SENATOR GREENLEAF AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to address the issue of mandatory life without parole for juveniles (JLWOP) in Pennsylvania and the implications of the U.S. Supreme Court’s recent ruling in *Miller v. Alabama*.

Juvenile Law Center is the oldest multi-issue public interest law firm for children and youth in the United States. Juvenile Law Center has played a national leadership role in successfully arguing against the imposition of the death sentence and life without parole sentence on juvenile offenders convicted of both homicide and non-homicide offenses. We submitted amicus briefs on behalf of dozens of advocacy organizations and individual professionals and academics in all three of the related US Supreme Court sentencing cases – *Roper v. Simmons*, *Graham v. Florida*, and *Miller v. Alabama*. Juvenile Law Center also submitted an amicus brief in *J.D.B. v. North Carolina*, a 2011 non-sentencing case where the Supreme Court applied the same principles of adolescent development to police interrogation of juvenile suspects. I have been with Juvenile Law Center since 1998 and currently serve as Associate Director. For more than a decade, I have been involved in the training of justice system stakeholders on considerations of adolescent development in the context of juvenile justice policy.

I am here to discuss implementation of the United States Supreme Court’s ruling in *Miller v. Alabama*, holding that states may no longer mandate life without parole sentences for juveniles convicted of homicide offenses, and affirming what the Court has acknowledged in this
and previous decisions: youth are different for the purposes of criminal law and sentencing practices.

Writing for the Court in *Miller*, Justice Kagan reaffirmed the science behind the Court’s decisions in *Roper v. Simmons*, *Graham v. Florida* and *J.D.B. v. North Carolina*. She noted—articulating a point that connects all three cases—“that imposition of a state’s most severe penalties on juvenile offenders cannot proceed as though they were not children.”

There is no doubt that the crimes for which lifers were convicted were among the most serious and horrible. Many people have suffered grievous losses. However, properly implementing *Miller* does not require a choice between valuing victims and their families or minimizing their loss. That is a false dichotomy. Instead, *Miller* mandates that punishment be appropriately tailored to account for the unique attributes of juvenile offenders, while still advancing the moral imperatives of the criminal law and promoting “just deserts.”

This is also *not* about being soft or tough on crime. Because of the harm they have done, youth who are convicted of murder should still be punished severely. Harm, however, is not the only consideration at sentencing, which addresses several public concerns. *Miller* requires that an individualized approach be used in determining the extent of the punishment imposed, taking into account blameworthiness, proportionate sentencing and youths’ distinctive capacity for rehabilitation and transformation. *Miller* made clear that Pennsylvania’s mandatory life without parole sentencing scheme for juveniles convicted of first and second degree murder is unconstitutional and must be reformed.

My testimony today seeks to accomplish the following objectives: first, to emphasize the unique nature of juvenile offenders, as affirmed by the Supreme Court in *Miller, Roper, Graham* and *J.D.B.* Second, to recommend that the General Assembly comply with the mandates of
Miller by: (1) creating a separate sentencing scheme for juveniles convicted of murder that precludes any mandatory sentence, and that instead establishes a discretionary, term of years sentencing scheme that would apply both prospectively for future offenders and retroactively for those currently serving unconstitutional life without parole sentences; and (2) establishing procedures to ensure that juveniles convicted of murder receive individualized sentencing hearings in which they can present the types of mitigating evidence suggested by Miller. Finally, to recommend that the General Assembly take this important opportunity presented by Miller to reconsider Pennsylvania’s treatment of juveniles in two areas: (1) by establishing an enhanced parole review process that ensures the participation of individuals trained and knowledgeable about adolescent development and behavior to ensure that a juvenile’s opportunity for release is “meaningful,” as required by Graham; and (2) by re-classifying murder under the Juvenile Act to address the ways in which juveniles enter the adult criminal justice system in the first place.

1. Miller reaffirms that JLWOP is inconsistent with our modern understanding of adolescent development.

Acknowledging the unique status of juveniles and reaffirming its past holdings in Roper, Graham, and J.D.B., the Court in Miller held that children are categorically different from adults for sentencing purposes. Justice Kagan wrote, “Roper and Graham establish that children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform . . . they are less deserving of the most severe punishments.”\footnote{Miller v. Alabama, No. 10-9646, slip op. at 8 (U.S. June 25, 2010).} The Court went on to recognize that “youth is more than a chronological fact. It is a time of immaturity, irresponsibility, impetuousness[,] and recklessness. It is a
moment and condition of life when a person may be most susceptible to influence and to psychological damage. And its signature qualities are all transient."^2

Neuroscience, too, tells us what every parent knows: youth are different. They are not adults. In the Court’s recent jurisprudence on juvenile sentencing, from ending the juvenile death penalty in *Roper*, to finding mandatory LWOP unconstitutional in *Miller*, the Court has consistently relied on the research and writings of Temple University’s Dr. Laurence Steinberg, who co-authored with law professor Elizabeth Scott a seminal article, *Less Guilty By Reason of Adolescence*.^3^ Dr. Steinberg points to the last decade’s emerging research on adolescent development to state that youth as a class are less blameworthy than adults. The Court in *Roper* and *Graham* “reasoned that those [scientific] findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child’s ‘moral culpability’ and enhanced the prospect that, as the years go by and neurological development occurs, his ‘deficiencies will be reformed.’”^4^ The Court also emphasized “that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.”^5^

Juveniles are uniquely different from any other category of offender, and the Court has properly crafted a separate Eighth Amendment analysis to take account of their exceptional status. Pursuant to *Miller* and the Court’s string of decisions profoundly altering the status and treatment of juveniles in the justice system, it is time that Pennsylvania stops treating children as

[^2]: *Id.* at 13.
[^4]: *Miller*, slip op. at 9 (quoting *Roper*, 543 U. S., at 570; *Graham*, 560 U. S., at ___ (slip op., at 18)).
[^5]: *Id.*
though they were fully formed adults.⁶ Pennsylvania must create a new developmentally appropriate sentencing system that accounts for both the individual characteristics of the youthful offender and a system of “just deserts.”

2. Pennsylvania should enact reforms to bring its sentencing scheme in line with Miller and Graham, and account for the unique characteristics of juvenile offenders

   a. Pennsylvania needs a constitutional sentencing scheme that takes into account the unique status of juvenile offenders.

   As it currently exists, Pennsylvania’s mandatory sentencing scheme for first and second degree murder is unconstitutional as applied to juveniles. Thus, Pennsylvania must bring its laws into conformity with Miller. We urge the General Assembly to develop a separate sentencing scheme for juveniles convicted of murder for both future offenders and those currently serving mandatory life without parole sentences.

   Juveniles convicted of murder are different from others sentenced to life terms because they are not fully formed adults at the time of the killing. In the same way that we treat children differently in many other areas of the law because they are still developing, sentencing policy should allow for the possibility of rehabilitation.

   The General Assembly should create a separate range of punishment for juveniles convicted of any degree of murder. In other words, Pennsylvania should adopt American Bar Association policy and create sentences for youthful offenders that are less punitive than sentences for those ages 18 and older who have committed comparable offenses. We do not

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⁶ Indeed, Pennsylvania statutory law consistently recognizes that children lack the same judgment, maturity and responsibility as adults. See, e.g., 23 Pa. Cons. Stat. § 5101 (the ability to sue and be sued or form binding contracts attaches at age 18); 18 Pa. Cons. Stat. Ann. §§ 6308, 6305 (a person cannot legally purchase alcohol until age 21 and cannot legally purchase tobacco products until age 18); 10 Pa. Stat. § 305(c)(1) (no person under the age of 18 in Pennsylvania may play bingo unless accompanied by an adult); 18 Pa. Cons. Stat. § 6311 (a person under age 18 cannot get a tattoo or body piercing without parental consent); 72 Pa. Stat. § 3761-309(a) (a person under age 18 cannot buy a lottery ticket); 4 Pa. Stat. § 325.228 (no one under age 18 may make a wager at a racetrack); 23 Pa. Cons. Stat. § 1304(a) (youth under the age of 18 cannot get married in Pennsylvania without parental consent or, if under 16, judicial authorization).
believe there is any age-appropriate penological justification for sentencing juveniles to life without the possibility of parole; such a sentence should never be imposed.

In creating a separate term of years sentencing scheme for juveniles convicted of murder with specified maximum sentences, it is important to note that even a mandatory minimum sentence would violate *Miller*. Any new sentencing scheme for juveniles convicted of murder must be discretionary. The *Miller* Court held that mandatory sentences for children are categorically different from discretionary sentences. “Such a scheme prevents those meting out punishment from considering a juvenile’s ‘lessened culpability’ and greater ‘capacity for change,’ and runs afoul of our cases’ requirement of individualized sentencing for defendants facing the most serious penalties.”7 As the Court held in *Graham*, irrevocable judgments about the character of juvenile offenders are impermissible under the Constitution – at least where they deny juveniles any opportunity to prove their eligibility to re-enter society.8

We are not suggesting that children should merely receive a slap on the wrist for gruesome murder. Youth should be sentenced in a way that satisfies our society’s penological goals of specific deterrence, general deterrence, retribution, rehabilitation, and incapacitation. However, these goals work differently when applied to children. By adhering to these traditional penological rationales in an age appropriate way, we can support public safety and address harm caused to the victim, while also ensuring that youthful offenders are receiving the individualized attention they require.

Specifically, we recommend that the maximum sentence for juveniles convicted of first degree murder should be forty years, with discretion to impose a less severe sentence. *Miller*, *Graham*, and *Roper* have found that juveniles are categorically less culpable than adults who

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7 *Miller*, slip op., at 1-2.
8 *Graham*, 130 S.Ct. at 2030.
commit the same crime. Because the General Assembly has previously determined that the maximum penalty for less culpable adult murderers (i.e., those convicted of third degree murder) should be forty years, we believe this provides proper guidance as an appropriate maximum sentence for a juvenile convicted of first degree murder. See 18 Pa.C.S. § 1102(d).

We recommend that the maximum sentence for juveniles convicted of second degree murder should be 20 years. By definition, a conviction of second degree murder requires no finding that the juvenile killed or intended to kill the victim; instead it merely requires that a juvenile was involved in a felony in which someone was killed. See 18 Pa.C.S. § 2502. Juveniles who participate in felonies, in light of their “transient rashness, proclivity for risk, and inability to assess consequences” see Miller, slip op. at 9, are less likely to understand or appreciate the risk that someone may be seriously hurt or killed as a result of the felony. Without a finding that the juvenile was involved in an intentional killing, an appropriate maximum sentence would be 20 years, which is consistent with what a defendant would receive for an underlying first degree felony. See 18 Pa.C.S.A. § 1103.

The appropriateness of these sentences is confirmed by case law which suggests that that lesser degree sentences are appropriate when a mandatory sentence has been declared inappropriate.9 As discussed, the maximum sentence currently permitted for a conviction of third degree murder (which is a lesser included offense to first degree) is 40 years. See 18 Pa.C.S. § 1102(d). The lesser included offense for a juvenile convicted of felony murder would

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9 State v. Davis, 227 S.E.2d 97 (N.C. 1976) (finding that “common sense and rudimentary justice demanded” that the maximum permissible sentence of life imprisonment be imposed upon persons convicted of first degree murder or rape committed between the date of the Supreme Court decision relating to the effect on the statute allowing imposition of death sentence resulting from United States Supreme Court decision in Furman v. Georgia and date of enactment of statute which rewrote death sentencing provisions); Carey v. Garrison, 452 F. Supp. 485 (W.D.N.C. 1978) (commuting an unconstitutional sentence down to the next harshest constitutional sentence made available by statute).
be the underlying felony, and, as discussed, a sentence of 20 years the maximum sentence for a
first degree felony. See 18 Pa.C.S.A. § 1103.

*Miller*, of course, affects not only future defendants, but also those already sentenced. We
believe there are approximately 480 individuals in this latter group. Because of the Supreme
Court’s ruling, all of these mandatory sentences must now be revisited to allow for
individualized sentencing determinations that take full account of each youth’s status and other
relevant attributes and circumstances. We therefore urge the General Assembly to ensure that
new legislation establishing a separate discretionary term-of-year sentencing scheme for
juveniles convicted of murder applies retroactively.

b. Juveniles must receive individualized sentencing hearings where
mitigating evidence is presented.

The process of imposing punishment must also comply with the mandates of *Miller*; a
judge or jury can no longer bypass important and relevant mitigating factors in sentencing an
offender who was under 18 at the time of the crime. The lack of individualized deliberation at
sentencing “precludes consideration of [the child’s] chronological age and its hallmark features. .
. . It prevents taking into account the family and home environment that surrounds him – and
from which he cannot usually extricate himself – no matter how brutal or dysfunctional.”

Mitigating factors that should be considered at sentencing include:

- The child’s age and developmental attributes, including immaturity, impetuosity, and
  failure to appreciate risks and consequences;
- The child’s family and home environment;
- The circumstances of the offense, including the extent of the child’s participation and the
  way familial and peer pressures may have affected his or her behavior;

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10 *Miller*, slip op. at 15.
• The child’s lack of sophistication in dealing with a criminal justice system that is designed for adults; and
• The potential for rehabilitation.

As the Miller Court noted, “Graham, Roper, and [their] individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.”\textsuperscript{11} Therefore, we urge the General Assembly to enact procedures to ensure that a judge or jury must consider any evidence of these mitigating circumstances prior to imposing a sentence on a juvenile convicted of murder.

c. Pennsylvania should establish a unique parole review process for juveniles

In light of Miller and Graham, both future defendants and those currently serving JLWOP should be entitled to a meaningful parole review process at some point in the future. As the Court noted in Graham, “What the State must do…is give defendants…some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”\textsuperscript{12} Graham and Miller must be read together. If juveniles convicted of homicide receive sentences which make them eligible for parole under Miller, they must also have ‘a meaningful opportunity to obtain release’ in accordance with Graham.

The Commonwealth must ensure a parole review process for juveniles convicted of murder designed specifically for these youthful offenders. It must be a review process that provides a meaningful opportunity for juveniles who have served an appropriate amount of time for taking a human life to obtain release, while at the same time weighing public safety and ensuring that the voices of victims’ families are sought out and heard. The Commonwealth has a responsibility to act in the best interests of all its citizens. This includes abandoning sentences

\textsuperscript{11} Id. at 27.
\textsuperscript{12} Graham, 130 S.Ct. at 2030.
that cannot justify the continued expense, when there is no longer a threat to public safety and no measurable benefit to taxpayers.

The adult parole review process as it currently exists is an inadequate alternative for juvenile offenders who possess unique developmental attributes and capacities for reform and rehabilitation; these attributes require particular attention. In order for to have a meaningful opportunity for release, the parole review for juveniles convicted of murder should include experts in adolescent development – a voice crucial to considerations of parole for these formerly youthful offenders and a perspective that would otherwise be left out of the process.

The parole review process for juvenile offenders could include observations about the juvenile made by guards and social workers in correctional facilities who come into contact with them every day; psychological and medical information; indeed anything that would shed light on the appropriateness of continued incarceration or the appropriateness and potential for productive, safe release into the community.

We are not arguing for a parole process that would provide an easy key to the jailhouse door. Rather, juveniles convicted of murder should be given a chance to make the argument, many years after the offense, that they are different now, and that neither public safety nor justice requires their continued incarceration. To make this process truly meaningful, however, as the Supreme Court has mandated, it also requires a review process tailored to take account of the unique attributes of youthful offenders – then and now.

d. In addition to creating a new sentencing scheme for juveniles convicted of murder, Pennsylvania should re-classify murder under the Juvenile Act

The *Miller* decision requires that we reconsider the way children are sentenced after being convicted of murder in the adult criminal system. However, it also provides an
opportunity to reconceptualize the way juveniles enter the adult criminal justice system in the first place. Pennsylvania has more people serving life sentences for crimes committed as juveniles than any other jurisdiction in the country or, in fact, the world. This is, in part, because Pennsylvania has always treated murder by an offender of any age as an adult offense, and in part because Pennsylvania has no lower age limit for the imposition of JLWOP and includes 2nd degree murder within its reach.

Presently, murder is treated differently than other violent offenses under the Juvenile Act because there is no lower age limit for charging children with murder in the adult criminal system. Under the current scheme, any child charged with murder – and other children over the age of 15 charged with certain violent felonies, or “direct file” crimes -- are automatically prosecuted in adult criminal court. While those youth can ask the criminal court to transfer the case to the juvenile division, this is a time consuming process that considerably reduces the chance for rehabilitation of a youth who is eventually transferred to juvenile court. Juvenile Law Center has been involved in cases of children who were nine and 11-years-old at the time of the offense; in each instance, it took years for the criminal and appellate courts to transfer their cases to juvenile court. This deprived the juvenile justice system of valuable time, at a critical developmental period, to turn these children around. This is not in the public interest.

This mandatory carve-out for murder flies in the face of Miller, as it fails to consider each offender individually and treats very young children the same as 17-year olds.

Murder should be treated like the other direct file crimes, setting 15 as the minimum age at which charges are automatically filed in adult court. This will require a change to 42 Pa.C.S.A. § 6302, under which adult criminal court maintains exclusive jurisdiction over children of any
age charged with murder, and over certain children older than 15 charged with specific violent felonies.

Support for this proposal can be found by looking to a broader policy adopted by the American Bar Association, which sets 15 as the age below which no juvenile should be transferred to criminal court, even when transfer (or waiver) is done by a judge. The ABA’s policy sets 17 as the upper age of juvenile court jurisdiction. Notably, the ABA has a rigorous system for adopting policies. The system involves judges, prosecutors, defense attorneys, academics, as well as other members of the legal profession.

By incorporating this recommended change, children under the age of 15 charged with murder will be tried in the juvenile system unless the juvenile court judge deems the child not amenable to treatment in the juvenile system. See 42 Pa.C.S.A. §6355. Thus, it will not mean that children under 15 charged with murder cannot or will never be tried in the adult system. Rather, the presumption that they automatically be tried as adults will shift. Because kids are different, murder should no longer exist in its own category with no age limits.

Conclusion

Today, Pennsylvania leads the world in sentencing children – no matter how young – to die in prison. The decision in Miller v. Alabama gives Pennsylvania the chance to outshine its neighbors and fellow citizens of the world not as the worst, but as a leader in adopting a more humane, research-based approach to the sentencing of juvenile offenders convicted of murder. Far from a moment to wring our hands, the Miller decision is an opportunity to be innovative, thoughtful, and sensitive to the interests of victims’ family members and loved ones all at once. You have already heard a cacophony of voices today, and you will hear more throughout this hearing. You will hear what may well be disparate views regarding punishment, and different
views regarding the weight to accord the suffering of survivors. As legislators you must ultimately pass laws that comport with the Constitution of the United States. The elements of a legislative package to implement the *Miller* decision that we have laid out here today meet that challenge. Our proposals strike a careful balance between the rights of juvenile offenders to be free from the harshest adult sentences, to receive individualized consideration, and to be assured a reasonable opportunity to obtain release, with the interests of our citizens to be safe and to hold perpetrators accountable, and the interests of friends and families of victims to be heard. The grief of victims’ survivors cannot be fathomed by most of us. But even as we struggle to understand their loss, true justice requires that we adopt a reasoned and fair remedy that the Supreme Court now demands of us.