TESTIMONY OF THE PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION

BEFORE THE HOUSE JUDICIARY COMMITTEE ON HB 1999

AUGUST 4, 2010

The Pennsylvania District Attorneys Association (PDAA) thanks you for the opportunity to submit testimony in strong opposition to HB 1999, which would allow convicted murderers who killed their victims before they turned 18 to be paroled little more than 10 years after they are sentenced.

The offenders we are talking about are incarcerated because they are violent and dangerous and have killed others. They are more than mere "youthful offenders," a misleading term used to reference these offenders in HB 1999. The PDAA supports our current law, which does not permit murderers serving life sentences to be eligible for parole regardless of whether they reached the age of eighteen before they killed their victims.

Pennsylvania's district attorneys have primary jurisdiction and responsibility for enforcing our murder laws. Under Pennsylvania law, the only defendants eligible for life sentences are those murderers whose offenses rise to the level of murder of the first or second degree. Murder of the first degree is intentional, premeditated killing with malice. Murder of the second degree is a murder committed while the defendant or his accomplice is engaged in the perpetration of a violent felony – a violent felony.

Our homicide statute sets forth a defined list of those felonies that qualify for second degree murder. They are forcible rape, forcible involuntary deviate sexual intercourse, arson, robbery, burglary, and kidnapping. Only killings committed during the commission of theses heinous and violent crimes can subject a defendant to conviction for murder of the second degree.

Additionally, Pennsylvania's law is entirely constitutional under the United States Supreme Court decision this past May in *Graham v. Florida*, which held that life sentences for juvenile offenders who commit murder are constitutional.

There is an important process set forth in statute that permits juveniles who commit murder to have their cases sent back to the juvenile court system, where there are no life sentences. Under Pennsylvania law, our criminal courts have original and exclusive jurisdiction over murder cases, regardless of the defendant's age. Therefore, juvenile murderers do not have an automatic right to have their cases adjudicated in juvenile court, but they can ask a judge to send their cases to juvenile court to seek treatment as a "youthful offender" under the Juvenile Act. At a hearing to decertify the case to juvenile court, the defendant has the burden of demonstrating that he is amenable to treatment, supervision or rehabilitation as a juvenile. In making this determination, a trial court must consider several factors, including 1) the defendant's age; 2) mental capacity; 3) maturity; 4) degree of criminal sophistication exhibited; 5) any previous records; and 6) the nature and extent of any prior delinquent history. The law gives the judge hearing a decertification motion broad discretion in making this determination, and the judge is certainly aware that denial of a decertification petition can result in a juvenile defendant being subject to a life sentence without parole.

Criminal defense attorneys are not shy in filing decertification petitions. In Philadelphia by way of example, such petitions are filed in virtually every case where a juvenile is charged in a murder case. The current system works well, and our judges decide on a case-by-case basis whether the juveniles that appear before them should be subjected to a possible sentence of a life sentence without parole.

Even if a convicted murderer is sentenced to a life sentence, current Pennsylvania law permits murderers serving these sentences to prove that they are rehabilitated and seek release through the commutation process. The commutation process is available to inmates regardless of whether they were adults or juveniles when they killed their victims. Article 4, Section 9 of the Pennsylvania Constitution vests in the Governor the power to orde a commutation on unanimous recommendation of the Board of Pardons. When an inmate files a petition for commutation, the Board of Pardons considers a number of pertinent factors. The Board looks at whether an appropriate period of incarceration has been served based on the circumstances of the offense. The Board also considers whether the inmate maintained an appropriate prison conduct record, examining both serious and minor prison misconducts as a reliable indicator of the rehabilitation of the applicant. The inmate's success in a prison work program and other programming in the correctional facility are relevant as well. The Board also considers the impact on the victim(s) and their families. Board regulations require the victims or next of kin be notified and given the opportunity to appear at the hearing or make a confidential submission in writing.

Therefore, if an inmate can convince the Board of Pardons that he or she is worthy of a commutation based on these reasonable, common-sense factors, the Board will send a favorable commutation recommendation to the Governor. If the Governor agrees with the Board, the inmate can obtain a release from custody. The mere fact that commutations are not being granted in large numbers is not a reason to radically modify the current system and give these inmates an opportunity to seek parole.

Consider that currently 43% of violent offenders are granted parole at their earliest eligibility date. If the law were changed to allow murderers serving life sentences to be eligible for parole, we might expect 43% of them to be released after their cases were reviewed. This would be bad public policy and would endanger the very safety of our towns and neighborhoods that we work so hard to protect.

HB 1999 also ignores the plight of families of murder victims. It would be devastating and unfair to change the rules long after families of murder victims who were told that the person who murdered their child, spouse, parent or other family members would spend the rest of his or her life behind bars. These family members are victims, too. They turned to the court system after terrible tragedies and put their faith in Pennsylvania's courts.

There are real victims and real families out there who would be devastated if this bill became law. How would we tell the family of Jason Sweeney that the three juvenile

defendants sentenced to life in his killing, who hit him in the head with a hammer and hatchet and a rock until his face was unrecognizable to his own parents, and then robbed him, that these depraved killers will get out of jail some day, even though they were convicted by a jury of first degree murder? What would we say to the family of Margaret Boyle, who was brutally killed by Eric VanZant. VanZant entered Ms. Boyle's home through her skylight, waited for her to come home, sexually assaulted her with a shower curtain rod, stabbed her repeatedly and threw her down the steps. And what about the family of Kimberly Dotts, a learning disabled girl who was tortured, hanged from tree, and smashed to death with a rock by a group of people, including Jessica Holtmeyer, a juvenile convicted of her death.

These are not the individuals we should take a chance on and hope they have been rehabilitated and allow them to walk the streets, live in our neighborhoods, and see our children. This committee has done an outstanding job of trying to address the prison population increase and improve diversionary programs by focusing on less violent offenders. That is the cohort group our collective attention should be focused on – not on letting out murderers early.

The legislation would permit those juvenile murderers to petition for parole at age 31 and every three years thereafter. In criminology, 31 years is still young. Many 31 year old offenders have numerous years of criminal behavior ahead of them. Additionally, one of the biggest indicators of future dangerousness is age of first offense and whether a firearm was used in the commission of the crime. Juvenile lifers commit their crimes young. Therefore, it is important to remember that these offenders typically show the recognized indicial of future dangerousness, and allowing them back to our communities at age 31 is a recipe for disaster.

Finally, the bill as drafted is technically deficient. Section 9720.3(b) would provide that a juvenile offender receiving a life sentence for murder would receive "at a minimum" the ability to be parole eligible at age 31. What does this phrase mean? Rules of statutory construction presume that words in statutes must be given some effect, so inclusion of this phrase is curious.

Consider also that any offender, including a juvenile, convicted of third degree murder can receive a minimum 20 year sentence. But HB 1999 would make parole available for the juvenile murderers in as little as 13 years. Therefore, someone convicted of third degree murder might actually be parole eligible earlier than a juvenile convicted of first degree murder.

We thank you again for the opportunity to submit our testimony today. Although we do strongly disagree with HB 1999, we do not take issue with the motives of those who support it. We agree that we must do more to help at-risk youth. But we believe the emphasis should be on the front-end. We need to invest wisely in programs like early childhood education, nurse family partnerships, and youth violence reduction programs. If we do more to prevent crime, then the issue of juveniles serving life sentences will diminish because there will be far fewer juveniles killing other people.