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**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
PORTAGE COUNTY, OHIO**

STATE OF OHIO, : Court of Appeals No. 2021 PA 0035  
 :  
 Plaintiff-Appellee, : On Appeal from the Court of  
 : Common Pleas, Portage County.  
 vs. :  
 : Trial Court Case No. 2016 CR 107E  
 DAMANTAE D. GRAHAM :  
 Defendant-Appellant :

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**BRIEF OF AMICUS CURIAE JUVENILE LAW CENTER  
IN SUPPORT OF DEFENDANT-APPELLANT D'AMANTAE D. GRAHAM**

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## STATEMENT OF INTEREST

**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.

## STATEMENT OF THE CASE

*Amicus* adopts the Statement of the Case as articulated in the brief of Appellant.

## STATEMENT OF FACTS

*Amicus* adopts the Statement of Facts as articulated in the brief of Appellant.

## ARGUMENT

Just one month after turning nineteen years old, D'Amantae Graham was convicted of an offense and sentenced to death. The Ohio Supreme Court reversed his death sentence citing mitigating factors such as his age, family background and negative influence, and his mental health and substance abuse issues. *State v. Graham*, Slip Opinion No. 2020-Ohio-6700, ¶ 193-202. The Court of Common Pleas resentenced him to life without parole (LWOP) to run consecutive to additional 61-year and 3-year sentences. (*See* T.d. 510).

In *Miller v. Alabama*, the United States Supreme Court held that children are less culpable than their adult counterparts because of their immaturity, impetuosity, susceptibility to peer influence, and greater capacity for change and that these "distinctive attributes of youth diminish

the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” *Miller v. Alabama*, 567 U.S. 460, 471-72, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). Any LWOP sentence imposed on a youthful offender that fails to consider whether the sentenced individual demonstrates “irreparable corruption,” “permanent incorrigibility,” or “irretrievable depravity,” and does not afford a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation” is unconstitutional. *Id.* at 471-73, 479-80; *see also Graham v. Florida*, 560 U.S. 48, 75, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). Further research now indicates that young people retain these characteristics beyond age 18. Because older adolescents between the ages 18 and 24, like Mr. Graham, often possess the same adolescent characteristics that the Supreme Court has determined reduce criminal culpability, mandatory LWOP sentences for this population are also disproportionate under both the Eighth Amendment and Article I, Section 9 of the Ohio Constitution.

## **FIRST ASSIGNMENT OF ERROR**

**The Court of Common Pleas unconstitutionally sentenced 19-year-old D’Amantae Graham to life without parole, (T.d. 510), without taking into consideration the diminished culpability of older adolescents. In fact, there is now a growing number of state and federal laws treating older adolescents like youth under 18.**

## **ISSUE PRESENTED FOR REVIEW AND ARGUMENT**

1. Did the Court of Common pleas err in sentencing D’Amantae Graham to life without parole where there were numerous mitigating factors such as his age, family background and negative influence, and his mental health and substance abuse issues that had already proved persuasive to the Ohio Supreme Court in overturning his death sentence?

The Ohio Constitution prohibits the infliction “cruel and unusual punishments.” Ohio Constitution, Article I, Section 9. “Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment.” *Montgomery v. Louisiana*, 577 U.S. 190, 206, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016). In the instant case, the lower court’s sentence of LWOP

to be served consecutively to 61-year and 3-year sentences, (T.d. 510), violates both the U.S. and Ohio Constitutions' prohibition against cruel and unusual punishments.

It is settled constitutional law that children are developmentally different from adults and that, under the Eighth Amendment, these differences require individualized consideration of their youthful characteristics prior to imposition of the law's harshest adult punishments. *See, e.g., Roper v. Simmons*, 543 U.S. 551, 578, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (banning the death penalty for individuals convicted of murder under the age of eighteen); *Graham v. Florida*, 560 U.S. at 82, 130 S.Ct. 2011, 176 L.Ed.2d 825 (banning LWOP sentences on juveniles convicted of non-homicide offenses); *Miller*, 567 U.S. at 465, 132 S.Ct. 2455, 183 L.Ed.2d 407 (banning mandatory LWOP sentences for juveniles convicted of homicide). The Supreme Court relied on three key developmental characteristics of youth in reaching its conclusions in the above-cited cases: (1) youth's lack of maturity, impulsivity and impetuosity; (2) youth's susceptibility to outside influences; and (3) youth's capacity for change. *See Montgomery*, 577 U.S. at 207, quoting *Miller*, 567 US at 471. Because of these developmental differences, youth are less culpable; their "conduct is not as morally reprehensible as that of an adult," *Roper*, 543 US at 570, quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988) (plurality opinion), making them "less deserving of the most severe punishments," *Miller*, 567 US at 471, quoting *Graham*, 560 US at 68.

Current research now shows that young adults over age 18 share these same physiological and psychological traits, making them less culpable and thus less deserving of the most serious punishments. Indeed, the Ohio Supreme Court noted that Mr. Graham had just turned 19-years-old when he committed this offense with three 17-year-old peers. *Graham*, Slip Opinion No. 2020-

Ohio-6700, ¶ 200. The Court cited the trial expert witness in this case, who opined that “Graham ‘didn’t demonstrate a maturity of an adult in any of the decisions that he made.’” *Id.*

**A. Research Now Shows Neurodevelopmental Growth Continues For Young Adults Beyond Age 18**

Researchers have recently established that the circuits in the brain associated with the characteristics relied on in *Roper* continue to mature beyond age 18. See Kathryn L. Mills et al., *Structural Brain Development Between Childhood and Adulthood: Convergence Across Four Longitudinal Samples*, 141 *NeuroImage* 273, 276 (2016); Christian K. Tamnes et al., *Development of the Cerebral Cortex across Adolescence: A Multisample Study of Inter-Related Longitudinal Changes in Cortical Volume, Surface Area, and Thickness*, 37 *J. Neuroscience* 3402, 3410 (2017).

It is now widely accepted that the characteristics cited by the Supreme Court in the youth sentencing cases persist far later than was previously understood and certainly beyond age 18. See, e.g., Andrew Michaels, *A Decent Proposal: Exempting Eighteen- to Twenty-Year-Olds from the Death Penalty*, 40 *N.Y.U. Rev. L. & Soc. Change* 139, 142 n.20, 163 (2016) (citing to research that found antisocial peer pressure was a highly significant predictor of reckless behavior in older adolescents 18 to 25); Alexander Weigard et al., *Effects of Anonymous Peer Observation on Adolescents’ Preference for Immediate Rewards*, 17 *Developmental Sci.* 71, 72 (2014) (finding that a propensity for risky behaviors, including “smoking cigarettes, binge drinking, driving recklessly, and committing theft,” exists into early adulthood past 18, because of a young adult’s “still maturing cognitive control system”); Kathryn Monahan, Laurence Steinberg & Alex R. Piquero, *Juvenile Justice Policy and Practice: A Developmental Perspective*, 44 *Crime & Just.* 577, 582 (2015) (finding that the development of the prefrontal cortex which plays an “important” role in regulating impulse control, decision-making, and pre-disposition towards risky behavior, extends into early adulthood).

Post-Miller studies comparing older adolescents to younger adolescents aged 13 to 17 reveal that 18- to 21-year-olds are more developmentally similar to 13- to 17-year-olds than to 22- to 25-year-olds. See Alexandra O. Cohen et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 *Psychol. Sci.* 549, 550, 559–60 (2016); Marc D. Rudolph et al., *At Risk of Being Risky: The Relationship Between “Brain Age” Under Emotional States and Risk Preference*, 24 *Developmental Cognitive Neuroscience* 93, 102–03 (2017). A comprehensive 2019 report from the National Academies of Sciences explains this shift in the understanding of adolescence, noting that “the unique period of brain development and heightened brain plasticity . . . continues into the mid-20s.” and that “most 18-25 year-olds experience a prolonged period of transition to *independent* adulthood, a worldwide trend that blurs the boundary between adolescence and ‘young adulthood,’ developmentally speaking.” Nat’l Academies of Sciences, Engineering, & Medicine, *The Promise of Adolescence: Realizing Opportunity for All Youth* 22 (2019). The report concludes that it is “arbitrary in developmental terms to draw a cut-off line at age 18.” *Id.*

Moreover, older adolescents, like their younger counterparts, also have greater potential for reform and rehabilitation. Researchers today continue to recognize that identity formation occurs in the latest stages of youth. Jeffrey Jensen Arnett, *Identity Development from Adolescence to Emerging Adulthood: What We know and (Especially) Don’t Know*, in 1 *The Oxford Handbook of Identity Development* 53, 54 (2015). The changes in the learning system that occur during late adolescence suggest that individuals in this developmental window are more amenable to intervention and rehabilitation. See, e.g., Ronald E. Dahl et al., *Importance of Investing in Adolescence from a Developmental Science Perspective*, 554 *Nature* 441, 441 (2018); David Scott

Yeager & Carol S. Dweck, *Mindsets That Promote Resilience: When Students Believe That Personal Characteristics Can Be Developed*, 47 *Educ. Psychologist* 302, 312 (2012).

In both *Roper* and *Miller*, the Court cited a 2003 study by Dr. Laurence Steinberg and Elizabeth Scott, when it set the line between childhood and adulthood at 18. *See Miller*, 567 U.S. at 471, 132 S.Ct. 2455, 183 L.Ed.2d 407, quoting *Roper*, 543 U.S. at 570, 125 S.Ct. 1183, 161 L.Ed.2d 1; *see also* Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1014, 1017 (2003). Dr. Steinberg himself has published numerous papers in the 18 years since the study relied upon in *Roper* and *Miller*, and his more recent scholarship uniformly concludes that the parts of the brain implicated in impulse control, propensity for risky behavior, and susceptibility to peer pressure are still developing even at age 21. *See* Laurence Steinberg, *Does Recent Research on Adolescent Brain Development Inform the Mature Minor Doctrine?*, 38 *J. Med. & Phil.* 256, 259-61, 263 (2013); *see also* Elizabeth S. Scott, Richard J. Bonnie & Laurence Steinberg, *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 *Fordham L. Rev.* 641, 642 (2016) (“Over the past decade, developmental psychologists and neuroscientists have found that biological and psychological development continues into the early twenties, well beyond the age of majority.”).

Indeed, Dr. Steinberg submitted an affidavit in support of Mr. Graham concluding “**there is no scientific evidence to suggest that a meaningful psychological or neurobiological distinction can be drawn between individuals who are nearly 18 years old and those who are between [sic] 19.**” (Emphasis in original.) (T.d. 504, Ex. A: Aff. of Laurence Steinberg ¶ 41). Thus, Dr. Steinberg concluded with a reasonable degree of certainty “that the findings of scientific studies of adolescent psychological and brain development apply to Mr. Graham’s behavior and

psychological function at the time of the offense.” (*Id.* at ¶ 39). Specifically, Dr. Steinberg was referring to the impulsive act of the shooting in a group of peers. (*Id.*)

**B. Given Their Shared Developmental Characteristics, Both Adolescents And Young Adults Are Less Culpable Than Older Adults And Cannot Be Subjected To The Harshest Sentences**

Recently, Ohio became the 24th state to ban life without parole sentences for youth under age 18. Daniel Nichanian, *Ohio Will No Longer Sentence Kids to Life Without Parole*, The Appeal (Jan. 13, 2021), <https://theappeal.org/politicalreport/ohio-ends-juvenile-life-without-parole/#:~:text=Ohio%20is%20the%2024th%20state%2C%20plus%20D.C.%2C%20that,and%20Virginia%2C%20in%202020%2C%20did%20this%20most%20recently.> This new law requires courts to consider “youth and its characteristics as mitigating factors” such as the youth’s “intellectual capacity, immaturity, impetuosity, and a failure to appreciate risks and consequences”—language mirroring the U.S. Supreme Court’s *Miller* decision. 2021 Sub.S.B. No. 256. This prohibition must extend to older adolescents like Mr. Graham, whose developmental characteristics mirror those of adolescents.

In striking the death penalty and substantially limiting LWOP sentences for juveniles, the Supreme Court has emphasized that, “[b]ecause juveniles have diminished culpability and greater prospects for reform, . . . ‘they are less deserving of most the severe punishments.’” *Miller*, 567 US at 471, 132 S.Ct. 2455, 183 L.Ed.2d 407, quoting *Graham*, 560 US at 68, 130 S.Ct. 2011, 176 L.Ed.2d 825. Its decisions relied on “what ‘any parent knows’” and the science regarding adolescent development. *Id.*, quoting *Roper*, 543 US at 569, 125 S.Ct. 1183, 161 L.Ed.2d 1.

While the U.S. Supreme Court sentencing cases limited their rulings to youth under the age of 18, the rationale for each of those decisions turned on scientific findings about the characteristics of individuals whose developmental immaturity rendered them constitutionally ineligible for our harshest penalties. More recent scientific research, as detailed above, confirms that older

adolescents share the traits deemed disqualifying by the Court and they must likewise be included in this protected class. The Supreme Court’s own evolving interpretation of the proscriptions of the Eighth Amendment illustrate why older adolescents over the age of 18 must now be included in this framework. In its first ruling protecting youthful offenders from the death penalty, the Court protected only youth who were under the age of 16. *Thompson*, 487 U.S. at 838, 108 S.Ct. 2687, 101 L.Ed.2d 702 (plurality opinion). The Court reasoned that, “inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult.” *Id.* at 835. The Court then held in *Roper*: “[A] plurality of the [Thompson] Court recognized the import of these characteristics with respect to juveniles under 16, and relied on them to hold that the Eighth Amendment prohibited the imposition of the death penalty on juveniles below that age. We conclude the same reasoning applies to all juvenile offenders under 18.” (Citation omitted.) *Roper* at 570–71. The developmental differences between youth under the age of 18 and adults “render[ed] suspect any conclusion that a juvenile falls among the worst offenders . . . . for a greater possibility exists that a minor’s character deficiencies will be reformed.” *Id.* at 570. The Court once again relied on these distinct attributes of youth in holding mandatory LWOP unconstitutional in *Miller* as “the mandatory penalty schemes . . . prevent the sentencer from taking account of these central considerations.” *Miller* 567 U.S. at 474. Therefore, “[b]y removing youth from the balance,” *id.*, mandatory life drawing the line at age 18 “creates an unacceptable risk” of a disproportionate sentence, *Hall v. Florida*, 572 U.S. 701, 704, 134 S.Ct. 1986, 188 L.Ed.2d 1007 (2014); *see also Montgomery*, 577 U.S. at 195, quoting *Miller*, 567 U.S. at 479.

Ohio jurisprudence mandates trial courts consider an individual's youth and attendant characteristics before imposing a LWOP sentence. *State v. Long*, 138 Ohio St.3d 478, 2014-Ohio-849, 8 N.E.3d 890, ¶ 29. The Court ruled that for young people, "a sentence of life without parole is the equivalent of a death penalty." *Id.* at ¶ 27, citing *Miller* at 469-70. Such a sentence should not be "imposed lightly, for as the juvenile matures into adulthood and may become amenable to rehabilitation, the sentence completely forecloses that possibility." *Id.* Given the similarities between youth and young adults, LWOP sentences should not be imposed on young adults without also considering the individual's youth and attendant characteristics.

**C. Criminal Justice Systems Nationwide Provide Youth Above Age 18 Special Privileges and Protections that Reflect The Three Key Developmental Characteristics Identified in *Miller***

During Mr. Graham's March 8, 2021 resentencing hearing, Dr. Steinberg testified that there is "continued maturation of self-control and self-regulation after age 18 that is not complete until around age 22." (T.p. 18). In recognition of this fact as well as key developmental characteristics of youth, courts and legislatures around the country have required modifications to sentencing and criminal justice policies and practices for youth above age 18 to offer them additional protection and support. Many of these laws have been in effect for decades, while others reflect more recent trends in response to the growing scientific and societal consensus that young people continue to develop and mature into their twenties. The legal landscape throughout the country therefore reflects the current developmental research: drawing the line between childhood and adulthood above age 18 in contexts that implicate the age-related characteristics described in *Miller*.

For example, the Washington State Supreme Court has held that youthful characteristics can mitigate the sentences of young people over the age of 18. *State v. O'Dell*, 183 Wash.2d 680, 695, 358 P.3d 359 (2015) (en banc) ("we now know that age may well mitigate a defendant's

culpability, even if that defendant is over the age of 18”). Recently, the Court also held that *Miller’s* prohibition on mandatory LWOP sentences extends to individuals up to age 20. *Matter of Monschke*, 197 Wash.2d 305, 306, 482 P.3d 276 (2021) (“Modern social science, our precedent, and a long history of arbitrary line drawing have all shown that no clear line exists between childhood and adulthood”).

Legislatively, many jurisdictions have adopted laws that extend special protections, such as criminal record sealing and shorter maximum sentences, to individuals ages 18 to 21.<sup>1</sup> Indiana and Missouri have enacted special sentencing provisions for young adults which expressly recognize their youthful characteristics and allow judges to craft individualized sentences to reflect these characteristics. Alex A. Stamm, *Young Adults Are Different, Too: Why and How We Can Create A Better Justice System For Young People Age 18 to 25*, 95 Tex. L. Rev. 72, 80–87, 91-92 (2016). Forty-eight of the fifty states allow the juvenile justice system to retain some jurisdiction over youth past their 18th birthday. Juvenile Justice Geography, Policy, Practice & Statistics, *U.S. Age Boundaries of Delinquency 2016 2* (2017), [http://www.ncjj.org/pdf/JJGPS%20StateScan/JJGPS\\_U.S.\\_age\\_boundaries\\_of\\_delinquency\\_2016.pdf](http://www.ncjj.org/pdf/JJGPS%20StateScan/JJGPS_U.S._age_boundaries_of_delinquency_2016.pdf). Thirty-five of those states, including Ohio, extend jurisdiction up to age 20, and nine states extend jurisdiction even further, in some cases through age 24. *Id.*; R.C. 2151.011(B)(6).

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<sup>1</sup> See, e.g., Ala.Code 15-19-1; Colo.Rev.Stat. Ann. 18-1.3-407, 18-1.3-407.5; Fla.Stat. Ann. 958.011 - 958.15; Ga.Code Ann. 42-7-2(7) - 42-7-4; N.J.Stat. Ann. 52:17B-182, 52:17B-183; N.Y.Crim.Proc.Law 720.10, 720.15; S.C.Code Ann. 24-19-10 - 24-19-150; V.I.Code Ann., Title. 5, Section 3712; Vt.Stat. Ann., Title 33, Sections 5280, 5281, 5287; Va.Code Ann. 19.2-311.

**D. Many Jurisdictions Extend Additional Supports to Youth Through Their Mid-Twenties In Non-Criminal Contexts In Recognition Of Their Shared Developmental Characteristics With Younger Youth**

Many jurisdictions, including Ohio, have further recognized the key developmental characteristics of young adults by extending additional supports and benefits to youth through age 21, and in some instances even longer. Such laws reflect the characteristics of youth identified in *Roper*, *Graham*, and *Miller* that makes them less deserving of the law's harshest punishments: the character of a young person above age 18, like those under 18, remains "not as well formed as that of an adult." *Roper*, 543 U.S. at 570, 125 S.Ct. 1183, 161 L.Ed.2d 1.

For example, with support from the federal government, states around the country have expanded foster care beyond age 18. In 2008, Congress passed the Fostering Connections to Success and Increasing Adoptions Act, allowing states to use federal funding to extend foster care up to age 21. 42 U.S.C. 675(8)(B). Since then, Ohio, along with 46 states and the District of Columbia, have extended foster care eligibility past age 18, with most, including Ohio, extending support services for former foster youth up to age 21. U.S. Dept. of Health & Human Services, *Extension of Foster Care Beyond Age 18* 2 n. 3 (2017), <https://www.childwelfare.gov/pubPDFs/extensionfc.pdf>. The near universal extension of support for foster youth beyond age 18 reflects researchers' conclusions that there is "nothing magical about age 18 or even age 21 as a marker of adulthood, and few children outside the child welfare system are expected to be 'independent' once they reach the age of majority." Nat'l Academies of Sciences, *supra*, at 267. In response to the COVID-19 pandemic, Ohio Governor Mike DeWine announced the state will provide funding to keep 18-year-olds in the foster care system as well as additional funding for the Bridges program which helps young adults, ages 18 to 20, find housing, employment, and pursue higher education after leaving foster care. Evan MacDonald, Cleveland.com, *Ohio Will Provide Funding to Extend Foster Care for Children Set to Turn 18 Amid Coronavirus Crisis* (Apr. 24,

2020), <https://www.cleveland.com/coronavirus/2020/04/ohio-will-provide-funding-to-extend-foster-care-for-children-set-to-turn-18-amid-coronavirus-crisis.html>. Both the expansion of foster care and the housing policies enacted by Governor DeWine comport with scientific and social realities that young people are not fully formed at age eighteen and that most young adults require support to transition to adulthood through at least age 21.

The healthcare system also increasingly recognizes that young people need additional support beyond age 18. Under the Affordable Care Act, young adults may remain on their parents' health care plans until age 26, in part to combat high rates of uninsurance among young adults. Center for Consumer Information & Insurance Oversight, Centers for Medicare & Medicaid Services, *Young Adults and the Affordable Care Act: Protecting Young Adults and Eliminating Burdens on Families and Businesses*, [https://www.cms.gov/CCIIO/Resources/Files/adult\\_child\\_faq](https://www.cms.gov/CCIIO/Resources/Files/adult_child_faq) (accessed Aug. 24, 2021). Children receiving Medicaid also continue to be able to access all medically necessary services under the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) guarantee until age 21 (whereas coverage for older adults on Medicaid is more limited). 42 C.F.R. 441.50. Access to education also extends into early adulthood. All fifty states and the District of Columbia provide a right to a free education until at least age 19, and more than half of states provide a right to education until at least age 21. Stephanie Aragon, Education Commission of the States, *Free and Compulsory School Age Requirements 3-6* (2015), <https://www.ecs.org/clearinghouse/01/18/68/11868.pdf>. Indeed, Ohio provides a right to free public education up to age 22. R.C. 3313.64(B). In addition, the federal Individuals with Disabilities Education Act (IDEA) requires states and school districts to offer special education services to children and youth with disabilities up to age 21 (or until high school graduation). 20 U.S.C. 1412(a)(1)(A).

Moreover, Ohio has numerous services targeted specifically at young adults. For example, the Comprehensive Case Management and Employment Program helps young people ages 14 to 24 with individualized employment services such as paid work experiences, childcare, transportation assistance, and mentoring. Ohio Dept. of Job and Family Services, *Fact Sheet: Comprehensive Case Management and Employment Program* (2018), <https://jfs.ohio.gov/factsheets/CCMEP-fact-sheet.stm>. The Lighthouse Youth & Family Services in Cincinnati aims to help young adults ages 18 to 24 experiencing homelessness with shelter, health care and first aid, basic necessities such as food, clothing, and showers, and individualized plans created with case managers. See Lighthouse Youth & Family Services, *Shelter, Housing Program, and Resources for Homeless Young Adults 18-24*, <https://www.lys.org/services/shelter-and-resources-for-homeless-young-adults-18-24> (accessed August 25, 2021). And finally, Wraparound Ohio identifies resources for young adults experiencing mental health, substance abuse, behavioral health, judicial justice, or trauma challenges. Wraparound Ohio, *Resources*, <https://wraparoundohio.org/resources> (accessed August 25, 2021).

In sum, a panoply of state and federal laws extends benefits and protections well above age 18, particularly in areas that implicate the key developmental characteristics of youth which the Supreme Court relied upon in striking extreme sentences—including LWOP—for youth.

## SECOND ASSIGNMENT OF ERROR

The Court of Common Pleas's harsh sentence of D'Amantae Graham, a Black youth, exacerbates longstanding racial disparities in Ohio and throughout the nation. Criminal laws are applied in a racially discriminatory manner, leading to disproportionate numbers of Black youth and young adults who are arrested, prosecuted, and harshly sentenced. In Ohio, Black defendants with white victims have been more likely to receive the death penalty than all other individuals facing capital charges. *Graham*, Slip Opinion No. 2020-Ohio-6700, ¶ 230. As the Supreme Court noted, there is a statutory and constitutional requirement "to undertake a more expansive proportionality review in cases such as this one that carry a special risk of arbitrariness." *Id.*

## ISSUE PRESENTED FOR REVIEW AND ARGUMENT

1. Did the Court of Common Pleas err in sentencing D'Amantae Graham to a life sentence where Black males and young adults are already disproportionately arrested, prosecuted, and harshly sentenced nationally and in Ohio?

At every stage of the criminal justice system, from interrogation through arrest, prosecution and plea negotiation, trial, and sentencing, people of color—particularly Black males—are treated more harshly than white individuals, even when controlling for offense severity. *See, e.g.,* Marc Mauer et al., *Addressing Racial Disparities in Incarceration*, 91 *Prison J.* 87S, 91S-95S (2011); Vera Institute of Justice, *Incarceration Trends in Ohio 2* (2019), <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-ohio.pdf>; Cedric Thornton, Black Enterprise, *Black Woman in Ohio Sentenced to 18 Months in Prison, White Woman Gets Probation For Similar Crime* (Aug. 10, 2021), <https://www.blackenterprise.com/black-woman-in-ohio-sentenced-to-18-months-in-prison-white-woman-gets-probation-for-similar-crime>. Nationally, Black males continue to receive longer sentences than similarly situated white males. U.S. Sentencing Commission, *Demographic Differences in Sentencing: An Update to the 2012 Booker Report 2* (2017), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114\\_Demographics.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf).

These disparities are prevalent in Ohio. A 2019 report found that 82% of youth transferred to adult court statewide were Black; and in Cuyahoga County, Ohio, more than 94% of youth tried

as adults were Black. Elizabeth Weill-Greenberg, *Despite Flat Crime Rates, More Cleveland-Area Young People Are Being Tried As Adults*, *The Appeal* (Oct. 22, 2019), <https://theappeal.org/despite-flat-crime-rates-more-cleveland-area-young-people-are-being-tried-as-adults/>. See also *Graham*, Slip Opinion No. 2020-Ohio-6700 ¶ 230 (“In cases, like this one, that involve black defendants and white victims, it is ‘abundantly clear that there is a special risk of arbitrariness’ in the prosecution of capital offenses. In Ohio, as elsewhere, black defendants with white victims are far more likely to receive the death penalty than all other defendants facing capital charges.” (citations omitted)). See also Ashley Nellis, The Sentencing Project, *Still Life: America's Increasing Use of Life and Long-Term Sentences* (May 3, 2017), <https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/#VI.%20Race%20and%20Ethnicity> (showing that in 2016, 51.7% of the 6,685 individuals serving life sentences or *de facto* life sentences in Ohio were Black). The 2010 census showed an incarceration rate of 2,336 Black residents per 100,000 compared to 422 for white individuals. Prison Policy Initiative, *Ohio Profile*, <https://www.prisonpolicy.org/profiles/OH.html> (accessed Aug. 24, 2021). Yet, Black residents only accounted for 12% of the Ohio population in that census compared to 81% for white individuals. *Id.* Most recently, data showed Black Ohio residents were at least four times as likely to be charged with violating COVID-19 stay-at-home orders as white residents. Joshua Kaplan & Benjamin Hardy, ProPublica, *Early Data Shows Black People Are Being Disproportionally Arrested for Social Distancing Violations* (May 8, 2020), <https://www.propublica.org/article/in-some-of-ohios-most-populous-areas-black-people-were-at-least-4-times-as-likely-to-be-charged-with-stay-at-home-violations-as-whites>. For example, in Toledo where Black residents make up just 27% of the population, 18 of the 23 arrests for stay-at-home orders were Black individuals. *Id.*

Starker disparities exist in the young adult population. Young people ages 18 to 24 made up just over 9% of Ohio's population, United States Census Bureau, *American Community Survey Table S0101* (2018), yet approximately 18% of prison admissions in 2018. Ohio Dep't of Rehabilitation & Correction, ODRC Reports, [https://drc.ohio.gov/Portals/0/COMMITMENT%20REPORT\\_CY2018.pdf](https://drc.ohio.gov/Portals/0/COMMITMENT%20REPORT_CY2018.pdf) at 3. Additionally, Ohio is one of just four states responsible for more than three-quarters of the executions of offenders sentenced between the ages of 18 and 20 over the last two decades, Brian Eschels, *Data & the Death Penalty*, 40 *Harbinger* 147, 152 (2016), [https://socialchangenyu.com/wp-content/uploads/2016/06/eschels-compliment-piece\\_clean-copy\\_6-14-16.pdf](https://socialchangenyu.com/wp-content/uploads/2016/06/eschels-compliment-piece_clean-copy_6-14-16.pdf), a statistic that would have increased had the Supreme Court not overturned Mr. Graham's sentence.

Eliminating LWOP sentences is just one way to eliminate racial disparities in the criminal justice system. To sentence Mr. Graham to LWOP plus consecutive term of years sentences without consideration of his youth, mental health, and family background only compounds the system's racially discriminatory and unjust impact on Black communities.

### CONCLUSION

For the foregoing reasons *Amicus* respectfully requests that the decision of the trial court be vacated.

Respectfully submitted this 7th day of September, 2021.

This document is acceptable to all signers.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of September, 2021, I caused copies of the foregoing Brief of *Amicus Curiae* Juvenile Law Center in Support of Defendant-Appellant D'Amantae D. Graham to be served via electronic mail on:

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