*

children a “realistic opportunity to obtain release.”<sup>3</sup> Finally, in *Miller v. Alabama* (2012), the Court struck down mandatory life-without-parole sentences for homicide offenses, finding that sentencing courts must “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.”<sup>4</sup>

*Miller* also requires that if a child is facing a sentence of life in prison, sentencing judges must consider certain factors related to the child’s age and his or her prospects for reform. Some of these factors include, but are not limited to, age at the time of the offense, impetuosity, family and community environment, ability to appreciate the risks and consequences of their conduct, intellectual capacity, peer or familial pressure, involvement in the child welfare system, traumatic history, level of participation in the offense, capacity for rehabilitation, and any other mitigating factor or circumstance. The Court said that once these factors are considered, the use of life sentences upon children should be “uncommon.”<sup>5</sup>

Today, approximately 2,500 individuals have been sentenced to life without parole in the United States for crimes committed as children. Countless more have been transferred to adult court where they have been given sentences that do not reflect how children are different from adults. While the vast majority of these sentences have been handed down in state courts, there are at least 37 individuals serving life sentences without the possibility of parole in the federal system for offenses committed when they were younger than 18 years old – all of whom are either entitled to re-sentencing hearings or are required to be provided with a meaningful opportunity to obtain release pursuant to *Graham* and *Miller*.

Even though the Sentencing Guidelines are not mandatory, they were originally intended for adults and their application to children is inappropriate given that they fail to account for the recent evolution in science and the law finding children fundamentally different from adults for the purposes of sentencing. In addition, the use of the U.S. Sentencing Guidelines in any resentencing or prospective sentencing of any individual who faces a life or de-facto life sentence for a crime they committed as a child would be unconstitutional as a result of *Graham* and *Miller*. Under the federal sentencing laws, there is no provision for parole; thus any sentence for a homicide offense(s) that imposes life or its equivalent on a youth is suspect under *Miller*. Any sentence that imposes life or its equivalent on a youth for non-homicide offense(s) is unconstitutional under *Graham*.

In light of recent developments in adolescent brain science and U.S. Supreme Court precedent on youth sentencing, we respectfully request that the U.S. Sentencing Commission resolve to update current U.S. Sentencing Guidelines for youth to more adequately reflect how children are different from adults. Specifically, we ask that the Commission provide guidance, in line with recent Supreme Court precedent and our understanding of children’s unique capacity to be rehabilitated, to judges on how youth should be treated differently at sentencing any time they are transferred and sentenced in adult court.

Sincerely,

Jody Kent Lavy  
Director and National Coordinator

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<sup>3</sup> *Graham v. Florida*, 130 S. Ct. 2011 (2010).

<sup>4</sup> *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

<sup>5</sup> *Id* at 2469.