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**Testimony submitted by
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To
House Judiciary Committee
Hearing on House Bill 1999
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Dear Mr. Chairman and Members of the Subcommittee,

Thank you for allowing me the opportunity to submit written testimony in support of House Bill 1999, which would amend Pennsylvania law to provide special sentencing rules for certain youthful offenders and give those who receive life sentences the opportunity to apply for parole, rather than serving a life sentence without any possibility of parole.

I am the Executive Director of the Center on the Administration of Criminal Law at New York University School of Law. The Center is an apolitical think tank that promotes good government and prosecution practices in the criminal justice system. Before establishing this organization, I was a prosecutor for 12 years. During that time, I prosecuted a wide variety of crimes, ranging from international terrorism to securities fraud to domestic violence and sexual abuse to homicide. I prosecuted cases in which offenders received very substantial sentences. I am proud of my work as a prosecutor – it is my career’s work as a practicing lawyer, other than

running the Center – and I am a believer that criminal punishment is critical to keep communities safe.

One of the defendants I prosecuted committed murder when he was 17 years old. He gunned down his victim and shot him 17 times in cold blood in broad daylight in the middle of a residential street. The same defendant had committed another murder before he turned 18. For these crimes, he was sentenced to consecutive terms of years that were so long as to be tantamount to life imprisonment, and he will never be released. And, in that case, that was a just result.

But at the same time, there are other youthful defendants who have been sentenced to unjust sentences of life without parole. For example, a 15 year old boy in Chicago, “Peter A,” on instructions from his older brother, helped steal a van so that his brother could drive to the home of two individuals who stole drugs and money from the brother’s apartment. Peter stayed in the van while two others went inside. While Peter waited in the van, one of the men who had gone into the home shot and killed two people. Peter was sentenced to life without parole, even though the judge said at sentencing that he wished he could impose a lower sentence and described Peter as “a bright lad” with “rehabilitative potential.” But the sentence was mandatory and the judge had no discretion or choice to sentence Peter otherwise. Peter – who is now 29 and has spent nearly half of his life in prison, obtained his G.E.D. and completed a correspondence paralegal course while incarcerated, and has received a disciplinary ticket only once in the past six years (for possessing an extra pillow and extra cereal in his cell) – will serve the rest of his life in prison without even the *possibility* of ever even being permitted to *ask* to be released.¹

¹ Human Rights Watch, *The Rest of Their Lives: Life without Parole for Youth Offenders in the United States in 2008* (May 2008), available at <http://www.hrw.org/en/node/11578/section/2>.

So to say that some youthful offenders deserve stiff punishment is not the same as saying that no youthful offender, under any set of facts, should ever be afforded the opportunity to request release from imprisonment. The proposed legislation does not guarantee release to any offender, but merely provides each with the opportunity to try to demonstrate that his individual circumstances warrant his release, before he dies, for an offense he committed as a child. This legislation should be passed.

* * *

All criminal law legislation must protect public safety. But it also should be rational and just. The proposed legislation accomplishes each of these goals.

First, House Bill 1999 does not have an adverse effect on public safety. Similar legislation has been enacted elsewhere without harmful consequences. In 2004, Kansas exempted child offenders from life without parole sentences.² Since then, the overall crime index rate in Kansas has gone down.³ Similarly, Colorado ended juvenile life without parole in 2006,⁴ and since then, Colorado's overall crime index rate has also gone down.⁵ In 2009, Texas repealed its juvenile life without parole law.⁶ Although the Texas reform is too recent to collect comparative data, there is no indication that crime in Texas has increased since juvenile life without parole was abolished.

Moreover, experience in my home state of New York demonstrates that law enforcement can effectively combat crime without imposing life without parole sentences on juveniles. In New York, life without parole is not an available sentence for juveniles unless they commit a

² KAN. STAT. ANN. §21-4622 (West 2007).

³ See Kansas Law Enforcement Agency Uniform Crime Reports, available at <http://www.disastercenter.com/crime/kncrime.htm>.

⁴ COLO. REV. STAT. §18-1.3-401(4)(b) (2009).

⁵ See Colorado Law Enforcement Agency Uniform Crime Reports, available at <http://www.disastercenter.com/crime/cocrime.htm>.

⁶ TEX. PENAL CODE ANN. §12.31 (West Supp. 2009).

crime of terrorism, and currently no juvenile is serving a life without parole sentence in the state system.⁷ In contrast, in Pennsylvania, where prosecutors and judges have been stripped of discretion to determine when life without parole sentences should be sought and imposed (the sentence is mandatory for juveniles convicted of first or second degree murder, which includes felony murder), approximately 450 youths are serving life without parole sentences.⁸ This is the highest number for any state in the United States.⁹ But despite the differences between the approaches of New York and Pennsylvania, the violent crime rates in the two states are virtually identical.¹⁰

The fact that ending juvenile life without parole sentences has no adverse impact on public safety, and why it is good policy, derive from two primary factors. First, juvenile offenders are less culpable than adult offenders and have more potential for rehabilitation because they are not fully developed, mentally or emotionally, at the time they commit their crimes. Second, life without parole sentences for juveniles fail to account for the fact that offenders typically commit fewer crimes as they age. Thus, such sentences impose extremely costly imprisonment regimes without even the possibility of alleviation, despite the fact that in some particular cases continued incapacitation is unnecessary and wasteful.

The Supreme Court of the United States recently acknowledged the lower culpability and higher potential for rehabilitation of youthful offenders. In its decision in *Graham v. United*

⁷ University of San Francisco School of Law State By State Resource Guide, available at http://www.usfca.edu/law/jlwop/resource_guide/.

⁸ See *id.*

⁹ Human Rights Watch, *supra* note 1.

¹⁰ See U.S. Census Bureau, Violent Crimes per 100,000 Population – 2006, available at <http://www.census.gov/statab/ranks/rank21.html>.

States, the Court held that juvenile life without parole sentences for nonhomicide crimes are unconstitutional. As Justice Kennedy observed in his majority opinion:

[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of irretrievably depraved character than are the actions of adults. It remains true that [f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.¹¹

Justice Kennedy also stated that:

because juveniles have lessened culpability they are less deserving of the most severe punishments. As compared to adults, juveniles have a lack of maturity and an underdeveloped sense of responsibility; they are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; and their characters are not as well formed. These salient characteristics mean that [i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption. Accordingly, juvenile offenders cannot with reliability be classified among the worst offenders. A juvenile is not absolved of responsibility for his actions, but his transgression is not as morally reprehensible as that of an adult.¹²

Empirical data corroborate the Court's commentary on the differences between juvenile and adult offenders. Studies have shown that the process of brain development during adolescence makes minors more likely to respond to situations emotionally rather than logically.¹³ Moreover, adolescents overvalue immediate rewards and undervalue future rewards

¹¹Graham v. United States, No. 08-7412, slip op. at 17-18 (U.S. May 17, 2010) (internal citations and quotation marks omitted).

¹² *Id.* (internal citations and quotation marks omitted).

¹³ See Brief for J. Lawrence Aber et al. as *Amici Curiae* Supporting Petitioner at 17, Graham v. Florida, No. 08-7412 (U.S. May 17, 2010) (citing Mary Beckman, *Crime, Culpability, and the Adolescent Brain*, 305 *SCIENCE* 596, 599 (2004) ("Studies also suggest that the immature controls associated with underdeveloped frontal lobes are at least

and future costs.¹⁴ Additionally, the severity of life without parole sentences does not operate effectively as a deterrent to juvenile crime, as it might for adults, due to these developmental differences.¹⁵ And – as anyone who has children or has spent time with children knows – adolescents are more susceptible to peer pressure than are adults.¹⁶ Finally, studies have shown that adolescents who commit crime are generally responsive to rehabilitation programs as they age and mature.¹⁷ And intervention programs are effective even for youths who are most at-risk of developing into career criminals.¹⁸ Thus, life with parole sentences fail to accomplish two of the core purposes of criminal punishment: they neither deter nor do they allow for the possibility

partly responsible for higher rates of risk-taking among adolescents. Indeed, studies confirm that adolescents use different areas of the brain to complete tasks that, in adults, would normally be completed by the frontal lobes. For example, the better-developed limbic system, which is the emotional center of the brain, has been observed to ‘stand in’ for adolescents’ immature control functions, meaning that the adolescent may process emotionally what the adult processes through logic and reason.”).

¹⁴ See *id.* at 17 (citing Laurence Steinberg, *Risk Taking in Adolescence: What Changes and Why?*, 1021 ANNALS N.Y. ACAD. SCI. 51, 54 (2004) (“Adolescents’ impulsiveness also results from an innate under-appreciation of cost and overvaluation of short-term rewards, which together create a heightened preference for risk. Research conducted under controlled conditions has attempted to parse the bases for this decisionmaking, and shows that adolescents systematically overvalue immediate rewards while undervaluing both future rewards and future costs.”)).

¹⁵ See Eric L. Jensen, *The Waiver of Juveniles to Criminal Court: Policy Goals, Empirical Realities, and Suggestions for Change*, 31 IDAHO L. REV. 173, 186-87 (1994-95) (citing Eric L. Jensen & Linda K. Metsger, *A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime*, 40 CRIME & DELIQUENCY 96, 100-102 (1994)).

¹⁶ See Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1014 (2003) (“Because of their developmental immaturity, normative (i.e., ‘ordinary’) adolescents may respond adversely to external pressures that adults are able to resist. If adolescents are more susceptible to hypothetical peer pressure than are adults (as noted earlier), it stands to reason that age differences in susceptibility to real peer pressure will be even more considerable. Thus, it seems reasonable to hypothesize that a youth would succumb more readily to peer influence than would an adult in the same situation.”).

¹⁷ See Robert J. Sampson & John H. Laub, *A Life-Course View of the Development of Crime*, 602 ANNALS AM. ACAD. POL. & SOC. SCI. 12, 17-18 (2005) (“Namely, what appears to be important about institutional or structural turning points is that they all involve, to varying degrees, (1) new situations that ‘knife off’ the past from the present, (2) new situations that provide both supervision and monitoring as well as new opportunities of social support and growth, (3) new situations that change and structure routine activities, and (4) new situations that provide the opportunity for identity transformation (for details, see Laub and Sampson 2003, chaps. 6-8). The lesson we drew is that involvement in institutions such as marriage, work, and the military reorders short-term situational inducements to crime and, over time, redirects long-term commitments to conformity.”).

¹⁸ See Aber, *supra* note 13, at 30-31 (“Numerous intervention studies show that even the highest-risk youths can be treated effectively, resulting in a reduced likelihood that they will engage in violence in the future. A panel of eminent scientists and practitioners assembled in 2003 by the National Institute of Health to review the state of the science concluded that intervention programs are effective in preventing serious violence, even in highest-risk youths. The President’s New Freedom Commission on Mental Health came to a similar conclusion in 2003. The United States Surgeon General has reached the same conclusion.”).

of rehabilitation.

Moreover, life without parole sentences for juveniles fail to account for the fact that offenders typically commit fewer crimes as they age. Thus, life without parole sentences for juveniles can be extremely costly, but without achieving commensurate benefits. As Judge Posner has observed, “[w]e know that criminal careers taper off with age,” and “[c]rimes that involve a risk of physical injury to the criminal are especially a young man’s game. In 1986 more than 62 percent of all persons arrested for robbery . . . were below the age of 25, and only 3.4 percent were 60 years old or older.”¹⁹

Judge Posner’s view is firmly rooted in empirical social science research.²⁰ For example, studies show that age is one of the major individual-level correlates of violent offending. In general, arrests for violent crime peak around age 18 and decline gradually thereafter. More than two-thirds of those arrested for violent crimes are age 30 or younger.²¹ And other studies have shown that adolescents who commit crimes are unlikely to develop into career criminals during adulthood.²²

¹⁹ United States v. Jackson, 835 F.2d 1195, 1199 (7th Cir. 1987) (Posner, J., concurring) (internal quotations and citations omitted).

²⁰ Robert J. Sampson & Janet L. Lauritsen, *Violent Victimization and Offending: Individual-, Situational-, and Community-Level Risk Factors*, in UNDERSTANDING AND PREVENTING VIOLENCE: SOCIAL INFLUENCES 3: 1, 18 (Albert J. Reiss & Jeffrey A. Roth eds., 1994), available at <http://books.google.com/books?id=mmM6UcVrctwC&lpg=PR1&ots=XLe8cC3jsX&dq=Understanding%20and%20Preventing%20Violence%3A%20Social%20Influences&pg=PA18#v=onepage&q&f=false>; Darrell J. Steffensmeier et al., *Age and the Distribution of Crime*, 94 AM. J. SOC. 803 (1989); see also R. Karl Hanson, *Recidivism and Age: Follow-Up Data from 4,673 Sexual Offenders*, 17 J. INTERPERSONAL VIOLENCE 1046 (2002) (detailing the lower recidivism rates among violent offenders released from prison at an older age); Stephen Porter et al., *Investigation of the Criminal and Conditional Release Profiles of Canadian Federal Offenders as a Function of Psychopathy and Age*, 25 LAW & HUMAN BEHAVIOR 647 (2001) (analyzing the negative relationship between recidivism rates and age for psychopathic criminals).

²¹ Sampson & Lauritsen, *supra* note 20, at 3: 1, 18.

²² See Steinberg & Scott, *supra* note 16, at 1015 (“In view of what we know about identity development, it seems likely that the criminal conduct of most young wrongdoers is quite different from that of typical adult criminals. Most adults who engage in criminal conduct act on subjectively defined preferences and values, and their choices can fairly be charged to deficient moral character. This cannot be said of typical juvenile actors, whose behaviors are more likely to be shaped by developmental forces that are constitutive of adolescence. To be sure, some adolescents may be in the early stages of developing a criminal identity and reprehensible moral character traits, but most are

Taking together the diminished culpability of juvenile offenders, their increased potential for rehabilitation, and the fact that most offenders age out of crime commission, it becomes clear that – in certain instances – spending on extremely lengthy terms of incarceration can be wasteful. In fiscal year 2008-2009 (the most recent year for which data is available), Pennsylvania spent \$32,059 annually per inmate on incarceration.²³ Incarcerated individuals generally experience age-related disabilities earlier than the civilian population, resulting in increased incarceration costs.²⁴ And the health care cost of caring for the elderly dwarfs the cost of caring for younger inmates. Current estimates suggest that it costs about \$70,000 annually to incarcerate an inmate over the age of 60, whereas younger inmates cost \$22,000. To illustrate the cost disparity, the SCI-Laurel Highlands facility in Pennsylvania, a facility specifically designed for elderly inmates, reported an average health care cost of \$16,362 per inmate for 1999. The average annual cost of health care per inmate in other correctional facilities in Pennsylvania is calculated to be between \$3,000 and \$4,453.²⁵ Thus, the imposition of life sentences on juveniles that categorically prohibit any possibility of early release can waste scarce resources that could otherwise be reallocated to more effective uses.

Finally, and critically, ending juvenile life without parole does not *guarantee* the release of any particular offender – indeed, of any offender. Instead, it merely leaves open the *possibility* that a child who commits a crime can petition for release later in life, if he can demonstrate that he is remorseful, has rehabilitated, and will not reoffend. Parole authorities in

not. Indeed, studies of criminal careers indicate that the vast majority of adolescents who engage in criminal or delinquent behavior desist from crime as they mature into adulthood (Farrington, 1986).”).

²³ 2010-2011 Pennsylvania DOC Costs & Population, *available at* http://www.cor.state.pa.us/portal/server.pt/community/research_statistics/10669/budget_documents/567424.

²⁴ *See id.*

²⁵ *See* The Council of State Governments, Corrections Health Care Costs 15 (January 2004), *available at* http://www.cor.state.pa.us/portal/server.pt/community/research_statistics/10669/budget_documents/567424; Pennsylvania DOC Costs & Population, *supra* note 23.

Pennsylvania can and should be trusted to make informed, reasoned decisions regarding the release and continued incarceration of inmates petitioning for parole. Indeed, while the rate of parole hovers around 50% in Pennsylvania,²⁶ the rate of parole grants for those convicted of violent crimes is far lower – less than 15%.²⁷ And, for inmates for whom data are available, in Pennsylvania, 12.5% of inmates who were paroled had been sentenced to serve prison terms with a maximum sentence of 1 year or less, as compared to 5% nationwide.²⁸ Given that offenders who have been sentenced to serve prison terms carrying maximum sentences of 1 year or less are the least culpable offenders, it appears that, proportionately speaking, Pennsylvania parole authorities tend to award parole less frequently to more dangerous and more serious offenders than their national counterparts.

Of course, whenever one discusses criminal punishment, victims and their families must have a voice. And that is certainly no less true of parole proceedings. If House Bill 1999 is enacted, victim constituencies will be able to object to parole for particular offenders. But in particular situations, even the victims of crimes or their families may support the parole of juvenile offenders. For example, at age 14, Quantel Lotts stabbed and killed his stepbrother during an argument over a toy. Despite objections from the victim's mother (Quantel's

²⁶ See Pennsylvania Board of Probation and Parole Monthly Program Report for June 2010 7 tbl 8 (Monthly Parole and Reparole Decisions), *available at* http://www.pbpp.state.pa.us/portal/server.pt/community/research%2C_reports_and_publications/5358/monthly_program_reports/502395; Pennsylvania Board of Probation 2006 Annual Report 5, *available at* http://www.pbpp.state.pa.us/portal/server.pt/community/research%2C_reports_and_publications/5358/annual_reports/502399; John S. Goldkamp, *Parole and Public Safety in Pennsylvania* 8 fig. 3 (March 29, 2010), *available at* http://www.pbpp.state.pa.us/portal/server.pt/community/research%2C_reports_and_publications/5358/specialized_reports_and_articles/518497 (“Final Report” link).

²⁷ Of Pennsylvania's nearly 73,000 adults on parole as of Dec. 31, 2008, only approximately 11,000 of them are known to have been convicted for violent crimes. See Lauren E. Glaze & Thomas P. Bonczar, Bureau of Justice Statistics, *Probation and Parole in the United States* 51 app. tbl 20 (December 2009), *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/ppus08.pdf>.

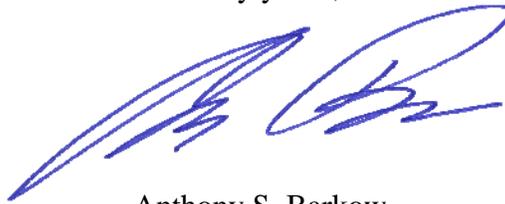
²⁸ See *id.* at 49 app. tbl 19.

stepmother), Quantel was tried and convicted as an adult and sentenced to die in prison.²⁹

Similarly, in Florida, a victim petitioned for the release of the boy who – when he was 13 years old – stabbed her.³⁰ And, critically, it is important to remember and emphasize that the legislation does not represent a “get out of jail card” for any offender; rather, it merely provides an opportunity to be heard for the youngest offenders sentenced to the “second most severe penalty permitted by law”³¹ after the death penalty, in recognition of the strong evidence of their lesser culpability and greater rehabilitative potential, as a categorical matter.

Therefore, I support House Bill 1999 because it has no adverse impact on public safety while allowing for flexibility in juvenile sentencing, thereby reducing incarceration costs and recognizing the possibility and need for rehabilitation in young offenders.

Sincerely yours,



Anthony S. Barkow

²⁹ Equal Justice Initiative, *Cruel and Unusual: Sentencing 12- and 14-Year-Old Children to Die in Prison* 30 (Jan. 2008), <http://www.eji.org/eji/files/20071017cruelandunusual.pdf>.

³⁰ *See id.* at 28.

³¹ *Graham*, slip op. at 18.