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Testimony of the Office of Chief Public Defender
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Committee on Judiciary – March 22, 2023
Senate Bill 952 - An Act Concerning Parole Eligibility for an Individual Serving a Lengthy Sentences for a Crime Committed Before the Individual Reached the Age of Twenty-Five.

The Office of Chief Public Defender **supports** passage of **Senate Bill 952, An Act Concerning Parole Eligibility for an Individual Serving a Lengthy Sentence for a Crime Committed Before the Individual Reached the Age of Twenty-Five.** This proposal would raise the age of eligibility for parole review granted to individuals who committed their offense when young in Public Act 15-84, from 18 to 25 years of age, after serving a certain period of incarceration. While 18 is considered the age of majority for criminal liability, 21 is the age for many other activities considered to be an "adult". An individual must be 21 to lawfully purchase cannabis, a firearm, alcohol, cigarettes and even vape products. By increasing the age to 25, this office believes that fairness will result where persons who committed a crime while their brain was not yet fully developed, can receive a "second look" with the opportunity to demonstrate mitigation and why their youth should be considered.[1]

[1] For a full discussion of why treatment of children under the age of 25 is cruel and unusual punishment without considering their "youthfulness" and why these children are different from adults see ***Tirza A. Mullin, Eighteen is Not a Magic Number: Why the Eighth Amendment Requires Protection for Youth Aged Eighteen to Twenty-Five***, 53 U. Mich. J. L. Reform 807 (2020).

Public Act 15-84 was enacted so that Connecticut would be in compliance with the Eighth Amendment to the U.S. Constitution and give a person the opportunity to have their youth at the time of the crime considered by the Board of Pardons and Parole. Such persons are eligible for review to have the Board of Pardons and Parole consider their youth at the time of the commission of the offense and any subsequent rehabilitation efforts for purposes of obtaining parole. P.A. 15-84 provides that a person who was under the age of 18 when they committed their crime can apply for this special type of parole if they are serving a sentence of more than 10 years and:

- if the sentence imposed was 50 years or less, and after he/she has served 60% or 12 years of their sentence, whichever is greater;

- if the sentence imposed was more than 50 years, and after he/she has served 30 years.

Expanding the age of eligibility for review under P.A. 15-84 does not equate to an automatic release. Preparation for these cases by this office can take up to a year as public defenders gather mitigating and rehabilitation information and documentation to present at the hearing before the Board of Pardons and Parole. Public defenders, working with a social worker, review and analyze a client's mental health records and prepare a release plan, which can include support comprising of treatment, counseling housing, education and/or employment. At the hearing, the client can present his/her rehabilitation efforts and proposed re-entry plan, and remorse to the victim and his/her families. At the hearings, the state is represented by the prosecutors and the victim is not only present, but able to fully participate in the hearing.

The U.S. Supreme Court found that sentences of life imprisonment without the possibility of parole imposed on young people who committed certain offenses prior to the age of 18 was cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution because youth was not considered as a mitigating factor. See Miller v. Alabama, 567 U.S. 460 (2012). "[A] judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles," id., at 489. The holding was primarily based what was then emerging science on the adolescent brain. This science has always showed that human brains do not reach full development until age 25. Miller and other decisions of the U. S. Supreme Court[2] have held that juvenile offenders are less culpable for their crimes and more capable of rehabilitation if their youth is considered.

> "In *Roper*, *Graham*, and *Miller*, the Court looked at and relied heavily on brain science to determine that juveniles have diminished culpability. This research

[2] See Miller v. Alabama, 567 U.S. 460 (2012); Graham v. Florida, 560 U.S. 48 (2010); Roper v. Simmons, 543 U.S. 551 (2005)

found youth have certain characteristics that make harsh punishments disproportionate, and therefore violate the Eighth Amendment. These characteristics include diminished maturity and responsibility that leads to risk-taking behavior, vulnerability to peer pressure, and underdeveloped character that is more prone to rehabilitation. According to the Court, each of these characteristics demonstrate an ability to be rehabilitated. . . [C]urrent research shows the brain is underdeveloped until age twenty-five, resulting in an inability to fully assess ***822** consequences, diminished capacity to make rational decisions, and increased susceptibility to peer pressure.[3] Youths under twenty-five therefore possess the same characteristics and potential for reform that the Court found persuasive in *Miller*, *Graham*, and *Roper*, finding Eighth Amendment violations and banning the death penalty and mandatory life without parole sentences for juveniles. Therefore, handing out these sentences to offenders aged eighteen- to twenty-five must also violate the Eighth Amendment."

Tirza A. Mullin, Eighteen is Not a Magic Number: Why the Eighth Amendment Requires Protection for Youth Aged Eighteen to Twenty-Five, 53 U. Mich. J. L. Reform 807, 821-822 (2020). (Internal footnotes deleted)

The Office of Chief Public Defender urges this Committee to act favorably on this proposal. Thank you.

[3] See also, Elizabeth S. Scott et al., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L. Rev. 641, 647 (2016); Carly Loomis-Gustafson, *Adjusting the Bright-Line Age of Accountability within the Criminal Justice System: Raising the Age of Majority to Age 21 Based on the Conclusions of Scientific Studies Regarding Neurological Development and Culpability*, 55 DUQ. L. REV. 221, 237 (2017).