Testimony in **SUPPORT** of Senate Bill 259:
Criminal Procedure – Life Without Parole – Imposition
Senate Judicial Proceedings Committee
The Honorable Robert Zirkin, Chair
February 11, 2016

Thank you for the opportunity to provide testimony on Senate Bill 259. Advocates for Children and Youth (ACY) supports this bill.

Founded in 1987, ACY is a statewide children's issues nonprofit based in Baltimore. We conduct research, analysis, and advocacy on a range of issue impacting Maryland's children, including in the area of juvenile justice.

We support this bill because it brings an end to a practice we believe is inhumane, in violation of internationally recognized human rights, and may well be contrary to the US Constitution. The case against juvenile life without parole is interdisciplinary, and rests upon the science of adolescent brain development, Eighth Amendment jurisprudence, ideas of morality, and theories of effective crime control and rehabilitation. As this is far too much ground to cover in the limited space of this testimony, I will focus on the constitutional status of juvenile life without parole, and argue that it ought to be repealed, as SB259 does.

In a case called *Roper v. Simmons*[1] , the US Supreme Court ruled that the Eighth Amendment's prohibition on cruel and unusual punishment made the death penalty impermissible when applied to minors. It based this ruling on two pillars. First, a contemporary scientific understanding of the adolescent brain indicates that children's brains are not fully developed, in a literal sense. Second, a national consensus had formed against the use of capital punishment for minors. Taken together, these two findings informed the Court's analysis of the "evolving standards of decency", which is the measure by which the court determines if a sentence is unconstitutional.

Five years later, in a case called *Graham v. Florida*[2] , the Court ruled that a sentence of life without the possibility of parole could not be applied to a minor if the crime that minor was convicted of was not a homicide. The Court recognized the grim finality of a life without parole sentence. As with a death sentence, it purports to determine once and for all if a person is fit to live in human society. The weight of such a consideration demands proportionality between the crime committed and the sentence imposed. For minors, underdeveloped and highly capable of change as they are, such a proportionality forbids juvenile life without parole for non-homicides. Moreover, the Court also stated that children serving long prison terms should be given a "realistic opportunity to obtain release".

[1] *Roper v. Simmons*, 543 U.S. 551 (2005).
[2] *Graham v. Florida*, 560 U.S. 48 (2010).

Finally, in a case called *Miller v. Alabama*[3] , the Court considered the constitutionality of state statutes that imposed a *mandatory* sentence of life without parole for certain crimes, when applied to minors. The Court struck down such statutes, holding that a mandatory juvenile life without parole sentence "contravenes *Graham*'s (and also *Roper*'s) foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." Not only did the Court in *Miller* strike down mandatory juvenile life without parole, it indicated in dicta that even *discretionary* juvenile life without parole is disfavored. "Given all that we have said in *Roper*, *Graham*, and this decision about children's diminished culpability, and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon".

Maryland is among those states that still permit the discretionary imposition of juvenile life without parole. However, the line of cases described above clearly show a trend toward restricting the use of this sentence as we advance both in our understanding of adolescent brain science and he great capacity for children to grow and be rehabilitated, and in our "evolving standards of decency." Indeed, we believe it should not only be restricted but rather ended entirely. Doing away with juvenile life without parole still leaves available a sentence of life with the possibility of parole. As the fiscal note states, in cases where a life sentence is imposed, parole is only considered after a considerable number of years have passed. I will not comment here on how many years are appropriate for a child, except to say that once an adolescent brain matures, it would be appropriate to *consider* parole.

In brief, both law and science recognize that children are capable of growth and rehabilitation to a far greater extent than adults. It is therefore wrong to impose a sentence of such finality and permanence as life without parole on a child.

For the foregoing reasons, we support SB 259 and urge a favorable report. If you have further questions, you may contact me at 410-547-9200 ext. 3028, or rakbar@acy.org.

Thank you.

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[3] *Miller v. Alabama*, 132 S.Ct. 2455 (2012).