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IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

Nos. 102 EM 2018 & 103 EM 2018

JERMONT COX AND KEVIN MARINELLI,
Petitioners,
v.
COMMMONWEALTH OF PENNSYLVANIA,
Respondent.

BRIEF OF JUVENILE LAW CENTER AND YOUTH SENTENCING AND REENTRY PROJECT AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS JERMONT COX AND KEVIN MARINELLI

Marsha L. Levick, ID No. 22535
Riya S. Shah, ID No. 200644
Brooke McCarthy, ID No. 325155
JUVENILE LAW CENTER
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
(215) 625-0551
mlevick@jlc.org

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STATEMENT OF INTEREST OF AMICI CURIAE[1]

Juvenile Law Center advocates for rights, dignity, equity and opportunity for young people in the child welfare and justice systems through litigation, appellate advocacy and submission of *amicus* briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting young people advance racial and economic equity, are rooted in research consistent with the unique developmental characteristics of youth and young adults, and reflective of international human rights values. Juvenile Law Center was lead counsel for dozens of *Amici* before the United States Supreme Court in *Roper v Simmons*, 543 U.S. 551 (2005); *Graham v Florida*, 560 U.S. 48 (2010); and *Miller v. Alabama*, 567 U.S. 460 (2012), and served as co-counsel in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). In Pennsylvania, Juvenile Law Center was co-counsel in *Commonwealth v. Batts*, 163 A.3d 410 (2017), co-counsel in *Commonwealth v. Foust*, 126 WAL 2018 (2018), and lead counsel in *In re J.V.R.*, 81 M.M. 2008 (2008). Juvenile Law Center has filed other influential *amicus* briefs in state and federal cases across the country.

The **Youth Sentencing & Reentry Project (YSRP)** is a nonprofit

[1] Pursuant to Rule 531, no counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

organization based in Philadelphia that uses direct service and policy advocacy to transform the experiences of children prosecuted in the adult criminal justice system, and to ensure fair and thoughtful resentencing and reentry for individuals who were sentenced to life without parole as children ("juvenile lifers"). YSRP partners with court-involved youth and juvenile lifers, their families, and lawyers to develop holistic, humanizing narratives that mitigate the facts of each case; get cases transferred to the juvenile system or resentenced; and make crucial connections to community resources providing education, healthcare, housing, and employment. YSRP also provides trainings on mitigation, and recruits, trains and supervises students and other volunteers to assist in this work. YSRP's ultimate goals are to keep children out of adult jails and prisons and to enhance the quality of representation juvenile lifers receive at resentencing, and as they prepare to reenter the community.

SUMMARY OF ARGUMENT

In December 2011, the Pennsylvania Senate directed the Joint State Government Commission ("JSGC") "to conduct a study on capital punishment in this Commonwealth." Pa. Sen. Res. 6 at 2-6 (Dec. 6, 2011). On June 25, 2018, the JSGC issued its report entitled "Capital Punishment in Pennsylvania: The Report of the Task Force and Advisory Committee" (the "JSGC Report"). *See* Pet'r's Br. 8-9. The JSGC Report found, *inter alia*, that "the 144 persons who remain on

Pennsylvania's death row represent, not the worst of the worst, but the product of a broken system where geography, race, mental illness, [intellectual disability] and poverty best predict who is sentenced to death." *Id.* at 13.

Notably, of the 144 persons currently sentenced to death, over one-third were in their mid-twenties or younger at the time of their crimes. App. A1-A3; Pennsylvania Department of Corrections, *Persons Sentences to Execution in Pennsylvania as of November 1, 2018*, https://www.cor.pa.gov/Initiatives/Documents/Death%20Penalty/Current%20Execution%20list.pdf (last visited Feb. 21, 2019). Recent research demonstrates that these young adults share the same characteristics of immature decision-making—impetuosity, susceptibility to negative peer influences and capacity for rehabilitation—that adolescents exhibit, and which the United States Supreme Court has repeatedly relied on in striking severe sentences for adolescents under the Eighth Amendment, including the death penalty in *Roper v. Simmons*, 543 U.S. 551 (2005).

Amici write in support of Petitioners to highlight concerns about the constitutionality of Pennsylvania's death penalty under Article I, Section 13, of the Pennsylvania Constitution, specifically with reference to this young adult population, whose developmental traits further underscore the overall arbitrary and disproportionate nature of the death penalty in this Commonwealth.

Specifically, the Eighth Amendment guarantees individuals the right to be free

from cruel and unusual punishment, which is grounded in the basic "precept of justice that punishment for crime should be graduated and proportioned to [the] offense." *Atkins v. Virginia*, 536 U.S. 304, 311 (2002) (alteration in original) (quoting *Weems v. United States*, 217 U.S. 349, 367 (1910)). To determine which punishments are so disproportionate as to be cruel and unusual, the Court has "established the propriety and affirmed the necessity of referring to 'the evolving standards of decency that mark the progress of a maturing society.'" *Roper*, 543 U.S. at 560-61 (quoting *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958) (plurality opinion)). "This is because '[t]he standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change.'" *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008) (alteration in original) (quoting *Furman v. Georgia*, 408 U.S. 238, 382 (1972) (Burger, C. J., dissenting)), *modified on denial of rehearing*, 554 U.S. 945 (2008). In reviewing the constitutionality of the death penalty for certain populations, the Court has considered both the policy and sentencing practices around the country, as well as the individual characteristics of the protected class. When applying this standard to the juvenile death penalty, the Court determined that the evolving understanding of brain development and changing national practices show that the factors determining death penalty eligibility are arbitrarily drawn. This continuously subjects less culpable offenders

to a disproportionate sentence in spite of efforts to the contrary in violation of Article I, Section 13, of the Pennsylvania Constitution. The need to continue modifying the minimum age for the death penalty reinforces society's inability to ferret out the "worst of the worst" offenders, resulting in a system that is willing to subject individuals to death not based on proper penological justifications but instead on systemic flaws and outdated science.

ARGUMENT

I. THE CONTINUING BRAIN DEVELOPMENT AND MATURATION OF YOUNG ADULTS UNDERSCORES THE UNCONSTITUTIONALLY ARBITRARY AND DISPROPORTIONATE NATURE OF PENNSYLVANIA'S DEATH PENALTY

Relying on prevailing developmental research and common human experience concerning the transitions that define adolescence, the Supreme Court has recognized that the special characteristics of young offenders play a critical role in assessing whether sentences imposed on them are disproportionate under the Eighth Amendment. The Court recognized three key characteristics that diminish adolescent culpability, exempting them from the death penalty: "juveniles have a 'lack of maturity and an underdeveloped sense of responsibility;' they 'are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure;' and their characters are 'not as well formed.'" *Graham v. Florida*, 560 U.S. 48, 68 (2010) (citing *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005)).

These characteristics have guided the Court's analysis of juvenile jurisprudence for the last 15 years.

In first protecting youthful offenders from the death penalty, the Court limited the class to include only those youth who were under the age of 16, raising the age from 7 under common law. *Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988) (plurality opinion). The Court reasoned, "inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure." *Id.* at 835. The Court then held in *Roper*:

> [A] plurality of the [*Thompson*] Court recognized the import of these characteristics with respect to juveniles under 16, and relied on them to hold that the Eighth Amendment prohibited the imposition of the death penalty on juveniles below that age. We conclude the same reasoning applies to all juvenile offenders under 18.

543 U.S. at 570-71 (internal citation omitted). Therefore, developmental characteristics of children under the age of 18 "render[ed] suspect any conclusion that a juvenile falls among the worst offenders. . . . for a greater possibility exists that a minor's character deficiencies will be reformed." *Id.* at 570.

With its decision in *Roper*, the Court marked the third line to be drawn around the minimum age for death penalty eligibility—from 7, to 16, to 18—each attempting to separate offenders by their requisite culpability. Despite society's and the Court's attempts to respond to the research, this recent line once again appears

arbitrary. The demarcation at 18 is immaterial in determining an individual's culpability as research now establishes that brain maturation can extend into one's mid-twenties. As noted above, over a third of Pennsylvania's death row population were in their mid-twenties or younger at the time of their offense, subjecting them to a sentence that is disproportionate to their culpability in light of this emerging research. In addition to the other ways in which the death penalty has been demonstrated to be arbitrary or disproportionate in the JSGC Report, its high rate of application to this specific population must now be considered as well.

A. A Death Penalty System That Disregards Scientific Research Is Inherently Arbitrary And Disproportionate

Reliance on scientific research to inform our disproportionality analysis of the constitutionality of the death penalty is well established. In *Atkins v. Virginia*, 536 U.S. 304, 318 (2002), the United States Supreme Court protected individuals with intellectual disabilities from execution because the research showed their limited understanding and reduced culpability were disproportionate for the most extreme sentence. The Court emphasized diminished capacity to understand and process information, to learn from mistakes, engage in logical reasoning, control impulses, and to understand others' reactions as cognitive deficiencies requiring additional protections for individuals with intellectual disabilities. *Id.* Furthermore, retribution and deterrence were ineffective penological justifications. *Id.* at 318-20. Attempting to implement the Court's holding in *Atkins*, the Florida legislature required a

defendant to present a threshold IQ of 70 or below before being permitted to present any additional evidence of intellectual disability. *Hall v. Florida*, 572 U.S. 701, 707 (2014). However, this bright line itself "disregards established medical practice" because the medical community did not endorse an intellectual disability diagnosis based solely on an IQ test measuring at 70 or below. *Id.* at 712. Due to the inherent error of measurement in any diagnostic, the medical community recognized intellectual disability as within a "band or zone of 65 to 75." *Id.* at 720 (quoting Diagnostic and Statistical Manual of Mental Disorders 28 (rev. 3d. ed. 1987)). The Supreme Court held that Florida's statute violated the Constitution as "[p]ersons facing that most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution;" an opportunity reflective of a medical diagnosis. *Id.* at 724.

In a similar case out of Texas, the Court dismissed the use of outdated testing and unfounded factors in determining intellectual disability for exemption from the death penalty. *Moore v. Texas*, 137 S. Ct. 1039, 1053 (2017). The Texas scheme disregarded medical guidance that had been updated over the course of two decades for diagnosing intellectual disability, instead relying on a lay person's understanding of intellectual disability despite the known error in such stereotypes. *Id.* at 1051-52 The Court emphasized that Texas could not use a process that "deviated from prevailing clinical standards" and must instead employ a process that incorporates

the medical community's "improved understanding over time." *Id.* at 1050, 1053.

B. Research Shows An Individual's Brain Development Continues For Nearly A Decade After Their Eighteenth Birthday

The Court's reliance on medical science is likewise reflected in its juvenile caselaw. The Court has repeatedly held that "youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage." *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982). Youth "is a time of immaturity, irresponsibility, 'impetuousness[,] and recklessness'" and "a moment and 'condition of life'" that creates an unacceptable risk of a disproportionate sentence when disregarded. *Miller v. Alabama*, 567 U.S. 460, 476 (2012) (alteration in original) (first quoting *Johnson v. Texas*, 509 U.S. 350, 368 (1993), then quoting *Eddings*, 455 U.S. at 115). Just as an I.Q. score of 70 is only an approximation of intellectual disability, so too is age 18 only an approximation for the passage from adolescence to adulthood. Therefore, in striking the death penalty and generally protecting juveniles from harsh sentences, the Supreme Court has repeatedly emphasized the unique characteristics of youthful offenders based on scientific research. Its decisions relied on "what any parent knows" and the science and social science regarding adolescent development. *Id.* at 471 (quoting *Roper*, 543 U.S. at 569).

> In *Roper,* [the Court] cited studies showing that [o]nly a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior. And in *Graham*, [it] noted

> that developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds—for example, in parts of the brain involved in behavior control. [It] reasoned that those findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child's moral culpability and enhanced the prospect that, as the years go by and neurological development occurs, his deficiencies will be reformed.

Id. at 471-72 (second alteration in original) (internal citations and quotation marks omitted). "[N]one of what [the Court] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific," *Id.* at 473, but, as current research teaches, nor is it specific to those under 18.

The scientific research shows that the line has again been improperly drawn as neurodevelopmental growth continues into a person's mid to-late-twenties. *See also,* Christian Beaulieu & Catherine Lebel, *Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood*, 27 J. NEUROSCIENCE 31 (2011); Adolf Pfefferbaum et al., *Variation in Longitudinal Trajectories of Regional Brain Volumes of Healthy Men and Women (Ages 0 to 85 Years) Measures with Atlas-Based Parcellation of MRI*, 65 NEUROIMAGE 176, 176-193 (2013). One longitudinal study which tracked the brain development of 5,000 children showed that their brains were not fully mature until at least 25 years of age. Nico U. F. Dosenbach et al., *Prediction of Individual Brain Maturity Using fMRI*, 329 SCI. 1358, 1358-59 (2010). *See*, *e.g.*, Andrew Michaels, *A Decent Proposal: Exempting Eighteen- to Twenty-Year-Olds From the Death Penalty*, 40 N.Y.U. REV. L. & SOC.

CHANGE 139, 163 (2016) (citing to research that found antisocial peer pressure was a highly significant predictor of reckless behavior in emerging adults 18 to 25); Alexander Weingard et al., *Effects of Anonymous Peer Observation on Adolescents' Preference for Immediate Rewards*, 17 DEVELOPMENTAL SCI. 71 (2013) (finding that a propensity for risky behaviors, including "smoking cigarettes, binge drinking, driving recklessly, and committing theft," exists into early adulthood past 18, because of a young adult's "still maturing cognitive control system"); Kathryn Monahan et al., *Juvenile Justice Policy and Practice: A Developmental Perspective*, 44 CRIME & JUSTICE: A REVIEW OF RESEARCH 577, 582 (2015) (finding that the development of the prefrontal cortex which plays an "important role" in regulating "impulse control," decision-making, and pre-disposition towards "risk[y]" behavior, extends at least to 21); Brief for Am. Med. Ass'n & Am. Acad. Child & Adolescent Psychiatry as Amici Curiae in Support of Neither Party at 19-20, *Miller v. Alabama*, 567 U.S. 460 (2012) ("[R]esponse inhibition, emotional regulation, planning and organization . . . continue to develop between adolescence and young adulthood." (second alteration in original) (citations omitted)).

Young adults are more prone to risk-taking, acting in impulsive ways that likely influence their criminal conduct, and are not yet mature enough to anticipate the future consequences of their actions. *See* Elizabeth S. Scott et al., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice*

Policy, 85 FORDHAM L. REV. 641, 644 (2016); Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28, 35 (2009). Young adults also face the same types of susceptibility to peer pressure as younger children. *See* Melissa S. Caulum, *Postadolescent Brain Development: A Disconnect Between Neuroscience, Emerging Adults, and the Corrections System*, 2007 WIS. L. REV. 729, 731-32 (2007) ("When a highly impressionable emerging adult is placed in a social environment composed of adult offenders, this environment may affect the individual's future behavior and structural brain development.") (citing Craig M. Bennett & Abigail A. Baird, *Anatomical Changes in Emerging Adult Brain: A Voxel-Based Morphometry Study*, 27 HUM. BRAIN MAPPING 766, 766–67 (2006)). Another study examined 306 individuals in 3 age groups—adolescents (13-16), youths (18-22), and adults (24 and older)—and found that "although the sample as a whole took more risks and made more risky decisions in groups than when alone, this effect was more pronounced during middle and late adolescence than during adulthood" and that "the presence of peers makes adolescents and youth, but not adults, more likely to take risks and more likely to make risky decisions." Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study,* 41 DEV. PSYCHOL. 625, 632, 634 (2005). The presence of friends has also been shown to double risk-taking among adolescents,

increasing it by fifty percent among young adults, but having no effect on older adults. Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEVELOPMENTAL REV. 78, 91 (2008).

Scientific research also demonstrates that maturity is context-dependent and adulthood may be reached more quickly for some purposes but not others. Specifically, research confirms that the portions of the brain associated with informed decision-making and logical reasoning, such as voting, develop earlier—meaning that "adulthood" begins earlier in this context—whereas brain functions related to impulse control and susceptibility to peer pressure, relied on by the Supreme Court in its juvenile sentencing cases, take longer to develop and require setting the age of "adulthood" past 18. *See, e.g.*, Alexandra O. Cohen et al., *When Does a Juvenile Become an Adult? Implications for Law and Policy*, 88 TEMPLE L. REV. 769, 786-87 (2016) (defining "young adulthood" at 21 for purposes of cognitive capacity and the ability for "overriding emotionally triggered actions," and finding that 21 is the "appropriate age cutoff[ ] relevant to policy judgments relating to risk-taking, accountability, and punishment"). Dr. Laurence Steinberg explains:

> [t]o the extent that we wish to rely on developmental neuroscience to inform where we draw age boundaries between adolescence and adulthood for purposes of social policy, it is important to match the policy question with the right science. . . . For example, although the APA was criticized for apparent inconsistency in its positions on adolescents' abortion rights and the juvenile death penalty, it is entirely possible for adolescents to be too immature to face the death penalty but mature enough to make autonomous abortion decisions, because the

> circumstances under which individuals make medical decisions and commit crimes are very different and make different sorts of demands on individuals' abilities.

Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 64 AM. PSYCHOLOGIST 739, 744 (2009); *cf. Roper*, 543 U.S. at 620 (O'Connor, J., dissenting) (questioning why the age for abortion without parental involvement "should be any different" given that it is a "more complex decision for a young person than whether to kill an innocent person in cold blood").

C. Since Young Adults Exhibit The Same Developmental Characteristics That Diminish Their Culpability, There Is No Penological Justification For The Death Penalty

As research improves our understanding of brain development, the inability to pin maturity to age 18 renders the death penalty disproportionate for young adults. "A sentence lacking any legitimate penological justification is by its nature disproportionate to the offense." *Graham*, 560 U.S. at 71. In light of the death penalty's unique "severity and irrevocability," *Gregg v. Georgia*, 428 U.S. 153, 187 (1976), the Court has found that "[u]nless the imposition of the death penalty . . . 'measurably contributes to [either retribution or deterrence of capital crimes by prospective offenders], it is nothing more than the purposeless and needless imposition of pain and suffering, and hence an unconstitutional punishment.'" *Atkins*, 536 U.S. at 319 (quoting *Enmund v. Florida*, 458 U.S. 782, 798 (1982)). Young adults possess the same characteristics that make them "less culpable" and

"[w]hether viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution" is diminished. *Roper*, 543 U.S. at 571. Similarly, continued brain development makes young adults "less susceptible to deterrence" as they are unlikely to engage in "the kind of cost-benefit analysis that attaches any weight to the possibility of execution." *Id.* at 571-72. There is nothing in the research to indicate that retribution or deterrence are any more effective on young adults than their juvenile counterparts.

Recent court decisions reflect this evolving framework. For example, in *Commonwealth v. Bredhold*, a Kentucky Circuit Court found that the state's death penalty statute was unconstitutional as applied to individuals under the age of 21 because of research demonstrating that those individuals were "psychologically immature in the same way that individuals under the age of eighteen (18) were deemed immature, and therefore ineligible for the death penalty." *Commonwealth v. Bredhold*, No. 14-CR-161, 2017 WL 8792559 at 1* (Ky. Cir. Ct. Aug. 1, 2017).[2] In C*ruz v. United States*, No. 11-CV-787(JCH), 2018 WL 1541898 (D. Conn. 2018) (Slip Copy), the federal district court applied *Miller* to vacate a life without parole sentence as applied to an 18-year-old defendant, noting that most courts that did not extend *Miller* failed to consider the adolescent development of older adolescents and

[2] *Commonwealth v. Bredhold*, No. 2017-SC-000436 (Ky. 2017), is currently on appeal before the Kentucky Supreme Court.

young adults. In a related vein, the Washington Supreme Court barred application of the state's mandatory minimum sentencing provisions to a defendant over age 18. *State v. O'Dell*, 358 P.3d 359, 366 (Wash. 2015) (en banc). The Court held that the defendant's youthfulness could be a mitigating factor justifying a sentence below the standard sentencing range even when defendant is over 18, in part because brain development involving behavior control continues to develop into a person's 20s. *Id.* at 364-66. These decisions are further evidence of the trend toward extending constitutional protections to young adults based on a more accurate understanding of brain development continuing beyond one's eighteenth birthday.

D. National Policies And Sentencing Practices Evince A Consensus That Brain Development Diminishes An Individual's Culpability Well Beyond Age 18

1. The American Bar Association has condemned the execution of young adults

In February 2018 the American Bar Association passed a resolution urging states that have the death penalty to prohibit its imposition on young adults who were 21 or younger at the time of their offense. *See* ABA Resolution 111: Death Penalty Due Process Review Project Section of Civil Rights and Social Justice, Report to the House of Delegates, https://www.americanbar.org/content/dam/aba/images/abanews/mym2018res/111.pdf. [hereinafter ABA Resolution 111]. Although the ABA drew a categorical line at age 22, the Resolution recognized that "research shows that profound

neurodevelopmental growth continues even into a person's mid to late twenties" because the "brain systems and structures are still developing" *Id.* at 3, 7. The ABA's policy relied heavily on scientific research regarding the "newly-understood similarities between juvenile and late adolescent brains."[3] As explained by ABA Resolution 111, because the death penalty is the most severe and irrevocable sanction available, it should only be imposed on the most blameworthy defendants who have committed the worst crimes. *Id.* at 11. Therefore, "[i]mposing a death sentence and otherwise giving up on adolescents, precluding their possible rehabilitation or any future positive contributions . . . , is antithetical to the fundamental principles of our justice system." *Id.* at 12. As a result of this increased understanding, "the line drawn by the U.S. Supreme Court no longer fully reflects the state of the science on adolescent development." *Id.* at 6.

2. State sentencing practices demonstrate Pennsylvania is out of step with the national trend toward eliminating the death penalty and other severe sentences for young adults

In banning the juvenile death penalty in *Roper*, the Court relied on data showing that the majority of states banned the execution of juveniles and that, even where permitted, few states actually imposed the death penalty on individuals under 18. *Roper*, 543 U.S. at 564-65. The sentence was considered disproportionate as "the

[3] The ABA defines "late adolescence" as individuals age 18 to 21 years old. *See* ABA Resolution 111 at 2.

rejection of the juvenile death penalty in the majority of states; the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice[ ] provide sufficient evidence that today our society views juveniles" as less culpable. *Id.* at 567. There are currently similar patterns regarding the imposition of the death penalty to young adults across the country.

Overall, the national trend is moving away from the death penalty regardless of age: twenty states and the District of Columbia do not have the death penalty at all.[4] Demonstrating the rapid nature of the change, eight of these states have disposed of the death penalty entirely since *Roper*—New Jersey (2007), New York (2007), New Mexico (2009), Illinois (2011), Connecticut (2012), Maryland (2013), Delaware (2016), and Washington (2018). *See, e.g., United States v. Fell*, 224 F. Supp. 3d 327, 349 (D. Vt. 2016) (counting jurisdictions). Three additional jurisdictions have gubernatorial moratoria in place suspending use of the death penalty, including Pennsylvania.[5] Thirteen jurisdictions have not executed anyone in at least decade despite retaining the death penalty, and an additional six have not

[4] These states are Alaska, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Vermont, West Virginia, Washington, and Wisconsin.

[5] *See* Governor John W. Hickenlooper, Executive Order D-2013-006, May 22, 2013, available at https://www.deathpenaltyinfo.org/documents/COexecutiveorder.pdf; Governor John Kitzhaber, Executive Order, November 22, 2011, available at https://www.deathpenaltyinfo.org/gov-join-kitzhaber-oregon-declares-maratorium-allexecutions; Governor Tom Wolf, Memorandum of Moratorium, February 13, 2015, available at https://www.scribd.com/doc/255668788/Death-Penalty-Moratorium-Declaration.

executed anyone in five years. Death Penalty Information Center, *States With and Without the Death Penalty*, (Oct. 11, 2018) http://www.deathpenaltyinfo.org/states-and-without-death-penalty (last visited Feb. 21, 2019); Death Penalty Information Center, *Jurisdiction with no recent executions* (Nov. 21, 2018) https://deathpenaltyinfo.org/jurisdictions-no-recent-executions (last visited Feb. 21, 2019).

More notably, jurisdictions are also decreasing the rate at which they sentence young adults to death even when they utilize their death penalty statutes. Colorado has executed only one individual since 1967, who was in his 40s at the time of his offense. Death Penalty Information Center, *Searchable Execution Database*, https://deathpenaltyinfo.org/views-executions (Select "CO" under "State") (last visited Feb. 21, 2019) [hereinafter DPIC, *Searchable Execution Database*]. Oregon has executed two individuals since 1962—both individuals voluntarily withdrew their appeals, electing to be executed; one was 29 and the other was 51 years old at the time of the offense. DPIC, *Searchable Execution Database*, *supra* (Select "OR" under "State"); *Oregon Man Is Executed for 1992 Double Murder*, DESERET NEWS (May 16, 1997), https://www.deseretnews.com/article/560629/Oregon-man-is-executed-for-1992-double-murder.html; https://www.nytimes.com/1996/09/07/us/oregon-and-south-carolina-execute-killers.html. Idaho has only executed two individuals in the last fifteen years, neither

of whom was under the age of twenty-five at the time of the offense. Clark County Prosecuting Attorney, *U.S. Executions Since 1976*, The Death Penalty (Oct. 1, 2014) http://www.clarkprosecutor.org/html/death/usexecute.htm [hereinafter *U.S. Executions Since 1976*]. In New Hampshire, the state has not executed anyone in eighty-six years, and the one person who remains on death row was twenty-six years old at the time of the offense. Death Penalty Information Center, *New Hampshire*, https://deathpenaltyinfo.org/new-hampshire-1 (last visited Feb. 21, 2019); *Officer Once Gave First Aid to N.H. Suspect*, SUN JOURNAL (Oct. 20, 2006), https://www.sunjournal.com/2006/10/20/officer-gave-first-aid-nh-suspect/. Similarly, Wyoming has executed one person in the last fifty years. DPIC, *Searchable Execution Database*, *supra* (Select "WY" under "State"). Montana has executed one individual in the last twenty years who was almost thirty, and currently has two persons on death row over the age of 23 at the time of their offense. Clark County Prosecuting Attorney, *David Thomas Dawson*, http://www.clarkprosecutor.org/html/death/US/dawson1039.htm (last visited Feb. 21, 2019); DPIC, *Searchable Execution Database*, *supra* (Select "MT" under "State"); Montana Department of Corrections, *Correctional Offender Network Search*, https://app.mt.gov/conweb (search corrections identification number 20055) (last visited Feb. 21, 2019).

Even states with larger death row populations or who continue to actively

execute individuals are following this trend. Kentucky has not executed a young adult since 1968, and of the thirty individuals on its death row, only one individual under the age of 25 was sentenced to death in the last two decades. DPIC, *Searchable Execution Database*, *supra* (Select "KY" under "State"); Clark County Prosecuting Attorney, *Harold McQueen, Jr.*, http://www.clarkprosecutor.org/html/death/US/mcqueen399.htm (last visited Feb. 21, 2019); Traci Angel, *Mo., KY. Execute Convicted Killers*, ASSOCIATED PRESS NEWS (May 26, 1999), https://apnews.com/b7d8bf90221138216c8e03afadb34795; http://www.clarkprosecutor.org/html/death/US/chapman1135.htm (last visited Feb. 21, 2019). In Kansas, executions have halted, and no one under the age of 25 has been sentenced to death in nearly a decade. Death Penalty Information Center, *Kansas*, https://deathpenaltyinfo.org/kansas-1 (last visited Feb. 21, 2019); Karen Dillon, *A Look at the 10 Kansas Inmates on Death Row*, LAWRENCE JOURNAL-WORLD (June 11, 2016), http://www2.ljworld.com/news/2016/jun/11/lives-10-kansas-inmates-death-row-quiet-solitary/. The state of Utah has nine people on death row, only one of whom is 21; and, although two of the seven people executed since reinstatement of the death penalty in Utah were twenty-one years old or younger, those executions occurred over twenty-five years ago. *U.S. Executions Since 1976*, *supra*; Utah Department of Corrections, *Utah State Prison: Death Row Inmates* (June 2011), available at https://corrections.utah.gov/images/deathrow.pdf.

Specifically for young adults under the age of 21 at the time of their offense, executions "are rare and occur in just a few states." Brian Eschels, *Data & the Death Penalty: Exploring the Question of National Consensus Against Executing Emerging Adults in Conversation with Andrew Michaels' A Decent Proposal: Exempting Eighteen- to Twenty-Year-Old's From the Death Penalty*, 40 N.Y.U. REV. L. & SOC. CHANGE 147, 152 (2016). Of the twenty-eight states that executed at least one adult between 2001 to 2015, only fifteen states executed anyone between 18 and 20 years old. *Id.* During these years, only 130 young adults were executed, compared to 730 people (excluding pre-*Roper* juveniles) executed in total. *Id.* Furthermore, 77.69% of these young people were executed in just four states—Texas, Oklahoma, Virginia, and Ohio—demonstrating how disfavored the practice has become. *Id.*

At first glance, Pennsylvania would appear to be in step with the national trend to dispose of the death penalty because the moratorium has been in place for four years and only three individuals have been executed since 1962.[6] However, the composition of Pennsylvania's death row demonstrates how out of step the Commonwealth is with the evolving standards of the nation. As other states

[6] Each was a volunteer, and the youngest, 24 years old at the time of the offense, was sentenced to death in 1981 and executed in 1995. *See* M. Watt Espy & John Ortiz Smykla, Executions in the United States, 1608-2002 (The ESPY File, DEATH PENALTY INFO. CTR, available at https://deathpenaltyinfo.org/documents/ESPYstate.pdf; *see also* Executions in the U.S. 1608-2002, DEATH PENALTY INFO. CTR, available at https://deathpenaltyinfo.org/views-executions).

eliminate the death penalty altogether and largely exclude young adults from death sentences in practice, over a third of the 144 individuals condemned to death in Pennsylvania were young adults at the time of their offense. The Commonwealth's sentencing practices demonstrate a widespread pattern of ignoring the scientific research, the legislative and judicial trends, and national practice.

Furthermore, a detailed analysis of the cases in which age has been presented as a mitigating factor reinforces Pennsylvania's difficulty in affording the proper weight to a young adult's maturation, which arbitrarily results in disproportionate sentences for less culpable offenders. The Court in *Roper* excluded juveniles from the death penalty in part because of the risk that juries would be unable to properly consider the mitigating attributes of youth that had been widely accepted across the country. 543 U.S. at 573. The Court held that "[a]n unacceptable likelihood exists that the brutality or cold-blood nature of any particular crime would overpower mitigating arguments based on youth *as a matter of course*, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death." *Id.* The Court similarly noted that "[i]n some cases a defendant's youth may even be counted against him." *Id.* Unfortunately, statistics suggest the Court's concerns are equally applicable to young adults in Pennsylvania.

The death penalty statute designates the "age of the defendant at the time of

the crime" as a mitigating factor. 42 Pa.C.S.A. § 9711(e)(4). A jury, however, can disregard the unequivocal scientific research diminishing a young adult's culpability—their lack of maturity and impetuosity, their susceptibility to outside influences, and their capacity for change. In fact, a jury must impose the death penalty "if the jury unanimously finds one or more aggravating circumstances which outweigh any mitigating circumstance." Section 9711(c)(iv). However, age has only been considered a mitigator in a quarter of cases that have presented it despite research dictating age as inherently mitigating. This limited application of age as a mitigating factor is inconsistent with Pennsylvania's larger jurisprudence surrounding adolescent development. For juveniles facing life without parole, they are presumed to be eligible for parole because of their diminished culpability and the Commonwealth bears the burden to prove their irreparable corruption beyond a reasonable doubt. *Commonwealth v. Batts*, 163 A.3d 410, 416 (2017). However, young adults a day past their eighteenth birthday receive none of those protections, are subject to the harshest penalty possible, and sentencing practices demonstrate they should expect a jury to completely disregard the attributes they share with their juvenile counterparts.

3. National policy trends reflect an understanding of evolving science by extending the minimum age for the exercise of adult rights and responsibilities in a variety of capacities

In striking the death penalty for children, the Supreme Court also considered where states drew the line "between childhood and adulthood" for "many purposes" outside the context of the death penalty and noted that many states drew that line at 18. *Roper*, 543 U.S. at 574. Since then, states have re-examined the appropriate age for the exercise of various adult rights and responsibilities and, looking to the developmental attributes identified in *Roper* and other juvenile sentencing cases, amended or passed new legislation raising the age.

The criminal justice system increasingly reflects the continuing developmental immaturity of young adults and recent reforms display a growing nonpartisan recognition of the need to protect late adolescents from the full brunt of criminal penalties. Forty-five states across the country have modified juvenile court jurisdiction to encompass a portion of young adults. *Jurisdictional Boundaries, Juvenile Justice Geography, Policy, Practice & Statistics*, NAT'L CTR. FOR JUV. JUST., http://www.jjgps.org/jurisdictional-boundaries#delinquency-age-boundaries?year=2016&ageGroup=3 (last visited Feb. 22, 2019). Some states even allow individuals in late adolescence to receive the same juvenile justice protections, such as heightened confidentiality and record sealing in their cases, and others have created separate housing units for these young adults when they are incarcerated.

See FLA. STAT. § 958.04 (2008) (under 21); D.C. CODE § 24-901 *et seq.* (2012) (under 22); S.C. CODE ANN. § 24-19-10 *et seq.* (2016) (under 25); *see also* 33 V.S.A § 5102, 5103 (2018) (under 22); H. 95, 2016 Leg., Reg. Sess. (Vt. 2016); *Division of Juvenile Justice,* CAL. DEP'T OF CORR. & REHAB., http://www.cdcr.ca.gov/Juvenile_Justice/ (last visited on Feb. 22, 2019); *Oregon Youth Authority Facility Services*, OR. YOUTH AUTH., http://www.oregon.gov/oya/pages/facility_services.aspx#About_OYA_Facilities (last visited on Feb. 22, 2019); Christopher Keating, *Connecticut to Open Prison for 18-to-25 Year Olds*, HARTFORD COURANT (Dec. 17, 2015), http://www.courant.com/news/connecticut/hc-connecticut-prison-young-inmates-1218-20151217-story.html. In keeping with this trend, specialty courts have been created across the country targeted specifically at young adults ages 18 to 21, and states have adopted "youthful offender" laws awarding a hybrid of special protections to individuals 18-21. *See* CONNIE HAYEK, U.S. DEPARTMENT OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE, ENVIRONMENTAL SCAN OF DEVELOPMENTALLY APPROPRIATE CRIMINAL JUSTICE RESPONSES TO JUSTICE-INVOLVED YOUNG ADULTS 6 (2016), available at https://www.ncjrs.gov/pdffiles1/nij/249902.pdf; *see also*, *e.g.*, MICH. COMP. LAWS ANN. § 762.11 (West 2015). These courts are hybrid juvenile/adult courts that provide accountability for young adults in the criminal justice system but also provide resources and protections necessary for the unique

developmental needs of young adults. *See*, *e.g.*, Young Adult Court, THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO, https://www.sfsuperiorcourt.org/divisions/collaborative/yac; Tim Requarth, *A California Court for Young Adults Calls on Science*, N.Y. TIMES (Apr. 17, 2017), https://www.nytimes.com/2017/04/17/health/young-adult-court-san-francisco-california-neuroscience.html. Similarly, youthful offender laws may protect young people from the harshest penalties of the criminal justice system, even when they are not afforded the protections of the juvenile justice system. A 2016 Department of Justice Report identified a variety of initiatives and innovations nationwide designed to protect late adolescents—for example, Young Adult Courts in San Francisco, California; Kalamazoo County, Michigan; Lockport City, New York; and New York, New York. HAYEK, *supra,* at 25-29. The report also details, *inter alia*, probation/parole programs, programs led by prosecutors, community-based programs, hybrid programs, and prison programs. *Id*. at 30-40. States are recognizing the criminal justice system is ill-equipped to handle young adults and adapting to better respond to the population.

The same rationale underpinning the changes in criminal justice have led states to update laws in many other areas. The Court in *Thompson* emphasized other contexts in which 16-year-old young people were treated differently from adults to underscore how young juveniles were seen as less responsible. 487 U.S. at 823. The

trend to increase the minimum age for the exercise of certain rights is continuing. For example, since *Roper*, 25 states, prompted in part by federal guidance, have extended the age at which young people can remain in foster care beyond the age of 18. *See* Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) Sec. 201 (continuing federal support for children in foster care after 18 based on evidence that youth who remain in foster care until 21 have better outcomes when they ultimately exit the foster care system); and Sec. 202 (requiring child welfare agencies to help youth at 18, 19, 20, and 21 plan for their transition to independence from the foster care system); *Extending Foster Care Beyond 18*, NATIONAL CONFERENCE OF STATE LEGISLATURES (July 28, 2017), http://www.ncsl.org/research/human-services/extending-foster-care-to-18.aspx.

The widespread adoption of this legislation is based on the notion that young people may not be prepared for independent living at 18, when their character is not yet fully formed and when propensity for risky behavior still exists. *See* Miriam Aroni Krinsky & Theo Liebmann, *Charting a Better Future for Transitioning Foster Youth: Executive Summary of Report From a National Summit on the Fostering Connections to Success Act*, 49 FAM. CT. REV. 292, 292 (2011) ("These studies confirm the wisdom of embracing policies and practices that can lengthen the window of support for these vulnerable and at-risk youth."); *cf. Roper*, 543 U.S. at 570 (identifying as a salient characteristic of youth an individual's "vulnerability and

comparative lack of control over their immediate surroundings"). Even the federal government designates individuals under the age of 23 as legal dependents of their parents for purposes of the Free Application for Federal Student Aid (FAFSA), and those under the age of 24 are dependents for tax purposes. *See* Dependency Status, FEDERAL STUDENT AID, https://studentaid.ed.gov/sa/fafsa/filling-out/dependency (last visited Feb. 22, 2019); *Dependents and Exemptions 7,* I.R.S, https://www.irs.gov/faqs/filing-requirements-status-dependents-exemptions (last visited Feb. 22, 2019); 26 U.S.C.A. § 152 (2008). Under the Affordable Care Act, individuals are able to remain on their parents' health insurance if they are 25 or younger as part of the government's recognition of continued dependence. 42 U.S.C.A. § 300gg-14 (2010). In education systems nationwide, individuals are entitled to services until they reach the age of 21; the Individuals with Disabilities Education Act (IDEA) permits individuals to continue to receive services through age 21 if they have a disability and have not earned a traditional high school diploma. *See Extending Foster Care Beyond 18*, *supra*; 20 U.S.C.A. § 1412 (a)(1)(A) (2016).

Many states and municipalities have also raised the age for purchasing tobacco from 18 to 21. *See, e.g.*, N.Y.C. ADMINISTRATIVE CODE § 17-706 (McKinney 2018); CAL. PENAL CODE § 308 (West 2018) and CAL. BUS. & PROF. CODE § 22963 (West 2016); HAW. REV. STAT. ANN. § 712-1258 (West 2016); CHI., ILL., CODE OF ORDINANCES § 4-64-345 (2017); KANSAS CITY, MO., CODE OF

ORDINANCES § 50-253 (2017); ST. LOUIS COUNTY, MO., CODE OF ORDINANCES § 602.367 (2017); CLEVELAND, OHIO, CODE OF ORDINANCES § 607.15 (2016). *See also* Campaign for Tobacco Free Kids, *State and Localities that Have Raised the Minimum Legal Sale Age for Tobacco Products to 21*, https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf. Similarly, all fifty states require an individual to be 21 to purchase alcohol. *See* National Minimum Drinking Age Act, 23 U.S.C.A. § 158 (West 1984). The corresponding federal legislative history affirms that 21 was chosen out of concern for their propensity for reckless activities such as drinking and driving. *National Minimum Drinking Age: Hearing on H.R. 4892 Before the Subcomm. on Alcoholism and Drug Abuse of the S. Comm. on Labor and Human Resources*, 98th Cong. 48 (1984). Once again, society is rapidly moving to enlarge the group of individuals protected as emerging adults. Viewed alongside recent scientific research demonstrating the ongoing development of the young adult brain, these laws demonstrate the imperfections in drawing bright lines of development for the purposes of an irrevocable punishment.

CONCLUSION

For all of the foregoing reasons, this Court should find that Pennsylvania's death penalty statute violates Article I, Section 13, of the Pennsylvania Constitution.

Respectfully submitted,

/s/ Marsha L. Levick

Marsha L. Levick, ID No. 22535
Riya S. Shah, ID No. 200644
Brooke McCarthy, ID No. 325155
JUVENILE LAW CENTER
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
(215) 625-0551
mlevick@jlc.org

Counsel for Amici Curiae

Dated: February 22, 2019

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word count limitation of Rule 531 and 2135 of the Pennsylvania Rules of Appellate Procedure. This brief contains 6,884 words. In preparing this certificate, I relied on the word count feature of Microsoft Word.

Dated: February 22, 2019

/s/ Marsha L. Levick
Marsha L. Levick

APPENDIX

Young Adults on Pennsylvania's Death Row as of November 1, 2018

	Name/Number	DOB[1]	Offense Date	Age	Case Citations for Date of Offense[2]
1	Abdul-Salaam, Seifullah (CS-6716)	11/4/1970	8/19/1994	23.8	*Abdul-Saleem v. Sec. of PA DOC*, 808 A.2d 558, 561 (Pa. 2002)
2	Bond, Aquil (GH-1499)	3/18/1978	12/1/2002	24.7	*Commonwealth v. Bond*, 985 A.2d 810, 814 (Pa. 2009)
3	Bronshtein, Antuan (BU-0261)	9/3/1970	1/11/1991	20.4	*Commonwealth v. Bronshtein*, 691 A.2d 907, 911 (Pa. 1997)
4	Busanet, Jose (DX-0422)	12/25/1972	6/11/1997	24.5	*Commonwealth v. Busanet*, 54 A.3d 25, 42-43 (Pa. 2012)
5	Clemons, Jordan Alexander (MA-2585)	2/10/1989	1/12/2012	22.9	*Commonwealth v. Clemons*, ___ A.3d ___. 2019 WL 286565, *1 (Pa. Jan. 23, 2019)
6	Cox, Jermont (CE-8242)	4/29/1971	11/8/1992	21.5	*Commonwealth v. Cox*, 983 A.2d 666, 673 (Pa. 2009)
7	Cox, Russell (AS-0394)	9/25/1967	2/27/1986	18.4	*Commonwealth v. Cox*, 686 A.d 1279, 1283 (Pa. 1996)
8	Daniels, Henry (BC-7615)	8/11/1965	9/2/1988	23.1	*Commonwealth v. Daniels*, 644 A.2d 1175, 1178 (Pa. 1994)
9	Davido, Tedor (EW-4765)	1/28/1976	5/15/2000	24.3	*Commonwealth v. Davido*, 868 A.2d 431, 434 (Pa. 2005)
10	Duffey, Steven (AY-7374)	8/16/1961	2/17/1984	22.5	*Commonwealth v. Duffey*, 548 A.2d 1178, 1180 (Pa. 1988)
11	Fahy, Henry P. (AM-5999)	11/5/1957	1/9/1981	23.2	*Commonwealth v. Fahy*, 516 A.2d 689, 693 (Pa. 1986)
12	Fiebiger, Anthony James (DW-9507)	7/14/1963	5/22/1982	18.9	*Commonwealth v. Fiebiger*, 810 A.2d 1233, 1235 (Pa. 2002)
13	Gibson, Ronald (BQ-5220)	6/24/1967	12/24/1990	23.5	*Commonwealth v. Gibson*, 688 A.2d 1152, 1156 (Pa. 1997)
14	Gwynn, Daniel (CW-5713)	1/12/1970	11/20/1994	24.9	*Commonwealth v. Gwynn*, 723 A.2d 143, 147 (Pa. 1999)
15	Haag, Randy Todd (AK-7856)	4/12/1958	7/14/1982	24.3	*Commonwealth v. Haag*, 562 A.2d 289, 292 (Pa. 1989)
16	Hachett, Richard D. (AS-1465)	8/8/1964	7/31/1986	22.0	*Commonwealth v. Hachett*, 627 A.2d 719, 721 (Pa. 1993)

[1] Pennsylvania Department of Corrections, *Persons Sentences to Execution in Pennsylvania as of November 1, 2018*, https://www.cor.pa.gov/Initiatives/Documents/Death%20Penalty/Current%20Execution%20list.pdf (last visited Feb. 21, 2019).

[2] Case citations are included solely for offense dates.

17	Hannibal, Sheldon (CG-5771)	1/8/1972	10/25/1992	20.8	*Commonwealth v. Hannibal*, 156 A.3d 197, 203 (Pa. 2016)
18	Housman, William (EX-0456)	12/25/1975	10/4/2000	24.8	*Commonwealth v. Housman*, 986 A.2d 822, 828 (Pa. 2009)
19	Hughes, Robert (BC-8234)	12/30/1968	1/8/1989	20.0	*Commonwealth v. Hughes*, CP-15-CR-0002247-1989
20	Jacobs, Daniel (CA-0314)	11/22/1970	2/1/1992	21.2	*Commonwealth v. Jacobs*, 727 A.2d 545, 554 (Pa. 1999)
21	Johnson, Marcel Emanuel (MB9312)	7/27/1992	11/25/2013	21.3	Commonwealth v. Johnson, 160 A.3d 127, 134 (Pa. 2017)
22	Jordan, Lewis (JG-9949)	7/5/1986	10/31/2007	21.3	*Commonwealth v. Jordan*, 65 A.3d 318, 322 (Pa. 2013)
23	Kennedy, Christopher (FQ-9268)	7/22/1982	1/19/2003	20.5	*Commonwealth v. Kennedy*, 959 A.2d 916, 918-19 (Pa. 2008)
24	Laird, Richard (AT-0811)	9/7/1963	12/15/1987	24.3	*Commonwealth v. Laird*, 988 A.2d 618, 623 (Pa. 2010)
25	Ligons, Antoine (DX-1687)	2/12/1979	4/6/1998	19.2	*Commonwealth v. Ligons*, 971 A.2d 1125 (Pa. 2009), 1132
26	Marinelli, Kevin J. (CT-9974)	4/30/1972	4/26/1994	22.0	*Commonwealth v. Marinelli*, 810 A.2d 1257, 1261-62 (Pa. 2002)
27	Marshall, Jerome (AY-5932)	1/1/1963	1/25/1983	20.1	*Commonwealth v. Marshall*, 568 A.2d 590, 593 (Pa. 1989)
28	May, Landon D. (FJ-4637)	7/4/1982	9/1/2001	19.2	*Commonwealth v. May*, 887 A.2d 750, 754 (Pa. 2005)
29	Mitchell, Wayne Cordell (EC-4077)	10/17/1977	9/1/1997	19.9	*Commonwealth v. Mitchell*, 105 A.3d 1257, 1262 (Pa. 2014)
30	Ogrod, Walter (DC-4162)	2/3/1965	7/12/1988	23.5	*Commonwealth v. Ogrod*, 839 A.2d 294, 304 (Pa. 2003)
31	Paddy, Donyell (CX-3459)	6/20/1968	4/28/1993	24.9	*Commonwealth v. Paddy*, 15 A.3d 431, 439 (Pa. 2011)
32	Parrish, Michael John (KN-7509)	11/19/1985	7/6/2009	23.6	*Commonwealth v. Parrish*, 77 A.3d 557, 558 (Pa. 2013)
33	Philistein, Bortella (DD-4916)	11/8/1973	6/16/1993	19.6	*Commonwealth v. Philistin*, 53 A.3d 1, 8 (Pa. 2012)
34	Poplawski, Richard (KB-7345)	9/12/1986	4/4/2009	22.6	*Commonwealth v. Poplawski*, 130 A.3d 697, 703 (Pa. 2015)
35	Porter, Ernest (AY-7434)	6/10/1961	4/27/1985	23.9	*Commonwealth v. Porter*, 35 A.3d 4, 7 (Pa. 2012)
36	Ragan, Derrick G. (BN-8022)	12/31/1970	6/26/1990	19.5	*Commonwealth v. Ragan*, 645 A.2d 811, 816 (Pa. 1994)
37	Reid, Anthony (BF-6567)	11/1/1967	3/7/1989	21.4	*Commonwealth v. Reid*, 99 A.3d 470, 478 (Pa. 2014)
38	Rivera, Cletus C (HS-2164)	2/10/1982	8/6/2006	24.5	*Commonwealth v. Rivera*, 108 A.3d 779, 784-85 (Pa. 2014)

39	Rivera, William (DN-4295)	5/14/1976	9/25/1995	19.4	*Commonwealth v. Rivera*, 773 A.2d 131, 135-36 (Pa. 2001)
40	Robinson, Harvey M. (CJ-8032)	12/6/1974	7/14/1993	18.6	*Commonwealth v. Robinson*, 82 A.3d 998, 1001-02 (Pa. 2013)
41	Sanchez, Abraham Jr. (HZ-5535)	8/24/1988	5/2/2007	18.7	*Commonwealth v. Sanchez*, 36 A.3d 24, 32 (Pa. 2011)
42	Simpson, Rasheed L. (CT-1781)	6/6/1974	12/8/1993	19.5	*Commonwealth v. Simpson*, 66 A.3d 253, 258 (Pa. 2013)
43	Singley, Michael B. (EP-2753)	4/1/1976	11/3/1998	22.6	*Commonwealth v. Singley*, 868 A.2d 403, 406 (Pa. 2005)
44	Smith, Christopher (FX-4208)	2/13/1981	12/1/2002	21.8	*Commonwealth v. Smith*, 985 A.2d 886, 891 (Pa. 2009)
45	Smyrnes, Ricky (KX-9435)	3/6/1986	2/11/2010	24.0	*Commonwealth v. Smyrnes*, 154 A.3d 741, 745 (Pa. 2017)
46	Spotz, Mark Newton (DA-4586)	2/14/1971	2/1/1995	24.0	*Commonwealth v. Spotz*, 716 A.2d 580, 583-84 (Pa. 1998)
47	Stokes, Ralph T. (AY-9034)	2/8/1963	3/12/1982	19.1	*Commonwealth v. Stokes*, 615 A.2d 704, 707-08 (Pa. 1992)
48	Towles, Jakeem Lydell (KP-2038)	8/8/1989	5/7/2010	20.8	*Commonwealth v. Towles*, CP–36–CR–0002879–2010
49	Uderra, Jose (CC-3832)	3/12/1967	10/18/1991	24.6	*Commonwealth v. Uderra*, 706 A.2d 334, 336 (Pa. 1998)
50	Wharton, Robert (AY-6874)	2/12/1963	1/30/1984	21.0	*Commonwealth v. Wharton*, 665 A.2d 458, 459-60 (Pa. 1995)
51	Williams, Roy L. (CF-4784)	12/26/1964	1/27/1988	23.1	*Commonwealth v. Williams*, 732 A.2d 1167, 1172 (Pa. 1999)