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**INTERIM TESTIMONY 2014**

## Senate Committee on Criminal Justice

### *Charge 5: Study and make recommendations regarding sentencing of youth under 18 accused of committing serious crimes.*

Dear Members of the Committee,

My name is Elizabeth A. Henneke. I am a Policy Attorney for Texas Criminal Justice Coalition (TCJC). Thank you for allowing me this opportunity to present testimony regarding sentencing of youth under 18 who are accused of committing serious crimes. **TCJC urges this Committee to raise the age of juvenile jurisdiction from 17 to 18 years old to better reflect the societal consensus for maturity and to enable adult facilities, which currently house the majority of system-involved 17-year-olds, to better comply with the Prison Rape Elimination Act. TCJC further urges this Committee to provide juries with a range of sentencing options for youth so that juries may take into account and give effect to mitigating factors that indicate a lesser degree of culpability for youth who commit serious crimes.**

#### **ISSUE #1: RAISE THE AGE OF JUVENILE JURISDICTION**

In Texas, the age of adulthood is typically 18 years of age; at that age, juveniles receive the right to vote, join the military, and buy a lottery ticket. Yet despite this seeming consensus that adulthood begins at 18, juveniles may be charged as an adult for a criminal offense the day a teen turns 17. Not only is this practice inconsistent with our societal consensus for “maturity,” it is also inconsistent with common sense—“what every parent knows”—and what neurological research has confirmed: youth are inherently less likely to consider the potential outcomes of their actions, are prone to risky behavior, and are more vulnerable or susceptible to negative influences and outside pressures.<sup>1</sup> Because of these distinctive attributes of youth, which they thankfully outgrow with time, there is less justifications for treating them as adults and subjecting them to adult punishment.

The majority of system-involved youth are charged with low-level offenses that could be adequately handled in other ways, without subjecting them to an adult criminal record or adult prison.<sup>2</sup> The adult prison system exposes youth to isolation and detention within a jail setting or incarceration within a prison setting – settings that pose a severe danger to the mental and physical health of youth.

#### **RAISE THE AGE OF JUVENILE JURISDICTION: KEY FINDINGS**

- **Research shows that young people who are kept in the juvenile justice system are less likely to re-offend than young people who are transferred into the adult system.** According to the Centers for Disease Control and Prevention, youth who are transferred from the juvenile court system to the adult criminal system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for violent or other crimes.<sup>3</sup>
- There is no justifiable basis for distinguishing between 17-year-olds and 16-year-olds. These two groups of teens commit largely the same types of offenses. The most common offenses for 17-year-old youth are minor offenses, such as disorderly conduct, violation of liquor laws, public drunkenness, vandalism, and larceny theft.<sup>4</sup>

- Setting the age of adult criminal justice jurisdiction at 17 negates neurological research findings that identify this age as a crucial point in developing cognitive reasoning.<sup>5</sup>
- According to criminologists, one of the most significant factors associated with a youth desisting from crime is known as a “turning point,” (e.g., job stability, marriage), while “cumulative disadvantage” (e.g., incarceration) is a factor strongly correlated to youth continuing to engage in criminal activity.<sup>6</sup> Given that the age of criminal jurisdiction is set only a year after a youth is eligible to obtain employment and a year before a youth is eligible to leave home, current policy makes it impossible for a turning point to be reached.
- The United State Supreme Court has set the age of adulthood at 18 years old and has provided procedural protections for youth that differ from adults.<sup>7</sup> Because 17-year-olds in Texas are considered adults by state law and juveniles by federal law, confusion and jurisdictional questions often arise when 17-year-olds are arrested.
- **Studies have shown that raising the age of juvenile jurisdiction to 18 will ultimately save Texans \$88.9 million for every cohort of 17-year-olds moved into the juvenile system in Texas.**<sup>8</sup>

**RAISING THE AGE OF JUVENILE JURISDICTION WOULD ALLEVIATE SUBSTANTIAL COSTS TO COUNTIES AND PROTECT SHERIFFS**

Regardless of legislative action on this jurisdictional issue, Texas county jails cannot continue housing 17-year-olds with adult inmates or in isolation cells without financial cost and/or liability risk. In September 2003, the United States Congress unanimously passed the Prison Rape Elimination Act (PREA).<sup>9</sup> PREA is a federal statute aimed at preventing sexual assault and victimization in juvenile facilities, adult prisons, jails, lockups, and other detention facilities. It requires all offenders under 18 to be housed separately from adults in all lockups, jails, detention centers, and prisons. PREA standards are mandatory for federal facilities. State and local facilities that do not comply with federal standards stand to lose 5% of particular federal funds. Additionally, states and localities that are not in compliance with the standards may be vulnerable to litigation. Private civil litigants might assert noncompliance with PREA standards as evidence that facilities are not meeting their constitutional obligations.

**PREA: KEY FINDINGS**

- **Locally operated facilities serving youth are 3 times more likely to have staff sexual misconduct as state facilities.** Nationally, “[l]ocal and privately operated juvenile facilities reported 3.22 allegations of staff sexual misconduct per 1,000 youth, nearly 3 times the rate in State prison systems (1.12 per 1,000 inmates) and Federal prisons (1.33).”<sup>10</sup>
- **Texas facilities have high reported incidents of sexual assaults.** During its initial investigation into allegations of prison rape, the Bureau of Justice Statistics found that five Texas prison facilities were among those nationally with the highest prevalence of sexual assault.<sup>11</sup> An astounding 15.7% of inmates surveyed indicated that they were sexually assaulted by another inmate or staff.

**Table 4. Prison facilities with the highest prevalence of sexual assault, by another inmate or staff and by level of force and injury, National Inmate Survey, 2007**

Facility name	Total prevalence <sup>a</sup>	Inmate-on-inmate sexual assault			Staff-on-inmate sexual assault			
		Physically forced	Pressured	Injured <sup>b</sup>	Physically forced	Pressured	Reported as willing	Injured <sup>b</sup>
U.S. total	4.5%	1.3%	1.7%	0.5%	0.9%	1.5%	1.7%	0.3%
Estelle Unit, TX	15.7	5.1	7.9	2.0	0.9	4.4	5.2	0.4
Clements Unit, TX	13.9	1.7	3.3	1.0	4.1	6.8	5.6	3.1
Tecumseh State Corr. Inst., NE	13.4	0.0	1.2	0.0	7.5	11.8	5.9	3.9
Charlotte Corr. Inst., FL	12.1	0.6	1.1	0.0	2.6	6.1	5.7	0.0
Great Meadow Corr. Fac., NY	11.3	1.0	2.8	0.0	6.0	6.3	2.8	2.0
Rockville Corr. Fac., IN <sup>c</sup>	10.8	6.5	7.5	3.7	0.5	1.1	0.9	0.6
Valley State Prison for Women, CA <sup>c</sup>	10.3	4.7	5.9	1.5	1.5	3.3	3.3	0.9
Allred Unit, TX	9.9	3.6	3.2	3.3	2.8	3.2	2.3	0.9
Mountain View Unit, TX <sup>c</sup>	9.5	7.5	6.8	2.7	0.7	3.0	1.4	2.1
Coffield Unit, TX	9.3	2.1	3.9	0.0	0.4	1.4	4.3	0.0

Note: Detail may add to more than totals because victims may report more than one type of victimization, injury, and type of force.  
<sup>a</sup>Percent of inmates reporting one or more incidents of sexual victimization involving another inmate or facility staff in the past 12 months or since admission to the facility, if shorter. (See *Methodology* for definitions.) Weights were applied so that inmates who responded accurately reflected the entire population of each facility on selected characteristics, including age, gender, race, time served, and sentence length. (See *Methodology* for nonresponse and post-stratification weighting procedures.)  
<sup>b</sup>Injuries included knife or stab wounds, broken bones, anal or rectal tearing, teeth chipped or knocked out, internal injuries, knocked unconscious, bruises, black eyes, sprains, cuts, scratches, swelling, or welts.  
<sup>c</sup>Female facility.

## WHAT IS PREA AND HOW IS IT RELATED TO THE AGE OF JUVENILE JURISDICTION?

In passing PREA, Congress “established a National Prison Rape Elimination Commission (NPREC) to ‘carry out a comprehensive legal and factual study of the penological [sic], physical, mental, medical, social, and economic impacts of prison rape in the United States’ and to recommend to the Attorney General ‘national standards for enhancing the detection, prevention, reduction, and punishment of prison rape.’”<sup>12</sup> “The statute defines ‘prison’ as ‘any confinement facility,’ including jails, police lockups, and juvenile facilities, and defines ‘rape’ to include a broad range of unwanted sexual activity.”<sup>13</sup> PREA has four primary goals:

- **Data Collection:** Section four of PREA requires the Bureau of Justice Statistics to collect statistics on the incidence of prison sexual violence in state, local, and federal custodial facilities.
- **Training and Technical Assistance:** Under Section five of PREA, the National Institute of Corrections received funding to administer a national clearinghouse on sexual violence in custody and to provide training and technical assistance to the field.<sup>14</sup>
- **Grants to the States:** PREA authorizes a grant program to help states meet the PREA requirements.<sup>15</sup> To date, the total federal amount given in grants to states and local departments of corrections from 2004-2013 is \$54,376,459.<sup>16</sup> **The most heavily funded state from these grants was Texas, which has received \$3,576,598.**<sup>17</sup>
- **Development of National Standards:** On June 20, 2012, the Department of Justice adopted a series of national standards aimed to prevent, detect, and respond to prison rape. “A State whose Governor does not certify full compliance with the standards is subject to the loss of five percent of any Department of Justice grant funds that it would otherwise receive for prison purposes, unless the Governor submits an assurance that such five percent will be used only for the purpose of enabling the State to achieve and certify full compliance with the standards in future years.”<sup>18</sup> “The final rule specifies that the Governor’s certification applies to all facilities in the State under the operational control of the State’s executive branch, including facilities operated by private entities on behalf of the State’s executive branch.”<sup>19</sup> There is no penalty to the state for facilities outside the state’s operational control; however, as discussed more fully below, counties may still be vulnerable to private litigation for noncompliance.

The PREA “standards are generally not outcome-based, but rather focus on policies and procedures.”<sup>20</sup> Many of these procedures are straightforward and non-controversial. One of those standards relates to the confinement of youth, defined as individuals under the age of 18. The **Youthful Inmates Standard** (§115.14) requires that:

- No youth under 18 years of age can be placed in a housing unit where contact will occur with adult inmates in a common space, shower area, or sleeping quarters.
- Outside of housing units, agencies must either maintain “sight and sound separation”—i.e., preventing adult inmates from seeing or communicating with youth—or provide direct staff supervision when the two are together.
- Agencies must avoid placing youth in isolation and, absent exigent circumstances, must afford them daily large-muscle exercise and any legally required special education services, and must provide them access to other programs and work opportunities to the extent possible.

## POTENTIAL LIABILITY FOR FAILING TO COMPLY WITH PREA

“PREA does not require State and local facilities to comply with the Department [of Justice]’s standards, nor does it enact a mechanism for the Department to enforce such compliance; instead the statute provides certain incentives for such confinement facilities to implement the standards.”<sup>21</sup> These incentives include grants to help local facilities come into compliance. **Several Texas counties have already received PREA-related grants:**

Dallas County Juvenile Department (\$88,942), Travis County Juvenile Probation Department (\$100,000), Atascosa County Juvenile Probation Department (\$300,000), Harris County, Texas (\$237,693), and Webb County, Texas (\$250,000).<sup>22</sup>

While the Department of Justice maintains that “[t]he standards are not intended to define the contours of constitutionally required conditions of confinement,”<sup>23</sup> **it is highly likely that the PREA standards will inform future civil litigation surrounding prison conditions.** In *Farmer v. Brennan*, the United State Supreme Court set forth the standard for determining if prison conditions violated the Eighth Amendment.<sup>24</sup> The two-part test adopted by the Supreme Court required the plaintiff to prove (1) that the conditions were cruel and (2) that the government was deliberately indifferent to the conditions facing the inmate. Prior to PREA, this second prong—deliberate indifference—narrowed the class of claims that litigants were able to bring, because it is extremely difficult to prove that a government entity was deliberately indifferent to the conditions facing inmates. **PREA has the potential, however, to change the way this litigation proceeds in the future by providing national standards—supported by extensive evidence-based research, correctional administrator input, public commentary, and other documentation—that suggest what governments must do to provide safe environments for inmates.** Thus, failure to follow these PREA standards could be seen as prima facie evidence of deliberate indifference and may result in plaintiffs succeeding past the initial stages of litigation, substantially increasing litigation costs to facilities that fail to comply with PREA.

Although there is no reliable data available specifically setting forth the costs of litigating these cases in Texas, the National Center for State Courts (NCSC) has developed a model to estimate the costs of civil litigation that resolve at different stages of litigation.<sup>25</sup>

#### COST ESTIMATES PER SIDE OF LITIGATION FOR TYPICAL AUTOMOBILE TORT CASE

Litigation Stage	Amount expended on attorney’s fees alone for lowest 25%	Amount expended on attorney’s fees alone for highest 75%
Case Initiation	\$1000	\$7,350
Between Discovery through Formal Negotiations or ADR	\$5,000	\$36,000
Trial	\$18,000	\$109,000

This cost model suggests that litigation costs alone may substantially increase for facilities that fail to comply with PREA. It is too early to predict what the costs might be if a plaintiff is successful. One ex-inmate of Travis County has sued alleging that county and sheriff’s officials displayed deliberate indifference to his safety by failing to comply with PREA; he is seeking \$2 million in damages as compensation for the rape he sustained while in the Travis County jail.<sup>26</sup>

#### RAISING THE AGE OF MAXIMUM JUVENILE JURISDICTION FROM 17 TO 18 TO LOWER THE FINANCIAL BURDEN ON COUNTIES

The Youthful Inmates Standard has greatly impacted adult county jails, forcing them to expend extra costs to comply, and leaving many counties simply unable to comply due to architectural constraints. For example, **Dallas County spends approximately \$79,850 per week to separate 17-year-olds from adults.** Harris County has had to evacuate entire floors simply to move one or two 17-year-olds to the shower. Smaller counties are simply unable to provide sight and sound separation and/or avoid placing youth in insolation without retrofitting facilities at tremendous expense.<sup>27</sup> Raising the age of jurisdiction would move these 17-year-olds into juvenile facilities that are more easily able to comply with PREA standards and would obviate the costs of doing sight and sound separation.

## ISSUE #2: ALTER THE PROCEDURE FOR SENTENCING JUVENILES TO GIVE GREATER FLEXIBILITY TO JURIES

In 2009, Texas eliminated life without parole (LWOP) as a sentencing option for individuals convicted of a capital felony committed under the age of 17. In 2013, following the U.S. Supreme Court's decision in *Miller v. Alabama*, Texas eliminated LWOP for 17-year-olds convicted of a capital felony as well. Under the statutes, individuals convicted of a capital felony committed under age 18 are subject to life sentences with the possibility of parole after 40 years, rather than LWOP.

While the Texas Criminal Justice Coalition applauds Texas for eliminating LWOP for juveniles prospectively, these reform efforts do not sufficiently protect Texas youth, some of whom will still die in prison. Because of this, Texas is not in compliance with the Eighth Amendment, wastes money incarcerating persons who have now matured and are fully rehabilitated, risks escalating litigation costs as the U.S. Supreme Court and the Texas Court of Criminal Appeals continue to refine the jurisprudence on youth, and subjects victims to continued uncertainty. For these reasons, the Texas Criminal Justice Coalition urges the legislature to adopt new policies to bring down costs, provide finality to victims, and give youthful offenders the opportunity to prove that they have sufficiently matured and rehabilitated to be given a second chance.

### SENTENCING FOR JUVENILES: KEY FINDINGS

- Children sentenced to life in prison without parole are often the most vulnerable members of our society. A national survey revealed that nearly 80% of juvenile lifers reported witnessing violence in their homes; more than half (54.1%) witnessed weekly violence in their neighborhoods.<sup>28</sup>
- This national survey further reported that 77% of girls and 20% of all youth lifers said they have been sexually abused.<sup>29</sup>
- African American youth are sentenced to life without parole as children at a per capita rate that is 10 times that of white youth.<sup>30</sup>
- The Eighth Amendment demands that states provide juvenile offenders a meaningful opportunity for release.<sup>31</sup> Since *Miller v. Alabama*, several states have eliminated juvenile life without parole entirely, providing for parole eligibility after 10-35 years.<sup>32</sup> Litigation in this area is rampant, depriving victims of the finality they deserve.
- The United States is the only country in the world to allow life without parole sentences for juveniles; the majority of the world (65%) either limits sentences to 20 years or less or reduces the degree of the crime for juveniles.<sup>33</sup>
- The current sentencing scheme deprives Texas juries from exercising their discretion to choose a sentence that matches the facts of the crime and the defendant's level of culpability and potential for rehabilitation.
- It costs approximately \$2.5 million to incarcerate juveniles for life,<sup>34</sup> whereas it costs taxpayers approximately \$625,720 to incarcerate a juvenile for 20 years.<sup>35</sup> **Early release for those individuals who have demonstrated that they have sufficiently matured and rehabilitated can save the state approximately \$1,874,280 per inmate.** That figure does not include the extra costs of litigation currently associated with life or functional life sentences, which are expected to substantially drive up those costs.

## COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS

- **Raise the age of maximum juvenile jurisdiction from 17 to 18 years.** The Texas Criminal Justice Coalition recommends that Texas raise the age of juvenile jurisdiction for both misdemeanors and felonies from 17 to 18. This expansion of juvenile jurisdiction is consistent with federal constitutional law and promotes a juvenile justice system focused on public safety, youth rehabilitation, fairness, and fiscal responsibility. This change will reduce confusion and jurisdictional questions that arise when 17-year-olds are arrested. Moreover, raising the age of jurisdiction would move these 17-year-olds into juvenile facilities that are more easily able to comply with PREA standards, and it would obviate the costs of doing sight and sound separation and/or avoid placing youth in isolation without retrofitting facilities at tremendous expense.
- **Bring Texas into compliance with the U.S. Supreme Court rulings regarding juvenile life without parole.** The Texas Criminal Justice Coalition recommends that Texas (1) provide a range of sentencing options for juries considering crimes involving juveniles; (2) permit juries to consider the mitigating factors of youth when choosing between those sentencing options; (3) reduce the time served prior to parole eligibility; (4) instruct the Parole Board to consider whether mitigating factors of youth played a part in the initial commitment offense and whether the individual has now demonstrated sufficient maturity and rehabilitation to justify release into society; and (5) apply these changes retroactively so as to bring Texas into conformity with the constitutional dictates of *Miller v. Alabama*.

## Citations

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- <sup>1</sup> *Miller v. Alabama*, 132 S.Ct. 2455, 2464-65 (2012); See generally, S. Johnson, R. Blum, and J. Giedd, *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Health Policy*, *Journal of Adolescent Health*, Vol. 45(3), (Sept. 2009).
- <sup>2</sup> Michele Deitch, et.al, *Seventeen, Going on Eighteen: An Operational Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas*, *American Journal of Criminal Law*, Vol. 40:1 (2012).
- <sup>3</sup> Centers for Disease Control and Prevention. *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services*. MMWR 2007; 56 (No. RR-9) (2007). Available online at <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>.
- <sup>4</sup> *Ibid.*
- <sup>5</sup> J.N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, *Annals of the New York Academy of Sciences*, Vol. 1021 (2004).
- <sup>6</sup> Robert J. Sampson and John H. Laub, *A life-course view of the development of crime*, *The Journal of the American Academy on Political and Social Science*, Vol. 602 (Nov. 2005).
- <sup>7</sup> *Miller v. Alabama*, 132 S.Ct. 2455 (2012); *J.D.B. v. North Carolina*, 131 S.Ct. 2394 (2011); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005).
- <sup>8</sup> Michele Deitch, et. al, *Seventeen, Going on Eighteen, supra n. 2*.
- <sup>9</sup> Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601-15609 (2003).
- <sup>10</sup> Allen J. Beck & Timothy Hughes, *Sexual Violence Reported by Correctional Authorities, 2004*, Bureau of Justice Statistics, July 2005, <http://www.bjs.gov/content/pub/pdf/svrca04.pdf>.
- <sup>11</sup> Allen J. Beck and Paige M. Harrison, *Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007*, Bureau of Justice Statistics, Dec. 2007, <http://www.bjs.gov/content/pub/pdf/svsfpri07.pdf>.
- <sup>12</sup> U.S. Department of Justice, National Standards to Prevent, Detect and Respond to Prison Rape, Executive Summary, p. 1 (citing 42 U.S.C. 15606(d)(1), (e)(1)).
- <sup>13</sup> *Ibid.* (citing 42 U.S.C. 15609(7) & (9)).
- <sup>14</sup> PREA § 15604(a).
- <sup>15</sup> See PREA § 15605(a) (stating that the purpose of the grants is to ensure that “budgetary circumstances . . . do not compromise efforts to protect inmates” and “to provide funds for personnel, training, technical assistance, data collection, and equipment to prevent and prosecute prisoner rape”).
- <sup>16</sup> OJP Grant Awards, <http://grants.ojp.usdoj.gov:85/selector/main>.
- <sup>17</sup> *Ibid.*
- <sup>18</sup> U.S. Department of Justice, National Standards to Prevent, Detect and Respond to Prison Rape, Executive Summary, p. 2 (citing 42 U.S.C. 15607(c)).
- <sup>19</sup> *Ibid.*
- <sup>20</sup> *Ibid.* at 2.
- <sup>21</sup> U.S. Department of Justice, National Standards to Prevent, Detect and Respond to Prison Rape, Executive Summary, p. 10 (emphasis added); see also Webinar: PREA Readiness – Arlington County Detention Facility, @ 56:00, <http://www.prearesourcecenter.org/training-and-technical-assistance/webinars/827/webinar-prea-readiness-arlington-county-detention-fac>.
- <sup>22</sup> OJP Grant Awards, <http://grants.ojp.usdoj.gov:85/selector/main>.
- <sup>23</sup> *Ibid.* at 2.
- <sup>24</sup> 511 U.S. 825 (1994).
- <sup>25</sup> Paula Hannaford-Agor & Nicole L. Waters, *Estimating the Cost of Civil Litigation*, Jan. 2013, 5 [http://www.courtstatistics.org/~media/Microsites/Files/CSP/DATA%20PDF/CSPH\\_online2.ashx](http://www.courtstatistics.org/~media/Microsites/Files/CSP/DATA%20PDF/CSPH_online2.ashx).
- <sup>26</sup> Farzad Mashhood, “Ex-Inmate Sues Over Travis County Jail Rape Claim,” *Austin American-Statesman*, Mar. 14, 2014.
- <sup>27</sup> Michele Deitch, Anna Lipton Galbraith, & Jordon Pollock, *Conditions for Certified Juveniles in Texas County Jails*, May 2012, p. 25.
- <sup>28</sup> Ashley Nellis, Ph.D., *The Lives of Juvenile Lifers: Findings from a National Survey* (Mar. 2012). Available online at [http://sentencingproject.org/doc/publications/jj\\_The\\_Lives\\_of\\_Juvenile\\_Lifers.pdf](http://sentencingproject.org/doc/publications/jj_The_Lives_of_Juvenile_Lifers.pdf).
- <sup>29</sup> *Ibid.*
- <sup>30</sup> *Ibid.*
- <sup>31</sup> In a series of cases the Supreme Court of the United States has recognized that juveniles are different and provided strict restrictions upon juvenile sentencing. In *Graham v. Florida*, 560 U.S. 48 (2010), the Supreme Court held that juveniles who had not committed a homicide could never be sentenced to life without parole. It also required states to give juvenile offenders a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. Thus, the

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Supreme Court limited the length of sentences that states can impose upon juveniles at the time of sentencing, requiring a meaningful review process to occur at some “later” date. The Supreme Court did not provide any guidance on when states must allow that opportunity for release to occur, leaving it up to states to decide in the first instance. Two years later, the Supreme Court in *Miller v. Alabama*, 132 S.Ct. 2455 (2012), held that mandatory life without parole violated the Eighth Amendment. After *Miller*, states must require sentencing courts to consider the distinctive mitigating features of youth prior to sentencing a juvenile to life without parole.

<sup>32</sup> Please see the Appendix, *Memorandum re sentencing reform relating to Graham and Miller nationwide*, Civil Justice Clinic, Quinnipiac University School of Law (Mar. 18, 2014).

<sup>33</sup> Connie de la Vega, et al., *Cruel and Unusual: U.S. Sentencing Practices in a Global Context* (USF School of Law Center for Law and Global Justice 2012) available at ; see also Connie de la Vega & Michelle Leighton, *Sentencing our Children to Die in Prison: Global Law and Practice*, 42 U.S.F L. REV. 983 (2008). Both are available at [http://www.usfca.edu/law/jlwop/law\\_review/](http://www.usfca.edu/law/jlwop/law_review/).

<sup>34</sup> *At America’s Expense: The Mass Incarceration of the Elderly*, ACLU (June 2012). Available at: [https://www.aclu.org/files/assets/elderlyprisonreport\\_20120613\\_1.pdf](https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf). Calculation = ((Average cost per year per inmate to incarcerate before age 50 x 34) + (National estimate for annual cost for the care of an inmate after age 50 x 21)).

<sup>35</sup> *Ibid.* Calculation = (Average cost per year per inmate to incarcerate before age 50 x 20).