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IN THE SUPREME COURT OF PENNSYLVANIA

34 EAP 2026

JEROME COFFEY,
APPELLANT

v.

COMMONWEALTH OF PENNSYLVANIA,
APPELLEE

BRIEF FOR AMICUS CURIAE, PUBLIC DEFENDER ASSOCIATION OF PENNSYLVANIA, ON BEHALF OF APPELLANT JEROME COFFEY

Appeal from the order of the Pennsylvania Superior Court dated March 5, 2026, at 1452 EDA 2024, affirming the order of court by the Court of Common Pleas of Philadelphia County, Pennsylvania, dated April 25, 2024, at CP-51-CR-0441911-1993 criminal term.

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***This memorandum of law is filed in the individual capacity of the author and in no way reflects, or is meant to reflect, the views of Penn State Dickinson Law or Penn State University. The institution is attached for affiliation purposes only.

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STATEMENT OF THE INTEREST OF AMICUS CURIAE

The Public Defender Association of Pennsylvania (the "Association") is a Pennsylvania non-profit corporation whose membership is comprised of the 800 public defenders employed in the 67 county public defender offices of this Commonwealth. The Association was incorporated in 1971.

The Association strives to ensure a high standard of representation in courts throughout the Commonwealth and works hard to ensure that the legal and constitutional rights of the citizens of the Commonwealth are respected. The members of this Association represent many criminal defendants who would be impacted by a decision of the Court in this case. Amici has previously participated in numerous cases before this Court.

One writer of this amicus brief is a faculty member and clinical professor at Penn State Dickinson Law at University Park, Pennsylvania. The faculty member represents individuals in pro bono matters in post-conviction cases and writes on issues of criminal law, procedure and advocacy. While he is affiliated with Penn State Dickinson Law and Penn State University ("PSU"), he does so in his individual capacity and does not represent the views of PSU, Penn State Dickinson Law or any of the clinical programs at Penn State Dickinson Law.

No entity or individual participated in the drafting of this brief other than the individuals named on the cover of this brief and pursuant to Pa. R. App. P. 531(b)(2),

no other person or entity has paid for the preparation of or authored this brief in whole or in part.

SUMMARY OF ARGUMENT

Until this Court's decision in *Commonwealth v. Lee* in March, 2026, Pennsylvania was truly an outlier. Among all the states in the United States, only four others—Iowa, Louisiana, Mississippi and North Carolina—prescribed mandatory life without parole for second-degree felony murder, a doctrine long critiqued for its harshness, mismatch between punishment and criminal responsibility, and discriminatory impact on minorities, women, and the poor.[1]

Pennsylvania still remains an outlier. While this Court ensured that the harshness of the felony-murder rule would no longer burden future defendants, it left to the legislature the issue of whether *Lee* would be retroactive. The legislature failed to act and the injustice which persuaded this Court to act in *Lee*, continues for over one thousand individuals convicted of second-degree felony murder and serving mandatory life sentences.

These are issues deeply concerning to the Association, committed as we are to equal treatment under the law. The purpose of this amicus, however, is not to reiterate the substantial legal and ethical arguments in favor of applying *Lee* retroactively. Rather, it is to highlight that courts, Public Defenders and Public Defender Offices throughout this great Commonwealth are ready and able to assist

[1] *E.g.*, Ian P. Farrell, *Abolishing Felony Murder: An Empirical Perspective*, 62 Am. Crim. Law Rev. 2025 available at https://www.law.georgetown.edu/american-criminal-law-review/wp-content/uploads/sites/15/2025/07/GT-ACLR240066.pdf.

the numerous individuals who are entitled to relief, should *Lee* be applied retroactively.

The first part of this amicus brief will show how courts and attorneys throughout Pennsylvania already know how to deal with resentencings on decades-old cases based on the experience in the juvenile-life context. The second part will outline the efforts that the Public Defender Association of Pennsylvania has undertaken to prepare attorneys and offices for the possible retroactivity of *Lee*. The third part details efforts individual offices have done to prepare for possible *Lee* post-conviction proceedings. Even though this amicus establishes all the ways the administrative costs will be manageable, the fourth and final part argues that consideration of administrative burdens should not, ultimately, guide this Court's decision on whether to make *Lee* retroactive. While it is noteworthy that courts, Public Defender offices and attorneys can and will rise to the challenge of enabling relief for the more than one thousand Pennsylvanians serving felony-murder life sentences, the most important consideration is remedying the historic injustice of mandatory life without parole for felony murder.

ARGUMENT

I. Pennsylvania courts know to conduct resentencings on life without parole cases because of their experience with similar tasks in the juvenile-life context.

The Association recognizes that applying *Lee* retroactively will require courts and counsel to address cases that became final years or decades ago. However, this challenge is not novel. Courts and attorneys had to deal with all of these issues in the juvenile-life context with *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577 U.S. 190 (2016). In addition, *Lee* retroactivity confers significant administrative benefits by providing a means of obtaining relief for elderly inmates. Older individuals have a correspondingly diminished public safety risk; keeping them incarcerated in an already burdened system taxes resources unnecessarily.

The Public Defender community has previously addressed the need for coordinated, individualized proceedings in longstanding cases. Following *Miller* and *Montgomery*, Pennsylvania courts and lawyers undertook the litigation and resentencing of 501 people serving mandatory life-without-parole sentences for offenses committed as juveniles.[2] That work required attention to final judgments, old records, individual histories, constitutional sentencing requirements, and the practical coordination of cases across jurisdictions. Defense counsel had to develop mitigation through older documents and interviews, litigate PCRA eligibility and

[2] *Juvenile Lifer Statistics*, https://www.pa.gov/agencies/parole/resources/statistics (last visited Nov. 5, 2026).

sentencing questions, and conduct individualized culpability inquiries. Many of these resentencings resulted in contested hearings before Common Pleas judges throughout Pennsylvania. Those same courts had to identify affected cases, permit the parties to develop relevant information, and impose individualized sentences consistent with the governing Constitutional rule. Thus, that accumulated expertise will be applied to *Lee* rather than recreated from scratch.

While the juvenile-lifer resentencing experience is important, there will likely be significant differences from any future *Lee* litigation. Any potential *Lee* claim may well result in far less administrative burden than for juvenile-lifers, because there may well be *fewer* contested hearings under *Lee* than for juvenile lifers.

According to current information from the Department of Correction, 106 of the *Lee* lifers are over 70 years old and 350 are over 60. Many of these cases may be easily resolved without extensive mitigation or litigation, simply given the age of the prisoner. In addition, given this Court's clear directive in *Lee* that reduced culpability in second-degree felony murder cases makes mandatory life without parole an unreasonable and unconstitutional sentence, the amount of time an inmate has served will surely be a relevant inquiry. Approximately 523 of the over 1000 inmates have served more than 30 years at the date of this filing.[3]

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[3] *Who's Serving Felony Murder in Pennsylvania Prison*, Lower Bucks Source, https://lowerbuckssource.net/cops-courts-fire-yardley-borough/whos-serving-felony-murder-sentences-in-pennsylvania-prisons/ (last visited Nov. 5, 2026).

From a purely cost perspective, paroling individuals over 60 and 75 quickly and efficiently should be a top priority, as the costs of providing health and geriatric care continue to skyrocket. A study by the U.S. Department of Justice in 2016 found that its institutions with the highest percentages of aging inmates in their population spent five times more per inmate on medical care ($10,114) than institutions with the lowest percentage of aging inmates ($1,916).[4] The high cost of care is not balanced by any dire public safety need. Study after study has shown that those who are older simply do not recidivate or recidivate at very low levels. Thus, there is no penal justification for continued incarceration, particularly in instances where this Court has already held that mandatory life sentences for felony-murder violate Pennsylvania's punishment clause. *See Commonwealth v. Lee*, 357 A.2d 356, 357 (Pa. 2026).

In addition, there is no mechanism currently in place to help older prisoners obtain early parole based on their age. Thus, the high costs of incarceration are baked into the correctional system. Pennsylvania not only has a high percentage of

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[4] *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons*, U.S. Dep't of Justice, Office of the Inspector General, at 10–11 (May 2015, rev. Feb. 2016), https://oig.justice.gov/sites/default/files/reports/15-05.pdf.

individuals 55 and over in prisons,[5] it also has a very high budget for the Department of Corrections. The budget stands at $3 billion and is one of the highest line items.[6]

Obtaining release of inmates suffering from serious medical issues ("compassionate release") has also been a failure. Indeed, the Pennsylvania House passed HB 150 in response to the shortcomings of the current "compassionate release" regime. In the sponsorship memo, the House members noted the following:

> Pennsylvania's current "compassionate release" program is largely failing. In use for 15 years, only 54 incarcerated individuals have successfully petitioned for release due to serious illness in Pennsylvania. Since 2016, 11 people have died in our Commonwealth's prisons waiting for a judge to hear their petition for medical-based release. Medical care for incarcerated people costs the state more than $400 million in annual taxpayer funding, and some of our state prison facilities are experiencing vacancy rates nearing 40% of their medical complement. We cannot afford inaction.[7]

HB 150 is currently languishing in the Senate.

In short, Pennsylvania's courts and its attorneys have the necessary experience to deal with older, post-conviction litigation. This litigation will be quicker and easier in many cases, given the extreme age of many inmates. As a practical matter,

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[5] *Aging Prison Populations Drive Up Costs*, Pew Research Center, https://www.pew.org/en/research-and-analysis/articles/2018/02/20/aging-prison-populations-drive-up-costs. Pennsylvania had the ninth highest total in the United States in 2015.

[6] *Priority Issues*, PA Justice Alliance, https://www.pajusticealliance.org/priority-issues (last visited Nov. 5, 2026).

[7] *Updating Pennsylvania's Medical Release Program*, Co-Sponsorship Memo, Pa. House of Representatives, https://www.palegis.us/house/co-sponsorship/memo?memoID=45097.

Pennsylvania's prison system also needs relief from caring for an elderly prison population.

II. The Association has used its experience, contacts and resources to help prepare Public Defender offices for the retroactivity of *Lee*.

The Association comes to the table with a myriad of contacts, trainings, written resources, and prior experience to assist the public defense community in the work of advocating for proportionate, just, and Constitutional sentencing. The Association trains and helps Public Defenders in all phases of trial, appellate and post-conviction litigation. The Association has worked with sitting judges of the Superior Court to provide insight into what is persuasive in legal briefs. It has sponsored conferences on the nuts and bolts of trial practice and invited an array of post-conviction lawyers to help Public Defenders navigate the complexities of the Pennsylvania post-conviction statute.

The Association reaches into every county in the Commonwealth. Public Defenders and members of the Association serve in all 67 counties and represent people whose cases have arisen in local courts throughout the Commonwealth. That statewide network permits local offices to identify and represent eligible clients, while the Association disseminates guidance and shares developing practices. The existence of a substantial number of affected cases calls for planning and coordination, and the Association is well-positioned to provide that coordination. Not

surprisingly, the Association has already begun the work of implementing *Lee* and providing Public Defenders with the know-how to litigate *Lee* claims should *Lee* be held retroactive.

Since this Court's decision in *Lee*, the Association has coordinated and held more than 5 individual informal meetings or CLE trainings on how to handle *Lee* litigation. These trainings have been both in person and online. The Association has formed a committee of highly experienced counsel who have developed a "Lee Resentencing Toolkit" which has been made available online, for free, to Public Defenders throughout the state. This toolkit includes sample Post-Conviction Relief Act petitions, evidence preservation letters, legal research and arguments, mitigation explanations, release forms, checklists and similar documents to assist Public Defenders in carrying out the constitutional mandate recognized in *Lee*.

After receiving information compiled by the Department of Corrections, the Association has distributed a list of all current inmates sentenced for 2nd Degree Murder to Public Defenders. This list further specifies the inmates' committing county. This has helped Public Defenders to easily identify the relevant cases falling under *Lee*, including ones that are many decades old. Many have already begun communicating with clients and developing protocols to prioritize clients who have been incarcerated the longest or who have immediate medical needs.

The Association has further provided Public Defenders with a register of mitigation specialists and the areas in which they operate. These mitigation specialists investigate, interview, and recover records relevant to culpability. Many of these specialists previously assisted in the resentencing investigations for juvenile-lifers. The records, information, and interviews they gather might include school, medical, disciplinary, job, or family contacts. These will be relevant to the sentencing court in assessing the person's overall motivation, character, and rehabilitative prospects.

The Association has coordinated meetings between Chief Public Defenders and their office's direct deputies to discuss strategy and provide updates to any developments in *Lee*. The Association has been tracking all proposed legislative fixes since the *Lee* decision and provides information on those potential remedies to its members.

The Association stands ready to continue to assist all Public Defenders in the state to carry out this Court's mandate. To be sure, there will undoubtedly be complicated cases, with specific needs, but these tasks will be manageable with proper support. Given the Association's experience in all phases of criminal defense training, its experience in the juvenile-life context, its reach into every Pennsylvania county and its already significant efforts to implement *Lee*, the Association is well-positioned to provide that support.

III. Local public defender offices have spoken: they are capable and well-positioned to implement *Lee* through individualized, case-specific proceedings.

Public Defender offices will play a key role in the legal work that follows a retroactivity ruling. The particular work required will vary by case and by the available record. Existing post-conviction and sentencing practices provide a procedural framework for addressing those differences.

Individual public defender offices have spoken out on their efforts to prepare for *Lee* retroactivity litigation. Some of that litigation has already begun.

Centre County. Chief Public Defender David Crowley reported that Centre County, a fourth class county with approximately 158,000 residents, has two felony-murder lifers. His office was prepared to conduct mitigation investigations for both, but conflicts arising from its representation of co-defendants required separate counsel. Crowley reported that he believed at least one individual had already filed a PCRA and had conflict counsel appointed.

Advance planning and the ordinary role of conflict procedures are ensuring representation.

Lehigh County. Chief Public Defender Kimberly Makoul reported that through a review of the Lehigh County Court of Common Pleas dockets and the records of the Office of the Public Defender, there are currently eighteen inmates from this county who are serving life sentences after convictions for second-degree

murder. New files have been opened for all of them. Their office sent each inmate a letter explaining the *Lee* holding and how it may affect their sentence. That correspondence emphasized that the *Lee* decision did not declare that its holding was to be retroactively applied. The correspondence noted, however, if the Supreme Court or the legislature did so, the Public Defender, or in the case of inmates who had previously filed a PCRA petition alleging ineffective assistance by the Public Defender, conflict counsel, would file a timely petition for review of that inmate's sentence pursuant to the Post Conviction Relief Act. A template of the petition has already been prepared. The inmates were also advised that they could decline representation by the Public Defender or conflict counsel if they wished to proceed *pro se* or retain private counsel, and were instructed to notify the office of that decision. However, the letter emphasized that representation by appointed counsel is encouraged to preserve the filing deadline.

The Lehigh County Public Defender's office paralegal has also begun reviewing each case for potential conflicts of interest so that they can promptly seek appointment of conflict counsel where necessary.

The letter further indicated that the sentence reevaluation contemplated by *Lee* would consider not only the inmate's specific conduct in the underlying offense, but also the inmate's institutional record and efforts toward rehabilitation. To support that review, the inmate was asked to provide information regarding completed

educational, vocational, treatment, or other prison programs, as well as privileges, awards, or incentives received for positive conduct. In addition, their office would seek psychological, psychiatric, medical, and other relevant records or expert evaluations to document rehabilitation and would develop any additional mitigating evidence relevant to the individual circumstances of the case.

Lycoming County. Chief Public Defender Nicole J. Spring reported that Lycoming County, a fifth class county with approximately 114,000 residents, had already filed a PCRA petition in an affected case and anticipated retroactivity in light of the juvenile-lifer cases.

Monroe County. Chief Public Defender Jason LaBar reported that Monroe County, a fourth-class county with approximately 168,000 residents, had identified 7 individuals potentially eligible for relief if *Lee* were held retroactive. The office formed a working group of attorneys and support staff, including LaBar and counsel experienced in PCRA litigation and appeals, filed petitions for relief, retained expert mitigation assistance, contacted and interviewed clients, and began preparing for resentencing hearings and related litigation. The office also requested that the Court of Common Pleas stay the PCRA proceedings pending this Court's decision in *Coffey*.

LaBar concluded: "We are otherwise prepared to proceed and confident we can defend our client's constitutional rights and remedy the injustice they have suffered for many years."

Montgomery County. Chief Public Defender Christina Lora reported that Montgomery County, a class 2A county with approximately 856,000 residents, had identified 34 felony-murder lifers and, after conflicts and private representation, was handling 23. The office filed PCRA petitions for its affected clients in July, requested and received trial files from the Court of Common Pleas, and began individual mitigation workups in August. Clients received intake mitigation questionnaires over the summer; the office finalized a geographic visitation schedule for initial in-person interviews at the ten state correctional institutions where clients were housed; and it expected initial interviews with attorneys and social-service advocates to be complete by December. At the time of Lora's report, 11 attorneys—mostly management-level attorneys—and two social-service advocates were working on the cases.

Montgomery County Public Defenders are already engaged in case identification, staffing, records collection, mitigation preparation, and have already coordinated client contact.

Pennsylvania's Public Defenders have the professional capacity and procedural experience to undertake this work. Our experience with *Miller* and

Montgomery, the statewide reach of the public defender community, and the efforts already undertaken in this litigation demonstrate that.

IV. Administrative burden cannot justify continued enforcement of sentences held unconstitutional, but passing muster based on a calendar date.

The administrative burdens placed on courts and attorneys should not dictate who is or is not entitled to Constitutional protection. After all, if administrative burdens on the government dictated whether or not Constitutional safeguards should apply, there would be no functional Fourth, Fifth, Sixth, or Eighth Amendments. This is especially true in Pennsylvania where this Court has routinely held that the Pennsylvania Constitution confers greater rights than that afforded under the U.S. Constitution, as the *Lee* case amply demonstrates. The relevant inquiry should always remain on the fundamental right at stake and what justice demands, keeping an eye to Dr. Martin Luther King's famous quote that the "arc of the moral universe is long, but it bends towards justice."[8]

While the proceeding sections demonstrate that attorneys and courts are prepared to deal with the administrative issues presented by *Lee* retroactivity, this practical perspective reinforces, but does not replace, the Constitutional analysis advanced by Mr. Coffey. The U.S. Supreme Court has recognized that rules

[8] Dr. Martin Luther King Jr., "Remaining Awake Through a Great Revolution," Speech at the National Cathedral (March 31, 1968) (transcript available at https://blog.library.si.edu/blog/2015/01/19/the-arc-of-the-moral-universe/).

prohibiting a category of punishment are different from rules that merely alter the procedures used to impose an otherwise permissible punishment. *See Montgomery*, 577 U.S. at 201–08. This Court held that Article I, Section 13 proscribes the mandatory sentencing model at issue. *Lee*, 357 A.3d at 395–97. If *Lee* applies only prospectively, over 1,000 people will be denied their due relief under our Constitution. But loss of liberty should depend on culpability, not calendar dates, as reduced culpability in felony murders was the weighty injustice that moved this Court to act in *Lee*.

Pennsylvania's retroactivity framework recognizes the illogical and unjust nature of allowing a Constitutional protection of this nature to only apply prospectively. *See Blackwell v. Commonwealth State Ethics Commission*, 589 A.2d 1094, 1098–99 (Pa. 1991) (noting that while a "sweeping rule of retroactive application is not justified," retroactivity is the "general rule."); *see also August v. Stasak*, 424 A.2d 1328, 1330 (Pa. 1981); *Cf. Commonwealth v. Miller*, 417 A.2d 128, 136 (Pa. 1980) (refusing to hold retroactive a decision of criminal procedure because law enforcement relied upon prior practice not requiring a warrant to arrest a suspect in their homes). Underlying these decisions is the observation that the purpose of the new rule should receive primary consideration. *See id*.

In enacting the Pennsylvania Constitution, the people of this Commonwealth made a conscious choice to abhor cruel punishments. Even where retroactivity

creates a real administrative burden, that burden must be evaluated against the consequences to justice and the democratic will of refusing relief. Furthermore, leaving *Lee* only prospective in nature would continually disrupt the administration of justice. This state would continue to give unwavering support to mandatory life-without-parole sentences that are illegal and cruel under the Pennsylvania Constitution, solely because the judgments became final before the constitutional rule was announced. While finality is important, it should not be the *sine qua non* of this Court's decision when this fundamental constitutional right is at stake. Pennsylvania's Constitution trumps both finality and administrative concerns.

CONCLUSION

The Public Defender Association of Pennsylvania respectfully submits that Public Defenders' experience, support, and efforts demonstrate that retroactive implementation of *Lee* will be both feasible and effective. The Association's statewide membership and the established experience of Pennsylvania courts and practitioners provide a practical foundation for orderly, individualized proceedings. Administrative concerns cannot justify leaving in place unjust sentences that many persons will have inappropriately suffered for decades. It is past time that justice was meted out proportionally. Amicus therefore asks this Court to reverse the order below and hold that *Lee* applies retroactively.

WHEREFORE, for the foregoing reasons, Mr. Coffey requests that this Court reverse the decision of the Superior Court and hold *Lee* retroactive.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH PA.R.A.P. 531

I, counsel for Amicus, hereby certify that the foregoing Brief is in compliance with Pa.R.A.P. 531(b)(3) and contains less than the allowable 7,000 words (4285 words).

/s Eric C. Closs, Esq.

Eric C. Closs, Esq.
Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY

I 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 non-confidential information and documents.

/s Eric C. Closs, Esq.

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