

IN THE SUPREME COURT OF PENNSYLVANIA
No. 28 MAP 2025

COMMONWEALTH OF PENNSYLVANIA

v.

IVORY KING,

Appellant

**BRIEF OF *AMICI CURIAE* CRIMINOLOGISTS, PSYCHOLOGISTS, AND
LAW PROFESSORS IN SUPPORT OF PETITIONER**

On appeal from a decision of the Superior Court, 406 EDA 2023, entered
October 11, 2024, affirming a judgment of sentence imposed by the Court
of Common Pleas of Bucks County, CP-09-CR-0003727-1998,
dated Nov. 21, 2022

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INTERESTS OF THE *AMICI CURIAE*

Amici curiae consist of professional criminologists, psychologists, and law professors who study crime with the goal of reducing and preventing it. *Amici* are familiar with the purposes, justifications, and consequences of incarcerating individuals and the most relevant evidence-based findings in the field of criminology. *Amici* have an interest in this case because evidence in our field strongly establishes that sentencing young people, particularly those that are not incorrigible, to *de facto* life sentences does not serve any valid penological purposes. A list of the *amici* and their professional affiliations appears in the Appendix to this brief.

INTRODUCTION

“Life without parole is an especially harsh punishment for a juvenile.”

Graham v. Florida, 560 U.S. 48, 70 (2010).

Sentences of life without the opportunity for parole (“LWOP”) for youths under age 18 (sometimes known as “juvenile LWOP” or “JLWOP”) violate Pennsylvania’s ban on “cruel punishment” and the Eighth Amendment’s ban on “cruel and unusual punishment.” This ban extends to those sentences that consist of terms of years so long that they are *de facto* LWOP sentences. There is no valid penological or sociological reason that would justify Pennsylvania’s practice of imposing such life sentences, and a “sentence

lacking any legitimate penological justification is by its nature disproportionate to the offense” and unconstitutionally excessive. *Graham*, 560 U.S. at 71. As the U.S. Supreme Court has emphasized repeatedly over the past few decades, children are “constitutionally different” from adults regarding the imposition of criminal punishments. Young persons’ ongoing physiological development makes them *less* morally responsible for their actions than adults; they are likely to be much *more* vulnerable to their external environment and much *less* able to extricate themselves from external pressures; and they also retain a *greater* capacity for growth and change than adults.

Starting with *Roper v. Simmons*, where the U.S. Supreme Court struck down capital punishment for youths, see 543 U.S. 551, 574 (2005), Eighth Amendment jurisprudence requires courts to provide heightened scrutiny of punishments imposed on young persons, and, most relevant here, requires courts to consider the penological goals of challenged punishments in light of the mitigating characteristics of youth. The distinctive characteristics of youths typically require courts to treat them differently from adults. These differences were central to the U.S. Supreme Court’s determination in *Graham* that youth LWOP sentences in non-homicide offenses are unconstitutional. See *Graham*, 560 U.S. at 82. Under the Eighth

Amendment's proportionality analysis set out in *Graham*, "[a] 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only." *Id.* at 70. Rather, LWOP sentences imposed on youths are different from those imposed on adults because youths are likely to serve out more years and "a greater percentage of [their] life in prison than an adult offender." *Id.*¹

Two years later, the same Court held that a *mandatory* life sentence for a youth convicted of homicide was contrary to the Eighth Amendment, because "children are constitutionally different from adults for purposes of sentencing" and consequently are "less deserving of the most severe punishments." *Miller v. Alabama*, 567 U.S. 460, 471 (2012). Later, the U.S. Supreme Court made *Miller* retroactive, holding that youths who were sentenced prior to *Miller* were eligible to challenge their mandatory LWOP sentences. *See Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016). Still later, the U.S. Supreme Court reaffirmed *Miller* and *Montgomery* with respect to youth offenders but held that compliance with those decisions did not require the sentencing court to make any particular factual finding that the

¹ As shown below, serving out a greater sentence than adults sentenced for the same crime is only one reason, among several others, why youth LWOP violates both the Pennsylvania and United States Constitutions.

youthful offender was incorrigible. See *Jones v. Mississippi*, 593 U.S. 98, 113 (2021).

The Pennsylvania's Constitution goes a step further than the Eighth Amendment. It prohibits the infliction of all "cruel punishments," not just those that are both cruel and unusual. Pa. Const. Art. I, § 13. With respect to youths, the Supreme Court of Pennsylvania has followed *Miller* and *Montgomery*, as further construed in *Jones*, and required that all sentences of young persons "take[] into account the offender's youth." *Commonwealth v. Felder*, 269 A. 3d 1232, 1245-46 (2022).

In 1998, the petitioner, Mr. Ivory King, was sentenced to four consecutive life sentences for four homicides and one injury committed when he was seventeen years old. In 2012, Mr. King filed a petition to challenge his sentence under the Post Conviction Relief Act ("PCRA"). In 2016, considering the U.S. Supreme Court's *Miller* and *Montgomery* decisions, the Superior Court of Pennsylvania vacated Mr. King's sentence and remanded for resentencing. In 2022, Mr. King was resentenced. Although the sentencing judge found that Mr. King's good behavior while incarcerated showed that he "has demonstrated a capacity for change," the court nonetheless sentenced Mr. King to four consecutive twenty-year sentences. *Commonwealth v. King*, 329 A.3d 617, 2024 WL 4471883, at *6 (Pa. Super.

Ct. Oct. 11, 2024). Under Pennsylvania law, Mr. King has no possibility for parole until 2078, when he will have served 80 years. Should Mr. King survive the eighty-year sentence, he would be 97 when he is eligible for release. Under his current sentence, Mr. King will almost certainly die in prison. Even if he survives to be 97, he would not be able to experience a meaningful life outside of prison. As such, Mr. King faces a *de facto* life sentence. Imposing a *de facto* LWOP on a youth offender, like Mr. King, violates the Eighth Amendment of the U.S. Constitution and the Pennsylvania Constitution's Article I, Section 13.

Consistent with *Commonwealth v. Edmunds*, 526 Pa. 374, 390 (1991) and U.S. Supreme Court precedent, including *Graham*, this Court is required to analyze the sentencing practice's penological justifications when considering constitutional challenges under the Pennsylvania and United States Constitutions. See *e.g.*, *Roper*, 543 U.S. at 571–72; *Graham*, 560 U.S. at 71. Our decades of work and research studying the factors that contribute to and reduce the risk of criminal behavior demonstrates that there is no valid penological justification to sentence youths, particularly those with the capacity for rehabilitation, to *de facto* life sentences. Our research and data-based evidence show that providing an opportunity for early release for such offenders accords more closely with the purposes of punishment

without implicating public safety concerns, and at significant cost-savings to the Commonwealth.

ARGUMENT

I. *Amici's* perspective is highly relevant to assist this Court's analysis.

This Court has agreed to hear Mr. King's appeal of his resentencing as unconstitutional under Article I, § 13 of the Pennsylvania Constitution, which prohibits "cruel punishment," Pa. Const. Art. I § 13, and, both facially and as applied, under the Eighth Amendment of the United States Constitution which prohibits "cruel and unusual punishment." U.S. Const. Amend. VIII.

Our perspective is relevant to this Court's analysis under the Eighth Amendment of the United States Constitution in which the Court must consider "penological justifications for the sentencing practice" in determining whether a sentence is "cruel and unusual." *Graham*, 560 U.S. at 71; see *also id.* at 67 (judicial analysis of the Eighth Amendment "requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question") (citation omitted).

Our perspective is also relevant to this Court's analysis under the provision of the Pennsylvania Constitution that prohibits "cruel punishment."

Where, as here, the U.S. Supreme Court has interpreted a similar provision of the U.S. Constitution, *Commonwealth v. Edmunds* directs this Court to evaluate “policy considerations, including unique issues of state and local concern” to decide what constitutes a “cruel punishment[]” under the Pennsylvania Constitution. 526 Pa. at 390.

II. Petitioner’s Sentence Constitutes a *De Facto* Life Sentence.

In denying Mr. King’s challenge to his resentencing, the Superior Court concluded that Mr. King’s four consecutive twenty-year sentences do not constitute a *de facto* life sentence based on Pennsylvania precedent requiring that courts consider individual sentences – not aggregate sentences – when determining whether someone has received a *de facto* life sentence. *King*, 329 A.3d 617, 2024 WL 4471883, at *6–8 (citing *Commonwealth v. Foust*, 180 A.3d 416 (Pa. Super. 2018), *appeal denied*, ___ Pa. ___, 279 A.3d 39 (2022), *abrogated in part by Commonwealth v. Felder*, ___ Pa. ___ 269 A.3d 1232 (2022)).

Although there is no definite period of time that would transform a sentence into a *de facto* life sentence, the Superior Court’s conclusion is contrary to the United States Sentencing Commission’s guidelines, which define a *de facto* life sentence to be one lasting a minimum of 470 months, or “39 years and two months” spent in prison, as “[t]his sentence length is

consistent with the average life expectancy of federal criminal offenders.” U.S. Sent’g Comm’n, Life Sentences in the Federal System at 10 n. 52 (Feb. 2015); U.S. Sent’g Comm’n, Life Sentences in the Federal System at 16 (2022). Mr. King’s sentence is more than twice 470 months; it is 960 months – a full 80 years. There is no denying the reality that he has been sentenced to spend the rest of his natural life in prison.

III. Life Sentences for Youths Lack Valid Penological Purposes

There is no valid penological justification for Mr. King to spend the rest of his natural life in prison for offenses that he had committed as a youth. As we shall show, the sentence cannot be justified by any of the four penological purposes of sentencing that criminologists widely recognize: deterrence, rehabilitation, retribution, and incapacitation. See, e.g., Marc Mauer & Ashley Nellis, *The Meaning of Life: The Case for Abolishing Life Sentences* 131 (2018); Michael Tonry, *Purposes and Functions of Sentencing*, 34 CRIME & JUST. 1, 6 (2006); Dirk van Zyl Smith & Catherine Appleton, *Life Imprisonment: A Global Human Rights Analysis* at 2–9 (2019).

Apart from retribution, the other three purposes focus primarily on promoting public safety through the imposition of the sentence. Rehabilitation seeks to aid the incarcerated person by providing services and/or training to improve education or other prosocial behaviors.

Deterrence seeks to use the sentence as a means of convincing the offender (specific deterrence) and others (general deterrence) not to commit crime. Incapacitation seeks to prevent crime by isolating the offender from society, thereby preventing them from committing further crimes. By contrast, the goal of retribution is to seek justice by imposing a sentence on an offender that is punishment commensurate with the severity of the crime.

Both Pennsylvania courts and the U.S. Supreme Court recognize these commonly accepted purposes of sentencing. See *Commonwealth v. Coleman*, 285 A.3d 599, 613 (Pa. 2022) (“sentencing serves many purposes, including ‘protection of society, general deterrence (example to others), individual deterrence, rehabilitation, and retribution’”) (internal citation omitted); *Graham*, 560 U.S. at 71 (“the goals of penal sanctions that have been recognized as legitimate [are] retribution, deterrence, incapacitation, and rehabilitation”); see also 204 Pa. Code § 303.11(a) (“[Pennsylvania’s Sentencing Guidelines establish] a sentencing system with a primary focus on retribution, but one in which the recommendation[s] allow for the fulfillment of other sentencing purposes including rehabilitation, deterrence, and incapacitation.”).

Indeed, as scholars have concluded and as Petitioner argues, for purposes of the Pennsylvania Constitution’s ban on “cruel” punishments,

anything unnecessary for punishment was considered “cruel”, and only the goals of “deterrence and reformation justified inflicting a punishment.” Kevin Bendesky, *"The Key-Stone to the Arch": Unlocking Section 13's Original Meaning*, 26 U. Pa. J. Const. L. 201, 219 (2024). As we show below, youth LWOP serves neither the purpose of deterrence nor of reformation (or rehabilitation) and, if anything, undermines them. Adding retribution and incapacitation to the analysis, youth LWOP, including *de facto* life sentences, for those who have the capacity for rehabilitation does not satisfy any penological purpose recognized by the courts, whether analyzed under the Eighth Amendment or Article I, Section 13 of Pennsylvania’s Constitution.

We address first the purposes of deterrence and rehabilitation and then, if the court wishes to consider them, the purposes of retribution and incapacitation.

- a. *Life sentences for youths are inconsistent with the theory of rehabilitation.*

Rehabilitation justifies a sentence of incarceration when it is used as a means through which offenders can engage in self-improvement in order to lead crime-free lives after incarceration. As the U.S. Supreme Court has noted, life without parole “forswears altogether the rehabilitative ideal. By denying the defendant the right to reenter the community, the State makes

an irrevocable judgment about the person's value and place in society.” *Graham*, 560 U.S. at 74. A sentence to spend one's entire life in prison “disregards the possibility of rehabilitation” even though studies show – and courts agree – that criminal behavior diminishes with age. *Miller*, 567 U.S. at 478. If someone's sentence results in them likely dying in prison or leaving prison with little to no opportunity to participate in society, rehabilitation could not possibly justify that sentence.

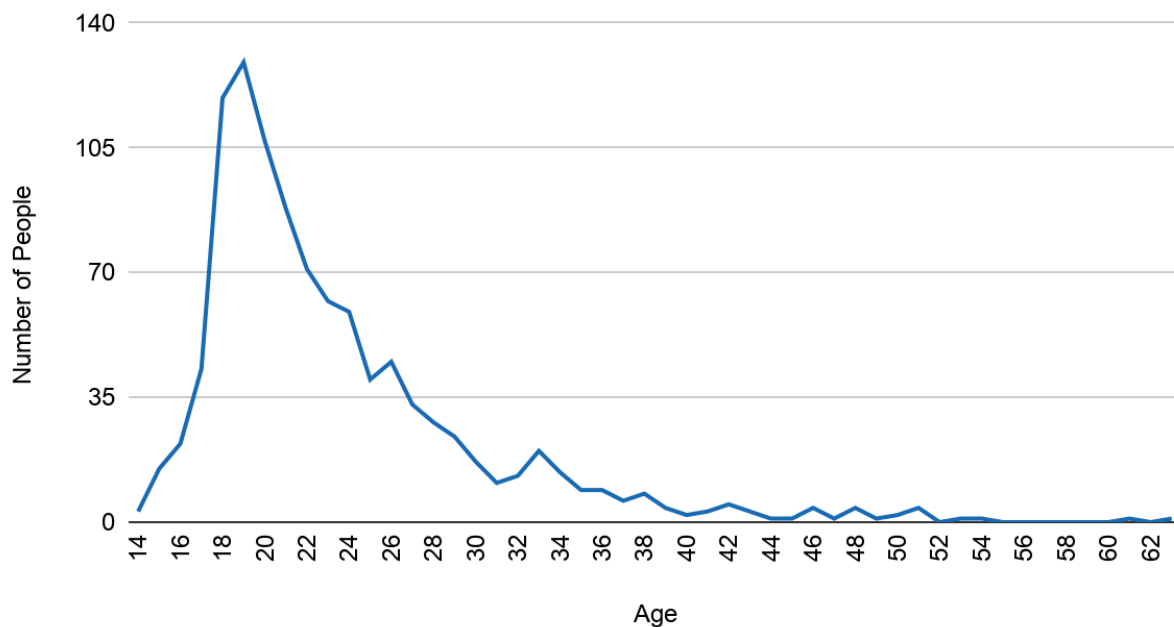
Pennsylvania's practice of punishing youths with LWOP or *de facto* LWOP sentences denies them a meaningful opportunity to demonstrate their rehabilitation and – more fundamentally – the practical hope for their release. The practice cannot be justified under a theory of rehabilitation because it contravenes conclusive research that individuals – and particularly youths – maintain the capacity to change and mature as they age. Like an overwhelming number of juvenile offenders, Mr. King has the capacity to change – something that the sentencing judge explicitly recognized. See *King*, 329 A.3d 617, 2024 WL 4471883, at *12. The practice of imposing youth LWOP is, therefore, contrary to well-documented evidence that many offenders spending their lives incarcerated actively pursue rehabilitation and self-improvement, even in the face of a system that denies their capacity to do so.

- i. The existence of the “age-crime curve” shows that youths often age out of their criminal behavior.

Decades of research shows that people “age out” of criminal behavior. See Gary Sweeten, Alex R. Piquero, & Laurence Steinberg, *Age and the Explanation of Crime, Revisited*, 42 J. YOUTH ADOLESC., 921-938 (June 2013). This phenomenon, revealed by the so-called “age-crime curve,” is robust and ubiquitous; it has been documented across social classes and nationalities, whether measured by arrest data or self-reported data. *Id.* And it holds true even for older offenders and so-called “career criminals.” Robert J. Sampson & John H. Laub, *Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70*, 41 CRIMINOLOGY 301 (2003). The likelihood of committing crime peaks in the late teens or early twenties, generally drops by over half by age 30, and continues to decrease significantly with age. Mauer & Nellis (2018), *supra*, at 133–34. The “age-crime curve” also manifests in consistently decreasing rates of recidivism with age, across all types of crime. See JJ Prescott, Benjamin Pyle, & Sonja B. Starr, *Understanding Violent Crime Recidivism*, 95 NOTRE DAME L. REV. 1643, 1688 (2020); see also Kim S. Hunt & Billy Easley II, *The Effects of Aging on Recidivism Among Federal Offenders*, U.S. Sent’g Comm’n (2017). A distribution of Pennsylvania’s population of second-degree murder

offenders by age at the time of the offense (Figure 1, below) illustrates the “age-crime curve” in practice.

Age at the Time of Offense



Andrea Lindsay, *Life Without Parole for Second-Degree Murder in Pennsylvania: An Objective Assessment for Sentencing*, Philadelphia Lawyers for Social Equity (2021), *Figure 1: Age at the Time of Offense*, at 13.

This “age-crime curve” is particularly relevant for youths, whose brains are undergoing development such that the “emergence of criminal behavior, especially in males, during adolescence that peaks around 17 years of age and then decreases.” Hanna Shah, *Note, De Facto Life Sentences Trigger*

Juvenile-Specific Eighth Amendment Protections: Why Bowling Was Wrongly Decided, 30 B.U. PUB. INT. L. J. 215, 222 (2021) (citation omitted).

Brain development and emotional maturation help to explain why young people are more likely to engage in criminal behavior at higher rates than older people. See Catherine Insel *et al.*, *White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys, and Policy Makers*, CTR. FOR L., BRAIN & BEHAVIOR, MASS. GEN. HOSP. 2 (2022) (“Maturation of brain structure, brain function, and brain connectivity continues throughout the early twenties. This ongoing brain development has profound implications for decision-making, self-control and emotional processing.”) (citation omitted). Neurobiology research shows that, into an individual’s mid-twenties, their likelihood of engaging in risky or sensation-seeking behavior and to respond to immediate outcomes continues to materially decrease, while their ability to resist peer influence or coercion materially increases. *Id.* at 2; see *also* Richard J. Bonnie & Emily P. Backes, *The Promise of Adolescence: Realizing Opportunity for All Youth*, Condensed Study Report, Nat’l Acad. Sci., Eng’g & Med. (2019); Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 DEV. PSYCH. 625 (2005).

Echoing these principles while holding that life without parole cannot be imposed on youth nonhomicide offenders, the U.S. Supreme Court recognized that young people – including young violent offenders – undergo psychological development as they age, becoming less impulsive and more mature. See *Graham*, 560 U.S. at 79. The Court determined that denying most youths a meaningful opportunity to demonstrate rehabilitation would violate the Eighth Amendment. *Id.*

- ii. Prisoners often undergo significant rehabilitation during incarceration.

Although aging impacts rehabilitation irrespective of the age at offense, this is especially true for younger offenders. As such, these offenders have a strong capacity for rehabilitation by the mere process of maturation and continued cognitive development.

Above and beyond even the general maturation process documented by the age-crime curve, many long-time prisoners accept responsibility for their offenses and actively pursue efforts to improve themselves, becoming positive forces within their prison communities. Margaret E. Leigey, *The Forgotten Men* at 24 (2015). As collected and recounted in Christopher Seeds' book *Death by Prison*, substantial research of prison communities has shown that lifers tend to be a positive and constructive influence on the

prison community, serving as mentors to younger prisoners and contributing to the overall prison morale. See Christopher Seeds, *Death By Prison: The Emergence of Life Without Parole and Perpetual Confinement* at 162 (2022).

Indeed, faced with what may appear to be bleak life prospects and minimal chance of release, many lifers “doggedly seek purpose in their lives” through the cultivation of an “optimistic sense of personal efficacy” aimed at improving their own lives, often becoming a “stabilizing force” for community management. Marie Gottschalk, *Chapter 7: No Way Out? Life Sentences and the Politics of Prison Reform* in *Life Without Parole* at 234 (Charles J. Ogletree, Jr. & Austin Sarat, eds. 2012) (citation omitted). See also Mark D. Cunningham & Jon R. Sorensen, *Nothing to Lose? A Comparative Examination of Prison Misconduct Rates Among Life-Without-Parole and Other Long-Term High-Security Inmates*, 33 CRIM. JUST. & BEHAV., 683 (Dec. 2006) (“data show that the likelihood and pattern of disciplinary infractions and potentially violent rule infractions among [inmates serving life without parole] during 1998 to 2003 is broadly similar to that of other long-term inmates, supporting a conclusion that [these] inmates act as a stabilizing rather than disruptive force in the prison environment”); Ben Crewe, Susie Hulley, and Serena Wright, *Swimming with the Tide: Adapting to Long-Term Imprisonment*, 34 JUST. Q. 517–41 (2017) (“Participants who

were further into their sentences had generally come to accept their predicament, worked out which areas of their lives they could and could not control, and begun to find purpose and meaning in their lives. Their focus was less on the past than the future, and their use of the present was constructive rather than merely depletive.”); Ashley Nellis and Celeste Barry, *A Matter of Life: The Scope and Impact of Life and Long Term Imprisonment in the United States at 25*, The Sent’g Project (2025) (lifers “have created supportive peer-to-peer rehabilitation communities that help imprisoned people work through their challenges, find friendship and acceptance, and contribute to personal transformation.”).

An analysis of Pennsylvania’s “juvenile lifers,” who were recently resentenced after the U.S. Supreme Court made *Miller* retroactive, bears this out. Approximately 90% of Philadelphia’s resentenced juvenile lifers surveyed in 2020 reported that they had engaged in rehabilitative programming, such as violence prevention, self-help, drug and alcohol education, vocational training, and anger management, completing four such programs on average. See Daftary Kapur & Tina M. Zottoli, *Resentencing of Juvenile Lifers: The Philadelphia Experience*, MONTCLAIR STATE UNIV. 9 (2020). And 99% of recently paroled juvenile lifers surveyed in 2022 reported that they participated in prison programming during their

incarceration, even though 53% reported that they were restricted from participating in some programs in which they wanted to participate.² Daftary Kapur & Tina M. Zottoli, *Reentry Experiences of Released Juvenile Lifers in Philadelphia*, MONTCLAIR STATE UNIV. 4 (2022). Notably, a study of 174 juvenile lifers who were released found that, after an average of 21 months, their rearrest rate was less than 4% and their reconviction rate was only 1%, corresponding to just two non-homicide convictions. Kapur & Zottoli (2020), *supra*, at 10. These numbers were far below the national two-year rearrest rate of 30% for individuals convicted of homicide generally. *Id.* This study suggests that many individuals sentenced to life without parole are capable of rehabilitation.

Pennsylvania's practice of sentencing youths to life in prison denies them any meaningful opportunity to demonstrate growth, maturation, or rehabilitation. It is therefore not justified under a theory of rehabilitation.

² In Pennsylvania, Jeffrey Shockley, a prisoner sentenced to life, discussed the opportunities that prisoners have for improving themselves while serving time. See Jeffrey Shockley, *Programming in Pennsylvania Prisons Gave this Lifer Purpose*, PublicSource.org (Oct. 10, 2022), <https://www.publicsource.org/pennsylvania-prison-life-sentence-programming-rehabilitation/>. He noted that the Pennsylvania Department of Corrections allows prisoners to take vocational or educational courses, work toward completing a GED, with more advanced students – including Mr. Shockley – even having access to college level courses. See *id.* The University of Pittsburgh's Inside-Out Prison Exchange Program, which exists in prisons throughout Pennsylvania, brings college professors into the prisons to teach college-level courses, and allows prisoners to take the courses alongside traditional college students. See *id.*

Ending such sentences would provide an opportunity for youths to demonstrate they have matured and atoned and therefore would better align Pennsylvania's statute with rehabilitative justifications. See, e.g., Pa. Parole Bd., *Understand the Process: Your Parole Handbook* at 12 (Feb. 2022) ("The Parole Board . . . bases its decision on what you have done to rehabilitate yourself so that you will not re-offend in the future."). Otherwise, those sentenced to spend their lives in prison, and who are actively rehabilitating themselves, would never have the opportunity to demonstrate their growth because they would never be permitted to reenter society in any meaningful capacity. An individual who had spent over 30 years in prison explained this best, noting that "[n]o matter how much you look at yourself, you make changes in your life, you try to stay positive, continually doing positive things, you're never getting out." Lindsey Linder & Justin Martinez, *No Path to Redemption: Evaluating Texas's Practice of Sentencing Kids to De Facto Life Without Parole in Adult Prison*, 22 THE SCHOLAR: ST. MARY'S L. REV. ON RACE AND SOC. JUST. 307, 319 (2020) (citation omitted).

Rehabilitation, therefore, cannot justify sentencing a youth to life in prison: they will likely age-out of their criminal behavior and whatever progress they make while in prison cannot be optimally realized if the goal of

rehabilitation is creating a more productive and positive person able to reenter society.

- b. *Deterrence does not support sentencing a youth to a life sentence.*

The deterrence justification of punishment is “predicated on the idea that if state-imposed sanction costs are sufficiently severe, criminal activity will be discouraged,” thereby improving public safety. Daniel Nagin, *Deterrence in the Twenty-First Century*, 42 CRIME & JUST. 199, 206 (2013); see also Paul H. Robinson & John M. Darley, *The Role of Deterrence in the Formulation of Criminal Law Rules: At Its Worst When Doing Its Best*, 91 GEO. L. J. 949, 950-51 (2003). Deterrence justifications are divided into two categories: general and specific (also referred to as special) deterrence. The general deterrence effect of a sentence is the impact that sentence has on the incidence of that crime in general. The specific deterrence effect of a sentence is the impact that sentence has on the likelihood that the specific sentenced individual will reoffend. The imposition of youth life sentences cannot be justified under either theory of deterrence.

- i. General deterrence does not justify youth LWOP.

General deterrence justifications for punishment are premised on the idea that the threat of punishment will deter potential offenders from

engaging in crime, thereby controlling crime in the general population. Empirical studies of crime rates across jurisdictions show that, above a threshold level, increasing the severity of a sanction does not produce a marginal deterrence effect. See, e.g., Nagin (2013), *supra*, at 200, 253; see also Anthony N. Doob & Cheryl Marie Webster, *Sentence Severity and Crime: Accepting the Null Hypothesis*, 30 CRIME & JUST. 143, 187 (2003); Tonry (2006), *supra*, at 29.

Research has shown that the perceived *likelihood* of a sentence for a specific criminal act has a measurable deterrent effect but increases to the marginal *severity* of the punishment do not. See, e.g., Nagin (2013), *supra*, at 200. This finding is not surprising. Criminal theorists have suggested that for punishments to be effective in deterring crime, potential offenders must know about and consider the punishment and must be capable of acting in a manner consistent with that knowledge and with their best interests in mind. Paul H. Robinson, *Chapter 4: Life Without Parole Under Modern Theories of Punishment* in *Life Without Parole* at 140 (Charles J. Ogletree, Jr. & Austin Sarat, eds. 2012); Leigey (2015), *supra*, at 19. But there is little to suggest that potential offenders, particularly youths, are likely to consider life in prison as a potential consequence of participating in any felony.

Deterrence by means of a life sentence is particularly ineffective when dealing with youths. Again, because youths have a reduced capacity for decision-making, “[j]uveniles do not consider long term consequences of their actions,” meaning that “sentencing one juvenile to a de-facto-life sentence will not deter other juveniles from doing the same action.” Julie Burke, Comment, *De Facto-Life and the Rare Juvenile*, 37 MISS. CRIM. L. REV. 264, 283 (2019).

Youths’ continuing brain development calls into question the theoretical justification for a general deterrence effect of imposing life sentences as punishment on young offenders. See Jeffrey Fagan & Alex R. Piquero, *Rational Choice and Developmental Influences on Recidivism Among Adolescent Felony Offenders*, 4 J. EMPIRICAL LEGAL STUD., 715–48 (Dec. 2007) (showing “that both mental health and developmental maturity moderate the effects of perceived crime risks and costs on criminal offending”).

Additionally, deterrence is only achievable if people are concerned about getting caught. But, realistically or not, criminals generally do not expect to be caught, let alone punished. “[T]he perceived probability of punishment is low to the point where the threatened punishment commonly is not thought to be relevant to the potential offender.” Robinson & Darley,

supra, at 954; see also U.S. Dept. of Just., Nat'l Inst. of Just., Five Things About Deterrence (May 2016) (“[It] is the certainty of being caught that deters a person from committing crime, not the fear of being punished or the severity of the punishment.”). Indeed, as discussed further above, this is particularly true for youthful criminals, who have not yet fully developed their cognitive ability and emotional maturity, which may make them believe incorrectly that they are immune from the consequences of their actions. See *supra*, pp. 12–15. General deterrence also fails because there tends to be a prolonged period of time between when a person commits a crime and receives their sentence, such that observers discount the weight of the threatened punishment. Robinson & Darley, *supra*, at 954.

ii. Specific deterrence does not justify youth LWOP.

The specific deterrent effect of a sentence is measured by the behavior of the offender *after their release*, but youth LWOP permanently denies an offender the opportunity for release, so it is difficult to quantify the specific deterrent effect of such a sentence. However, any theoretical specific deterrence value of a life sentence for youths is diminished by the extremely low risk of recidivism posed by this group of offenders as they age, as demonstrated in the rehabilitation section. See *supra*, at 12–13; see also James W. Marquat & Jonathan R. Sorensen, *Institutional and Post-release*

Behavior of Furman-Commuted Inmates in Texas, 26 CRIMINOLOGY 677, 690 (1988) (review of recidivism data for individuals originally sentenced to death, but released on parole in Texas following the Supreme Court's decision in *Furman v. Georgia*, "seriously call[s] into question" the validity of "life-without-parole statutes, specifically designed to protect society."). Further, research suggests that marginal increases in sentence length do not significantly impact a criminal's likelihood of recidivism. See Marco T. C. Stam, et al., *The effects of imprisonment length on recidivism: a judge stringency instrumental variable approach*, 20 J. EXP. CRIMINOLOGY 973 (2023), see also Nagin (2013), *supra*, at 200. This suggests that at a certain point, a lengthy sentence provides diminishing returns with respect to specific deterrence.

c. *Retribution does not justify a life sentence for a youth.*

The goal of retribution – also referred to as "just deserts" – is to impose a punishment that fits the crime and the offender. Michele Cotton, *Back with a Vengeance: The Resilience of Retribution As an Articulated Purpose of Criminal Punishment*, 37 AM. CRIM. L. REV. 1313, 1315 (2000); van Zyl Smith & Appleton (2019), *supra*, at 4; Robinson, *supra*, at 156 ("The central demand of desert is that greater punishment be imposed on an offender of greater blameworthiness."). Retribution, therefore, requires that the

punishment imposed by a sentence be commensurate with the moral culpability of the offender. *Id.* at 1317 (“Retribution . . . assumes that the criminal should be hurt, and that the injury caused by the criminal offense calls for a like infliction of injury on the criminal”).

As the U.S. Supreme Court has recognized, youths are less morally culpable for their crimes than their adult counterparts. Children under the age of 18 have “diminished culpability” due to “youth and immaturity,” and thus “the case for retribution is not as strong with a minor as with an adult.” *Roper*, 543 U.S. at 571.

This conclusion is borne out by a significant body of scientific research studies which have demonstrated that adolescence and early adulthood involve significant brain development. See Linder & Martinez, *supra*, at 316–17; see also *supra*, at pp. 12–15. This ongoing brain development bears significantly on a youth’s capacity for rational decision-making, controlling their impulses, and processing their emotions. Unlike adults, children often struggle to avoid acting on their impulses and even to weigh the consequences of their actions. See Shah, *supra*, at 222. These factors, such as the “diminished culpability and greater prospects of reform,” have led courts to recognize – consistently and emphatically – that children are less morally culpable than adults. *Montgomery*, 577 U.S. at 207 (citation

omitted); see also *Miller*, 567 U.S. at 471. Children are “more vulnerable... to negative influences and outside pressures” while also having much more “limited control over their own environment and the lack [of] the ability to extricate themselves from horrific, crime-producing settings.” *Miller*, 567 U.S. at 471 (citation and internal quotation marks omitted).

At the same time, because of their very youth, young criminals receiving LWOP sentences must serve a greater proportion of their life in prison than adult criminals. Because the crimes for which Mr. King is being sentenced occurred during his youth, Mr. King is in effect being sentenced to serve a *longer* sentence – a greater portion of his life – in prison compared to an adult offender for the same crime even though youths have “lessened culpability” and “greater capacity to change” relative to adult offenders. *Id.* at 465. This makes the sentencing court’s 80-year sentence of Mr. King disproportionate and excessively punitive.³ Indeed, as the U.S. Supreme Court has held, it would be punitive and disproportionate to sentence youths just as harshly as adult offenders for the same crime, without the opportunity

³ These same considerations also apply when reviewing the petitioner’s as-applied Eighth Amendment claim. See William Berry, *Evolving Standards, as Applied*, 74 FLA. L. REV. 775, 804–5 (2022) (discussing Chief Justice Robert’s concurrence in *Graham*, which involved an individual as-applied analysis and considered the personal culpability of the defendant, finding “Graham’s juvenile character part of the Eighth Amendment proportionality calculus but also it was enough to overcome the narrow proportionality threshold and violate the Eighth Amendment.”).

to consider the characteristics inherent to youths. See *Graham*, 560 U.S. at 70. Sentencing youths to life, or what amounts to life in prison without the possibility of parole is inconsistent with retributive principles or any semblance of proportionality.

d. *Incapacitation cannot justify youth LWOP.*

Incapacitation, like deterrence and rehabilitation, is a utilitarian justification for sentencing premised on public safety benefits. Whereas deterrence seeks to modify behavior through a fear of punishment and rehabilitation seeks to modify behavior by bettering the individual so they are not driven to commit crime, incapacitation seeks to decrease crime by removing an individual from the community so that the individual cannot commit further crime (or, indeed, participate in society at all). See van Zyl Smith & Appleton (2019), *supra*, at 6–7; see also Guyora Binder & Ben Notterman, *Penal Incapacitation: A Situationist Critique*, 54 Am. Crim. L. Rev. 1, 2–3 (2017). Therefore, permanently incarcerating a youth for homicide under a theory of incapacitation necessarily presupposes that the individual cannot be rehabilitated or deterred; in other words, it requires determining that the individual is incorrigible.⁴ See *Graham*, 560 U.S. at 72

⁴ All youth have the capacity for change and reformation as their brains develop. See Ana Ionescu, Note, “*Incorrigibility is Inconsistent with Youth*”: The Supreme Court’s

(noting that “while incapacitation may be a legitimate penological goal,” this theory cannot justify sentencing a youth to spend their life in prison because it assumes “that the juvenile offender forever will be a danger to society” and “requires the sentencer to make a judgment that the juvenile is incorrigible.”). Importantly, the U.S. Supreme Court has expressed that it is exceedingly difficult to find a youth to be incorrigible as their criminal activity could simply reflect “transient immaturity” and not “irreparable corruption.” *Id.* at 73 (quoting *Roper*, 543 U.S. at 572). See also *id.* (“As one court concluded in a challenge to a life without parole sentence for a 14-year-old, ‘incorrigibility is inconsistent with youth.’”) (internal citation omitted).

- i. Denying Mr. King eligibility for release until he is 97 is effectively a finding of incorrigibility.

At Mr. King’s resentencing, where he was sentenced to four twenty-year consecutive sentences – a sentence that would not make him eligible for parole until he turned 97 – the sentencing judge found that he “has demonstrated a capacity for change.” *King*, 329 A.3d 617, 2024 WL

Missed Opportunity to Cure the Contradiction Implicit in Discretionary JLWOP Sentencing, 76 U. MIAMI L. REV. 612, 627–643, 651 (2022) (demonstrating that science shows “incorrigibility is most certainly not permanent in light of teenagers’ incomplete maturation of their brains, unfixed character, greater capacity for rehabilitation, as well as the difficulty in predicting future criminality in adolescents.”). Therefore, this supports a categorical ban on sentencing youths to LWOP, expanding the holding in *Graham* beyond youths convicted of non-homicide offenses.

4471883, at *12. Mr. King’s time in prison shows that he is in fact capable of rehabilitation and would be able to positively integrate back into society. As Lieutenant Shawn Homer noted at the re-sentencing proceeding, Mr. King had “exceptional performance” in the State Correctional Institution (“SCI”)’s drug and alcohol treatment program, he was a mentor to others in the program, required little supervision, and was “respectful and not aggressive toward other staff and inmates.” *King*, 329 A.3d 617, 2024 WL 4471883, at *3. Additionally, he has expressed remorse for the harm he has caused to the victims and their families. *Id.* at *6. However, any progress made by Mr. King is moot as his sentence does not permit him a meaningful opportunity to “demonstrate that he has changed and matured into a model citizen who can contribute back to society.” *Burke, supra*, at 283. Despite evidence that Mr. King is capable of reform, suggesting that he could return to society without presenting any risk to public safety, the trial court’s re-sentencing effectively brands him as incorrigible by denying him any possibility of release for 80 years.

- ii. The cost and inefficiency of incarcerating an elderly prison population is disproportionate to any gains accrued through incapacitation.

Any theoretical public safety benefits accrued by incapacitation are offset by the cost of incarcerating Pennsylvania's elderly lifer population. The considerable resources required to incarcerate a person for life would be better utilized if diverted to other, more effective efforts, to promote public safety.

As of 2024, each incarcerated individual in Pennsylvania costs the state \$67,744 annually, with this number increasing every year. See Pa. Dep't of Corr. 2025-2026 Budget Testimony, at 4 (noting that in the Fiscal Year of 2023-2024, the average cost per day of an inmate was \$185.60).⁵ However, these costs do not include extraneous costs associated with aging inmates, which double the costs per inmate once they are over the age of 50. See Linder & Martinez, *supra*, at 320. As of December 2024, "there were 10,926 incarcerated persons (27.7%) over the age of 50," which reflects "the continuing aging trend of [Pennsylvania's prison] population." 2025-2026 Budget Testimony at 7. The Pennsylvania Department of Corrections notes that the cost of healthcare in the Pennsylvania prison system will continue to rise as inmates get older, which is made worse due to a growing trend by Pennsylvania judges of sentencing individuals for longer sentences.

⁵ Found at <https://www.pa.gov/content/dam/copapwp-pagov/en/cor/documents/resources/statistics/budget-documents/budget-testimony-2025-26.pdf>.

See *id.* at 7-8. Since that burden increases as an individual ages, allowing the opportunity for the early release of youths serving youth LWOP can result in considerable cost savings that can be diverted to protecting public safety via other mechanisms. Considering the enormity of the cost (which could be allocated to other, more efficient, public safety uses) in conjunction with the low risk of recidivism and the adequacy of parole review, Pennsylvania's incapacitation of youths convicted of homicide cannot be justified by a financial cost-benefit analysis.

Nor can these lengthy sentences be justified by any concern for recidivism. The U.S. Sentencing Commission's reports have found that recidivism rates for people who have served a decade in federal prison are 29% lower compared to those who serve shorter sentences. See Nazgol Ghandnoosh & Ashley Nellis, *How Many People are Spending Over a Decade in Prison?*, The Sent'g Project (Sept. 2022) at 8. Even those who have been convicted and imprisoned for serious crimes and served decades of imprisonment have shown "extremely low recidivism rates" upon their release. *Id.* There are virtually no benefits, in terms of public safety outcomes, for imposing such lengthy prison sentences even for those convicted of serious crimes.

CONCLUSION

For the foregoing reasons, this Court should find *de facto* life sentences for youths who show capacity for rehabilitation unconstitutional under both the United States and Pennsylvania Constitutions. Sentencing children to spend their entire life in prison, without the opportunity for a meaningful life outside of prison defeats any penological purpose – rehabilitation, retribution, deterrence or incarceration. Therefore, it should be found to be a “cruel punishment” under Article I, Section 13 of the Pennsylvania Constitution, Pa. Const. Art. 1 § 13, and “cruel and unusual” under the Eighth Amendment of the United States Constitution, U.S. Const. Amend. VIII.

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Pursuant to the Pennsylvania Rules of Appellate Procedure 531 (b)(2)(i)(ii), amici state that no person or entity other than the amici, their members, or counsel have contributed money for the preparation of the brief. Amici further state that no person or entity other than the amici, its members, and their counsel have authored the brief either in whole or in part.

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CERTIFICATE OF COMPLIANCE

I further certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than nonconfidential information and documents.

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word count limitation of Rule 531 of the Pennsylvania Rules of Appellate Procedure. Using the word processor used to prepare this document, the word count is 6,623 words.

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