

To: The Honorable Chadwick Johnson
From: Julie E. McConnell Director, Children's Defense Clinic,

Date:

Re: Parole Hearing

Memorandum in Support of Parole Release

I. Introduction

John Doe is forty-one years old and has been serving a life-sentence in prison for the past twenty-five years. John was introduced to drugs and alcohol as a young teenager, which led to consistent misguided behavior. Mr. Doe was only 16 years old when he shot and killed a store clerk during a robbery. He turned himself in for the crime and was sentenced to life in prison without parole plus 56 years.

John had no chance of ever being released from prison until recent changes in the law. Although he might easily have resigned himself to a "life in prison" attitude, he worked to better himself despite knowing he could not be released. John's record throughout his incarceration speaks volumes of his own efforts at rehabilitation and the character development he fostered through his shift from adolescence into adulthood. His personal, academic, and spiritual achievements evidence this development and John's intent to continue to progress.

John has only had six infractions in his entire 25 years of incarceration. Four of the six infractions occurred between 2000 and 2003, which John was still finding his footing in the prison system. After over a decade without incident, John received a minor infraction in 2016 which is his last standing infraction. John received an infraction in 2020 but it was quickly dismissed after appeal.

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John committed a very serious crime for which he will always feel great remorse. One of the ways of which he has tried to redeem himself is to be a positive member of the prison community through his work and participation. John has displayed exemplary work ethic and has been

Should this Board decide to allow John's release from prison, he will have the support of many friends and family. John's parents have demonstrated their support for him throughout his incarceration, and they have voiced their intent to continue such support in every way possible upon his release. They have visited him every weekend since his incarceration, excluding when COVID-19 rules prohibited in-person visitation. Upon release, John plans to live with his mother in Chester, Virginia, or alternatively, to enter into an independent living program. His father has also offered to support John financially and can provide a vehicle for John once he receives his driver's license. John plans to utilize all the resources he has available to continue to further his education and begin a stable career.

II. Background

John is the youngest of four XXX. John's parents got divorced when he was only 10 years old, and John went from living with his family in a stable home to jumping back and forth between separate houses and locations. He acted out, obtaining several charges between 1993 and 1997 and was truant from school. John's unstable homelife, moving from town to town, led him to turn to drug and alcohol abuse as a means to cope with the chaos.

On March 6, 1997, at the age of 16, John robbed a convenience store to pay a drug debt. John fired one shot, killing the store's owner. After the crime occurred, he was picked up by the police and then released due to a lack of evidence. A few months later, in January 1998, John returned of his own volition and confessed to the crime because of his guilty conscience. He acknowledges that prison was the just consequence for his crime, and he chooses to view it as an opportunity to reconcile his unconscionable conduct and work to turn his life around for the better.

Before trial, John was certified as an adult and moved to Brunswick jail in general population. John took ownership of his crime and showed remorse during his testimony at trial. The trial lasted four days, and the jury found him guilty of capital murder, robbery, use of a firearm in a murder, and use of a firearm in a robbery. The verdict was based almost entirely upon his guilty confession, and he received a life sentence plus 56 years.

At the time, the court could not consider any mitigating factors during sentencing and was forced to order no less than life without parole. It was not until 2017 in *Jones v. Commonwealth*, 795 S.E.2d 705,

721 (2017), that Virginia Courts determined that Virginia’s capital murder sentencing scheme does not mandate life without parole for juvenile homicide offenders. However, at the time of John's sentencing, the judge was under the impression that life without parole, or the death penalty, were his only two options for John. The sentencing judge acknowledged John's significant remorse at the time but stated that he could not lower the sentence. Additionally, the judge noted that John “had a conscience, and it came to bear.” Because of this remorse, the judge sentenced John to life in prison without parole rather than giving him the death penalty, which was later found to be unconstitutional in *Roper v. Simmons*, 543 U.S. 551, 575 (2005).

III. John's Age and Experience at the Time of the Offense Makes Him Developmentally and Constitutionally Different Than an Adult Charged with the Same Crime

Over the past two decades, the U.S. Supreme Court has clarified that crimes committed by juveniles should not result in the death penalty or, absent exceptional circumstances, life without the possibility of parole. When John was sentenced, the country believed in the “super predator” theory, created by Princeton University Professor and political scientist John DiIulio. DiIulio claimed that the country was facing a wave of “super predators,” which he defined as young juvenile criminals who could kill or maim on impulse, without intelligent motive. John J. DiIulio, Jr., *The Coming of the Super-Predators*, *Wkly. Standard*, Nov. 27, 1995, at 23. Though the “super predator” theory has been discredited as a myth, the term was tragically successful in establishing harsher juvenile laws and producing unintended consequences for youth all over the country. Virginia, for example, created an overly inclusive case transfer system that provided unfettered authority for courts to adjudicate juveniles as adults in circuit court where punishments are far harsher than in juvenile court.

It wasn’t until decades after the creation of the term “super predator” that the Supreme Court instituted notable changes in the treatment of juvenile offenders. The Court’s decisions in *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577 U.S. 190 (2016) identify key differences between juveniles and adults: (1) juveniles lack maturity and sufficient responsibility, which leads to recklessness and risk-taking; (2) juveniles are more vulnerable to negative influences and outside pressures from family and peers, and have less control over their environments than adults; and (3) a juvenile’s character is not fully formed, so illegal actions are less likely to be evidence of permanent character issues or tendencies. Considered together, these mitigating factors are critical to consider in sentencing and parole determinations for juvenile offenders.

In *Miller*, the Court held that mandatory life without parole for juveniles violates the Eighth Amendment's prohibition on "cruel and unusual" punishment. *Miller*, 567 U.S. at 465 (2012). The Court recognized that adolescent brains are not fully developed in several key areas, leading to poor impulse control, diminished ability to plan, and decreased risk-avoidant behavior. This underdevelopment highlights two important distinctions between juveniles and adults: juveniles are less culpable for their actions, and they have tremendous potential for rehabilitation. John's story illustrates both points.

John was just sixteen years old - in the height of his adolescence - at the time of his offense, reducing his culpability as compared to an adult. *Miller* asserts that John's brain would likely not have been fully developed enough to allow him to make responsible, future-oriented decisions at that time. *Id* at 472. This adolescent underdevelopment explains how John could take such radical actions without thinking through the implications of those actions. John planned to rob the convenience store, exhibiting high-risk behavior, then he panicked during the robbery and shot the clerk, exhibiting poor impulse control. This is a prime example of *Miller's* distinction between adults and juveniles, and how John's youth likely contributed to his rash behavior. Had John's case been tried today, his sentencing would have gone very differently.

John is also a prime example of how juveniles have tremendous potential for rehabilitation. When John entered the prison system, he knew that he would not have the opportunity to be released. Despite this knowledge, he set out daily to better himself, and, with time and maturity, he was able to do so.

"Step by step it became clear that I had to better myself in any and all ways possible, to not only change the direction of my life, but to attempt to make amends for what I had done."

-John Doe

Twenty-five years after committing this crime at seventeen years old, John is now a rehabilitated adult who exemplifies the rationale of the court's reasoning in *Miller*. Unfortunately, *Miller* was decided in 2012, 13 years after John was sentenced. The protections and considerations that would have been afforded to him had he committed his crime post-*Miller* had not yet been conceived. However, the same lack of brain development that the Court used to decide *Miller* in 2012 existed when John committed his crime in XXXX, therefore it is important to utilize these factors in analyzing John's case. John entered the prison system as a reckless child, but he has transformed himself into a reformed and responsible man.

In 2020, Virginia formally revised its sentencing policies to reflect the Supreme Court’s decisions in *Roper*, *Graham*, and *Miller*. Through Senate Bill 103 and House Bill 35, signed into law in February 2020, the General Assembly recognized sentencing policies in legislation. Moreover, juveniles are particularly well-suited for rehabilitation. Mr. Doe has demonstrated that juveniles are meaningfully different from adult offenders for the purposes of sentencing and parole eligibility throughout his decades in prison as he has pursued self-improvement, education, and therapy.

IV. John Has Demonstrated Remorse for his Offense and Has Successfully Been Rehabilitated

“There was no way I could go on living with the weight of the guilt I was carrying, so I turned myself in. When I turned myself in, I wrote a confession that I knew would send me to prison.”

-John Doe

Through Senate Bill 103 and House Bill 35, the General Assembly distinguished juvenile offenders for parole eligibility, even if it was not contemplated in their original sentence. The law specifically proposes parole consideration for those individuals who have “demonstrated maturity and rehabilitation.” Va. Code § 53.1-136.2(a). Delegate Joseph Lindsey described the change in law to “give an opportunity for youths who have committed serious crimes and repented, a future opportunity for social redemption.”

John has gone before the board twice previously, the first review was in June 2021 and the second was in May of 2022. Both denials focused on more time needing to be done, noting specifically: (1) the serious nature and circumstances of his original offense, (2) the desire to have him serve more of his sentence prior to release on parole, and (3) crimes committed. However, as instructed by the General Assembly in 2020, it is important to distinguish juvenile offenders from their adult counterparts in reference to culpability and rehabilitative propensity. The reasoning provided by the previous Board did not include anything that John could change and seemed to overlook the factors explicitly contemplated by the General Assembly. Nonetheless, John has continued in his efforts to demonstrate maturity and reformation.

At John's sentencing hearing in 1999, the judge expressed how he would likely have diverted from the extensive sentence that John received had he been able to. At that time, the sentencing court was not permitted to consider any mitigating factors and had no discretion to sentence to anything less

than life without parole for John's offense. Even so, John's demonstrative and expressed remorse struck the court.

In prison, John participated in the victim impact program, and he describes the experience as expounding his vision and understanding of how many people his crime truly affected. Not only does John speak highly of how this program impacted his understanding of his offense, but he was so impressed by the program he helped facilitate another victim impact program for a re-entry counselor in 2019. John is not simply interested in demonstrating his deep remorse to others; his efforts to understand the impact his offense made on others' lives shows he is engaged in the interests of those outside himself.

Because of John's appreciation for the impact of his past actions on others, he has expressed a desire to help troubled youth avoid making similar mistakes today. In recent years, he contacted the investigator to whom he confessed his crimes and suggested initiating a mentoring program between incarcerated adults and youth involved with the XXXX's Police Department. John recognizes that he was a self-destructive teenager who caused great harm through a reckless decisions and wants to help others avoid similar mistakes.

“I am now a man who seeks to live his life righteously under the eye of the Lord, someone who has reconstructed himself and built in the tools and principles to go forth and add back to the world I so ignorantly took so much from.”

-John Doe

When John was a teenager, he sought out negative relationships to cope with the struggles of his home life. He adopted a sense of criminogenic thinking that led him to destruction. In prison, John made and continues to make extraordinary efforts to establish positive relationships with his peers, mentors, and superiors. Over the last two years, many of John's friends have been transferred to other facilities or units, creating a situation of isolation not unlike his parents' divorce created. But his reaction to the change in circumstances has been very different. John now consciously rejects criminogenic thought and behavior. He is able to adapt to sudden changes, further proving the successful growth and rehabilitation that has taken place over the last twenty-five years.

V. Infraction History

Throughout his 25 years in prison, John has only had six infractions - all minor with no need for punitive segregation. In 2000, when John was first incarcerated, he obtained a charge for not standing for count and was given a verbal reprimand. While at Wallens Ridge in 2001, John received two separate contraband charges, one for having an extra Walkman and the other for having a bag of oranges.

Half of John's six infractions occurred in the first two years of imprisonment, when he was still in the throes of adolescent brain development. Such infractions are much more common for younger inmates, who statistically commit more rule violations than older inmates, as the trauma of incarceration is experienced more acutely by juvenile prisoners. *See Ashley Nellis, The Lives of Juvenile Lifers: Findings from a National Survey*, THE SENTENCING PROJECT (2012) <https://juvenilesentencingproject.org/sentencing-project-the-lives-of-juvenile-lifers/>.

In his time at Sussex I, John obtained his fourth infraction for not returning to his cell quickly enough after recreation was over. He was not provided a hearing for this charge but was ultimately found guilty. At XXX, where John has been for the past 16 years, he obtained his final two infractions, both of which were appealed. First, in 2016, he was charged with aiding and abetting another to commit possession of an intoxicants, which John appealed but he lost on appeal. As a result of this infraction, John lost his yard-worker job. Then in 2020, John obtained an infraction for allegedly breaking and opening a cell door, though it was shown on appeal that the door was broken through no fault of Stephen's. The charge was dismissed, but the incident report is still in his record.

As demonstrated, John has never received a charge for any aggressive or confrontational behavior in his 25 years of prison. Further, the majority of his infractions occurred over 15 years ago and all were low-level, especially in relation to the nature of the offense for which he was convicted. Additionally, his last infraction was dismissed after appeal, making the seven-year-old 2016 infraction as the last standing infraction on his record. And even despite these mistakes, John has shown extensive rehabilitation and perseverance in overcoming the obstacles he faces in prison.

VI. Education and Employment History

John has made tremendous educational and employment strides since his initial incarceration in 1999. When he entered prison, John was a high school dropout and did not value education as a priority. But on October 31, 2001, just two years into his sentence, John earned his GED.

From 2007 to 2009, John participated in the Correspondence Program offered by Ohio University. He was able to earn 17 credits before Virginia discontinued the Pell Grant System. During this time, he took Math, English, Psychology and Philosophy courses. Unfortunately, when the grant was discontinued, John could no longer afford to continue the program; however, in 2009, he was able to complete a course in Communication Arts and Design. He was later asked to serve as a teacher's aide for this course by the instructor, and he served in this position for five years. He enjoyed being a teacher's aide because it allowed him to serve as a resource for other prisoners seeking to improve themselves.

John did show a strong work ethic even prior to his arrest. During the summer of 1996, when he was still a teenager, John was a dishwasher and cleaner at XXX's. John also worked at XXX's Sub Shop and XXX Construction in Ashland, VA. His latter job entailed putting in manholes and pulling cables into buildings.

John has also held several other positions during his incarceration. Not only does John have an extensive work history while in prison, but he has continued to demonstrate stability in his work ethic, holding several jobs for a long duration. In his time at Wallen Ridge, John was a pod book handler and cart pusher. At Sussex I State Prison, John held a yard work job for three years, and completed painting and drywall jobs on occasion.

Over the past 16 years at Sussex II State Prison, John has held several different positions that require different skill sets. He cleaned hallways, bathrooms, and buffed floors; worked in the kitchen; worked in the yard crew; and most recently was a houseman. John held positions that required special training, like working in the Enterprise section and being a lift operator, both of which required him to acquire the forklift safety training certificate.

John has demonstrated a constant desire to work while in prison and has gained invaluable skills and experience through his various positions. John plans to continue his work upon release and attend ECPI University to obtain a degree in mechatronics.

VII. Program Completion

John has completed numerous programs in prison, evidencing his dedication to bettering himself. The Court ordered John to complete the Substance Abuse Program as a part of his sentence. Not only did he complete that program, but he has continued to voluntarily receive treatment throughout the past 25 years and plans to continue this treatment upon release.

Early in his incarceration, John completed GED prep classes and obtained his GED. In 2001, he also completed the Custodial Maintenance Vocation Class. In 2008, he completed Anger Management

and later participated in a meditation group, which he found extremely transformative to his mental health. John has also taken behavioral classes like cognitive restructuring, positive psychology and problem solving. He became significantly involved in the communication arts and design class in 2012, and he subsequently earned a certificate of appreciation for work done on a logo design for a re-entry program.

In 2019, John was eligible for transfer to a lower-level security prison, but turned it down. One reason John decided not to transfer was because he was accepted into the prison fellowship program, which was a year-long commitment, and he did not want to break his commitment. This program integrates re-entry workbooks that have allowed John to focus on the step-by-step process he will need to follow when he re-enters society. Despite a pause on the program due to COVID, John was still able to explore resources through the fellowship.

COVID shut down many programs at the prison, but John took the initiative to reach out to the American Community Corrections Institute (ACCI) to complete many of the therapeutic programs they offer. Through ACCI, John completed the Offender Corrections; Substance Abuse; and Offender Responsibility programs. John's actions further illustrate the initiative he takes to improve himself, despite not being required or even encouraged to do so. John takes rehabilitation very seriously and is always looking for ways to participate in character-building programs.

VIII. Support System and Home Plan

John has a substantial support system waiting for him upon his release. He is planning to live with his mother and stepfather, XXX, in their four-bedroom, 2-bathroom house in XXX, Virginia. The house is centrally located to businesses for employment opportunities, and John would have a bedroom to himself. XXX have committed to helping support John with basic needs upon his release, including food, clothes, and a phone. John's mother has already opened a bank account for him, and his father has expressed his intent to contribute financial support until John finds a job. Additionally, his father will provide a vehicle once John earns his driver's license. Family has always been important to John, and he has demonstrated strong family relationships, especially with his mother, for whom he turned down a lower-level security transfer to remain close to her.

John's parents are not in good health, which is part of the reason John desires an early release. His father was recently diagnosed with stage 4 Alzheimer's Disease and has willed his entire estate to John upon his death. John's mother had a stroke in XXXX and receives daily care. Witnessing his mother's health struggles further elucidated to John the hurt and pain he caused the XXX family.

Beyond John's immediate family, his aunts, uncles, cousins, brothers, and friends have all supported him over the years and will continue to support him upon his release. John plans to volunteer with the Virginia Coalition for the Fair Sentencing of Youth to promote awareness and help other juveniles in his free time. John already has one internship interview from Rise for Youth, an organization that will allow him to advocate for juveniles and share his story to mentor youth. John has also been invited to the Incarcerated Children's Advocacy Network, which would serve as a support system for juveniles who were sentenced to life but were ultimately granted parole. Upon his release, John hopes to participate in a number of programs to give back to his community.

John plans to engage immediately in continuing the treatment and counseling that he has received in prison. He has already contacted XXX County Mental Health Support Services to plan to begin counseling immediately upon release. He also plans to attend XXX Church and engage with the Recovery Program there. Further, John plans to be involved with Opportunities, Alternatives and Resources (OAR).

John aspires to receive his degree in XXXX from ECPI using a grant for post-release offenders. ECPI's mechatronics department includes an apprenticeship program that provides a job once John graduates. John is positive that his friends and family will continue to provide emotional support, as they have demonstrated since 1999, in helping him thrive in a stable, safe environment.

IX. Conclusion

Over two decades ago, at the age of sixteen, John made a tragic, impulsive decision that changed his life and the lives of many in his community. To this day, John deeply regrets the rash decision he made that day in XXX's Convenience Store, and he expresses his shame and remorse for causing so much pain to his victim, his victim's family, his own family, and his community. John quickly realized that he had to take full responsibility for his actions in the interest of justice and to begin his own rehabilitation.

"I know that if given a second chance outside these walls, I will make it one to be proud of"
-John Doe

Now, after over two decades in prison, this Board has an opportunity to reconsider John's rehabilitation and release. The Court in *Miller* wrote that children are Constitutionally different from adults, and the Virginia General Assembly affirmed that principle in 2020. We respectfully ask this Board to consider John's diminished culpability as an adolescent offender, but more importantly his relentless pursuit of rehabilitation throughout his incarceration and offer him the meaningful opportunity for release envisioned in *Miller*.

Thank you for your consideration.