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IN THE SUPREME COURT OF PENNSYLVANIA
NO. 34 EAP 2026

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

JEROME COFFEY,

Appellant.

AMICUS CURIAE BRIEF OF DREXEL UNIVERSITY THOMAS R. KLINE SCHOOL OF LAW COMMUNITY LAWYERING CLINIC IN SUPPORT OF APPELLANT

Appeal from the Judgment of the Superior Court of Pennsylvania at No. 1452 EDA 2024, dated December 24, 2025, Affirming the Order of the Court of Common Pleas of Philadelphia County at CP-51-CR-0441911-1993 dated April 25, 2024

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Community Lawyering Clinic at Drexel University's Thomas R. Kline School of Law provides legal representation to individuals and communities in Philadelphia and throughout Pennsylvania. The Clinic's faculty has written extensively about extreme sentences, life imprisonment, and aging behind bars from international human-rights and constitutional law perspectives.

The Clinic also represents individuals serving life without the possibility of parole for first and second-degree murder and works with incarcerated people serving lengthy sentences on matters related to release and reentry. Through that work, the Clinic has direct experience with the population whose sentences would be affected by the retroactive application of *Commonwealth v. Lee*. Because this case will determine whether individuals sentenced under the mandatory sentencing scheme invalidated in *Lee* may obtain individualized resentencing, it raises questions of fundamental importance to the Clinic and the clients and communities it serves.

No person or entity other than amicus curiae, its members, or its counsel paid in whole or in part for the preparation of this brief or authored this brief in whole or in part. *See* Pa.R.A.P. 531(b)(2).

Background research for this brief was completed by students in the Community Lawyering Clinic, Ganna Aboutabl, Ty del Casal, and Danny Gallagher.

SUMMARY OF ARGUMENT

Appellant Jerome Coffey was 24 years old when he was sentenced to life without the possibility of parole for felony murder in 1994. Now 56 years old, Mr. Coffey has spent more than three decades in prison. He is representative of the population that would benefit from retroactive application of *Commonwealth v. Lee*, 357 A.3d 356 (Pa. 2026): people who entered Pennsylvania's prisons as young adults and have grown old there. According to Department of Corrections data, the average age of the at least 1,028 people serving life without parole for second-degree murder in Pennsylvania when they entered prison was approximately 26; today their average age is approximately 52. More than half are now over 50, and nearly a third are 60 or older. More than half have been incarcerated for at least 25 years.

Thus, the population at issue in this case is not a population of young people seeking an early opportunity for release. It is, increasingly, an elderly prison population. For hundreds of people, this Court's decision will determine whether, after decades years in prison, they will ever have the opportunity to return to a courtroom and receive the individualized sentencing consideration that *Lee* requires. Because their judgments became final long ago, they can obtain review under the Post Conviction Relief Act only if this Court holds that *Lee* applies retroactively. *See* 42 Pa.C.S. § 9545(b)(1)(iii) (2018); *Commonwealth v. Taylor*, 283 A.3d 178, 188 (Pa. 2022). Without such a holding, the people who have served longest under

the unconstitutional scheme are the ones left without a path to relief, while those whose sentences became final within the past year may raise *Lee* claims in timely petitions.

The demographic realities of this cohort also place this case within a broader problem confronting Pennsylvania's correctional system. A sentencing regime that requires people to remain incarcerated until death necessarily produces an aging prison population. The Commonwealth must increasingly operate not simply prisons, but long-term-care facilities, providing treatment for chronic disease, mobility limitations, dementia, and other conditions associated with advanced age. Those demands consume substantial correctional resources and become more expensive as incarcerated people grow older.

The public-safety return on those expenditures, meanwhile, diminishes. Age is strongly associated with declining rates of criminal behavior and recidivism. Pennsylvania thus devotes some of its most resource-intensive forms of incarceration to a population that, as it ages, generally poses less risk to public safety. Every dollar and staff hour devoted to providing increasingly complex geriatric care inside a prison is a resource unavailable for other correctional and public-safety needs. And because Pennsylvania provides no generally available mechanism for geriatric release, the costs of this system will continue to increase as the population serving life without parole grows older.

Finally, retroactivity would not require automatic release; it would mean resentencing. At those proceedings, courts could consider the individual's culpability, the harm caused, time already served, correctional records, evidence of rehabilitation, and the other circumstances relevant to an appropriate sentence. Some individuals may receive sentences that result in release; others may not. What matters is that the sentencing court, rather than a mandatory sentencing scheme imposed decades earlier, would have the opportunity to make that determination based on the individual before it.

That is all Mr. Coffey seeks. After more than three decades in prison, he only asks for the opportunity to return to a sentencing court and receive the individualized consideration that *Lee* requires. The same is true for the others sentenced under Pennsylvania's mandatory sentencing scheme for felony murder. Retroactive application of *Lee* does not determine what their sentences should be; it gives courts the opportunity to make that determination individually. Any other result would leave Mr. Coffey and more than a thousand others permanently imprisoned under the very sentencing scheme this Court has held violates Pennsylvania's constitutional prohibition against cruel punishment.

ARGUMENT

I. THE PEOPLE SERVING THE SENTENCE INVALIDATED IN *LEE* ARE, AS A GROUP, OLDER AND HAVE ALREADY SERVED EXTRAORDINARILY LONG TERMS OF INCARCERATION.

As of January 20, 2026, according to Pennsylvania Department of Corrections (DOC) data, at least 1,028 people were serving life without parole for second-degree murder.[1] *See* Pa. Dep't of Corr., Individuals Incarcerated for First and Second Degree Murder in Pennsylvania (Jan. 20, 2026) (unpublished spreadsheet prepared by the Pennsylvania Department of Corrections, on file with counsel; copy available to the Court upon request) (hereafter "DOC Spreadsheet"). The characteristics of that population demonstrate the cumulative effect of decades of mandatory sentencing: Pennsylvania has created a substantial population of people who entered prison young, have remained there for decades, and are now reaching advanced age behind prison walls. Charts summarizing these data—the cohort's current age, years incarcerated, age at commitment, and committing county—appear in Appendix A.

[1] This figure includes only individuals whose DOC records identify a second-degree murder conviction and a life sentence with no minimum release date. It excludes individuals whose records list only "murder" without specifying the degree, individuals who have been resentenced to terms with a minimum release date, and individuals convicted of felony murder before the 1974 amendments to the Crimes Code, when felony murder was classified as first-degree murder. The number of people serving life without parole for felony murder is therefore likely higher. Other estimates are consistent with this figure. *See* Nazgol Ghandnoosh et al., THE SENTENCING PROJECT, FELONY MURDER: AN ON-RAMP FOR EXTREME SENTENCING 5 (updated 2026) (reporting that 1,166 Pennsylvanians were serving life without parole for felony murder in 2019).

A. More Than Half of the Cohort is 50 or Older.

The average age of people in this cohort is approximately 52. *Id.* Nearly 59% (604 people) are at least 50 years old. *Id.* Of those, 329 are 60 or older, 98 are 70 or older, and 10 are 80 or older. *Id*. By contrast, fewer than 4% of the entire cohort are younger than 30. *Id*.

Age 50 is not an arbitrary benchmark in the correctional context. Pennsylvania's Department of Corrections itself uses 50 as a meaningful demarcation when planning for an aging prison population. As the Department has explained, "[b]ecause the incarcerated population tends to age at a rate that is five to ten years beyond their chronological age, the demarcation of age 50 is a meaningful indicator of future needs, including: medical costs; specialized institutional housing needs; and advanced-age reentry services."[2]

The present age distribution is also only a snapshot. Because a sentence of life without parole offers no path to release short of commutation, the average age of this population will keep rising: a person who is 55 today will be 65 after another decade of incarceration, and someone who is 65 will be 75. As the cohort ages, the medical and custodial demands that come with advancing age will also grow.

[2] PA. DEP'T OF CORR., BUDGET TESTIMONY 2026-27, at 7 (2026), https://www.pa.gov/content/dam/copapwp-pagov/en/cor/documents/about-us/statistics/budget-documents/budget-testimony-2026-27.pdf [hereinafter BUDGET TESTIMONY 2026-27].

B. Most of This Population Has Already Been Incarcerated for Decades.

Age tells only part of the story. The length of time this population has already spent in prison is equally significant. More than half of the 1,028 people currently serving LWOP for second-degree murder have already been incarcerated for at least 25 years. DOC Spreadsheet. Approximately 44% have served 30 years or more, and nearly 17% have served at least 40 years. *Id.* Ten people, roughly 1%, have been incarcerated for 50 years or longer. *Id.*

Mr. Coffey's case illustrates the point. He has been incarcerated for more than three decades, but he is far from an outlier: roughly 450 others have served 30 years or more. Retroactivity therefore does not present the Court with a choice between punishment and no punishment. Most of this cohort has already served decades behind bars. The question is whether they will have an opportunity to receive the individualized sentencing consideration that *Lee* requires.

C. This Population Entered Prison When They Were Overwhelmingly Young.

Perhaps the most revealing comparison is between who these individuals were when they entered prison and who they are today. The average age at admission among the 1,028 people currently serving LWOP for second-degree murder was approximately 26. *Id.* Nearly one in five were 20 years old or younger when admitted. *Id.* Another 37% were between 21 and 24 years old. Only 4.7% were 40 or older. *Id.*

The available Department of Corrections data reports age at admission rather than age at the time of the offense, so it does not establish everyone's precise age when the crime occurred. But the data does reveal a population that entered prison overwhelmingly as young adults that has grown old during decades of incarceration. Pennsylvania has incarcerated many of these individuals through young adulthood, middle age, and now into old age.

That history is relevant to understanding what retroactive application of *Lee* entails. Resentencing would allow courts to evaluate individuals after decades of experience and transformation that the mandatory sentencing scheme made legally irrelevant at the time their sentences were imposed. It would permit consideration not only of culpability, which is the constitutional deficiency at the center of *Lee*, but also of the person who stands before the sentencing court today.

D. Those Serving This Sentence for Felony Murder are Disproportionately Black Men From Philadelphia and Allegheny Counties.

The population serving life without parole for second-degree murder also has identifiable geographic roots. Nearly half (485 people, or 47.2%) were convicted in Philadelphia County. *Id*. Another 127, or 12.4%, were convicted in Allegheny County. *Id*. Together, those two counties account for nearly 60% of Pennsylvania's second-degree-murder LWOP population. Delaware (48 people, 4.7%), Montgomery (33 people, 3.2%), and Dauphin (32 people, 3.1%) Counties account

for additional significant shares, with the remainder distributed throughout the Commonwealth. *Id.*

The population's racial and gender composition is likewise skewed. Available data indicates that Black Pennsylvanians constitute approximately 71% of those incarcerated for felony murder, despite constituting approximately 12% of Pennsylvania's population.[3] Approximately 97% of those incarcerated for felony murder are men. *Id*.

Because the population sentenced under the mandatory regime invalidated in *Lee* is concentrated in Philadelphia and Allegheny Counties, retroactive application of *Lee* will therefore have profound impact on the communities that have borne a disproportionate share of these sentences. Indeed, the Community Lawyering Clinic's representation of people serving this sentence began at the urging of leaders from West Philadelphia's Mantua neighborhood, a community that has endured extreme violence. Those community leaders identified people serving this sentence whom they hoped to bring home to serve as elders and mentors to younger people, reflecting their belief that welcoming rehabilitated community members back into the neighborhood can be an important part of strengthening communities and preventing future violence.

[3] *State Data - Pennsylvania*, THE FELONY MURDER REPORTING PROJECT, https://felonymurderreporting.org/states/pa/ (last visited Nov. 2, 2026).

II. CONTINUING TO INCARCERATE THIS AGING POPULATION IMPOSES INCREASING PRACTICAL AND FINANCIAL COSTS.

Incarceration of older prisoners presents unique and costly challenges for the Department of Corrections, placing a large strain on state budgets. As incarcerated people age, correctional institutions increasingly must also function as hospitals, nursing facilities, mobility-care providers, and, in some cases, dementia-care units. The Department of Corrections has identified the health needs of its rapidly aging population as a growing and significant fiscal challenge: at the end of 2025, 11,090 people in its custody, 28.3% of the total, were over 50. BUDGET TESTIMONY 2026-27, at 6.

The people serving life without parole for second-degree murder are at the leading edge of that trend. As explained in Part I, more than half of this cohort is over 50, roughly twice the systemwide rate. DOC Spreadsheet. Because their sentences offer no path to release short of commutation, the costs associated with this population will only grow as its members continue to age.

A. The Population Affected by *Lee* is Disproportionately Old, and Its Medical Needs are Increasingly Intensive and Costly.

By the Department's own measure, these individuals' medical needs exceed what their ages alone would suggest. As noted earlier, the Department treats age 50 as "a meaningful indicator of future needs"—including medical costs and specialized institutional housing—because "the incarcerated population tends to age

at a rate that is five to ten years beyond their chronological age." BUDGET TESTIMONY 2026-27, at 7. On that measure, the 604 people in this cohort who are already 50 or older, including 329 who are 60 or older and 98 who are 70 or older, face the medical needs of people considerably older still. DOC Spreadsheet. Indeed, a nationwide survey found that 50.5% of all prisoners and 72.6% of prisoners 50 years or older reported having a chronic medical condition.[4]

As this population grows older, the Commonwealth bears the weight of caring for people whose chronic and debilitating illnesses are the predictable consequence of long-term incarceration and advancing age. This responsibility poses a unique challenge for the Pennsylvania DOC, which must maintain adequate medical staff, medicine, and medical equipment, not just for acute illnesses like bronchitis, but also for chronic diseases such as cancer and Alzheimer's disease, which require ongoing treatment, specialist care, and, increasingly, assistance with basic activities of daily living. *Id*.

The Department's testimony shows how these needs translate into costs. Medication costs for incarcerated people 50 and older are 115.5% higher than for younger people: approximately $2,610 per person each year, compared with $1,211 for those under 50. BUDGET TESTIMONY 2026-27, at 7. According to the DOC,

[4] LAURA M. MARUSCHAK ET AL., MEDICAL PROBLEMS OF STATE & FEDERAL PRISONERS & JAIL INMATES, 201112, U.S. DEP'T OF JUST., BUREAU OF JUST. STATISTICS 5 (Feb. 2015), http://www.bjs.gov/content/pub/pdf/mpsfpji1112.pdf (last accessed Oct. 15, 2025).

"[n]early all of the incarcerated elderly population in Pennsylvania are on life-sustaining medication," which drives up the costs of medication substantially.[5]

The Department has restructured its operations around these needs. It reports an "[i]ncreased need for skilled, memory and infirmary unit care," which requires "intensive medical staffing not applicable to general population." BUDGET TESTIMONY 2026-27, at 7. It also lists among its priorities "[s]killed care, hospice care, and chronic care units with adequate staffing to support elderly inmates through end-of-life" and "[m]emory care for inmates with dementia related conditions." *Id*. To meet these needs, it operates three long-term care units at SCI Laurel Highlands, SCI Waymart, and SCI Muncy. 2024-25 BUDGET TESTIMONY, at 8. The cost of this care is substantial: housing only 70 elderly people in the Laurel Highlands' long-term care facility costs an estimated $12.8 million a year, roughly $183,000 per person.[6] By comparison, the Department's average daily cost per incarcerated person is roughly $72,000 a year. BUDGET TESTIMONY 2026-27, at 5. In addition, older people drive a greater need for medical care outside of the DOC's correctional

[5] PA. DEP'T OF CORR., FY 2024–25 BUDGET TESTIMONY, at 7 (2024), https://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2024_0522_0002_TSTMNY.pdf [hereinafter 2024-25 BUDGET TESTIMONY].

[6] Douglas Ankney, *The Dramatic Increase in the Elderly Prison Population Is Fiscally and Morally Irresponsible*, PRISON LEGAL NEWS (Oct. 1, 2026), https://www.prisonlegalnews.org/news/2026/oct/1/the-dramatic-increase-in-the-elderly-prison-population-is-fiscally-and-morally-irresponsible/ [https://perma.cc/B2XN-3YST] (estimating that "it costs a minimum of $12.8 million per year to house those 70 elderly individuals").

facilities, for which the Department must pay "for both the service and security escorts to community providers." *Id.* at 4, 7.

These expenditures are not anomalous costs associated with a handful of exceptional cases. They are a predictable consequence of maintaining a large population under sentences that, by definition, contemplate incarceration through old age and until death.

None of this suggests that cost alone determines the constitutionality of a sentence or whether *Lee* must apply retroactively. It does demonstrate, however, that the consequences of continuing the pre-*Lee* sentencing regime are neither abstract nor static. Each additional decade of incarceration moves this cohort further into the period of life in which confinement becomes most medically complicated and most expensive. And the Commonwealth receives progressively less in public-safety benefit in exchange.

B. Aging in Prison Imposes Harms That Extend Beyond Financial Cost.

The consequences of incarcerating an aging population are not only fiscal. The risk of cognitive impairments such as dementia and Alzheimer's disease rises sharply with age.[7] Indeed, one study found that 40% of older prisoners had been diagnosed with a cognitive impairment—a percentage far exceeding the rate among

[7] John Wilson et al., *The Looming Challenge of Dementia in Prisons*, 24 CORRECT CARE 12 (2010).

their peers outside of prison.[8] Another study of adults aged 55 and older in one U.S. jail found that approximately 70% screened positive for cognitive impairment.[9] The true prevalence is likely higher still, because the rigid structure of prison life can conceal the early warning signs of dementia, leaving many people undiagnosed and untreated.[10]

Dementia is especially devastating in prison. Psychologists and social workers have described it as "a 'cruel and unusual' disease," marked by the "gradual, irreversible loss of memory, judgment, functional abilities, health, and eventually threats to one's personhood."[11] Prison life depends on a person's ability to follow directions, navigate institutional routines, comply with rules, and protect themselves from others, and dementia erodes each of those capacities.[12] Its symptoms—confusion, disinhibition, agitation—are frequently misread as misconduct and met

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[8] Combalbert et al., *Cognitive Impairment, Self-Perceived Health and Quality of Life in Older Prisoners*, 28 CRIM. BEHAV. & MENTAL HEALTH 36, 37 (2018); *see* Rachel López, *The Unusual Cruelty of Nursing Homes Behind Bars*, 32 FED. SENT'G REP. 264, 266 (2020).

[9] Cyrus Ahalt et al., *Cognition and Incarceration: Cognitive Impairment and Its Associated Outcomes in Older Adults in Jail*, 66 J. AM. GERIATRICS SOC'Y 2065, 2065 (2018).

[10] OSBORNE ASS'N, THE HIGH COSTS OF LOW RISK: THE CRISIS OF AMERICA'S AGING PRISON POPULATION 23 (2018), https://d2g1job4b5z6d1.cloudfront.net/files/Osborne_HighCostsofLowRisk_2026-05-05-225854_vlug.pdf; Sara Veggi & Fausto Roveta, *Neurodegenerative Disorders in Criminal Offending and Cognitive Decline Among Aging Inmates*, 6 NEUROSCI. 5 (2025).

[11] Tina Maschi et al., *Forget Me Not: Dementia in Prison*, 52 GERONTOLOGIST 441 (2012); *see* López, *supra* note 8, at 265.

[12] Sherryl Gaston, *Vulnerable Prisoners: Dementia and the Impact on Prisoners, Staff and the Correctional Setting,* 25 COLLEGIAN J. ROYAL COLL. NURSING AUSTL. 242 (2018); *see* AM. BAR ASS'N COMM'N ON L. & AGING, PERSONS LIVING WITH DEMENTIA IN THE CRIMINAL LEGAL SYSTEM (2022), https://www.americanbar.org/content/dam/aba/administrative/law_aging/2022-dementia-crim-just-rpt.pdf.

with punitive rather than therapeutic responses.[13] People with dementia are also at heightened risk of victimization, sexual assault, and bullying by other incarcerated people,[14] and because they struggle to conform to prison rules, they are more likely to be disciplined, including through placement in solitary confinement, which further compromises their physical and mental health.[15]

Prisons were not designed to provide the care this population needs. In the later stages of dementia, people are unable to care for themselves and eventually require around-the-clock nursing care in a protected environment.[16] Most correctional institutions are not equipped to provide it, and much of that care falls to other incarcerated people.[17] At SCI Waymart, "[n]urses and their inmate aides care for hospice patients," some of whom "are bedridden, needing help with eating, changing and using the bathroom."[18] The DOC itself now lists "[m]emory care for

[13] Veggi & Roveta, *supra* note 10, at 7.
[14] Anne Feczko, *Dementia in the Incarcerated Elderly Adult: Innovative Solutions to Promote Quality Care*, 26 J. AM. ASS'N NURSE PRACTITIONERS 640, 646 (2014); Gaston, *supra* note 12.
[15] Feczko, *supra* note 12; López, *supra* note 8, at 268.
[16] Wilson et al., *supra* note 7, at 14.
[17] *See* Brie Williams et al., *Aging in Correctional Custody: Setting a Policy Agenda for Older Prisoner Health Care*, 102 AM. J. PUB. HEALTH 1475 (2012); Pam Belluck, *Life, with Dementia*, N.Y. TIMES (Feb. 25, 2012), https://www.nytimes.com/2012/02/26/health/dealing-with-dementia-among-aging-criminals.html; Kempis Songster, Terrell Carter & Rachel López, *Regarding the Other Death Penalty*, 124 COLUM. L. REV. F. 114 (2024).
[18] Lydia McFarlane, *SCI Waymart Meets Needs of Aging Incarcerated Population by Training Inmates in Hospice Care*, WVIA NEWS (June 8, 2025), https://www.wvia.org/news/local/2025-06-08/sci-waymart-meets-needs-of-aging-incarcerated-population-by-training-inmates-in-hospice-care.

inmates with dementia related conditions" among its priorities. BUDGET TESTIMONY 2026-27, at 7.

These realities bear directly on the purposes of punishment that *Lee* requires courts to consider. Retribution depends on a person's capacity to understand why they are being punished; for that reason, the U.S. Supreme Court has held that executing a person whose dementia prevents a rational understanding of the reason for the punishment serves no retributive purpose.[19] That reasoning applies with growing force to a population that is aging into the years when dementia is most common. For a person who no longer understands why they are in prison, continued incarceration until death serves no legitimate penological end. Retroactive application of *Lee* would allow sentencing courts to take these circumstances into account, rather than leaving a sentence imposed decades ago to run its course regardless of who the person has become.

III. THE PUBLIC-SAFETY RATIONALE FOR CONTINUED INCARCERATION DIMINISHES SUBSTANTIALLY AS PEOPLE AGE.

The increasing costs associated with aging might be understood differently if advancing age corresponded with increasing danger. The evidence demonstrates the opposite. One of the most consistent findings in criminological research is the

[19]Madison v. Alabama, 586 U.S. 265, 268 (2019); *see* Panetti v. Quarterman, 551 U.S. 930, 958–59 (2007); López, *supra* note 8, at 267.

relationship between age and criminal behavior: offending declines substantially as people grow older.[20] That relationship has particular significance here. The people potentially affected by retroactive application of *Lee* are not simply older than the general offending population. Many combine two characteristics strongly relevant to an assessment of future risk: advanced age and decades already spent in prison.

A. Older Adults Pose a Low Risk of Recidivism.

Generally, there is a natural decline in criminality with age. Indeed, the "age-crime curve," one of the most robust findings in criminology, shows that offending rises in adolescence, peaks in late adolescence or early adulthood, and declines thereafter.[21] Although some recent research has found that this curve has grown flatter for some less serious offenses, such as property, drug, and alcohol offenses, largely because arrest rates among teenagers have fallen sharply, the pattern for the most serious offenses has not changed.[22] A 2025 study of U.S. arrest data from 1980 to 2019 found that the age curves for homicide and robbery showed "little, if any, change in peak age, half peak, and skewness" over the study period. *Id.* at 571. In

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[20] *See* ALYSSA GORDON, ET AL., TRAPPED IN TIME: THE SILENT CRISIS OF ELDERLY INCARCERATION 36 (Am. Civ. Liberties Union Nat'l Prison Project & Prison & Jail Innovation Lab, Lyndon B. Johnson Sch. of Pub. Affs., Univ. of Tex. at Austin 2025).

[21] *See* Darrell Steffensmeier et al., *Has Postponed Entry into Adult Roles Modified U.S. Age-Crime Curves? Age-Arrest Patterns of Teens, Emerging Adults and Adult Age Groups, 1980–2019*, 42 JUST. Q. 553, 565 (2025) (finding that "[a]cross offenses and time, the age curves . . . uniformly peak early in the late teens or early twenties"); Travis Hirschi & Michael Gottfredson, *Age and the Explanation of Crime*, 89 AM. J. SOCIO. 552 (1983); David P. Farrington, *Age and Crime*, 7 CRIME & JUST. 189 (1986).

[22] Steffensmeier et al., *supra* note 21, at 553, 566–67.

2019, homicide arrests peaked at age 19 and fell to half that level by age 31; robbery arrests peaked at 18 and fell by half by age 25. *Id.* at 564 tbl. 1. Those patterns "have held steady going at least as far back as the 1930s," and because homicide is "widely recognized as accurately reflecting behavior patterns," they are unlikely to be artifacts of policing practices. *Id.* at 575. For the offenses most often underlying felony-murder convictions then, the decline in offending with age remains as pronounced as ever.

National recidivism data confirm the pattern. In a study published in 2022, the U.S. Sentencing Commission found that among federal offenders released in 2010 only 21.3% of the 4,091 people released at age 50 or older were rearrested over the following eight years; nearly four in five were never arrested again.[23] The Commission's earlier study of aging and recidivism found that the rate falls further with age: only 13.4% of people aged 65 or older at release were rearrested within eight years.[24] And those older people who recidivate tend to be rearrested for less serious conduct. U.S. SENT'G COMM'N, OLDER OFFENDERS, *supra* note 23, at 44. Only 19.2% of the older people who were rearrested were arrested for a violent

[23] U.S. SENT'G COMM'N, OLDER OFFENDERS IN THE FEDERAL SYSTEM 42 (2022).
[24] U.S. SENT'G COMM'N, THE EFFECTS OF AGING ON RECIDIVISM AMONG FEDERAL OFFENDERS 3 (2017).

offense, and the most common reason for rearrest was a violation of probation or supervised release; homicide and weapons offenses were the least common.[25]

These findings are especially significant for people serving the longest sentences, nearly 40% of whom entered prison before age 25.[26] Mr. Coffey is one of them. He was 24 when he was convicted of felony murder in 1994—near the height of the age-crime curve for the offense. He is now 56 and has spent more than three decades in prison. A sentence imposed for conduct in early adulthood, without any later review, cannot account for the changes that come with age.

B. Decades of Incarceration Further Diminish the Risk of Reoffending.

Several age-related changes help explain why the risk of reoffending declines, and why that decline is especially pronounced for people who have spent decades in prison.

First, physical aging, chronic health conditions, mobility limitations, and cognitive changes inherently limit someone's capacity for physical or violent crime.[27] Incarceration accelerates that process. As noted above, the Department

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[25] *Id*. at 44. Violent offenses include murder, sexual assault, robbery, assault, and other violent offenses.

[26] Alexi Jones, *Reforms Without Results: Why states should stop excluding violent offenses from criminal justice reforms*, PRISON POL'Y INITIATIVE (Apr. 2020), https://www.prisonpolicy.org/reports/violence.html [https://perma.cc/J36Q-DVNP] (citing LEIGH COURTNEY ET AL., A MATTER OF TIME: THE CAUSES AND CONSEQUENCES OF RISING TIME SERVED IN AMERICA'S PRISONS 2 (Urban Inst., 2017)).

[27] Andrew C. Sparkes & Jo Day, *Aging bodies and desistance from crime: Insights from the life stories of offenders*, 36 J. AGING STUD. 47, 54 (2016) ("For the participants, as their body changed with age, its physical capabilities declined, and this had a direct bearing on the kinds of crimes they could commit, and whether or not they continued to commit crime…This finding

estimates that incarcerated people age five to ten years faster than their chronological age, *see supra* Part II.A, and some studies place the gap as high as 15 years, attributing it to exposure to institutional violence, chronic disease, and poor nutrition.[28] Chronic conditions—diabetes, obesity, arthritis, chronic pain, and dementia—typically seen in people 65 years and older present much earlier in prison.[29] Additionally, negative experiences in prison, like witnessing violence, are linked to biological markers associated with accelerated aging. *Id.* Solitary confinement compounds these effects: prolonged isolation disrupts circadian rhythms, limits mobility, and restricts access to sunlight and social interaction.[30] This phenomenon is particularly relevant in Mr. Coffey's case as he spent 14 years (nearly half of the total time he has spent incarcerated) in solitary confinement.

Research on older incarcerated adults also illustrates how physical decline can change behavior. In one study conducted in the United Kingdom, an older incarcerated individual described how aging and physical decline diminished his

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complements previous studies that identified a 'burning out' process, where the person no longer has the energy to continue the crime and gradually decreases as physically it becomes more difficult to take part in living an active criminal lifestyle.").

[28] Sandra Cowen, et al., *Experiences of older people during reentry from prison – an exploration of current research using a systematic quantitative literature review (SQLR)*, PSYCH., CRIME & L., March 2026, at 2; Jim A. Johansson, et al., *Accelerated Aging, Slow Death, & the Multiple Temporalities of Aging Incarcerated Persons: A Philip K. Dickian Science Fiction Examination*, NURSING INQUIRY, Sept. 2025, at 4.

[29] Johansson et al., *supra* note 28.

[30] Interview of Rose Onyeali, MD, Steve Levine, MD, Dominic Sisti, PhD, & Chinelo Osakwe, HCP Live (March 12, 2026), https://www.hcplive.com/view/clinical-ethical-impacts-solitary-confinement-health [https://perma.cc/3XAB-6TMQ].

ability and inclination to engage in the criminal conduct he pursued when he was younger: "I've just sort of got older and I think a bit deeper . . . [I have] slowed down. Everything has slowed down . . . Even my crime slowed down. I wouldn't go out and break into stately homes when I was this age. I would at that age, when I was younger."[31]

Second, psychological development and behavioral change may further reduce the likelihood of reoffending. A person's decision-making, self-regulation, and priorities may differ substantially in later adulthood from those present when the offense was committed.[32] A 2022 study examining aging and parole similarly found that older individuals were perceived as mature, compliant, responsible, and receptive to change.[33] Although perceptions of maturity do not themselves establish an individual's risk of recidivism, these findings support the importance of evaluating an individual's current characteristics rather than assuming those characteristics remain unchanged over time.

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[31] Sparkes & Day, *supra* note 27.

[32] *See* Ted Schwaba et al., *Refining the maturity principle of personality development by examining facets, close others and co-maturation*, J. OF PERSONALITY & SOC. PSYCH., May 2022, at 1. As adults get older, they generally become more agreeable, more organized and reliable, and less moody or anxious, which psychologists call the "maturity principle."

[33] Angela Silletti Murolo, Aging on Parole: An Empirical Analysis of Reentry, Reintegration, and Life Satisfaction (2022) (Ph.D. dissertation, City University of New York) (ProQuest) (Table 7, Differences in Working with Older and Younger Paroled Population, displays how 87.18% of participating parole officers expressed that there are differences between the older and younger populations. Compared to younger parolees, older parolees have a more respectful attitude, are more compliant, and have learned from their mistakes or take responsibility.).

Third, aging may alter an individual's motivations and priorities. Psychologist Laura Carstensen's Socioemotional Selectivity Theory suggests that people who perceive their remaining time as limited increasingly prioritize emotionally meaningful experiences and stability.[34] This theory offers a possible explanation for why older individuals may become less inclined to engage in behavior that jeopardizes their remaining years. Although individual motivations vary, these potential changes further demonstrate why age and the passage of time are relevant to an assessment of future risk.

Taken together, these findings provide several reasons to distinguish the risk an individual may have posed decades ago from the risk they pose today. Age-related changes in physical capacity, psychological development, and personal priorities can all bear on the likelihood of future offending, and for people who have spent decades in prison, those considerations are especially relevant to an evidence-based assessment of public safety.

The experience of jurisdictions that have released people serving life sentences confirms these findings. After *Montgomery v. Louisiana*, 577 U.S. 190 (2016), made *Miller* retroactive, Philadelphia resentenced its juvenile lifers. Of the 174 who had been released at the time of one study, only 1.14% had been reconvicted

[34] Laura L. Carstensen, *Socioemotional Selectivity Theory: The Role of Perceived Endings in Human Motivation*, 61 THE GERONTOLOGIST 1188, 1188 (2021).

of any offense.[35] After *Unger v. State*, 48 A.3d 242 (Md. 2012), applied retroactively to people convicted before 1981, roughly 200 people serving life sentences in Maryland were released at an average age of 64, after an average of 40 years in prison. Fewer than 3% have returned to prison, compared with a statewide recidivism rate of roughly 40%.[36]

C. Without Retroactive Application, *Lee* Would Exclude the People for Whom Continued Incarceration Serves the Least Purpose.

In *Commonwealth v. Lee*, this Court held that mandatory life without parole for felony murder, imposed without any individualized assessment of culpability, violates article I, section 13 of the Pennsylvania Constitution. 357 A.3d at 357. At the heart of that holding was the recognition that imposing the same punishment on every person convicted of felony murder, regardless of individual culpability and circumstances, does not advance legitimate penological goals. This Court described the sentence as "inconsistent with legitimate penological goals" and the rule as "highly punitive and objectionable." *Id.* at 366, 373. It makes "little deterrent sense," the Court explained, to punish a defendant for a killing committed by someone else completely outside the defendant's control, *id.* at 394, and punishing every felony

[35] TARIKA DAFTARY-KAPUR & TINA ZOTTOLI, RESENTENCING OF JUVENILE LIFERS: THE PHILADELPHIA EXPERIENCE (Montclair State Univ. 2020).
[36] THE UNGERS, 5 YEARS AND COUNTING: A CASE STUDY IN SAFELY REDUCING LONG PRISON TERMS AND SAVING TAXPAYER DOLLARS, JUST. POL'Y INST. (2018), https://abell.org/wp-content/uploads/2022/02/JPI_The20Ungers20520Years20and20Counting_Nov_2018.pdf.

murder the same way, regardless of intent to kill, is "in tension" with any deterrent purpose, *id.*

The evidence presented in this brief shows that the penological case for these sentences grows weaker with every year a person serves. Recidivism declines sharply with age, particularly for the serious offenses underlying felony murder. *See supra* Part III.A. Decades of incarceration accelerate physical decline, and psychological maturation and shifting priorities further distinguish a person from who they were at the time of the offense. *See supra* Part III.B. And the cost of incarcerating people as they age rises steadily. *See supra* Part II. The longer a person has served under the sentence *Lee* invalidated, in other words, the less any legitimate purpose is served by continuing it.

Yet without retroactive application, *Lee*'s protection would run in exactly the opposite direction. People whose judgments of sentence became final within the past year may raise *Lee* claims in timely petitions under the Post Conviction Relief Act. But for everyone else—including people whose sentences became final decades ago—the only path to review is the PCRA's exception for a constitutional right that "has been held by [this] [C]ourt to apply retroactively." 42 Pa.C.S. § 9545(b)(1)(iii); *see Commonwealth v. Taylor*, 283 A.3d 178, 188 (Pa. 2022). Unless this Court so holds, their petitions will be dismissed as untimely before any court reaches the merits. The result would be that *Lee* reaches those most recently sentenced, who are,

on average, the youngest, while excluding those who have served the longest, are the oldest, and statistically pose the least risk of recidivism. More than half of the 1,028 people serving this sentence have already served at least 25 years. A rule that withholds *Lee*'s protection from them while extending it to those sentenced most recently would invert the very penological reasoning on which *Lee* rests.

Mr. Coffey's case illustrates the point. He has spent more than three decades in prison, including 14 years in solitary confinement, under a sentence imposed without any consideration of his individual culpability for the death. He entered prison at 24, near the peak of the age-crime curve; he is now 56. If *Lee* does not apply retroactively, he and others like him—the very people for whom continued incarceration is hardest to justify—will never receive the individualized assessment that *Lee* held the Pennsylvania Constitution requires.

Retroactivity would not require a sentencing court to ignore public safety. It would do precisely the opposite: it would permit courts to assess public safety individually rather than conclusively presume, as the mandatory scheme did, that every person convicted of felony murder must remain incarcerated until death. For people who have served decades behind bars and reached an age associated with dramatically diminished recidivism risk, that presumption is especially difficult to justify. What retroactivity supplies is not a predetermined answer. It supplies the

opportunity for the individualized judgment that *Lee* held the Pennsylvania Constitution requires.

CONCLUSION

The vast majority of people serving the sentence invalidated in *Lee* entered prison young, have grown old there, and pose a diminishing risk to public safety, while the cost of their continued incarceration rises every year. For the foregoing reasons, amicus curiae respectfully requests that this Court hold that *Commonwealth v. Lee* applies retroactively, so that Mr. Coffey and the more than one thousand others sentenced under the scheme it invalidated may receive the individualized sentencing that the Pennsylvania Constitution requires.

Respectfully submitted,

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Dated: November 9, 2026

CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I certify that this brief complies with the word limit of Pa.R.A.P. 531(b)(3). Excluding the parts exempted by Pa.R.A.P. 2135(b), it contains 6,144 words, as counted by the word-processing software used to prepare it.

/s/ Lauren Katz Smith
LAUREN KATZ SMITH

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/ Lauren Katz Smith
LAUREN KATZ SMITH

CERTIFICATE OF SERVICE

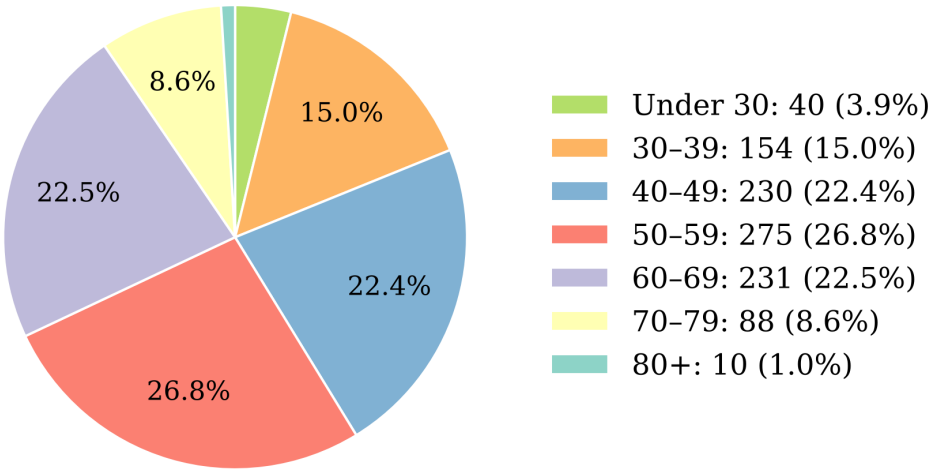
I certify that on November 9, 2026, I served a copy of this brief on all counsel of record through the Court's PACFile electronic filing system, which satisfies the requirements of Pa.R.A.P. 121.

/s/ Lauren Katz Smith
LAUREN KATZ SMITH

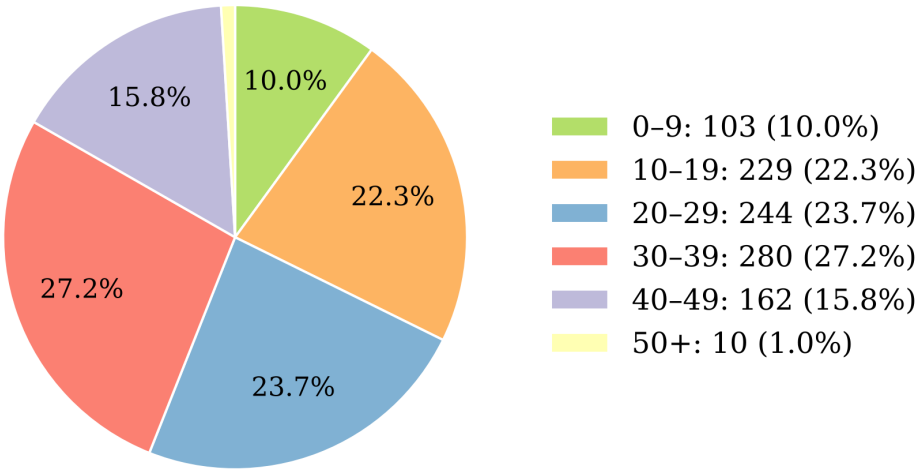
APPENDIX A

Pennsylvania Department of Corrections Data on People Serving Life Without Parole for Second-Degree Murder (as of January 20, 2026)

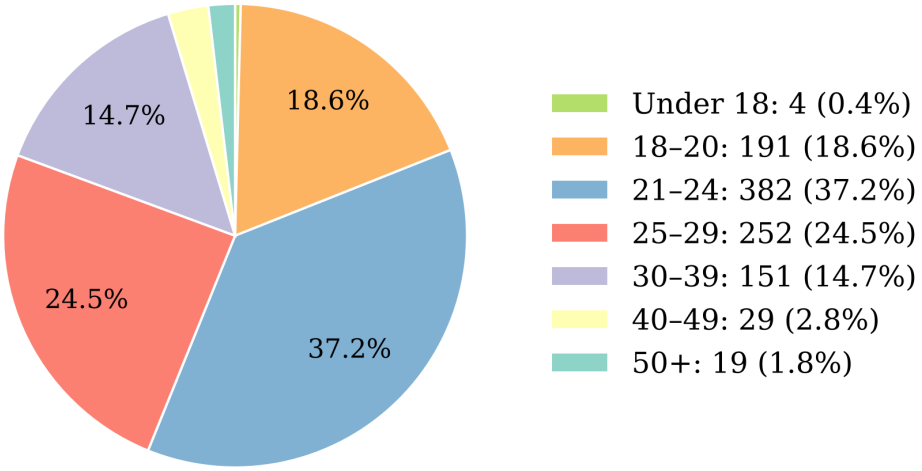
Current age (as of Jan. 20, 2026)



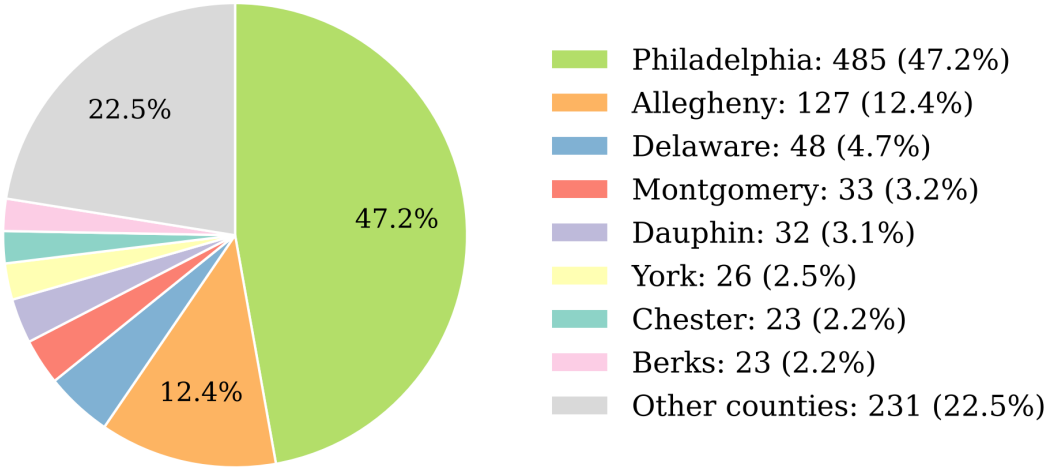
Years incarcerated



Age at commitment (not age at offense)



Committing county



N = 1,028 individuals whose DOC records show a second-degree murder conviction and a life sentence with no minimum release date. Percentages may not total 100% because of rounding. Source: Pa. Dep't of Corr., Individuals Incarcerated for First and Second Degree Murder in Pennsylvania (Jan. 20, 2026) (DOC Spreadsheet).