



# The Commonwealth of Massachusetts

## Committee for Public Counsel Services

Youth Advocacy Division  
1822 North Main Street, Suite 205  
Fall River, Massachusetts 02720

TEL: 508-484-5785  
FAX: 508-672-5603

**ANTHONY J. BENEDETTI**  
CHIEF COUNSEL

**JOSHUA DOHAN**  
DIRECTOR  
YOUTH ADVOCACY DIVISION

**AFTON M. TEMPLIN**  
DIRECTOR OF JUVENILE APPEALS  
YOUTH ADVOCACY DIVISION

March 4, 2019

Francis V. Kenneally, Clerk  
Supreme Judicial Court for the Commonwealth  
John Adams Courthouse  
One Pemberton Square  
Boston, MA 02108

RE: Submission of the Committee for Public Counsel Services and others<sup>1</sup>  
as amici curiae in support of the petitioner supporting reversal  
Commonwealth v. LaPlante, No. SJC-12570

Dear Mr. Kenneally:

In light of the “[t]he unpleasant realities of prison life,” Nick Straley, *Miller’s Promise: Re-Evaluating Extreme Criminal Sentences for Children*, 89 Wash. L. Rev. 963, 986 (2014), the life sentence with parole eligibility after 45 years imposed in this case is the functional equivalent of a sentence of life

---

<sup>1</sup> **Massachusetts Association of Criminal Defense Lawyers** (MACDL) is an incorporated association of more than 1,000 experienced trial and appellate lawyers who are members of the Massachusetts Bar and who devote a substantial part of their respective practices to criminal defense. MACDL is dedicated to protecting the rights of the citizens of the Commonwealth guaranteed by the Massachusetts Declaration of Rights and the United States Constitution. MACDL seeks to improve the criminal justice system by supporting policies and procedures to ensure fairness and justice in criminal matters. MACDL devotes much of its energy to identifying, and attempting to avoid or correct, problems in the criminal justice system. It files amicus curiae briefs in cases raising questions of importance to the administration of justice. The MACDL Board has determined that the Roberio matter is such a case. The **Juvenile Law Center** advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children’s unique developmental characteristics, and reflective of international human rights values. Juvenile Law Center has participated in appeals to this Court addressing the protections that must be afforded to youth in the juvenile justice system, including as amicus curiae in Commonwealth v. Brown, No. SJC-11454; Commonwealth v. Guthrie G., No. SJC-09805; Commonwealth v. Juvenile, No. SJC-12351 and Commonwealth v. Lugo, No. SJC-12546. Pursuant to Mass. R. A. P. 17(c), undersigned counsel certify that none of the amici have authored any part of the party brief, contributed any money to fund the party brief, represented any party in another proceeding involving similar issues or another proceeding at issue in the present appeal.

without the possibility of parole. See *id.* at n.142 (citing actuarial authorities). See also Commonwealth v. Costa, 472 Mass. 139, 146 n.3 (2015) (noting that United States Sentencing Commission equates 39-year sentence with life sentence). In the context of juvenile offenders, a de facto life sentence, like a sentence of life without parole, could comport with art. 26 of the Declaration of Rights only if it could reliably be said that the prospects for future rehabilitation were nil. But such predictions about juveniles “can never be made, with integrity. . . .” Diatchenko v. District Attorney for Suffolk Dist., 466 Mass. 655, 670 (2013) (Diatchenko I). To the contrary, it is the “central intuition” of Miller v. Alabama, 567 U.S. 460 (2012), “that children who commit even heinous crimes are capable of change.” Montgomery v. Louisiana, 136 S. Ct. 718, 736 (2016). That is why this Court abolished juvenile life without parole in Diatchenko I, and that is why it should now declare that no juvenile offender may be required to serve 45 years in prison before seeing a parole board.

Daniel LaPlante’s crimes were heinous. But the “brutality or cold-blooded nature of any particular crime” cannot “overpower” the right of all juvenile offenders to be free from disproportionate punishment. Roper v. Simmons, 543 U.S. 551, 573 (2005). The Committee for Public Counsel Services (CPCS) is aware of other juvenile offenders who (like LaPlante) are currently serving extreme sentences that afford no hope for release at a meaningful time in what remains of their lives but who (unlike LaPlante) have not sought sentencing relief since Miller was decided in 2012. Throwing away the key in this case likely consigns these juveniles to death in prison as well. And setting the constitutional bar at 45 years in this case will of course serve to justify the imposition of a de facto life sentence in the next “exceptional” case, thereby effectively overruling Diatchenko I.

“[B]asic to due process is the right to be heard *at a meaningful time* and in a meaningful manner.” Diatchenko v. District Attorney for Suffolk Dist., 471 Mass. 12, 20 (2015) (Diatchenko II) (emphasis supplied; internal citations omitted). Unless the meaningful opportunity for release required by art. 26, see *id.* at 24, is merely a chance to die on the street, no juvenile offender – no matter how awful the crime – may be required to beat the actuarial odds in order to reach parole eligibility. The briefs submitted by counsel for LaPlante explain in cogent detail why the de facto life sentence imposed in this case cannot be upheld without undoing this Court’s post-Miller jurisprudence. Amici endorse those arguments in full and urge the Court to grant LaPlante his requested relief.

Thank you for your consideration.

Respectfully submitted,

/s/ Benjamin H. Keehn  
Benjamin H. Keehn  
BBO 542006  
Appellate Counsel to the Trial Unit  
Public Counsel Division/CPCS  
298 Howard Street, Suite 300  
Framingham, MA 01702  
(508) 620-0350  
bkeehn@publiccounsel.net

/s/ Afton M. Templin  
Afton M. Templin  
BBO 634375  
Director of Juvenile Appeals  
Youth Advocacy Division/CPCS  
1822 No. Main Street, Suite 205  
Fall River, MA 02720  
(508) 484-5785  
atemplin@publiccounsel.net

cc: ADA Crystal Lee Lyons  
Merritt Schnipper, Esq.

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss**

**SUPREME JUDICIAL COURT  
DOCKET NO. SJC-12570**

**COMMONWEALTH,  
APPELLEE**

**v.**

**DANIEL LAPLANTE,  
APPELLANT**

**CERTIFICATE OF SERVICE**

I, Afton M. Templin, do hereby certify that I have served one copy of the MOTION OF AMICI CURIAE TO FILE AMICUS LETTER LATE and LETTER OF AMICI CURIAE CPCS, MACDL AND THE JUVENILE LAW CENTER on the parties by emailing a .pdf to the parties' attorneys on March 4, 2019, and by eservice via Odyssey:

Merritt Schnipper, Esq.  
Schnipper Hennessy PC  
25 Bank Row, Suite 2S  
Greenfield, MA 01301

ADA Crystal Lee Lyons  
Office of the Middlesex District Attorney  
15 Commonwealth Avenue  
Woburn, MA 01801

*/s/ Afton M. Templin*  
Afton M. Templin  
BBO 634375  
Director of Juvenile Appeals  
Youth Advocacy Division/CPCS  
1822 No. Main Street, Suite 205  
Fall River, MA 02720  
(508) 484-5785  
atemplin@publiccounsel.net

DATED: March 4, 2019