No. S256149

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

IN RE WILLIAM M. PALMER, ON HABEAS CORPUS

On Review From The Court Of Appeal For the First Appellate District
Division Two, 1st Civil No. A154269

APPLICATION TO FILE BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONER, WILLIAM M. PALMER and BRIEF OF AMICI CURIAE HUMAN RIGHTS WATCH AND THE PACIFIC JUVENILE DEFENDER CENTER IN SUPPORT OF PETITIONER

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TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Human Rights Watch (HRW) and the Pacific Juvenile Defender Center (PJDC), through their attorneys and pursuant to Rule 8.520(f) of the California Rules of Court, respectfully apply for leave to file the attached amici curiae brief in support of Petitioner William M. Palmer. As explained in further detail below, amici, as sponsors and supporters of much of the youth justice legislation in California, submit this brief to provide the Court with a comprehensive and balanced review of the case law, legislation, executive actions, and direct voter initiatives pertinent to the issues before the Court.

IDENTITY AND INTEREST OF AMICI CURIAE

HRW was founded in 1978 as "Helsinki Watch" to investigate human rights abuses in countries that signed the Helsinki Accords. HRW is an independent, international organization devoted to combatting human rights abuses. It brings together lawyers, journalists, country experts, researchers, and others to protect those most at risk in the world. HRW works in five continents. One of its divisions is devoted to Children's Rights. That division has advocated for much of the pertinent youth justice reform in California: For example, HRW sponsored Senate Bills 9 (co-source), 260 (co-source), 261 (sponsor), 394 (sponsor), 395 (co-source),

1391 (co-source), and Assembly Bill 1308 (co-source). HRW also supported SB 1143. Given HRW's unique role in sponsoring, drafting, supporting, and advocating for a large number of the bills within the California Legislature addressing youth justice reform, HRW is well positioned to provide the Court with a description of the shifting culture and norms in the Legislature toward incarcerated youth.

PJDC is a regional affiliate of the Washington, D.C.-based National Juvenile Defender Center. PJDC works to build the capacity of the juvenile defense bar and to improve access to counsel and quality of representation for children in the justice system. PJDC provides support to more than 1,000 trial lawyers, appellate counsel, law school clinical programs and non-profit law centers to ensure quality representation for children throughout California and around the country. Collectively, PJDC members represent thousands of youth in juvenile court delinquency cases and youth being tried as adults in California. PJDC also engages in policy work and involvement in appellate cases aimed at assuring fairness and appropriate treatment of young people in the justice system. In this regard, PJDC has long been concerned about the handling of youth in the adult criminal justice system.

PJDC wrote an amicus brief in *People v. Lara*, 6 Cal. 5th 1128 (2019), in which this Court found Proposition 57 applied retroactively to all cases not yet final on appeal. PJDC participated with other amici in *In re*

Cook, 7 Cal. 5th 439 (2019), regarding whether, and by what means, a person may seek a post-sentencing hearing to make a record of mitigating evidence tied to his youth. In *People v. Contreras*, 4 Cal. 5th 349 (2018), PJDC filed an amicus brief in a case in which this Court held that a sentence of 50 years to life for juvenile non-homicide offenders constitutes a *de facto* life without parole sentence in violation of the Eighth Amendment. The organization participated with other amici curiae in the cases of *People v. Franklin*, 63 Cal. 4th 261 (2016), *In re Alatriste*, S214652, and *In re Bonilla*, S214960, filing an amicus brief in *Bonilla* regarding whether imprisonment for a total term of 50 years to life for murder committed by a 16-year-old offender is the functional equivalent of life without possibility of parole by denying the offender a meaningful opportunity for release on parole. PJDC also participated with other amici curiae in *People v. Gutierrez*, 58 Cal. 4th 1354 (2014), in which this Court held that the Eighth Amendment forbids a presumption in favor of life without parole at sentencing hearings under Penal Code section 190.5. And PJDC participated in *People v. Caballero*, 55 Cal. 4th 262 (2012), in which this Court struck down the imposition of *de facto* life sentences on juveniles tried as adults. PJDC is knowledgeable about the relevant law, and the impact of age and immaturity on behavior, adjudicative competence, and capacity for rehabilitation.

PJDC is interested in this case because it presents a significant opportunity for the Court to consider the seismic policy shift in California during the past decade in the way youth are treated by the justice system in its determination as to when continued confinement becomes constitutionally disproportionate.

To assist the Court in resolving the complex questions presented by this matter, amici respectfully request that their application be granted. Pursuant to Rule 8.520(f)(4), no party or counsel for any party in the pending appeal authored the proposed amicus brief in whole or in part, and no one other than the amici have made any monetary contribution intended to fund the preparation or submission of the brief. Amici are familiar with the questions involved in this case and the scope of their application, and feel that additional argument and briefing on these points will be helpful. Accordingly, HRW and PJDC request that the Court accept the attached brief and allow them to appear as amici curiae.

Respectfully submitted,

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INTRODUCTION

California has experienced an extraordinary shift in attitudes toward the punishment of youth. For decades, the State relied heavily on adult-style incarceration and punishment for youth who committed crimes. Yet, in recent years California has embraced the evolving scientific consensus—and the judicial decisions recognizing that science—that, for purposes of evaluating culpability, youth are markedly different from adults. It is now widely understood that youth have different capacities for decision-making and less control over their impulses and environment. Those differences mean that youth who commit even heinous crimes are capable of change as they grow and mature into adulthood. This new understanding undermines the traditional justifications for punishment—and requires a different approach for youth. California governors, legislators, voters, and courts have acted accordingly, reorienting the youth justice system toward a non-punitive approach aimed at rehabilitating youth within their communities.

In a January 2019 speech, Governor Newsom explained California's recent approach to youth incarceration and sentencing practices:

> Juvenile justice should be about helping kids imagine and pursue new lives — not jumpstarting the revolving door of the criminal justice system. The system should be helping these kids unpack trauma and adverse experiences many have suffered. And like all youth in California, those in our juvenile justice system should have

> the chance to get an education and develop skills that will allow them to succeed in our economy.

Governor Newsom Announces His Intention to End Juvenile Imprisonment in California as We Know It, Office of Governor Gavin Newsom (Jan. 22, 2019), https://www.gov.ca.gov/2019/01/22/end-juvenile-imprisonment/.

This brief traces the normative shift that has occurred in California. Amici curiae Human Rights Watch (HRW) and the Pacific Juvenile Defender Center (PJDC) first describe how changing norms, bolstered by the evolving science, drove decisions in the United States and California Supreme Courts prohibiting imposition of the most extreme criminal sentences on youth and emphasizing rehabilitation. These changing norms also prompted the California Legislature, the Governor, and the voters to enact an extraordinary series of reforms addressing all aspects of the adjudication, incarceration, and rehabilitation of youth who commit crimes, which amici summarize. Finally, HRW provides data analysis evidencing that, as a result of these changes, fewer young people today are sent to adult prison in the first place. Those who received lengthy adult sentences under the old scheme are now afforded a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation," *Miller v. Alabama*, 567 U.S. 460, 479 (2012), after, at most, 25 years of incarceration.

In light of the revolutionary shift in California's treatment of youth, if Petitioner William Palmer had committed his crime in 2020, rather than in 1988, he would have found himself in an entirely different youth justice system. In 1989, Mr. Palmer was charged as an adult with kidnapping for robbery and sentenced to life in prison without the possibility of parole. In 2020, Mr. Palmer would have likely never entered the adult criminal justice system at all. In the juvenile system, Mr. Palmer would have faced, at the absolute maximum, detention in the Division of Juvenile Justice (DJJ) for seven years—where he would have been housed with other youth, and afforded access to counseling, high school and college courses, and numerous other rehabilitative services. More likely, Mr. Palmer would have been housed in a county detention center or treated locally within his community. And even if Mr. Palmer had been transferred to the adult criminal justice system, in 2020 he likely would have received a significantly shorter sentence than what he accepted in 1988. Thanks to various legislative reforms, he also would have had access to more rehabilitative programming even in adult prison.

Given this marked change in both societal norms and the governing legal framework, it is unfathomable that in 2020 a judge would sentence Mr. Palmer to *30 years* in adult prison for a crime that injured no one except Mr. Palmer himself. Accordingly, the Court of Appeal was eminently correct when it held that Mr. Palmer's continued punishment is

constitutionally disproportionate under Article I, section 17 of the California Constitution and the Eighth Amendment of the United States Constitution. Judicial decisions in the U.S. Supreme Court and California, along with state legislation, executive action, direct California voter initiatives, and the data on California's youth sentencing practices, all prove that since Mr. Palmer was sentenced, California has revolutionized its approach to youth justice.

ARGUMENT

I. Changing Norms Drove a Series of Decisions in the United States and California Supreme Courts Prohibiting the Most Extreme Sentences for Youth

Starting in 2005, decisions in the federal and California courts reflect a marked shift in sentencing norms for youth. This shift began in the United States Supreme Court with the decision in *Roper v. Simmons*, 543 U.S. 551 (2005), and continued with the 2012 decision in *Miller v. Alabama*, 567 U.S. 460 (2012). In a parallel line of cases, this Court took up the same set of questions—and, in a series of decisions that most recently includes *People v. Contreras*, 4 Cal. 5th 349 (2018), this Court applied the logic of *Miller* beyond the four corners of that case.

A. In Light of the Transitory and Distinctive Traits of Youth and their Environmental Vulnerabilities, the Supreme Court of the United States Prohibits Sentencing Youth to the Death Penalty and, in Most Cases, Life Without Parole

In a line of cases starting with the 2005 *Roper* decision, the United States Supreme Court has held that "the evolving standards of decency that mark the progress of a maturing society," *Roper*, 543 U.S. at 561 (quoting *Trop v. Dulles*, 356 U.S. 86, 100–01 (1958) (plurality opinion)), require substantive changes to the states' youth sentencing practices.

In 1989—just one year after Mr. Palmer committed the robbery that earned him a life sentence—the U.S. Supreme Court concluded that neither the Eighth Amendment nor the Fourteenth Amendment prohibited sentencing youth older than 15 to death. *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989). At the time of Mr. Palmer's crime, society took an increasingly harsh approach toward criminal justice, and the "tough on crime" mentality extended to the states' treatment of youth who committed crimes. *See, e.g.*, Laura Cohen, *Freedom's Road: Youth, Parole, and the Promise* of Miller v. Alabama *and* Graham v. Florida, 35 CARDOZO L. REV. 1031, 1067–68 (2014) (discussing the effect that the "tough on crime" era had on the prosecution and sentencing of youth). By the mid-1990s, media were stoking fear about juvenile "superpredators," imagined to be youth who maraud and kill without conscience. *See generally*, Beth Caldwell & Ellen C. Caldwell, *"Superpredators" and "Animals" – Images*

and California's "Get Tough on Crime" Initiatives, 2011 J. INST. JUST. & INT'L STUD. 61 (2011).

Yet sixteen years later, in *Roper v. Simmons*, the Court reversed itself. The *Roper* Court held that "today our society views juveniles . . . as 'categorically less culpable than the average criminal.'" 543 U.S. at 567 (quoting *Atkins v. Virginia*, 536 U.S. 304, 316 (2002)).

In coming to its decision, the Court emphasized the "propriety and . . . necessity of referring to 'the evolving standards of decency that mark the progress of a maturing society'" when determining whether a particular punishment is so extreme as to be "cruel and unusual" under the Eighth Amendment. *Id.* at 561 (quoting *Trop*, 356 U.S. at 100–01). The very nature of a progressing society requires that, from time to time, a court undertaking an Eighth Amendment analysis must take stock of public consensus to determine whether norms have changed. *See id.* at 563–64. If norms have changed—as they had by the time the Court decided *Roper*—a different conclusion must be reached. *Id.* In *Roper*, the Court concluded that "the objective indicia of consensus" it relied upon in reaching its prior decision in *Stanford* "have changed." *Id.* at 574. So, too, did the Court's analysis.

In holding that the Eighth Amendment prohibits imposition of the death penalty on juveniles, the Court identified three key differences between youth and adults, which taken together render it impermissible to

categorize youth as the most culpable offenders. *First*, youth lack the maturity and sense of responsibility that characterize adulthood. *Roper*, 543 U.S. at 569. This quality "often result[s] in impetuous and ill-considered actions and decisions." *Id.* at 569 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)). *Second*, the *Roper* court explained that youth are more vulnerable to peer pressure and other negative influences. *Id.* Youth also have less control over their environment, meaning they are less able to extract themselves from toxic situations. *Id.* *Third*, young people's character or personality is simply less well-developed than adults'—meaning both that it is impossible to determine if a juvenile who commits a crime is "irretrievably depraved," *id.* at 570, and that youth can be more responsive to rehabilitative efforts than adults, *id.*

Taken together, these differences led the *Roper* court to conclude that there existed an "unacceptable likelihood . . . that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe . . . ." *Id.* at 573. That possibility required imposition of a categorical ban on the juvenile death penalty, rather than a more flexible case-by-case analysis of mitigating circumstances. Like other cases imposing categorical bans on capital punishment, *Roper* turned on characteristics inherent to the offender—in

this case, the characteristics inherent to youth—rather than on an analysis of the sentence in comparison with the relative severity of the crime.

Thus, *Roper* marked the beginning of an era: a recognition that no matter how brutal the circumstances of a crime, the law must recognize that youth, as a group, are different. *Roper* was also the first case to conclude that some sentences, although appropriate for adults, would be cruel and unusual—*i.e.*, categorically disproportionate—if served by any juvenile who committed the same crime.

In *Graham v. Florida*, 560 U.S. 48 (2010), the Court took its analysis a step further. The Court reasoned that the distinguishing characteristics of youth outlined in *Roper* prohibited courts from sentencing youth to life without parole for any crime except murder.

In coming to this conclusion, the Court considered the traditional penological justifications for extreme sentencing: retribution, deterrence, incapacitation, and rehabilitation. The *Graham* court concluded that none could justify sentencing a juvenile to life without parole for a non-homicide crime. As for retribution, the Court observed, "[t]he heart of [that] rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender . . . ." 560 U.S. at 71. Because youth are categorically less culpable than adults, "the case for retribution is not as strong with a minor as with an adult"— and "[t]he case becomes even weaker with respect to a juvenile who did not commit homicide." *Id.*

The deterrence justification for extreme sentencing fared no better. Young people's lack of maturity means "they are less likely to take a possible punishment into consideration when making decisions." *Id.* at 72. For a punishment to be constitutional, "it must be shown that the punishment is not grossly disproportionate in light of the justification offered." *Id.* The *Graham* court determined that the minimal likelihood of deterrence was not sufficient to justify the extreme sentence of life without parole.

The Court explained that incapacitation is a valid justification for an extreme sentence only if there is no possibility of rehabilitation. *Id.* But as was discussed in *Roper* related to the science on youth brain development, any "judgment that the juvenile is incorrigible" is "questionable." *Id.* at 72–73. In Graham's case, even if he were eventually found to have been incorrigible, his sentence as originally imposed "was still disproportionate because that judgment was made at the outset." *Id.* at 73. In the Court's view, youth *must* be given "a chance to demonstrate growth and maturity." *Id.* And finally, rehabilitation cannot justify extreme sentences for youth because the sentence of life without parole inherently forswears the rehabilitative ideal—despite scientific advances showing that youth are more responsive to rehabilitative efforts than adults. *Id.*

In reaching its decision, the Court in *Graham* reiterated that the Eighth Amendment requires a normative analysis, in which proportionality

is key: "'This is because the standard of extreme cruelty is not merely descriptive, but necessarily embodies a *moral judgment*. The standard itself remains the same, but its applicability must change as the basic mores of society change.'" 560 U.S. at 58 (quoting *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008)) (emphasis added). Thus, the *Graham* decision reflects changing social norms, which require less extreme sentences for juvenile offenders. As a result of the developing science and changing attitudes across the nation, "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Id.* at 76.

Finally, in *Miller v. Alabama*, the Court extended *Graham* to hold that the Eighth Amendment prohibits mandatory sentences of life without parole even for youth who commit murder. 567 U.S. 460 (2012). In so holding, the Court reiterated its view that "a sentencing rule permissible for adults may not be so for children." *Id.* at 481.

By 2012, a majority of the Court had become convinced that juvenile status was not just *relevant* to the Eighth Amendment inquiry—it was *central* to it: "'[A]n offender's juvenile status can play a central role' in considering a sentence's proportionality." *Id.* at 474 (quoting *Graham*, 560 U.S. at 90 (Roberts, J., concurring)). The Court understood that even where, as in *Miller*—and, as was also the case for Mr. Palmer—a juvenile's crime includes an aggravating factor such as the use of a gun, the aggravating circumstance was likely affected by the young person's

characteristically poor calculation of risk. *Id.* at 478 (explaining that the petitioner's "age could well have affected his calculation of the risk. . . as well as his willingness to walk away at that point."). Because "none of what [*Graham*] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific," *id.* at 473, the sentencing court *must* take age into account when deciding whether to impose the most serious penalty.

Since the U.S. Supreme Court's 2012 decision in *Miller*, the social norms described in the *Graham* and *Miller* line of cases—emphasizing a more rehabilitative and less punitive approach to youth sentencing—have continued to grow more robust. In *Montgomery v. Louisiana*, 577 U.S. __, 136 S. Ct. 718 (2016), the Court addressed the concern that "*Miller*'s conclusion that the sentence of life without parole is disproportionate for the vast majority of juvenile offenders raises a grave risk that many are being held in violation of the Constitution." *Id.* at 736 (holding that *Miller* applies retroactively). That same concern motivated further legal developments in California specifically, both in the courts and in the Legislature. The *Graham* and *Miller* line of cases thus not only describes a normative shift in national sentiment regarding the relative culpability of youth as compared with adults; those cases also sounded a retreat from the extreme sentencing that characterized the era in which Mr. Palmer was sentenced.

B. The California Supreme Court Confirms That the Prohibition Against Sentencing Youth to Life Without Parole Includes Extreme Term-of-Years Sentences and Urges Comprehensive Legislative Reform

The shifting social norms outlined in the *Graham* and *Miller* line of cases have made their mark on California case law as well. California courts have developed a robust jurisprudence, rigorously applying *Roper* and its progeny in examining state sentencing practices. Taken together, those cases constitute a full-throated rejection of the extreme sentencing practices common when Mr. Palmer was sentenced.

Around the same time as the U.S. Supreme Court decided *Roper*, California courts also began to recognize that, as *Miller* later put it, "children are different . . . ." from adults. 567 U.S. at 481. Indeed, several California Court of Appeal decisions foreshadowed the reasoning later adopted by the U.S. Supreme Court in *Graham* and *Miller*. In *In re Nunez*, 173 Cal. App. 4th 709 (2009), the Fourth District Court of Appeal held that both the Eighth Amendment and Article I, Section 17 of the California Constitution prohibited sentencing the fourteen-year-old defendant to life without parole for a crime that, although dangerous, injured no one. *Id.* at 715. In reaching this conclusion, the *Nunez* court anticipated the distinctive characteristics of youth that would later motivate the *Graham* Court, explaining that "[y]outh is generally relevant to culpability, and the diminished 'degree of danger' a youth may present after years of

incarceration has constitutional implications." *Id.* at 726. Later, in 2010, the Second District Court of Appeal applied similar reasoning to conclude that sentencing a 16-year-old to a term of 84 years-to-life for a non-homicide crime violated both the United States and California constitutions. *People v. Mendez*, 188 Cal. App. 4th 47, 64 (2010).

Following the *Miller* decision, this Court began a substantive reconsideration of sentencing norms for youth in the State. In *People v. Caballero*, 55 Cal. 4th 262 (2012), the Court held that sentencing a juvenile convicted of a non-homicide crime to a term of years with a parole eligibility date outside the young person's natural life expectancy is cruel and unusual under the Eighth Amendment. *Id.* at 268. The Court reasoned that the *Graham* court's "flat ban" on sentencing youth to life without parole for committing non-homicide crimes applies regardless of the young person's intent or the way the sentence technically is structured. *Id.* at 267. Because the defendant would not become eligible for parole until more than a century from sentencing, his sentence denied him the constitutionally-guaranteed right to "demonstrate growth and maturity" in an effort to secure an earlier release, "in contravention of *Graham*'s dictate." *Id.* at 268. The Court also emphasized the greater burden that extremely long sentences imposed on youth—like Mr. Palmer—who, when sentenced to life without parole or its functional equivalent, end up spending more years and a greater percentage of their lives in prison than adults. *Id.* at 266.

Thus, following the decision in *Caballero*, faithful application of *Miller* requires something more than merely outlawing mandatory sentences of life without parole for youth. Rather, if a sentence would *in effect* deprive a juvenile convicted of a non-homicide crime of the chance to seek parole within his or her natural lifetime, such a sentence is disproportionate and unconstitutional, regardless of how the sentence is styled. *Caballero* gave teeth to *Graham* and *Miller*'s mandate that youth be afforded a meaningful opportunity to obtain release from imprisonment through demonstrated growth and maturity.

This Court has further expanded this doctrine in the years following the decision in *Caballero*. In *People v. Gutierrez*, 58 Cal. 4th 1354 (2014), the Court interpreted Penal Code 190.5(b)—the special circumstance murder statute—to carry no presumption in favor of life without parole. In so holding, the Court cemented the norms that "concerns about juveniles' lessened culpability and greater capacity for reform have force independent of the nature of their crimes." *Id.* at 1380. By 2014, courts had reached a consensus that a young person's status as a juvenile is independently relevant to the sentencing analysis.

In *People v. Contreras*, 4 Cal. 5th 349 (2018), the Court, "building on *Caballero*, elucidate[ed] *Graham*'s applicability to a term-of-years sentence . . . ." *Id.* at 381. The Court held that under *Graham* and *Caballero*, sentences of 50 and 58 years-to-life for youth who committed

non-homicide crimes were disproportionately long, in violation of the Eighth Amendment. And the Court predicted that its "reasoning [in *Contreras*] will inform the application of *Graham* by California courts going forward." *Id.* at 381.

The *Caballero* line of cases applied *Graham*'s mandate to rigorously evaluate California's existing sentencing scheme for youth. These cases represent a commitment within California courts to take seriously the ways in which "children are different." The cases are evidence of a larger shift within the State away from finding multi-decade sentences for juvenile offenders proportionate—or acceptable—and toward limiting the amount of time that youth offenders spend in prison for their crimes. As discussed in the next section, these cases, and the shifting norms they describe, also prompted the California Legislature to reconsider how the State should respond when young people commit crimes.

II. California's Legislative and Executive Acts Demonstrate a Change in the Evolving Standards of Decency

In the past decade, California's Legislature has consistently pared back the State's ability to impose extreme sentences on youth and incorporated consideration of the "distinctive attributes of youth" at all stages of young people's contact with the justice system. "[T]he standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment." *Graham*, 560 U.S. at 58. Thus, this shift in California's

values represents a moral and normative judgment that in a decent society, youth deserve both less punishment and more rehabilitation than adults.

According to *Graham*, "[t]he clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures." 560 U.S. at 62. In California, the Legislature has reduced youth incarceration generally and provided for the eventual release of youth previously sentenced too harshly, thereby mitigating the adverse consequences for youth sentenced during the harsh "superpredator" era.

A. Youth Offender Parole

In 2012, California lawmakers began to pass laws mitigating the impact of harsh sentences on youth and creating opportunities for their return to the community. These laws were rooted in the science embraced by the U.S. Supreme Court in *Roper* and its progeny that demonstrates that youth are neurologically different from adults, experience constrained decision-making, and mature and grow psychologically as they age. Beginning with passage of Senate Bill ("SB") 9[1] in August 2012, the California Legislature repeatedly expanded opportunities for youth to be treated differently than older individuals, to receive a greater chance at

[1] Cal. Penal Code § 1170.

parole, and, in many cases, to be released earlier from prison. *See generally* SB 260 (2013);[2] SB 261 (2015);[3] AB 1308 (2017);[4] SB 394 (2017).[5]

As the first of a flurry of youth justice reform bills, SB 9 moved California toward more humane treatment of youth by providing a path for those serving life without parole to obtain a reduced sentence. SB 9 provided that people who were sentenced to life without parole for a crime they committed as juveniles could petition the court for resentencing after serving 15 years. If the court denied that petition, they could petition for resentencing again after serving 20 and 24 years in prison.

On both sides of the political spectrum, the public reacted favorably to SB 9, fueling further expansion of the youth offender parole process. For example, the Los Angeles Times dubbed the bill "sensible and humane." *For Juvenile Lifers, a Chance*, LOS ANGELES TIMES, Aug. 21, 2011, at A27. Even self-proclaimed "conservative Republicans" Newt Gingrich and former Assembly Republican leader Pat Nolan wrote that, "California's teen [sentence of life without parole] is an overuse of incarceration. It denies the reality that young people often change for the better. And it denies hope to those sentenced under it. . . . Shouldn't we

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[2] Cal. Penal Code §§ 3041, 3046, 3051, 4801.

[3] Cal. Penal Code §§ 3051, 4801.

[4] Cal. Penal Code §§ 3051, 4801.

[5] Cal. Penal Code §§ 3051, 4801.

give the kids and grandkids of others the same second chances that we would want for our own families?" Newt Gingrich & Pat Nolan, *Giving Teen Offenders Chance at Parole Is Just*, SAN DIEGO UNION TRIBUNE, Sept. 20, 2012, https://www.sandiegouniontribune.com/opinion/commentary/sdut-giving-teen-offenders-chance-at-parole-is-just-2012sep20-story.html. SB 9 represented a key moment in shifting public opinion, heralding a wave of reform-oriented legislation.

Also in 2012, this Court "urge[d] the Legislature to enact legislation establishing a parole eligibility mechanism that provides a defendant serving a *de facto* life sentence without possibility of parole for non-homicide crimes that he or she committed as a juvenile with the opportunity to obtain release on a showing of rehabilitation and maturity." *Caballero*, 55 Cal. 4th at 269, n.5 (italics added). The Legislature responded, passing SB 260 on September 10, 2013. SB 260 granted a youth parole hearing to people sentenced to lengthy prison terms for crimes committed when they were under 18 years old. Eligibility for an initial youth offender parole hearing was staggered based on the severity of the sentence: Under the new regime, those originally sentenced to a determinate term became eligible for a hearing during their 15th year of incarceration; those originally sentenced to 24 years or less to life became eligible for a hearing during their 20th year of incarceration; and those originally sentenced to 25 years or more to life became eligible for a hearing during their 25th year of incarceration.

SB 260 required the Board of Parole Hearings to "give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with [the *Graham*/ *Miller*/ *Caballero* line of cases]." The Legislature thereby intentionally embedded the neuroscientific differences between youth and adults into each parole deliberation. The Legislature premised its decision to pass SB 260 on "evolving standards of decency," *Graham*, 560 U.S. at 85, expressly recognizing "that youthfulness both lessens a juvenile's moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society." SB 260, Section 1. Legislators echoed this theme when discussing SB 260. Republican Assemblymember Rocky J. Chavez, for example, contextualized SB 260 in relation to the American dream, pointing out that youth may serve some time, but should not "give [up] their whole life in the land of opportunity. . . ." Assembly Floor Hearing on SB 260, Sept. 6, 2013.

Senate amendments to a rival bill proposed around the same time as SB 260 reflect a strong commitment to the less punitive approach. AB 1276, sponsored by the Los Angeles County District Attorney's Office, originally sought to enact a harsher parole regime than that set forth in SB 260 for youth under 18 with extreme sentences. It would have required

youth convicted of non-homicide crimes to serve 25 years before becoming eligible for parole consideration. In contrast, as described above, SB 260 took a staggered approach that set hearing eligibility as low as 15 years.

The California Senate chose to pass SB 260. It also rewrote the Los Angeles District Attorney's proposed bill, transforming AB 1276 into yet another reform measure, this time focused on housing classifications for incarcerated youth. *Compare* 04/24/2013 Assembly Committee on Public Safety AB 1276 (Bloom) Analysis *with* 08/20/2014 Assembly Floor Analysis and Concurrence in Senate Amendments AB 1276 (Bloom). Given the choice between incremental changes and major reforms, the Legislature decisively opted to implement significant youth justice reform.

As with SB 9, media and public opinion supported SB 260. When discussing Governor Brown's signature on SB 260, the Sacramento Bee declared that "[t]he criminal justice pendulum is swinging." Dan Morian, *Hollywood Producer and San Quentin Inmate Live Worlds Apart*, SACRAMENTO BEE, Sept. 22, 2013. *See also Young Criminals Get a New Path to Parole Under Law*, VENTURA COUNTY STAR, Sept. 29, 2013; Jesse Wegman, *Once Again, California Eases Harsh Sentencing Laws*, THE NEW YORK TIMES BLOGS, Sept. 25, 2013; Lizzie Buchen, *Troubled Young People Deserve Compassion, Not Punishment*, CALIFORNIA PROGRESS REPORT, Aug. 5, 2013.

The State further cemented its commitment to reform on September 1, 2015 with the passage of SB 261. That bill expanded SB 260's youth offender parole hearings to youth who were 18 to 22 years old when they committed their crimes. Two years later, the Legislature passed AB 1308, again expanding youth offender parole hearings, this time for those who were up to 25 years old at the time of their crimes, in recognition of the hallmark features of youth and the emerging neuroscience. As Senator Holly Mitchell stated, referencing neuroscientific research on the Senate floor: "If we're going to be policymakers and make decisions about what's in the best interest of California, then I suggest we all check our bias at the door [and] read current research." Senate Floor Session on AB 1308, September 12, 2017. Lawmakers also emphasized that youth can change, rehabilitate, and grow. Senator Steven Bradford remarked that, "To say that young people aren't salvageable is a crime in and of itself." Senate Floor Session on AB 1308, September 12, 2017. They also highlighted data supporting these ideas, with sponsor Assemblymember Mark Stone pointing out that, prior to AB 1308, the recidivism rate for youth offender parolees released under SB 260 and 261 was less than 1%. Assembly Floor Session on AB 1308, June 1, 2017.

Youth who benefitted from SB 260 and 261 testified movingly in support of AB 1308. Ryan Lowe, who was released after a youth offender

parole hearing, spoke to the transformative potential of SB 260 and its progeny:

> During my incarceration, I saw the worst our system had to offer. However, with the introduction of the youthful offender parole bill, I also saw the best. I saw places that once housed despair, bred anger, fear, and violence, suddenly bubble with hope and motivation and potential. Youthful offender parole changed how people thought and how they acted. I watched men all around me make the decision to rehabilitate because youthful offender parole made a chance of coming home possible. . . . The message youthful offender parole sends is clear: if you do the hard work and make yourself into a better, healthier person, you might have a chance at a fruitful life. Today, I'm a Soros Justice Fellow, a filmmaker, and a staffer at a transitional housing for veterans coming out of incarceration, homelessness, or war. I live my amends, I pay my bills, I have student loan debt, and I work to make my communities healthier and safer.

Testimony before Assembly Appropriations Committee on AB 1308, May 10, 2017.

The Legislature also passed SB 394, another expansion of youth parole hearings that made juveniles sentenced to life *without* parole eligible

for release after serving 25 years. In 2019, lawmakers passed AB 965,[6] which awarded new credits toward time served for the purposes of youth parole eligibility dates, shortening wait times for a youth parole hearing. The Legislature recognized the value, rehabilitative potential, and redemption of the State's incarcerated youth and took significant steps toward cutting short unnecessarily lengthy prison terms, like Mr. Palmer's.

In passing SB 9 and its progeny, the Legislature has outlined a decisively more rehabilitative approach to youth crime, focused on minimizing youth contact with the justice system and providing meaningful, and in many cases, earlier opportunities for release. The practical application of that approach to Mr. Palmer's sentence is currently before the Court in a companion case, *In re William M. Palmer*, Case No. S252145. But had Mr. Palmer been afforded the benefits of SB 260 from the time he was sentenced, and had the Board faithfully accorded the youth offender factors "great weight," as directed by the Legislature, *see* California Penal Code section 4801(c), there can be little doubt Mr. Palmer would have been granted parole much sooner. *In re Palmer*, 238 Cal. Rptr. 3d 59, 76–79 (2018) (depublished) (describing Mr. Palmer's maturation and personal development, beginning early in the course of his prison sentence).

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[6] Cal. Penal Code § 3051.

B. Restrictions on Juvenile Transfer

In addition to creating pathways out of prison for youth, the California Legislature dramatically curtailed the practice of sending youth to adult courts and prisons. Thus, *had Mr. Palmer committed his crime today, he would have almost certainly stayed in juvenile court.* On August 17, 2015, lawmakers passed SB 382.[7] Like the requirement that the Parole Board consider the hallmark features of youth during youth parole hearings, SB 382 revamped the criteria courts must consider when evaluating whether to transfer a youth under 18 to the adult criminal justice system. The bill elaborated factors focused on rehabilitation, holistic assessment, and recognition of youth's constrained decision-making to reduce the number of cases transferred to the less rehabilitative and more punitive adult system.

Before SB 382, juveniles could end up in adult criminal proceedings in three ways. First, for many cases, prosecutors had the discretion to file a juvenile's case directly in adult court, a practice often referred to as "direct file." Second, particular statutes mandated that certain crimes, when committed by youth 14 years or older, be prosecuted directly in adult court. Third, a judge could find at a hearing that a juvenile was not "fit" to remain in the juvenile system. SB 382 clarified the factors judges must consider in

[7] Cal. Penal Code §1170.17; Cal. Welf. & Inst. Code § 707.

transfer hearings[8] and shifted the court's focus from the severity of the crime to the best outcome for the young person and his or her community. SB 382 encouraged courts to consider a juvenile's age, mental and emotional health, childhood trauma, actual behavior at the time of the crime, peer pressure, community environment, adequacy of services in prior delinquency proceedings, and potential for growth. For example, when considering the existing factor of a juvenile's "degree of criminal sophistication," the bill directed that the court must now take into account "the person's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the offense, the person's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the person's actions, and the effect of the person's family and community environment and childhood trauma on the person's criminal sophistication." Cal. Penal Code § 1170.17(b)(2)(A).

Even earlier, in 2013, lawmakers supported keeping youth in the juvenile system. Speaking from the Assembly floor in support of SB 260, Assemblymember Tom Ammiano described a turning point in his own evolving perspective on the punishment of youth. A friend was murdered by a 15-year-old, and Mr. Ammiano originally attended court hearings with

[8] California no longer uses the term "fitness hearings" after Proposition 57 in 2016. Now, such hearings are called "transfer hearings."

a mindset focused on revenge. But then he met with the youth's parents and other community members. They discussed what the potential transfer of the youth to adult court would mean, and Mr. Ammiano came to believe that sending the youth to the adult system was wrong. The youth was retained in the juvenile system, rehabilitated, and ultimately released. On the Assembly floor, Mr. Ammiano reflected, "I don't want revenge, and I thought I did. I wanted justice, and I think we got it." Assembly Floor Hearing on SB 260, September 6, 2013. Designed to curtail the practice of condemning youth to adult punishments, SB 382's purpose was later reinforced by a direct voter initiative.

C. Other Reform Measures

In addition to the above-summarized bills, the California Legislature passed a series of youth justice reform measures designed to keep youth out of the justice system generally—and the adult system in particular; to shorten the amount of time youth spend in detention; and to facilitate re-entry into society.

Lawmakers recognized the special vulnerabilities of youth in passing SB 395 (2017)[9] and SB 439 (2018).[10] SB 395 mandated that youth under 16 years old must speak with counsel before any custodial interrogation and

[9] Cal. Welf. & Inst. Code § 625.6.

[10] Cal. Welf. & Inst. Code §§ 601, 602, 602.1.

cannot waive the consultation. This measure sought to protect youth by interceding in circumstances that often led to false confessions and coercion. SB 439 established that children under 12 years old cannot be prosecuted even in juvenile proceedings, except for murder and certain sex crimes. Both bills embraced the long-established neuroscientific research on youth decision-making and potential, aiming to minimize young people's contact with the criminal justice system.

Beyond youth parole hearings, science-driven transfer hearing criteria, and efforts to keep youth out of the criminal justice system, California's lawmakers also focused on other ways to decrease youth sentences, provide alternative rehabilitative programs, and further limit youth involvement in the adult system.

In 2016, SB 1391[11] categorically forbade trying youth under 16 years old as adults. In 2019, AB 1423[12] provided that youth with felony cases that had already been heard in adult court, and that were reduced to misdemeanors, dismissed, or did not result in a felony conviction under California Welfare & Institutions Code section 707(b), may petition to return their cases to juvenile court.

[11] Cal. Welf. & Inst. Code § 707.

[12] Cal. Welf. & Inst. Code § 707.5.

California legislators now also require more humane conditions for incarcerated youth, to minimize trauma and facilitate rehabilitation and successful re-entry. AB 1276,[13] passed in 2014, changes how the California Department of Corrections classifies youth under 22 years old when they enter prison. Previously, youth sentenced to life without parole, regardless of age, were automatically sent to maximum security prison yards. Further, the prior classification system weighed factors that distinctly disadvantaged youth, such as whether one had ever had a mortgage. AB 1276 created a classification process specifically for people entering prison under age 22, many of whom would have been under age 18 at the time of their crimes. This law is intended to ensure that younger people entering prison are less likely to be housed on high-security yards with higher risks of physical and sexual assault. In passing the measure, the Legislature expressly stated that "[a]menable young adults incarcerated in state prisons should have access to programs and living circumstances that increase the likelihood of rehabilitation during these important [neurological] developmental stages." AB 1276, Section 1(a)(4).[14]

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[13] Cal. Penal Code § 2905.

[14] Additionally, the Legislature has focused its reform attention on young adults in other ways. In so doing, legislators indicated their willingness to provide more lenient, productive paths for even young adults older than Mr. Palmer at the time of their crimes. For example, on September 30, 2016, SB 1004 established the Transitional Age Youth Pilot Program for deferred

In 2016, SB 1143[15] restricted the use of locked room confinement in juvenile facilities, given the trauma that solitary confinement inflicts. *See, e.g.*, Dr. Robert T. Muller, *Solitary Confinement Is Torture*, PSYCHOLOGY TODAY (May 10, 2018), https://www.psychologytoday.com/us/blog/talking-about-trauma/201805/solitary-confinement-is-torture. It forbade locked room confinement for "punishment, coercion, convenience, or retaliation"; introduced medical providers and facility superintendents into decisions to detain for more than 4 hours; and required documentation of solitary confinement lasting longer than 4 hours. Cal. Welf. & Inst. Code § 208.3(b).

California's Legislature has also passed numerous bills to facilitate youth's re-integration into society and to mitigate the continuing punitive

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entry of judgment for certain drug crimes for those 18 to 20 years old at the time of the offense. Instead of ending up in in county jail, youth in the program serve no more than one year in a juvenile hall. In 2018, SB 1106 extended the SB 1004 Pilot Program to an additional county and extended the sunset provision for another 2 years. The Legislature also created another diversion program in 2018 with AB 1812, an omnibus public safety and budget bill. It established a 7-year pilot program that diverts youth from adult prisons to juvenile facilities to better provide trauma-informed rehabilitative programming. It also requires the Board of State and Community Corrections to coordinate with the California Health and Human Services Agency and the State Department of Education to provide services and thereby reduce recidivism for youth. With these measures, legislators have sought to keep youth in the juvenile system or return them to it even after transfer to the adult system. Mr. Palmer would have benefitted from these measures if his crime had happened today.

[15] Cal. Welf. & Inst. Code § 208.3.

effects of a criminal record, including adverse effects on employment and housing options. *See* SB 1038 (2014);[16] AB 1843 (2016);[17] SB 312 (2017);[18] AB 529 (2017);[19] SB 625 (2017);[20] AB 1394 (2019)[21] (all facilitating sealing of juvenile records or easing the honorable discharge of juvenile records, including eliminating fees for sealing). Further, in 2017, lawmakers passed SB 190,[22] which ended the assessment and collection of administrative fees from youth within the juvenile justice system and their families. This bill also supported reintegration and family unity by eliminating heavy financial burdens that could strain or destroy relationships and cause families to lose their homes or other necessities.

D. Governor Newsom's Executive Support

Apart from legislative and judicial indicators of changed standards of decency, the State's executive branch has also proactively embraced this

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[16] Cal. Welf. & Inst. Code §§ 782, 786.

[17] Cal. Labor Code § 432.7.

[18] Cal. Welf. & Inst. Code §§ 781, 786.

[19] Cal. Welf. & Inst. Code §§ 786, 786.5.

[20] Cal. Welf. & Inst. Code §§ 827, 1179, 1719, 1766, 1772. Repealing Cal. Welf. & Inst. Code §§ 1177, 1178.

[21] Cal. Welf. & Inst. Code § 781.1. Repealing Cal. Welf. & Inst. Code § 903.3.

[22] Cal. Gov. Code § 27757; Cal. Penal Code §§ 1203.016, 1203.1ab, 1208.2; Cal. Welf. & Inst. Code §§ 207.2, 332, 634, 652.5, 654, 654.6, 656, 659, 700, 729.9, 729.10, 871, 900, 902, 903, 903.1, 903.2, 903.25, 903.4, 903.45, 903.5, 904. Repealing Cal. Welf. & Inst. Code § 903.15.

shift. On January 22, 2019, Governor Newsom proposed a 2019–20 budget that moved the Department of Juvenile Justice ("DJJ") from under the California Department of Corrections and Rehabilitation to the Health and Human Services Agency umbrella. *See Governor Newsom Announces His Intention to End Juvenile Imprisonment in California as We Know It*, Office of Governor Gavin Newsom (Jan. 22, 2019), https://www.gov.ca.gov/2019/01/22/end-juvenile-imprisonment/. This substantive change reflects the broader shift in approach to youth sentencing, calling for youth who commit crimes to receive needed services and rehabilitative programming, as opposed to punitive detention. It emphasizes that youth within the juvenile justice system belong under an administrative agency that focuses on physical and mental health, social services, and treatment—not punishment and detention.

Not only did Governor Newsom commit to working with the Legislature to effect this change in the administration and focus of the State's juvenile justice agency, but he also recommended allocating $2 million to help fund AmeriCorps members dedicated to assisting youth released from DJJ and $8 million for "therapeutic communities" within DJJ to better provide services to youth. The proposed budget also allocated $100 million for screenings to identify youth experiencing trauma and developmental issues, to better facilitate earlier interventions and prevent youth from coming into contact with the criminal justice system in the first

instance. These changes further cemented California's sweeping shift from a punitive to a rehabilitative approach to youth crime.

E. Popular Support: Proposition 57

Consistent with the judicial, legislative, and executive expression of the State's evolving standards of decency, California's voters definitively demonstrated popular support for youth justice reform in 2016 when they passed Proposition 57, the Public Safety and Rehabilitation Act, in a direct voter initiative. More so than legislative measures, California's proposition system provides direct insight into voters' views. When passing propositions, California voters act as their own legislators.

The passage of Proposition 57 represented a marked shift in voter preferences. In 2000, voters passed Proposition 21, which increased punishments for various crimes and required youth 14 and older who were charged with murder and certain sex offenses to be tried as adults. Proposition 21 gave prosecutors the power to "direct file" juvenile cases in adult criminal court. It also eliminated informal probation for juveniles who committed felonies and decreased their confidentiality protections. Sixteen years later, the voters demanded reform. In passing Proposition 57, California voters endorsed and expanded the State's extraordinary shift toward a more rehabilitative approach to youth crime.

Proposition 57 eliminated the "direct file" option created by Proposition 21, removing power from prosecutors who previously could

unilaterally decide to prosecute youth in adult court. "Youths accused of committing certain severe crimes would no longer automatically be tried in adult court and no youth could be tried in adult court based only on the decision of a prosecutor . . . . . As a result of these provisions, there would be fewer youths tried in adult court." Proposition 57 Ballot at page 56. Proposition 57 requires prosecutors to file a motion for transfer, shifts the burden to prosecutors to prove that a juvenile should be tried in adult court, and replaces "fitness" hearings with transfer hearings in which judges evaluate factors that consider juveniles' wellbeing. The proposition expressly stated its purpose: "In enacting this act, it is the purpose and intent of the people of the State of California to . . . [s]top the revolving door of crime by emphasizing rehabilitation, especially for juveniles. . . ." The Public Safety and Rehabilitation Act of 2016, Section 2. Californians passed this measure by a resounding majority, with the proposition garnering approval of 64.46% of the voters.

By passing Proposition 57, voters ratified the courts' and the Legislature's sense of the community's shifting views on the proper treatment of youth. Proposition 57 reflected a public will to keep youth out of adult prisons and to reduce the extended sentences they would face there. In large part due to Proposition 57, by October 3, 2019, the San Francisco Chronicle declared, "Now, California's mass transfer of youth to adult courts — where they faced the prospect of longer sentences and less

rehabilitation — has been all but abandoned by voters and lawmakers." Evan Sernoffksy & Joaquin Palomino, *Vanishing Violence: Locked Up, Left Behind*, SAN FRANCISCO CHRONICLE, Oct. 3, 2019, https://www.sfchronicle.com/bayarea/article/California-once-sent-thousands-of-juveniles-to-14480958.php. Proposition 57 embodies California voters' will, in alignment with their Legislature and Governor, to rehabilitate youth, cut back on youth incarceration, and keep youth out of adult prisons.

III. The Seismic Policy Shift in California Is Not Theoretical: Data Demonstrate That, If Sentenced Today, Mr. Palmer Likely Would Have Remained in Juvenile Court and Served a Sentence Less Than a Third of the Time He Has Already Spent Behind Bars

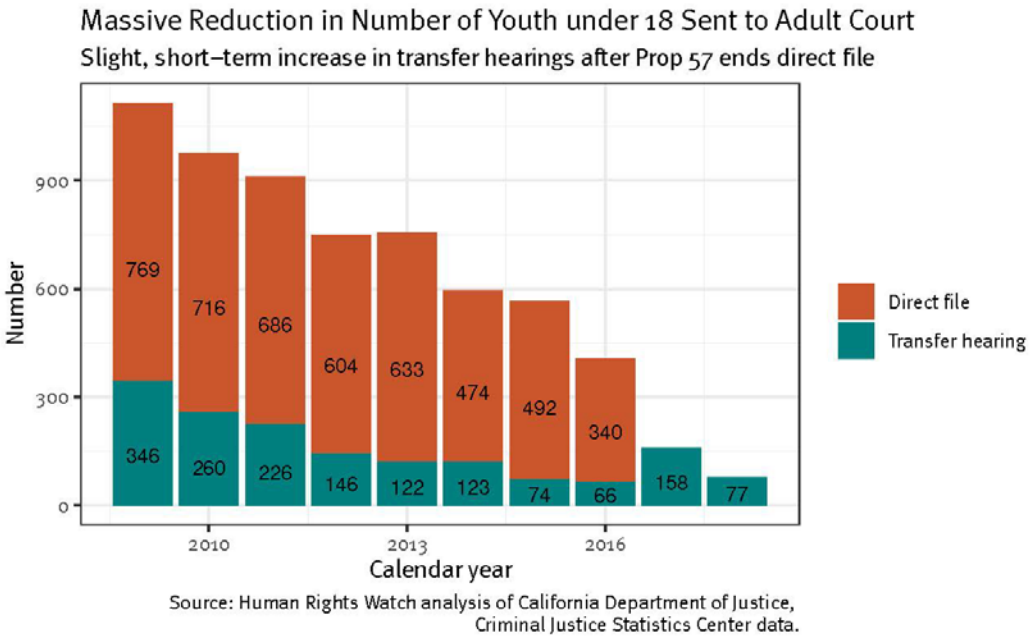
Human Rights Watch analyzed data from the California Department of Justice and found that sentencing practices within California have shifted as a result of judicial and legislative change: California prosecutes youth as adults less often, and when it does, the sentences are not as harsh.[23]

In 2016, Proposition 57 eliminated two of the three ways youth cases could be prosecuted in adult criminal court: prosecutorial discretion to directly file and mandated charging, leaving judicial transfer as the sole method of trying youth as adults. This could have resulted in a sharp

[23] HRW analysis of California Department of Justice Criminal Justice Statistics Center data. Data and analytical code available upon request to Human Rights Watch.

increase in the number of judicial transfer cases. Instead, there was only a slight increase in the number of judicial transfers in 2017. And, significantly, while the number of judicial transfers increased slightly, the overall number of youth transferred to adult court was more than 60 percent lower than the previous year. Then, the following year, 2018, transfers were back down to 2015 levels, suggesting that the ending of direct file and mandated charging has not resulted in a long-term substitution of transfer hearings in their place.[24] These trends are illustrated in Chart 1, below.

Chart 1

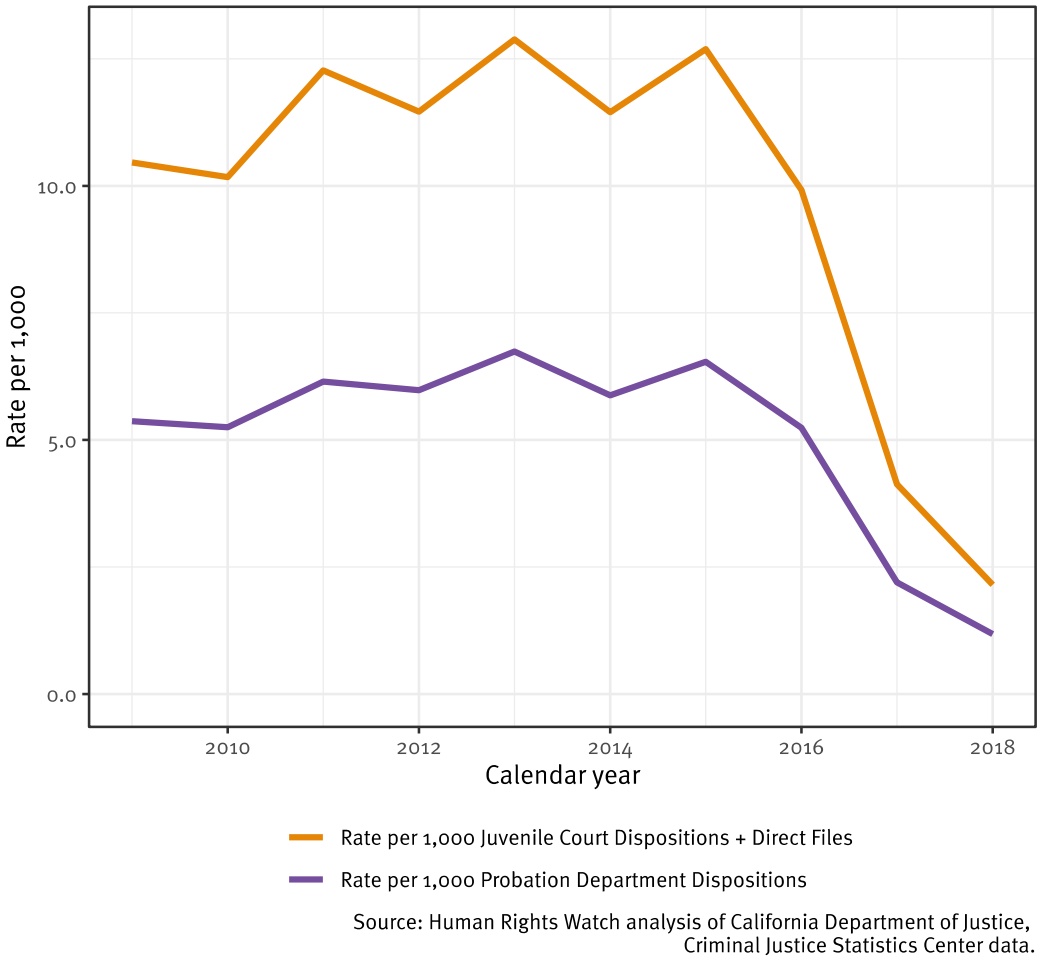


[24] In 2016, there were 66 cases transferred by judges (then called a "fitness" hearing) and 340 direct file cases, with a total of 406 juvenile cases transferred to adult court. In 2017, the first full year direct file was prohibited, the number of cases transferred to adult court via judicial hearing increased by 92 cases to a total of 158 for that year. HRW analysis of California Department of Justice Criminal Justice Statistics Center data.

Arrests of youth have been steadily declining for years. Despite this, HRW's analysis of the California Department of Justice data shows that even while overall caseloads were decreasing, the combined rate of judicial, mandated, and direct-file transfers of youth to adult court stayed relatively steady until Proposition 57—as illustrated in Chart 2, below.

Chart 2

Rate of Transfer to Adult Court was Steady Until Proposition 57



Source: Human Rights Watch analysis of California Department of Justice, Criminal Justice Statistics Center data.

In 2013, there were nearly 13 youth sent to adult court for every 1,000 juvenile court dispositions.[25] After Proposition 57 took away prosecutors' discretion to file youth cases directly in adult court in 2018, that rate dropped over 83 percent to 2 per 1,000 dispositions.[26] The passage of Proposition 57 ensured that the transfer rate better reflected the broader shift in social attitudes toward a more rehabilitative approach to youth sentencing.

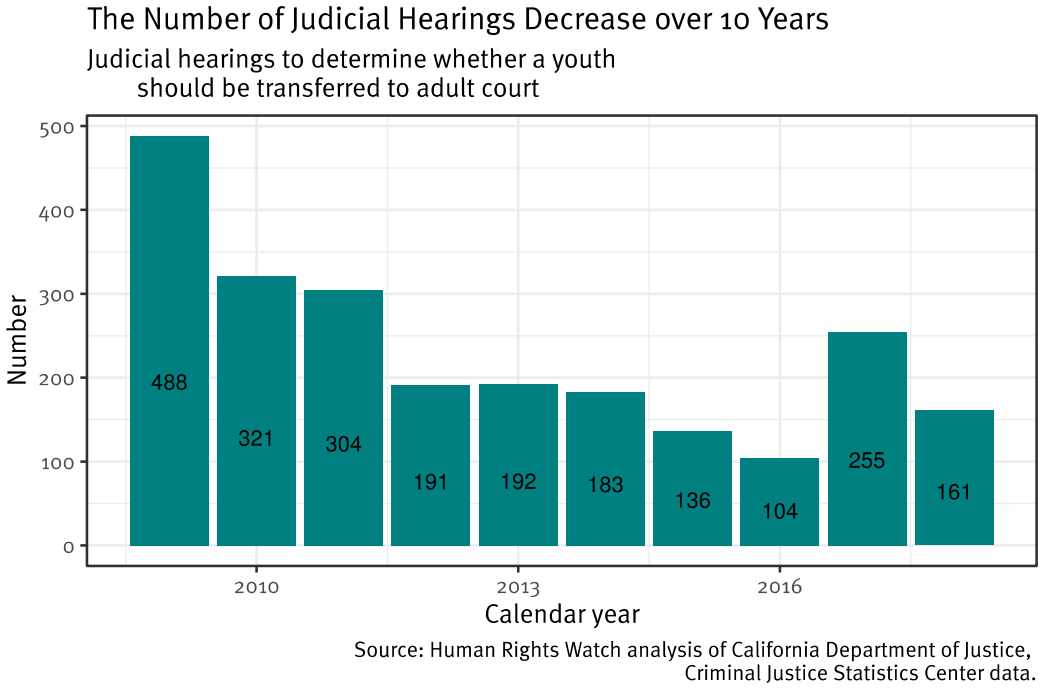
As outlined in Chart 3, below, the use of judicial hearings to determine whether a youth should be transferred to adult court has also decreased drastically over the past 10 years from 488 hearings in 2009 to 161 in 2018. There was a slight uptick in the number of hearings immediately after direct file ended, but the gap between the numbers that were previously direct filed and the slight increase in hearings since then indicate that, despite having wide discretion to do so, prosecutors are choosing not to file motions for transfer hearings in many cases. Their

[25] Denominator includes juvenile court dispositions plus direct files to adult court.

[26] In order to control for overall decreases in the number of arrests, referrals, and dispositions, HRW analyzed data in two ways. First, HRW examined the rate of transfer to adult court per 1,000 probation dispositions. Second, HRW analyzed the rate of transfer per 1,000 cases either adjudicated in juvenile court or filed directly in adult criminal court. This second method excludes the impact of diversions, informal probation, transfers to immigration or traffic court, and other closures at intake, so it includes only those cases being moved along through the court system.

decisions to seek transfer of fewer cases is another indicator of changing societal norms.

Chart 3



Source: Human Rights Watch analysis of California Department of Justice, Criminal Justice Statistics Center data.

Anecdotal reports from practitioners support this conclusion. In a recent case in Alameda County, for example, the District Attorney declined even to file a motion for transfer where a 17-and-a-half-year-old was accused of two carjackings involving multiple victims, one of whom was stabbed with a knife, culminating in a police chase that ended with a car crashing into a house. Ultimately, the 17-year-old's juvenile court disposition included a month in juvenile hall and eight months in a county camp, where he worked toward high school graduation and earned a union card in construction. He went home on the weekends, paid off his

restitution, and after being released, returned to camp to finish the union card classes. He will soon be eligible to have his wardship terminated and his record sealed.[27] In a Los Angeles case, a 17-year-old who had aimed a gun and emptied an entire clip of ammunition at another person faced charges of attempted murder with two gun enhancements. The District Attorney agreed to withdraw a motion for transfer and dismiss the enhancements in exchange for admitting the offenses alleged in the petition, and a disposition of commitment to DJJ.[28] In Riverside County, a 17-year-old who was alleged to have committed attempted murder was adjudicated in juvenile court. He was committed to a county juvenile facility for nine months, where he had the opportunity to make substantial progress towards his high school diploma, participate in therapy, volunteer for community organizations, and learn skills preparing him for the workforce. [29] All of these cases involve more serious crimes than Mr. Palmer's.

HRW also examined changes in the rate that transfer hearings result in youth being sent to adult court. In 2010, out of 321 hearings, 81 percent

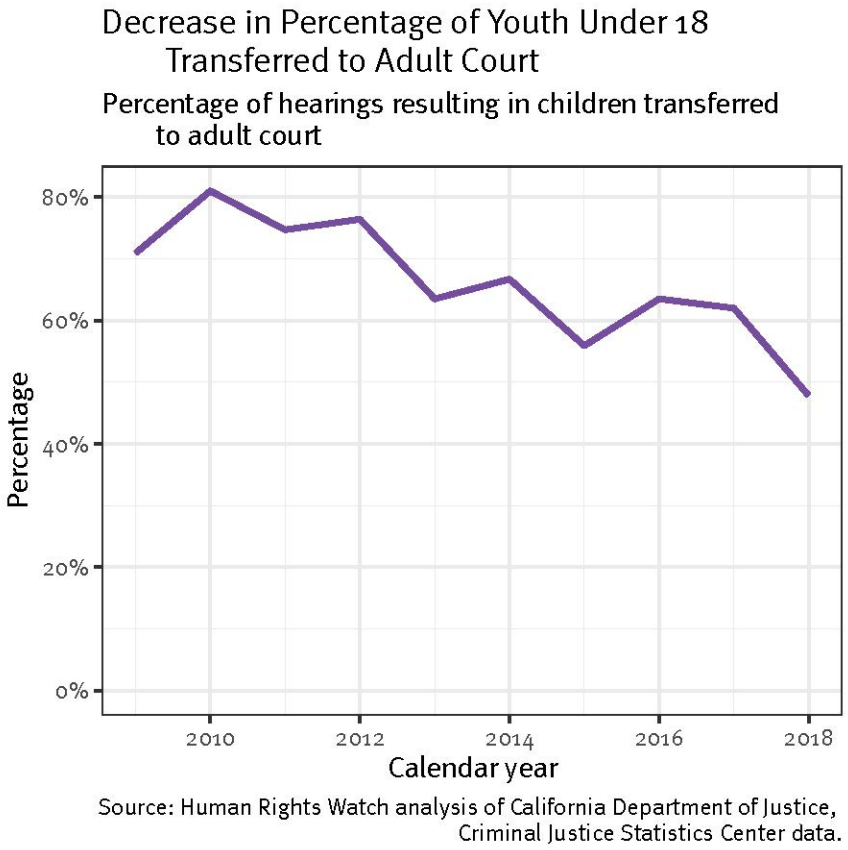
[27] Human Rights Watch Telephone Interview with Laurel Arroyo (March 19, 2020).

[28] Human Rights Watch Telephone Interview with Rachel Steinback (March 20, 2020).

[29] Human Rights Watch Telephone Interview with Joelle Moore (March 20, 2020).

of youth were found "unfit" for juvenile court. By 2018, less than 48 percent of the 161 youth in hearings were transferred to adult court. The data showing this sharp decrease in the percentage of youth transferred to adult court are illustrated in Chart 4, below.

Chart 4



This decline in youth transfers suggests a change in judicial discretion and attitudes—a change borne out by anecdotal reports from the field. In Kern County, practitioners report that judges are less likely to send youth to adult courts than in the past, even in cases much more serious than Mr. Palmer's. For example, two years ago a judge denied a motion to

transfer a 16-year-old youth charged with murder in the first degree with special circumstances. Instead, the judge committed the youth to DJJ. At DJJ, he will have counseling for childhood trauma, whereas a prison term—conceivably life without the possibility of parole—would have likely resulted in further victimization. In another Kern County case, a youth one week shy of his 17th birthday was accused of carjacking with both gang and gun enhancements, and additionally accused of robbery in a separate incident. Despite the youth's significant prior criminal history, and two prior commitments to locked facilities, the judge denied the transfer motion. The case is pending disposition, but it is likely the youth will be committed to DJJ and eligible for release in 18 months.[30] Comparatively, these reports suggest that Mr. Palmer likely would not have been transferred to adult court if he had committed his crime in 2020.

Although the data HRW relied on for this analysis do not exist for 1989, Mr. Palmer's fitness hearing was held in the context of the "superpredator" era, when public attitudes and existing law favored prosecution of youth as adults for violent crimes. The data analyzed above, along with scholarly writing on this subject, and reports from practitioners in the field, all suggest that Mr. Palmer likely would have had a much better

[30] Human Rights Watch Telephone Interview with Robin Walters (March 20, 2020).

chance of being tried in juvenile court if he had been sentenced today. *See, e.g.*, Krisberg, et al., *A New Era in California Juvenile Justice*, at 1 (Oct. 2010) (discussing the steady decline in the number of incarcerated youth—from over 10,000 in 1996 to 1,499 in 2009).

HRW also examined the rate of potential transfer to the adult system for two specific offenses: homicide and kidnapping.[31] For both charges, the rate of potential transfer to adult courts has dropped precipitously. In 2013, 65 percent of homicide cases either were filed directly in adult criminal court or included a fitness hearing. In 2018, only 16 percent of youth accused of homicide faced transfer through a judicial hearing. For kidnapping cases, 26 percent faced transfer to adult court in 2013 while only 4 percent did in 2018. Youth accused of kidnapping are now far less likely to be tried as adults than they were in the past. In fact, even youth accused of the more serious crime of murder are far less likely to be tried as adults. Changing societal norms are reflected in these decisions not to transfer youth to criminal court, even for crimes more serious than Mr. Palmer's conviction.

[31] HRW uses "potential transfer" because data are available only on whether fitness hearings for these offenses occurred and not whether the youth were found unfit or fit. The rates are the number of cases filed directly in adult court plus the number of cases that included a fitness hearing, divided by the number of juvenile court petitions plus direct files.

These data demonstrate that today, Mr. Palmer would have likely remained in juvenile court and served a sentence less than a third of the time he has already spent behind bars. Mr. Palmer's effective sentence of thirty years is plainly and grossly excessive for an offense he committed as a juvenile.

CONCLUSION

From federal and state case law, state legislative and gubernatorial actions, direct voter engagement, to actual sentencing practices, the direction of change is clear: California's standards of decency regarding youth offenders have evolved to condemn lengthy sentences like Mr. Palmer's. Under current law, Mr. Palmer would have likely remained in juvenile court—and thus, in even the most extreme case, he would have been released by the time he turned 25. Instead, Mr. Palmer was held for three decades in adult prison and released only following the intervention of the California Court of Appeal. The thirty years Mr. Palmer spent in prison—and his ongoing parole—represent a grossly disproportionate sentence for a youthful crime in which only he was injured. Amici urge the Court to uphold the Court of Appeal's decision to release Mr. Palmer from parole.

Respectfully submitted,

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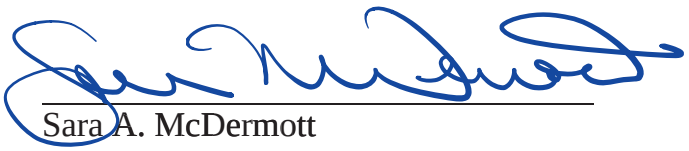
March 23, 2020

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared in compliance with Rule 8.204 of the California Rules of Court. The brief was prepared with 13 point font or more. The brief, excluding the cover, the required tables, the signature block, and this certificate, is 9,412 words long, which is less than the total number of words permitted by the Rules of Court. In making this representation, Counsel relies on the word count of the Microsoft Word word-processing program used to prepare this brief.

Dated: March 23, 2020



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Abraham Filoteo

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First District Appellate Project 475 Fourteenth Street, Suite 650 Oakland, CA 94612	Via U.S. Mail
Office of the Clerk California Supreme Court 350 McAllister Street, Room 1295 San Francisco, CA 94102-3600	Not required until further notice from the court.

No. S256149

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

IN RE WILLIAM M. PALMER, ON HABEAS CORPUS

On Review From The Court Of Appeal For the First Appellate District
Division Two, 1st Civil No. A154269

AMENDED PROOF OF SERVICE RE BRIEF OF AMICI CURIAE HUMAN RIGHTS WATCH AND THE PACIFIC JUVENILE DEFENDER CENTER IN SUPPORT OF PETITIONER

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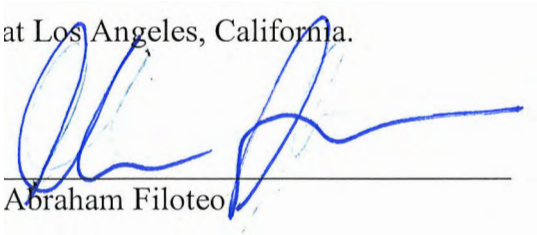

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Richard Sachs Deputy District Attorney San Diego County District Attorney's Office P. O. Box 121011 San Diego, CA 92112-1011	March 24, 2020 Via U.S. Mail Application and Amicus Brief Amended Proof of Service
The Honorable J. Anthony Kline Presiding Justice Court of Appeal of the State of California First Appellate District, Division Two 350 McAllister Street San Francisco, CA 94102-3600	March 24, 2020 Via U.S. Mail Application and Amicus Brief Amended Proof of Service
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STATE OF CALIFORNIA
Supreme Court of California

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/s/Sara McDermott
Signature

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