

No. 28 MAP 2025

SUPREME COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

Respondent,

v.

IVORY KING,

Petitioner.

On Appeal from a Judgment of the Superior Court of Pennsylvania,
No. 406 EDA 2023, dated Oct. 11, 2024, affirming a Judgment of
the Court of Common Pleas of Bucks County,
No. CP-09-CR-0003727-1998, dated Nov. 21, 2022

**BRIEF OF THE ABOLITIONIST LAW CENTER AND THE
STATE LAW RESEARCH INITIATIVE AS AMICI CURIAE
SUPPORTING APPELLANT AND REVERSAL**

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INTERESTS OF THE AMICI CURIAE

The Abolitionist Law Center (ALC) is a non-profit public interest organization dedicated to defending and expanding rights of incarcerated people and challenging state violence through advocacy, public education, and litigation. ALC has litigated numerous cases attacking unconstitutionally long and harsh sentences imposed on juveniles, including *Commonwealth v. Lee*, No. 3 WAP 2024, currently pending before this Court. ALC submits a brief in this case in part because of the connection between Mr. King's and Mr. Lee's cases—both cases implicate the same provision of the Pennsylvania Constitution, and *Amicus* has a strong interest in both correct and consistent interpretation of that provision in cases across the Commonwealth.

The State Law Research Initiative (SLRI), a fiscally-sponsored project of the Proteus Fund, Inc., is a legal advocacy organization dedicated to reviving and strengthening state constitutional rights that prevent extremes in our criminal systems, with a focus on excessive prison terms and inhumane conditions of confinement. SLRI has unique expertise in the development and application of state constitutional law, particularly in the context of criminal legal systems. SLRI's work includes, among other things, fostering and developing legal scholarship on the history and meaning of state constitutional rights, as well as working with legal scholars and criminologists on amicus briefs in state courts of appeal that

focus on the efficacy of criminal punishments and its role in proper state constitutional analysis.

SUMMARY OF ARGUMENT

Amici recognize that this Court could reject the sentence imposed on Mr. King as straightforwardly disallowed by *Miller*, *Montgomery*, and the United States Constitution, because it imposes a *de facto* life sentence on a juvenile whom the sentencing Court acknowledged had the potential for redemption. But in undertaking consideration of what the Pennsylvania State Constitution allows, *see* May 13, 2025 Order, at (1), *Amici* urge the Court to hold that our Commonwealth’s constitution goes further: it does not allow life without parole sentences for youth at all.

In urging the Court to do so, *Amici* argue as ALC did in *Lee* that under the analysis directed by *Edmunds*, Article I, Section 13 of the Pennsylvania Constitution sweeps more broadly than its federal counterpart. *Amici* will not belabor the points that ALC made in its *Lee* briefing. But each *Edmunds* factor cuts in favor of holding as such. First, the state constitution’s text differs in an important way from the Eighth Amendment; second, Pennsylvania’s founding-era history contextualizes that difference as more rights-protective than its federal counterpart. Article I, Section 13’s history prioritizes rehabilitation as a goal—and imposing a life sentence on someone with the capacity for redemption ignores that goal entirely. Third, when this Court looks to the practices

of other states, it will find considerable support in other states rejecting life without parole sentences—direct, or as here, *de facto*—for youth. Even states that allow multi-decade sentences for youth do so in part by finding that they are not *de facto* life sentences. And the fact that the sentencing Court imposed a *de facto* life sentence here by stacking shorter consecutive sentences instead of imposing one long sentence does not change this analysis—most states consider the ultimate aggregated sentence. Fourth, policy considerations counsel in favor of rejecting LWOP sentences for youth, as evidence from hundreds of returning Pennsylvanians following the U.S. Supreme Court’s *Miller* and *Montgomery* decisions reveals startlingly low recidivism rates—and, accordingly, demonstrates both that Pennsylvania sentencing practices have long done a terrible job of correctly assessing rehabilitation potential and that youth convicted of even terrible crimes can and do redeem and improve themselves in the ensuing years.

So, all the *Edmunds* factors cut against allowing LWOP sentences for youth at all. That the sentencing Court imposed a *de facto* life without parole sentence here after specifically finding that Mr. King had capacity for rehabilitation, however, makes this an easy case in which to find a violation of the Pennsylvania Constitution. At minimum, the Pennsylvania Constitution prohibits imposition of a *de facto* LWOP sentence in the face of such a finding.

ARGUMENT

I. Life without parole sentences for youth—both direct and *de facto*—violate the Pennsylvania Constitution.

Amicus ALC has previously provided considerable analysis in its briefing in *Lee* as to the meaning of Article I, Section 13 of the Pennsylvania Constitution. *Amici* do not intend to belabor those points here. Similarly, however, life without parole sentences for juveniles like Mr. King violate that provision of the state constitution. In undertaking an *Edmunds* analysis of the differences between the state constitutional provision and its federal counterpart,¹ *Amici* explain that several factors cut in favor of Article I, Section 13 offering broader protection. First, the text, *see Edmunds*, 586 A.2d at 895, and second, the history, *see id.*, of the provision confirms that it sweeps more broadly. Third, other states' treatment, *see id.*, of even *de facto* life sentences—to say nothing of directly imposed life sentences—for juveniles confirms that it does. If anything, the sentencing court imposing a *de facto* life sentence here through stacking or aggregation only confirms that the Article I, Section 13 should bar the sentence. And fourth, policy considerations here counsel in favor of extending broader protection through the state constitution than through its federal counterpart. Those include general

¹ In determining whether a provision of the Pennsylvania Constitution is co-extensive with a federal constitutional counterpart or offers more protection, this Court has provided guidance for that analysis. *Commonwealth v. Edmunds*, 586 A.2d 887, 894 (Pa. 1991).

policy considerations about the rehabilitative potential of youth, but also include Pennsylvania-specific public safety considerations inherent to the Commonwealth's parole process.

A. The text and history of Article I, Section 13 demonstrates this.

The text of Article I, Section 13 differs in an important way from the text of the U.S. Constitution's Eighth Amendment. As a reminder, Article I, Section 13 prohibits the infliction of "cruel punishments," *id.*, while the federal counterpart prohibits "cruel and *unusual* punishments." U.S. Const. Amend. VIII (emphasis added). As this Court has acknowledged in agreeing to hear *Lee*, and as Justice Castille observed in *Commonwealth v. Baker*, 78 A.3d 1044 (Pa. 2013), the addition of "unusual" to "cruel" must have some independent substantive meaning. *Id.* at 1054-55 (Castille, J., concurring). Indeed, canons of constitutional interpretation in both federal precedent and the law of the Commonwealth require "unusual" to have its own substantive meaning, because holding otherwise would contravene the rule against surplusage. *E.g. Commonwealth v. Ostrosky*, 909 A.2d 1224 (Pa. 2006) (requiring textual interpretations "to give effect to every word"); *Commonwealth v. Gilmour Mfg. Co.*, 822 A.2d 676, 679 (Pa. 2003) ("no provision is mere surplusage"). And so, any look at the difference between the Commonwealth and U.S. constitutions' provisions starts with an

assessment of the work that “unusual” does in the text of the Eighth Amendment.

As *Amicus* ALC has previously written to this Court, the key difference occasioned by the U.S. constitution’s use of “unusual” is that it limited the Eighth Amendment’s protection by extending it only to prohibit cruel practices with no longstanding history—even if longstanding practice included unambiguously cruel punishments. The leading scholarship on the subject has said as much, explaining that “[u]nder the common law ideology . . . the best way to discern whether a government practice comported with principles of justice was to determine whether it was continuously employed throughout the jurisdiction for a very long time, and thus enjoyed ‘long usage.’ The opposite of a practice that enjoyed ‘long usage’ was an ‘unusual’ practice, or in other words, an innovation.” John F. Stinneford, *The Original Meaning of “Unusual”: The Eighth Amendment As A Bar to Cruel Innovation*, 102 Nw. U. L. Rev. 1739, 1745 (2008) (internal citations omitted). To be clear, “unusual” does not doom the People to suffer any punishment used at some point in history; a government that attempts to revive types of punishment that “fall completely out of usage” for a considerable period of time may violate the Eighth Amendment. *Bucklew v. Precythe*, 587 U.S. 119, 130-31 (2019) (citing Stinneford with approval). But the U.S. Constitution’s protection extending only to bar particular punishments that are both cruel *and* unusual poses a meaningful

obstacle to people challenging longstanding or commonly-used law enforcement, sentencing, or other carceral practices under the Eighth Amendment. By contrast, that additional obstacle does not exist in the text of our Pennsylvania Constitution’s Article I, Section 13.

The history of Article I, Section 13 sheds additional light on this difference and demonstrates why it affords more protection to individual rights than its federal counterpart. Recent scholarship has illuminated framing-era Pennsylvanians’ strong commitment to rehabilitation and strong disapproval of punishment for its own sake untethered from a rehabilitative purpose. Framing-era Pennsylvanians “believed that only deterrence and reformation justified a punishment,” and that even those purposes of punishment justified “only the least severe infliction” of whatever punishment would be imposed. Kevin Bendesky, *“The Key-Stone to the Arch”: Unlocking Section 13’s Original Meaning*, 26 U. Pa. J. Const. L. 201, 204 (2023). By contrast, “[t]hey proscribed as cruel anything unnecessary for those aims.” *Id.* And as part of the explicit distinction between the federal and state constitutional text, their exclusion of “unusual” reflected their belief that the meaning of “cruel” in Article I, Section 13 “must evolve alongside society’s scientific understanding.” *Id.*

Framing-era Pennsylvanians specifically understood their prohibition on cruel punishments to encompass protection against disproportionate punishments. Indeed, in the Commonwealth’s very first constitution,

nearby text called for the legislature to “reform” “the penal laws as heretofore used” as quickly as possible, specifically to make punishments “more proportionate to the crimes” at issue. Pa. Const. of 1776, Section 38. The very next section after that called for making “sanguinary punishments”—or “bloodthirsty” punishments²—“less necessary.” Pa. Const. of 1776, Section 39; *see also Unlocking Section 13* at 213. Judges of that era understood that clear command, with one of Pennsylvania’s earliest chief justices urging the legislature “to fulfill these constitutional demands by implementing the most lenient means of achieving punishment’s aims: deterrence.” *Id.* The legislature took him up on that, passing laws in 1786 and 1790 “for the purpose of carrying the provisions of the constitution into effect” that reformed punishment and sentencing in several ways, including by restricting the use of the death penalty and prioritizing rehabilitation and deterrence as purposes of punishment. *Id.* at 214; *id.* (citing Act of 5th Apr. 1790, reprinted in John W. Purdon, *Digest of the Laws of Pennsylvania*, 9 (M’Carty & Davis, 1831)). And when Pennsylvania enacted a new constitution in 1790, people discussed at the drafting convention the understanding that the language they chose would mean “that cruel punishments ought not to be inflicted” and that it would “prohibit every penalty which is not evidently necessary.” *Unlocking Section 13* at 214.

² *See* Merriam-Webster, “sanguinary” (listing “bloodthirsty” and “bloody” as the first and second definitions).

Other contemporaneous historical evidence confirms this. Early state penal legislation prioritized rehabilitation, with a 1794 law “confirm[ing] that Pennsylvanians believed it is the ‘duty of every government to endeavor to reform, rather than exterminate offenders. . .’” *Id.* at 214-15. Prominent figures in framing-era Pennsylvania government and politics championed proportionate sentencing, including James Wilson, *id.* at 222-23, Thomas McKean, the first Chief Justice of Pennsylvania, *id.* at 226-27 (quoting McKean’s writing observing that the first purpose of punishment was “to correct and reform the offender”), early Pennsylvania Attorney General Jared Ingersoll, *id.* at 229 (quoting Ingersoll explanation of punishment’s purpose “to reform rather than to destroy”) (cleaned up), and Benjamin Rush, *id.* at 233 (quoting Rush as saying “the only design of punishment is reformation of the criminal”).

Beyond the views of significant individuals, early judicial and penal practices reflected the prioritization of rehabilitation, too. America’s first jail was on Walnut Street in Philadelphia. Melvin Gutterman, *Prison Objectives and Human Dignity: Reaching a Mutual Accommodation*, 1992 BYU L. Rev. 857, 862. And “[e]very few months in the early 1790s,” judges, politicians, prison inspectors, and others visited “to ensure that the penitentiary was operating in accordance with its design, which was meant to create a humane, rehabilitative environment for those detained within.” Wynne Muscatine Graham, *The Forgotten History of Prison Law*, 138 Harv. L. Rev. 1715, 1716 (2025) (citing Rex A. Skidmore, *Penological*

Pioneering in the Walnut Street Jail, 1789–1799, 39 J. Crim. L. & Criminology 167, 171 (1948)). They conducted these visits, investigated complaints, addressed misconduct and abuse, implemented and revised policies, and generally played an active role in jail oversight because such responsibilities were “essential to a humane and effective carceral system.” *Id.* at 1717. The aforementioned Benjamin Rush, Supreme Court of Pennsylvania Justice and one-time U.S. Attorney General William Bradford, and others influenced by British advocate John Howard, all prominently championed the value of external assurance that prisons were fulfilling their rehabilitative purpose. *Id.* at 1737 (citing Rush’s 1787 writing *An Enquiry Into the Effects of Public Punishments Upon Criminals* and Bradford’s 1793 Governor-commissioned pamphlet *An Enquiry How Far the Punishment of Death Is Necessary in Pennsylvania*).

All told, both prominent early Pennsylvanians in law and policy, and the public at the time of Pennsylvania’s state constitution’s drafting and enactment, understood the “distinctly Pennsylvanian emphasis on punishment’s necessity” as a precedent condition to imposing it, and a corresponding preference for leniency and prioritization of rehabilitation over retribution. *Unlocking Section 13* at 244. And by excluding “unusual,” they understood that they had specifically drafted a provision that would evolve with the times—“Our progress in virtue should certainly bear a just proportion to our process in knowledge.” *Id.* (quoting

James Wilson). Accordingly, as time elapsed, Pennsylvania courts began discarding punishments that even earlier, framing-era Pennsylvanian's had seemingly tolerated. *See James v. Commonwealth*, 12 Serg. & Rawle 220 (Pa. 1825) (rejecting use of a “ducking stool”); *Commonwealth v. Ritter*, 13 Pa. D. & C. 285 (Pa. 1930) (rejecting retribution as purpose of punishment).

Amici urge the Court to articulate a standard that reflects the text and history of Article I, Section 13. That requires giving real meaning to the provision's specific exclusion of a conjunctive “unusual,” and recognizing the framing-era's sole focus on the purposes of rehabilitation and deterrence. As *Amicus* ALC urged in *Lee*, Article I, Section 13 requires an assessment of proportionality between a crime and its proposed punishment, in reference to those purposes. That counsels against all life without parole sentences for juveniles, because such sentences do not acknowledge even the possibility of rehabilitation—to say nothing of a sentence like Mr. King's, which overrides an explicit finding that he can rehabilitate himself. Juvenile LWOP sentences similarly lack proportionality relative to the diminished culpability of juveniles, as a category. *Miller v. Alabama*, 567 U.S. 460, 471 (2012). “Nor can deterrence do the work in this context, because the same characteristics that render juveniles less culpable than adults—their immaturity, recklessness, and impetuosity—make them less likely to consider

potential punishment.” *Id.* at 472. Under the circumstances, Article I, Section 13 simply does not allow LWOP for juveniles.

B. Other state constitutions that bar even *de facto* life sentences for youth confirm that the Pennsylvania constitution does, too.

To the extent that the *Edmunds* analysis considers the practices of other states, *see Edmunds*, 586 A.2d at 895, *Amici* can report that other states generally do not allow life without parole sentences for juveniles, either. The U.S. constitution prohibits mandatory life without parole sentences that do not account for a youth’s capacity for redemption, *Miller*, 567 U.S., and *Miller* itself addressed a practice that, even then, 21 states entirely disallowed and other states substantially curtailed. *See id.* at 487. As relevant here, numerous states reject both direct and *de facto* life sentences for youth in many or all circumstances, including those imposed on a mandatory basis, those imposed for non-murder offenses, those imposed disproportionately, or, again, any at all.

First, many states reject life without parole sentences in some or all circumstances because they do not allow for the rehabilitation that Pennsylvania’s Article I, Section 13 prioritizes. No matter the age of the defendant, a sentence that “consigns an offender to spend his or her entire life in prison is plainly unconcerned with reforming the offender.” *State v. Kelliher*, 873 S.E.2d 366, 386 (N.C. 2022) (internal quotation marks omitted); *see also Naovarath v. State*, 779 P.2d 944 (Nev. 1989)

(same). Michigan, as another example, has struck down a mandatory life without parole penalty under its state constitution that the U.S. Supreme Court had previously upheld under the Eighth Amendment, specifically because Michigan's state constitution offered broader protection and mandatory LWOP undermined "the goal of rehabilitation." *People v. Bullock*, 485 N.W.2d 866, 873 (1992); compare *id.* with *Harmelin v. Michigan*, 501 U.S. 957 (1991) (upholding the same statute under the 8th Amendment).³ Indeed, to the extent that LWOP sentences specifically disregard even the possibility of rehabilitation and reentering civil society, some courts have even analogized them to death sentences. *Diatchenko v. District Attorney*, 1 N.E.3d 270, 284 (Mass. 2013) (calling LWOP sentences "strikingly similar" to death sentences).

Second, many states reject LWOP sentences for youth, specifically, because youth as a category defy the fair application of such sentences in reference to their capacity for rehabilitation, to deterrence, and to

³ Michigan's experience here also underscores the role that this Court must play in protecting people's rights under the Pennsylvania Constitution. *Harmelin* itself held back from striking down the statute in question precisely because of "the nature of our federal system" and the associated belief that states like Michigan would sufficiently protect individual rights. *Harmelin*, 501 U.S. at 1001 (Kennedy, J., concurring). Washington's highest court, similarly, has invalidated a sentencing scheme under its state constitution even where the Supreme Court previously allowed it. *State v. Fain*, 617 P.2d 720, 723 (Wash. 1980) (acknowledging argument under Eighth amendment foreclosed by *Rummel*); compare *id.* with *Rummel v. Estelle*, 445 U.S. 263 (1980).

allowable purposes of punishment. The Supreme Court has acknowledged Kentucky's decision on that basis in its own jurisprudence, for example. *Graham v. Florida*, 560 U.S. 48, 73 (2010) (citing *Workman v. Commonwealth*, 429 S.W.2d 374, 378 (Ky. App. 1968)). But Kentucky is hardly alone; state supreme courts have gone far beyond the U.S. Supreme Court's jurisprudence. Iowa bans mandatory minimum sentences for children entirely, no matter their length, *State v. Lyle*, 854 N.W.2d 378, 380-81 (Iowa 2014), and New Jersey bars long sentences that fall short of even *de facto* life sentences because of the nature of youth. *State v. Comer/Zarate*, 266 A.3d 374, 380-81 (N.J. 2022) (addressing 30-year mandatory minimum sentence when applied to a juvenile). Indiana's highest court has observed that *de facto* life without parole sentences "forswear[] altogether the rehabilitative ideal" and violate the law when imposed on youth, pursuant to *Graham*. *Brown v. State*, 10 N.E.3d 1, 8 (Ind. 2014); *see also People v. Caballero*, 282 P.3d 291, 294-95 (Cal. 2012) (holding that "sentencing a juvenile offender for a nonhomicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment").

Numerous states, however, entirely bar or sharply curtail LWOP when imposed on even a discretionary basis. Iowa, Massachusetts, and Washington bar even discretionary LWOP sentences for youth, as examples. *State v. Sweet*, 879 N.W.2d 811, 839 (Iowa 2016); *Diatchenko*,

1 N.E.3d at 275-76; *State v. Bassett*, 428 P.2d 343, 345-46 (Wash. 2018). And states that allow LWOP for youth under some circumstances often sharply circumscribe a sentencing court’s ability to impose such a sentence. Alaska, for its part, requires sentencing courts to “affirmatively consider” youth when considering either a direct or *de facto* life sentence, and specifically rejects such sentences in the absence of an explicit finding that the individual “is one of the rare juvenile offenders whose crime reflects irreparable corruption.” *Fletcher v. State*, 532 P.3d 286, 308 (Alaska Ct. App. 2023) (internal quotations omitted).

Notably, states that bar life sentences for youth often apply that prohibition even to *de facto* life sentences, because a *de facto* life sentence still results in a violation of a juvenile’s constitutional rights. And states that look at whether a sentence amounts to a *de facto* life sentence typically treat shorter sentences than Mr. King’s as such. The Illinois Supreme Court, for example, vacated a 50-year sentence imposed on a 16-year-old under even the U.S. Constitution pursuant to *Miller* without an independent look at Illinois’ own constitution, because the sentencing court had not assessed capacity for redemption before imposing a *de facto* life sentence. *See People v. Buffer*, 137 N.E.3d 763, 769-70, 774 (Ill. 2019) (treating anything over 40 years for a juvenile as a *de facto* life sentence). In doing so, it noted that states like New Jersey, Iowa, and Wyoming treat any sentence imposed on a juvenile that would “result[] in a geriatric release” as one triggering constitutional scrutiny. *Id.* at 772

(citing *State v. Zuber*, 152 A.3d 197, 212-13 (N.J. 2017), *Bear Cloud v. State*, 334 P.3d 132 (Wyo. 2014), and *State v. Null*, 836 N.W.2d 41, 71 (Iowa 2013)). North Carolina, too, treats term sentences imposed on juveniles as a *de facto* life sentence when the length reaches 40 years without parole. *State v. Conner*, 873 S.E.2d 338, 359-60 (N.C. 2022). Even for states that set higher bars than 40 years when assessing *de facto* life sentence status, most treat a 50-year sentence imposed on a juvenile as a *de facto* life sentence. *Carter v. State*, 192 A.3d 695, 727-28 & n.40 (Md. 2018) (collecting cases from more than a dozen states applying a 50-year threshold, and observing that it had “found no significant authority holding that a sentence that precludes release for more than 50 years is *not* equivalent to life without parole for a juvenile offender”) (emphasis in original).

And in assessing whether a sentence is *de facto* one for life, most courts look to the aggregate of consecutively imposed sentences, rather than allowing aggregation as a loophole to constitutional protections. Indeed, some prosecutors do not even contest this proposition. *People v. Reyes*, 63 N.E.3d 884, 888 (Ill. 2016) (rejecting an aggregate sentence with earliest opportunity for release at 89 years for a 16-year-old, and noting that “the State concedes” that the sentence “is a mandatory, *de facto* life-without-parole sentence”); *see also* Bob Egelko, *California AG will no longer defend lengthy sentences for violent young offenders*, San Francisco Chronicle (July 26, 2025) (quoting a legal filing as asserting that “the

Attorney General has decided . . . to concede that all juvenile offender sentences of at least 50 years to life are de facto LWOP sentences”).⁴ When prosecutors have insisted that aggregation does not amount to a *de facto* life sentence, courts generally reject that; one observed that “[a] strict application of the State’s argument would mean that a sentence that inarguably would not allow for the offender to ever be released could not be considered a life sentence so long as the sentence is expressed in years,” which was obviously wrong. *Steilman v. Michael*, 407 P.3d 313, 319 (Mont. 2017). “Logically, the requirement to consider how ‘children are different’ cannot be limited to de jure life sentences when a lengthy sentence denominated in a number of years will effectively result in the juvenile offender’s imprisonment for life.” *Id.* (collecting cases). At bottom, most states look to the total length of sentence, accounting for aggregation of consecutive sentences. *See e.g., Conner*, 873 S.E.2d at 359 (allowing aggregation but setting the aforementioned 40-year limit before treating it as de facto life sentence); *Davis v. State*, 415 P.3d 666, 676 (Wyo. 2018) (characterizing aggregated sentence of 54 years as de facto life sentence because it exceeded 45 years); *State v. Moore*, 76 N.E.3d 1127 (Neb. 2016) (applying *Graham* to long aggregated term of years); *Johnson v. State*, 215 So.3d 1237 (Fla. 2017) (same).

⁴ Available at: <https://www.sfchronicle.com/politics/article/bonta-violent-youth-sentences-20774960.php>.

Third, in assessing sentences under state constitutions, high courts in several states look at whether those sentences are proportional to the allowable purposes of punishment.⁵ That assessment considers of evidence about punishments’ efficacy, including in the context of age and other characteristics of a defendant. Tennessee, for example, has rejected a sentence for a juvenile that required “at least 51 years of incarceration” as disproportionate for its purposes in light of the youth of the defendant. *State v. Booker*, 656 S.W.3d 49, 65 (Tenn. 2022) (“although a state need not guarantee a juvenile offender eventual freedom, it must not foreclose all genuine hope of a responsible and productive life or reconciliation with the community”); *see also Davilla v. Oregon*, 462 P.3d 748, 749 (Or. Ct. App. 2020) (rejecting 50-year sentence for juvenile because courts cannot sentence juveniles “without regard for the unique qualities of youth that might make imposition of that sentence inappropriate”). Michigan, which has a state constitutional provision prohibiting cruel *or* unusual punishment, *see* Michigan Constitution, Article I, Section 16 (emphasis added), specifically assesses “the severity of the sentence compared to the

⁵ Numerous states whose state constitutions, like Pennsylvania’s, prohibit “cruel” punishments and lack the “or unusual” language of the Eighth Amendment to the U.S. Constitution, have state court opinions specifically observing that the difference is meaningful. *E.g. Hopkinson v. State*, 632 P.2d 79, 204-05 (Wyo. 1981) (Rose, C.J., concurring in part and dissenting in part); *People v. Carmony*, 26 Cal. Rptr.3d 365 (Ca. Ct. App. 2005); *Bullock*, 485 N.W.2d at 872 (discussing the difference between only “cruel” and “cruel and unusual”).

gravity of the offense” under that provision. *People v. Stovall*, 987 N.W.2d 85, 91 (Mich. 2022) (discussing state court precedents). In undertaking that comparison, the sentencing court must also address “whether the penalty imposed advances the penological goal of rehabilitation” and consider “the important mitigating ways that children are different from adults.” *Id.* Even a South Carolina decision that upheld a *de facto* life sentence imposed on a juvenile under the federal constitution did so only after observing that he “did not argue he would be entitled to relief under our state constitution’s cruel and unusual punishments clause.” *State v. Slocumb*, 827 S.E.2d 148, 153 n.8 (S.C. 2019). Given the text of South Carolina’s state constitutional provision, the result might well have been different if he had.

C. Policy considerations counsel rejecting youth LWOP sentences because evidence demonstrates that essentially all juveniles are capable of rehabilitation.

Amici will not belabor this point, either, having made it in other briefs to this Court. But suffice to say that as both ALC’s own party briefing and other *amici*’s briefs in the *Lee* case illustrate, numerous policy considerations should foreclose LWOP sentences for youth.

First, all evidence suggests that people who commit crimes as juveniles—even violent crimes—have considerable capacity for redemption. The best evidence of that within the Commonwealth is the track record of former juvenile lifers released in the years following

Miller and *Montgomery* after serving unconstitutional sentences, often for decades prior to release. Former juvenile lifers released after resentencing and/or parole have shown remarkably low rates of recidivism. In Philadelphia specifically, the *Miller* and *Montgomery* legal reforms led to nearly 200 former juvenile lifers reentering the community, and the recidivism rate among that group, even years after many had been released, was measured at just 1.14% in 2022—a lower offense rate even than people in other demographics with no criminal history at all. Tarika Daftary-Kapur and Tina M. Zottoli, Reentry Experiences of Released Juvenile Lifers in Philadelphia, Montclair State Legal Decision Making Lab (2022).⁶ Indeed, very few of them had even had subsequent contacts with police of any kind, and of the two who re-offended, one was a conviction for contempt. *Id.*

Former Pennsylvania juvenile lifers are not unique in this regard. Across the country, people who have served very long terms of incarceration even for violent crimes have low recidivism rates—statistics that have proven durable over time. Robert Weisberg, Debbie A. Mukamal & Jordan D. Segall, *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California*, Stanford, CA: Stanford Criminal Justice Center

⁶ Available at: <https://www.msudecisionmakinglab.com/lifers-policy-brief>.

(2011).⁷ This tracks with former lifers' pre-release in-facility conduct, which also improves over time. People who start out their terms with recklessness, impulsivity, and anti-social behavior, regularly learn and apply new behavioral skills during their sentences. As a result, in-facility misconducts decline markedly over time on average. Ashley Nellis, *The Lives of Juvenile Lifers: Findings from a National Survey*, The Sentencing Project (March 2012). A lot of people who enter prison without even a high school diploma end up attaining their GED by diligently studying even in a restrictive environment. *Id.* In fact, contrary to general misconceptions, older people who have already served portions of very long sentences for violent crimes are the most well-adjusted of anyone in the prison population. Lila Kazemian & Jeremy Travis, *Imperative for Inclusion of Long Termers and Lifers in Research and Policy*, 14 *Criminology & Pub. Pol.* 2 (2015).⁸

If anything, former juvenile lifers' capacity for redemption is all the more notable given the obstacles to rehabilitation in many prison systems, including Pennsylvania's. In Pennsylvania, for example, many of the aforementioned former juvenile lifers spent considerable portions of their sentences in solitary confinement and, because of their sentences,

⁷ Available at: <https://law.stanford.edu/wp-content/uploads/sites/default/files/publication/259833/doc/slspublic/SCJC%20Lifer%20Parole%20Release%20Sept%202011.pdf>

⁸ Available at: http://www.antoniocasella.eu/nume/Kazemian_Travis_2015.pdf.

lacked eligibility for certain types of in-facility programming that might have aided their rehabilitation. Across the country, demand for rehabilitative programming far outstrips its supply: more than 50-60% of incarcerated people do not receive correctional programming—not because of lack of interest, but because of institutional policy or capacity. *See* Nellis (2012), *supra*; Reentry Experiences of Released Juvenile Lifers, *supra*. In fact, 29% of people in one study could not participate in programming because they had already completed all available programming, or there were simply insufficient programs for them to attend despite wanting to do so. Nellis (2012), *supra*. Many people successfully rehabilitate themselves over the course of their sentences simply because of their own capacity for redemption and self-directed maturation, with no thanks to carceral systems that offer them insufficient programming, poor health care, and other burdens on family communication and maintaining community ties that might help, *see* Pennsylvania Profile, Prison Policy Initiative.⁹

As a final policy consideration, *Amici* also observe that parole eligibility would not harm public safety in any event. Unlike many other states, Pennsylvania has no presumptive right to parole, for anybody. Parole eligibility does not guarantee release; the Parole Board generally

⁹ (quantifying “the high cost of being incarcerated in Pennsylvania” passed on to incarcerated people and their families), and *available at*: <https://www.prisonpolicy.org/profiles/PA.html>.

declines to release people whom the DOC speculates might pose a public safety danger. The parole process, if anything, sets a high bar for applicants, because even more than other states, the Commonwealth provides for robust prosecutorial and victim participation in the process. Commonwealth law requires that “each victim . . . [of] a personal injury crime shall be given an opportunity by the court to submit a preparole statement to the court expressing concerns or recommendations regarding the parole or parole supervision of the offender.” 61 Pa. C.S. § 6134.1(c)(1); *see also* 61 Pa. C.S. § 6140. Not only may victims register themselves, but “the district attorney shall affirmatively” notify those victims about their participation rights. 61 Pa. C.S. § 6134.1(c)(2); *see also* 61 Pa. C.S. § 6140. Those rights also extend to immediate family members if the victim is a minor, is incapable of testifying, or has died. 61 Pa. C.S. § 6140(a)(2). Statutes also impose a “duty to investigate” on the Parole Board, and specifically direct the Board to consider not only the circumstances of the offense and the “written or personal statement of the testimony of the victim or victim’s family,” 61 Pa. C.S. § 6135(a)(5), but an applicant’s conduct in the DOC, personal and family history, and complete record. *Id.* at § (a)(7). So the law fulsomely addresses public safety concerns in the parole process, and that statutory context would also apply to the prospect of potential—not guaranteed—future release to juveniles who would otherwise face direct or *de facto* LWOP sentences.

Considering both the considerable statutory protections for public safety and the empirical evidence of low recidivism rates for juveniles previously—erroneously—deemed incorrigible, the policy considerations become clear. In the *Edmunds* analysis, they counsel in favor of rejecting LWOP sentences for juveniles Article I, Section 13 of the Pennsylvania Constitution.

CONCLUSION

In considering the *Edmunds* factors, the text, history, practices of other states, and policy considerations inexorably point to one conclusion. The Pennsylvania Constitution's Article I, Section 13 confers broader protection than the Eighth Amendment of the U.S. Constitution, and should preclude the imposition of LWOP sentences on juveniles. Indeed, to harmonize with other states with similar textual differences in their own analogous provisions, both direct and *de facto* life without parole sentences for youth violate the state constitution, because they entirely disregard even the possibility of a juvenile's redemption. Where, as here, a sentencing court specifically finds that a juvenile has capacity for rehabilitation and nevertheless applies a *de facto* life without parole sentence, even the Eighth Amendment prohibits the sentence. But in response to this Court's stated intent to consider the state constitution, for the reasons in this brief and for the reasons in Mr. King's brief, this Court must vacate the sentence.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word count limitation of Rule 2135 of the Pennsylvania Rules of Appellate Procedure. This brief contains 5,559 words. In preparing this certificate, I relied on the word count feature of Microsoft Word.

Dated: July 31, 2025

/s/ Jim Davy
Jim Davy