

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

**MARIE SCOTT, NORMITA JACKSON,  
MARSHA SCAGGS, REID EVANS, WYATT  
EVANS, TYREEM RIVERS**

**Petitioners,**

**v.**

**PENNSYLVANIA BOARD OF PROBATION  
AND PAROLE**

**Respondent.**

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:  
: **No.** \_\_\_\_\_  
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:  
: **PETITION FOR REVIEW IN THE**  
: **NATURE OF A COMPLAINT**  
: **SEEKING DECLARATORY**  
: **JUDGMENT AND INJUNCTIVE**  
: **RELIEF**  
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**ELECTRONICALLY FILED**

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You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within 20 days after this Petition and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any claim or relief requested by the Petitioners.

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PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT SEEKING  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

INTRODUCTION

More than 5,200 people in the state of Pennsylvania are serving sentences of death-by-incarceration (DBI), commonly referred to as life-without-parole (LWOP)—more people than nearly any other state in the country. Of this population, approximately 1,100 people are serving this sentence for criminal convictions in which they did not take a life or intend to take a life. Convicted pursuant to the felony murder rule, an antiquated doctrine that allows prosecutors to cast a wide net and punish people for the unintended and tragic consequences of certain felonies, these individuals have been automatically deprived of *any* right to rejoin society, *ever*, outside of barbed wire and prison walls, under Pennsylvania’s sentencing scheme, which mandates a life sentence for all people convicted of felony murder and eliminates the possibility of parole for all

people serving a life sentence.<sup>1</sup> That scheme operates to deny these individuals the chance to seek redemption, by being allowed to return home and give back to their communities and families for the past harms they committed, and forces them all to live under the nightmarish specter of dying in prison no matter what they do, no matter decades of exemplary conduct, and without any individualized determination as to whether this harshest of sentences is warranted, or whether the remainder of their sentence can be served under conditions of parole.

The racial disparities among the population of people serving death-by-incarceration sentences for felony murder, like the DBI population generally, are unconscionable even when compared to the already shameful disparities existing within the administration of the criminal punishment system in Pennsylvania. Although Black people only make up 12% of the state's population, nearly 70% of those serving DBI sentences for felony murder are Black. This is higher by nearly a quarter than the overall population of Black people incarcerated in Pennsylvania, who make up approximately 46% of the state's prison population.<sup>2</sup> DBI sentences for felony murder convictions thus intersect with deeply entrenched systemic racism in the

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<sup>1</sup> In Pennsylvania, felony murder is graded as second-degree murder. 18 Pa.C.S. §2502(b). One can be charged with felony murder if a death occurs during the commission or attempted commission of a felony to which one was a principal or accomplice, even if one did not cause the death or intend it. *Id.*

"Felony murder" as used in this complaint thus refers to second-degree homicide in Pennsylvania as currently enacted, as well as felony murder as enacted prior to 1974, when it was a specified subsection of first-degree homicide in Pennsylvania. Thus, we use "felony murder" throughout to refer to individuals convicted of second-degree homicide after that offense was separated from first-degree homicide, and individuals convicted of first-degree homicide pursuant to the felony murder rule, such as lead plaintiff Marie Scott, prior to the statutory change in 1974.

<sup>2</sup> Statistical information on racial demographics, age of entry into the Department of Corrections (DOC), and average current age are based on data obtained from the DOC in November 2019.

criminal punishment system by disproportionately sentencing Black people to die in prison for homicides they did not commit or intend to commit.

Age provides another important context for understanding the excessive nature of death-by-incarceration sentences. Of people currently serving DBI sentences in Pennsylvania for felony murder convictions, the majority are aging or considered elderly by prison standards, with an average age of 48 years, and have already spent decades in prison for actions they took in their early-to-mid-20s, with an average age at the time of their commitment to the Pennsylvania Department of Corrections being 25 years. Their relative youth at the time of their crime of conviction, the years they have already served, and their aging or elderly condition today—which there is ample evidence to show correlates to low recidivism—mean that hundreds upon hundreds of people convicted under the felony murder rule could be released without risk to public safety, and could go on to provide social, economic and emotional benefits to their communities and families.

The public health risks of keeping this aging population unnecessarily trapped in prison, where social distancing is impossible, as the state has done, have also become dramatically apparent in light of the COVID-19 pandemic, which has turned jails and prisons across the country into sites of mass infection and community spread.

Plaintiffs are three women and three men who have served between 23 and 47 years in Pennsylvania prisons, or a combined total of 199 years, who seek to remedy this injustice. Each was sentenced to life after a felony murder conviction. None committed or intended to commit any killing in the course of their crime of conviction. All have sought to be considered for parole and been denied the opportunity via the Pennsylvania Board of Probation and Parole's enforcement of 61 Pa.C.S. § 6137(a), a statutory provision of the parole code that prohibits

individuals serving life sentences from parole eligibility. They bring this suit to challenge the constitutionality of 61 Pa.C.S. § 6137(a) under the prohibition on cruel punishments of the Pennsylvania state constitution, and seek an evidentiary hearing so that they may show how 61 Pa.C.S. § 6137(a) is grossly disproportionate to any legitimate penological interest as applied to individuals who did not take a life or intend to take a life, and must be struck down.

In the midst of a global pandemic and the eruption of a renewed and massive national movement for racial justice, now is the time for serious and urgent consideration of Plaintiffs' claim. Rooted in sacrosanct, cross-cultural values of redemption and liberation, Plaintiffs request the right to parole eligibility so that they may be assessed as the individuals they are, possessed of dignity and humanity, and may have an opportunity to live outside of prison walls again.

### **JURISDICTION**

1. This court has jurisdiction over this matter under 42 Pa. C.S.A. § 761, in that this is an action against the commonwealth government and officials acting in their official capacities.

### **PARTIES**

2. Plaintiff Marie Scott, age 67, is currently incarcerated at State Correctional Institution (SCI) Muncy. She has been incarcerated for 47 years. Ms. Scott was arrested when she was 19 years old for her role in a robbery in which her co-defendant killed the victim. Ms. Scott did not commit or intend the killing. She was convicted of homicide and given a mandatory sentence of life.
3. Reid Evans, age 58, is currently incarcerated at SCI Phoenix. He has been incarcerated for 37 years. Reid Evans was arrested when he was 19 years old for his role in a robbery in which the victim later died of a heart attack. He did not commit a killing nor intend the

victim's death. He was convicted of second-degree murder, also known as felony murder, and given a mandatory sentence of life.

4. Wyatt Evans, age 57, the brother of Reid Evans, is currently incarcerated at SCI Phoenix. He has been incarcerated for 37 years. Wyatt Evans was arrested when he was 18 years old for his role in a robbery in which the victim later died of a heart attack. He did not commit a killing nor intend the victim's death. He was convicted of felony murder and given a mandatory sentence of life.
5. Marsha Scaggs, age 56, is currently incarcerated at SCI Cambridge Springs. She has been incarcerated for 32 years. Ms. Scaggs was arrested when she was 23 years old during an attempted drug transaction resulting in a homicide. Ms. Scaggs did not commit or intend the killing. She was convicted of felony murder and given a mandatory sentence of life.
6. Normita Jackson, age 43, is currently incarcerated at SCI Cambridge Springs. She has been incarcerated for 23 years. Ms. Jackson participated in a robbery when she was 19 years-old in which her co-defendant committed a homicide. Ms. Jackson did not commit or intend the killing. She was convicted of felony murder and given a mandatory sentence of life.
7. Tyreem Rivers, age 42, is currently incarcerated at SCI Dallas. He has been incarcerated for 23 years. Mr. Rivers was arrested when he was 18 years old for robbing a woman of her purse. The victim died approximately two weeks later from injuries sustained during the course of the robbery. Mr. Rivers did not commit a killing nor intend her death. He was convicted of felony murder and given a mandatory sentence of life.
8. Defendant Pennsylvania Board of Probation and Parole is a state agency responsible for determining whether people serving sentences of incarceration in the state Department of

Corrections (DOC) will be granted parole. Defendant enforces 61 Pa.C.S. § 6137(a), a statutory prohibition in the parole code on parole eligibility for individuals serving life sentences. Defendant has enforced the prohibition against each Plaintiff.

### **STATEMENT OF FACTS**

#### **A. Background on Death-By-Incarceration in Pennsylvania**

9. Pennsylvania is an outlier both within the United States and globally in the imposition of death-by-incarceration sentences, accounting for ten percent of the total number of people serving these sentences across the entire United States. Quinn Cozzens & Bret Grote, *A Way Out: Abolishing Death By Incarceration in Pennsylvania*, Abolitionist Law Center at 27-28 (2018) (hereafter “*A Way Out*”), [https://abolitionistlawcenter.org/wp-content/uploads/2018/09/ALC\\_AWayOut\\_27August\\_Full1.pdf](https://abolitionistlawcenter.org/wp-content/uploads/2018/09/ALC_AWayOut_27August_Full1.pdf). Over 5,200 people are currently serving DBI in this state—second only to Florida, which has twice the population of Pennsylvania both inside and outside of prison.
10. Philadelphia County, in particular, leads the state, country and world in sentencing people to death-by-incarceration. Philadelphia alone accounts for nearly 2,700 of those serving DBI in Pennsylvania. *Id.* at 16. More people serving DBI were convicted in Philadelphia than in any other county or parish in the country; in more than in 45 states in the United States; and more than in any country in the world. *Id.*
11. Philadelphia’s death-by-incarceration per capita rate, 177 DBI sentences per 100,000 people, is also higher than the *overall* incarceration rates of 140 countries, including Mexico, the United Kingdom, Spain, China, Kenya, and Germany. *Id.* at 29.
12. Moreover, Pennsylvania is one of only six states where there is absolutely no possibility for parole for people over the age of 18 serving life sentences. Marc Mauer, Ryan King, & Malcolm Young, *The Meaning of “Life”: Long Prison Sentences in Context*, The

Sentencing Project at 3 (May 1, 2004),

<https://www.sentencingproject.org/publications/the-meaning-of-life-long-prison-sentences-in-context/>.

13. The state’s commutation system is the only possible avenue of release for people serving death-by-incarceration sentences, but commutations in these cases have become increasingly rare over the last few decades. In the 1970s, over 200 individuals serving DBI in Pennsylvania were released after their sentences were commuted, an average of around 20 per year. *A Way Out* at 18, 37. After a steady decline in the 1980s, however, commutations for DBI sentences in the state have become virtually non-existent—8 total between 1995 and 2018. *Id.* at 18, 37.
14. This transformation has contributed to a rising death toll in state prisons. From 1980 to 2016, a total of 787 people serving a death-by-incarceration sentence in Pennsylvania died in prison. *Id.* at 19. The death rate rose from approximately six deaths per year in the 1980s, to 38 deaths per year from 2010–2016. *Id.*
15. Racial disparities among people serving death-by-incarceration sentences in Pennsylvania are high, surpassing the national average. Black people are serving DBI sentences at a rate of 18 times higher than white people in Pennsylvania; and Latinx people are serving DBI sentences at a rate five times higher than white people. *A Way Out* at 17.
16. The population of people serving death-by-incarceration sentences in Pennsylvania is also aging or elderly. Approximately 650 people over the age of 65 are currently serving DBI sentences in this state, *see* Joshua Vaughn, “What Does Death By Incarceration Look Like in Pennsylvania? These Elderly, Disabled Men Housed in a State Prison,” *The Appeal* (Nov. 20, 2019) <https://theappeal.org/death-by-incarceration-pennsylvania-photo->

[essay/](#), despite the low public safety risk that older incarcerated people pose. *See A Way Out at 20*; Marc Mauer, *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, The Sentencing Project (November 5, 2018) <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/>.

17. The aging death-by-incarceration population in Pennsylvania also presents serious and costly public health concerns, in the context of an already massive number of aging people incarcerated in the state—over 10,000 people, the fourth highest number after Texas, California, and Florida. *See High Cost of Low Risk*, at 10. These grave public health concerns have become particularly and painfully obvious in the era of COVID-19.

**B. Facts Regarding Plaintiffs**

18. Plaintiffs are each serving a mandatory death-by-incarceration sentence for felony murder, offenses that do not require the act of taking or intent to take a life under Pennsylvania law.<sup>3</sup> *See* 18 Pa.C.S.A. § 2502(b). Under 18 Pa.C.S.A. § 1102(b) of the Pennsylvania Sentencing Code, life sentences are mandatorily imposed for these offenses, while parole eligibility for people serving life sentences is completely precluded under the parole code at 61 Pa.C.S.A. § 6137. Commutation is thus the only, largely theoretical, mechanism for Plaintiffs' possible release under Pennsylvania's current sentencing scheme for felony murder.
19. On May 19, 2020, counsel for Plaintiffs submitted a parole application for each Plaintiff to the Pennsylvania Board of Probation and Parole (PBPP) via email. The requests sought

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<sup>3</sup> Plaintiff Marie Scott's conviction occurred prior to Pennsylvania re-classifying felony murder as second-degree murder in 1974. At the time of Ms. Scott's conviction, felony murder was classified as first-degree murder. If convicted today, Ms. Scott's felony murder offense would be considered second-degree murder.

parole review for each individual based on the fact that none took or intended to take a life during their crime of conviction, and evidence that Plaintiffs “present no risk to public safety” and are “thoroughly rehabilitated.” The applications argued that “any denial of consideration for parole would constitute a violation of the Pennsylvania Constitution’s prohibition on cruel punishments, as well as the U.S. Constitution’s prohibition against cruel and unusual punishments.” Plaintiffs also requested an “opportunity to present evidence regarding how denial of parole eligibility constitutes a cruel punishment and is excessive in relation to legitimate penological interests.”

20. In letters dated June 8, 2020, the PBPP provided identical boilerplate responses to each Plaintiff denying their requests: “Upon review of the application for parole and the Department of Corrections records of his sentencing, it appears that (s)he is serving a life sentence and is therefore not eligible for parole consideration based upon 61 Pa.C.S. § 6137(a).”

Marie Scott

21. Plaintiff Marie Scott was convicted of homicide in Philadelphia County on June 27, 1974, and mandatorily sentenced to life in prison. In the same case she was also convicted of Conspiracy to do Unlawful Act, 18 Pa.C.S. § 903, and Aggravated Robbery, 18 Pa.C.S. § 3701. No further penalty was imposed for the non-homicide convictions. *See* Docket Number: CP-51-CR-0411022-1973.
22. Ms. Scott is a survivor of repeated childhood sexual abuse and physical abuse, and in turn abused drugs and alcohol as a means of coping with her trauma. She first drank alcohol when she was nine years old, and began smoking marijuana when she was 14 years old. At the age of 16, she began abusing heroin.

23. Ms. Scott was prosecuted for her role in a robbery of a gas station during which her co-defendant killed the station attendant, Michael Kerrigan. Ms. Scott served as the lookout. She did not commit or intend Mr. Kerrigan's killing, and had no warning or knowledge of her co-defendant's plan to kill Mr. Kerrigan.
24. Ms. Scott was 19 years old at the time of the offense. She was also heavily under the influence of pills given to her by her co-defendant, which severely impaired her ability to make rational decisions.
25. Ms. Scott's co-defendant was 16 years old at the time of the crime. As a result, his death-by-incarceration sentence was later vacated pursuant to the U.S. Supreme Court's decision in *Miller v. Alabama*, 567 U.S. 460 (2012), which holds that mandatory DBI sentences for juveniles convicted of homicide are cruel and unusual under the Eighth Amendment. He has since been granted parole and released from prison.
26. Ms. Scott accepts full responsibility for her crime and feels deep remorse over her actions and the harm they caused.
27. During her incarceration of nearly 50 years, Ms. Scott has availed herself of numerous educational and rehabilitative programs. *See Women's Lifers Resume Project*:  
[https://72bb6018-60f7-4448-9be5-52745990840e.filesusr.com/ugd/161764\\_828c0c500d504f1fb869b8777be6cf64.pdf](https://72bb6018-60f7-4448-9be5-52745990840e.filesusr.com/ugd/161764_828c0c500d504f1fb869b8777be6cf64.pdf).
28. She has undergone paralegal training; received an associate degree in Sociology from Penn State University; and completed other college courses, including Business Management and Entrepreneurship Courses from Bloomsburg University, and a Women's Issues course from Bucknell University.

29. She has also completed numerous rehabilitative programs, including: Drug and Alcohol; Violence Prevention; Thinking for a Change [cognitive-behavioral program]; Character and Development; Anger Management; Citizenship; and The Impact of Crime, a victim awareness program.
30. Ms. Scott also formed groups in prison that support children of incarcerated parents. She authored a bill that was accepted by five senators and turned into Senate Resolution 71, calling on state agencies to study the needs and problems of children whose parents are incarcerated. In 1992, she was asked by former Superintendent Mary Leftridge-Byrd to travel to Pittsburgh and speak before the governor's council about correctional planning for women. In 1996, she received the meritorious Julia Hall award for Inmate of the Year. She is featured in several books by Dr. Howard Zehr, considered the grandfather of restorative justice practices. She is the editor of a newsletter called COPING, [Children of Parent Inmates Needing Guidance]. And recently, she introduced to the Department of Corrections a workbook series on Codependency entitled, "Healthily Living: Breaking the Chains of Codependency." At present, she is a peer facilitator for a drug and alcohol treatment program.
31. Ms. Scott is demonstrably far from the person she was 47 years ago when she was first incarcerated. In her own words:

*When I began to mature ... that's when changes started happening to me and in my life. The crowd of people I hung out with definitely changed. They were about something that I wanted to be about. I began taking college courses and eventually obtained an Associate Degree in Sociology. The study of people amazed me so much that I started studying myself and why I came to prison. It*

*was that time in my life that I began facing and taking responsibility for what I had actually done to come to prison. Not being able to be alright with that pushed me to try and do things that would not let Mr. Kerrigan's murder go in vain.*

32. Ms. Scott shared her goal if released from prison:

*[T]o try and prevent women who struggle with codependency like I did, from making the terrible choices I did that caused an innocent man to lose his life. I will visit prisons to share my story about the disease of codependency and show them that not only the majority of women in prison are codependent but suffer with it because of their family dynamics.*

33. By operation of 61 Pa.C.S. § 6137, which denies the possibility of parole for people serving life sentences, Ms. Scott will die in prison even though she did not take or intend to take a life during her crime of conviction, presents no risk to public safety, and has remarkable record of educational achievement and community service that would allow her to make meaningful contributions to her community and the public upon her release on parole.

Reid and Wyatt Evans

34. Plaintiffs Reid and Wyatt Evans were convicted of second-degree murder, 18 Pa.C.S. § 2502, in Philadelphia County on October 14, 1981, and mandatorily sentenced to life in prison. In the same case they were also convicted of Kidnapping, 18 Pa.C.S. § 2901; Criminal Conspiracy, 18 Pa.C.S. § 903; Robbery, 18 Pa.C.S. § 3701; and Prohibited Offensive Weapons, 18 Pa.C.S. § 908.1. They were given an additional five to ten years for the Criminal Conspiracy offense. *See* Docket Number: CP-51-CR-1023311-1980 (Reid Evans) and CP-51-CR-1023471-1980 (Wyatt Evans).

35. Reid Evans was 19 years old at the time of the offense. Wyatt Evans was 18 years old.
36. The Evans brothers and their co-defendant used a non-operational shotgun that could not fire to rob a man, Leonard Leichter, in west Philadelphia. After following him to his car, showing him the gun, and placing him in the back seat, the three teenagers drove him several blocks before dropping him off by a pay phone. They robbed him of his wallet, watch, \$47, and his car.
37. Several hours after this incident, Mr. Leichter died of a heart attack. The Evans brothers were convicted of second-degree murder based on the theory that the robbery had precipitated Mr. Leichter's heart attack.
38. Reid and Wyatt Evans did not kill Mr. Leichter, or intend his death.
39. The Evans brothers accept full responsibility for their crime and deeply regret the harm they caused.
40. Both men have excellent disciplinary records in the Department of Corrections (DOC). Reid Evans's last misconduct was almost 20 years ago.
41. Wyatt Evans has also had a virtually clean disciplinary record for the last 20 years, with the exception of one minor violation, six years ago, for being in an unauthorized area, where he was giving another incarcerated individual a haircut.
42. Both men have also availed themselves of rehabilitative programming, including numerous courses on anger management and violence prevention, and held longstanding jobs in the DOC. Reid Evans has completed Stress and Anger Management; Thinking for a Change; and Violence Prevention. Wyatt Evans has completed Citizenship; Thinking for a Change; and Violence Prevention.

43. Wyatt Evans has also pursued courses from the Pennsylvania Business Institute, attaining 36 credits in Business Administration with a major in Accounting, and achieving a career diploma. He also achieved certificates in Typing, Word Perfect, Computer Application, and Lotus.
44. Both men have long work histories in the DOC. Reid Evans worked for 17 years as a sanitation worker, and completed a course that trained him in electrical wiring. Wyatt Evans worked for 16 years as a sheet metal worker. Both men worked for over 18 years in the soap and detergent plant at SCI Huntingdon, making products for use throughout the DOC.
45. For the last three years, the Evans brothers have also both given charitable donations to Bethlehem School District in support of a minority scholarship fund.
46. If released, Reid Evans says he would “work, start a family, and help my community. I have changed since I been incarcerated, where I stay out of trouble; I keep steady work; I am more skilled (I have a certificate in electricity); I am more patient; I love helping people; and I hang with just positive people.”
47. Wyatt Evans, if released, “would hopefully find a job in my trade, sheet metal fabrication.” He also wants “to start a family and surround himself with positive people.”
48. Both brothers applied for commutation but were denied in December 2019, despite having the support of the Lieutenant Governor, who chairs the Board of Pardons, and the Philadelphia District Attorney.
49. By operation of 61 Pa.C.S. § 6137, Reid and Wyatt Evans will die in prison even though they did not take or intend to take a life during the course of their crime of conviction,

present no risk to public safety, and have the support of their families and members of the community for commutation, including the Philadelphia District Attorney's Office.

Marsha Scaggs

50. Plaintiff Marsha Scaggs was convicted of second-degree murder, 18 Pa.C.S. § 2502, in Lawrence County on May 28, 1988, and mandatorily sentenced to life in prison.
51. Ms. Scaggs was prosecuted after an altercation with the victim in her case resulted in her co-defendant killing the victim, Joseph Supples. Ms. Scaggs testified at trial that her co-defendant handed her a gun and, while pointing his own gun at Ms. Scaggs, ordered her to shoot Mr. Supples, whom they suspected of being a police informant seeking to purchase drugs. When Ms. Scaggs refused to shoot, her co-defendant took her gun and shot Mr. Supples himself. A jury convicted Ms. Scaggs of second-degree murder.
52. Ms. Scaggs did not kill Mr. Supples, or intend to kill him.
53. Ms. Scaggs was 23 years old at the time of the offense. She was also under the influence of cocaine.
54. Ms. Scaggs was a victim of rape when she was 15 years old and experienced an extraordinary amount of additional violence in her home growing up. Her step-father frequently assaulted her mother during most of Ms. Scaggs's childhood. She began abusing drugs after her rape.
55. Ms. Scaggs accepts full responsibility for her crime and feels deep remorse over her actions and the harm they caused.
56. During her incarceration of more than 30 years, Ms. Scaggs has availed herself of numerous educational and rehabilitative programs. *See Women's Lifers Resume Project:*

<https://72bb6018-60f7-4448-9be5->

[52745990840e.filesusr.com/ugd/161764\\_92ce4d94aa124edc965c557710ac79e2.pdf](52745990840e.filesusr.com/ugd/161764_92ce4d94aa124edc965c557710ac79e2.pdf).

57. She received her General Education Diploma in 1990; an Associate Degree in Business and Accounting in 1992; completed more than 400 hours in Food and Nutrition education; and received a Braille Certification in 2005, which she used to transcribe books for approximately five years.
58. Rehabilitative programs she has completed include: multiple drug and alcohol programs; Anger Management; Stress Management; Creative Non-Violent Conflict Resolution; Survivor's group programs; Healthy Relationships group; Drug Dealers group; and Victim Awareness group. Ms. Scaggs has recently been accepted into the Living Safely program, which is focused on helping incarcerated women transition into society outside of prison.
59. Ms. Scaggs has also dedicated countless hours to community service, fundraising for Big Brothers and Big Sisters programs every year, organizing activities for Big Brothers and Big Sisters of Crawford County, donating handmade items such as hats, scarves, gloves, and blankets to a children's hospital, and facilitating Alcoholics Anonymous and Narcotics Anonymous groups in her housing units.
60. Ms. Scaggs has made important changes in her life during her decades in prison. As she recounts:

*I came from a dysfunctional family and had no sense of direction so when I came to prison I immediately enrolled in G.E.D. classes, college courses, groups and organizations to help better myself. Today my understanding and experience, utilizing self-help and AOD [Alcohol and Other Drug] groups. I recognize and*

*live by making healthy decisions and choices. I am my own self motivator. I am responsible for my actions, changes, needs, and me. I make conscious decisions every day to be a better sister, aunt, and to those around me. I maintain balance and protection over my mind, emotions, and time from the behaviors or demands of others. I have maintained above average housing unit reports as well as work reports. I have been misconduct free for 22 years and lived in the honor unit for over 13 years. I attend Protestant church services every Sunday and I attend bible study twice a month. I have learned to forgive myself for all the wrongs I have done to others and also to those who have hurt me.*

61. For approximately ten years, Ms. Scaggs has also served as a Peer Facilitator in drug and alcohol programs at SCI Cambridge Springs, assisting other incarcerated people with their recovery and making plans for their future.

62. Ms. Scaggs shared her hopes if released from prison:

*I would love to work with the youth to share my experience to hopefully steer them away from getting caught up in the justice system. Spend some quality time with my family and friends. I also will be attending NA/AA groups as well as one on one counseling to help me cope with re-entering back into society after being incarcerated for over three decades. I just want to live a simple life.*

63. By operation of 61 Pa.C.S. § 6137, Ms. Scaggs will die in prison even though she refused to take a life or intend to take a life during the course of her crime of conviction, presents no risk to public safety, and has a remarkable record of self-transformation and community service that would allow her to make meaningful contributions to her community and the public upon her release on parole.

Normita Jackson

64. Plaintiff Normita Jackson was convicted of second-degree murder, 18 Pa.C.S. § 2502, in Allegheny County on July 2, 1998, and mandatorily sentenced to life in prison. In the same case she was also convicted of Burglary, 18 Pa.C.S. § 3502; Robbery, 18 Pa.C.S. § 3701; and two counts of Criminal Conspiracy, 18 Pa.C.S. § 903. No further penalty was imposed for the non-homicide convictions. *See* Docket Numbers: CP-02-CR-0001297-1997; CP-02-CR-0003064-1997; CP-02-CR-0001833-1997.
65. Ms. Jackson was 19 years old at the time of the offense.
66. Ms. Jackson was prosecuted for participating in a robbery in which her co-defendant committed a homicide, killing the victim, Henry Egbo. Ms. Jackson, at the request of her co-defendant, agreed to invite Mr. Egbo to her residence, where her co-defendant intended to rob him. Ms. Jackson directed Mr. Egbo to a room on the first floor of the home, where her co-defendant shot Mr. Egbo, while Ms. Jackson remained on the second floor.
67. Ms. Jackson did not kill Mr. Egbo, nor did she intend to kill him.
68. Ms. Jackson is a survivor of repeated child sexual abuse. When Ms. Jackson was ten or 11 years old she was sexually assaulted multiple times by her mother's boyfriend. This profound trauma caused serious, adverse effects on Ms. Jackson during her adolescence.
69. Ms. Jackson accepts full responsibility for her crime and feels profound regret for her role in the events leading to Mr. Egbo's death.
70. During her incarceration of 23 years, Ms. Jackson has availed herself of numerous rehabilitative programs. *See* Women's Lifers Resume Project: <https://72bb6018-60f7->

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[52745990840e.filesusr.com/ugd/161764\\_06991063f4934c4e856bfa7bf4dc9f08.pdf](#).

71. Rehabilitative programs she has completed include: multiple anger management programs; Stress Management; Impulse Control; Cage your Rage; Civic Responsibility and Self Esteem; Violence Prevention; Thinking for a Change; Alcohol and Other Drug Outpatient Treatment; Domestic Violence/Sexual Abuse Inpatient Treatment; parenting classes; and she recently completed Seeking Safety, an outpatient domestic violence/sexual abuse treatment program.
72. Ms. Jackson is a Certified Peer Assistant for Drug and Alcohol counseling, and has been a Peer Facilitator for multiple programs that she completed. She has also worked as a tutor to other women pursuing Adult Basic Education courses and their General Education Degrees. She currently works as a medical aide in hospice care for SCI Cambridge Springs.
73. If released, Ms. Jackson's goals are the following:

*To be a productive citizen in society by helping young adults and children by telling my story and allowing them to see and know that there is more to life than just drugs, fast money and drinking. I would like to assist people who may be unable to clean their homes properly; I would clean for them, free of charge. I would reach out to churches, Boys and Girls clubs, promoting clean-environment projects, and work side-by-side with them to pick up trash off the streets.*
74. As Ms. Jackson has gotten older, and despite the challenges of incarceration, she has matured and transformed from the person she was 23 years ago. She states:

*I want people in society to know, we as lifers are not cold-hearted monsters. We are people just like you! We are kind, caring, loving and respectful human beings. I am a woman, I am someone's child. Please do not judge us, get to know us. Every day that I awake, I am proud of who I have become and the changes that I have made. I continue to make changes every day. It is not easy but I know that God did not bring me this far just to leave me.*

75. By operation of 61 Pa.C.S. § 6137, Ms. Jackson will die in prison even though she did not take a life or intend to take a life during the course of her crime of conviction, presents no risk to public safety, and has a remarkable record of self-transformation and community service that would allow her to make meaningful contributions to her community and the public upon her release on parole.

*Tyreem Rivers*

76. Plaintiff Tyreem Rivers was convicted of second-degree murder, 18 Pa.C.S. § 2502, in Philadelphia County on September 16, 1997, and mandatorily sentenced to life in prison. In the same case he was also convicted of Robbery, 18 Pa.C.S. § 3701; Theft by Unlawful Taking, 18 Pa.C.S. § 3921; and Theft by Receiving Stolen Property, 18 Pa.C.S. § 3925. He received no additional sentence for the non-homicide offenses. *See* Docket Number: CP-51-CR-0703221-1996.
77. Tyreem Rivers was 18 years old at the time of the offense.
78. Mr. Rivers was convicted of second-degree murder after he committed a robbery by grabbing the purse of the victim, Mary Tonzolla, an elderly woman who fell as a result. Ms. Tonzolla was hospitalized because of her fall and died two weeks later from pneumonia she contracted while in the hospital.

79. Mr. Rivers accepts full responsibility for his crime and feels deep sorrow over the harm he caused.
80. Currently, Mr. Rivers is employed as an educational teacher's aide in the Department of Corrections. Prior to that he worked as a peer educator and assistant in a Therapeutic Community alongside drug and alcohol treatment specialists who work with incarcerated people struggling with substance abuse. He has also worked in the infirmary doing janitorial and hospice work.
81. During his incarceration, Mr. Rivers has completed rehabilitative programs including Violence Prevention, Alcohol and Other Drug Program to assist with overcoming substance abuse, and Relapse Prevention. Mr. Rivers has been drug and alcohol free for 22 years.
82. Mr. Rivers received his General Education Diploma early in his incarceration in 1997, and has completed numerous educational programs since then, including Basic Algebra I, Business Math, Basic Geometry, Techniques for Tutoring Adult Reading, Keyboarding, Business Correspondence and Reports, Accounting, and a Diploma of Legal Assistant/Paralegal with Distinction from Blackstone Career Institute.
83. He has greatly transformed himself from who he was when he committed the offense that resulted in his incarceration. In his own words:

*At the age of 42 I no longer think in a way that leads to substance abuse or criminal activities. One of the main things that has helped shape the way that I now think is years of educational programming, vocational programming, drug & alcohol treatment groups and programs, years of introspection, keeping good company, attending self-help workshops, learning from my past mistakes and the*

*mistakes of others, reading some amazing life-altering books, and just maturing over the years. My new way of thinking is more pro social. I've been 24 years clean of substance abuse, fell completely in love with education, and I've reached a point in life where I'm able to help educate others through tutoring and advocating for their sobriety.*

84. If released from prison Mr. Rivers would continue along this trajectory of education, pro social engagement, and tutoring:

*After 24 years of incarceration I find a great sense of pleasure and comfortability in being in education settings, advocating sobriety, and teaching people about the horrific impact of crime and how it wrongfully and directly affects the victims, their families, and the communities in which that crime occurred. At 42 [years-old], this is how I want to continue to live the rest of my life from here on out.*

85. By operation of 61 Pa.C.S. § 6137, Mr. Rivers will die in prison even though he did not take a life or intend to take a life during the course of his crime of conviction, presents no risk to public safety, and has the support of his family and an remarkable record of self-transformation and community service that would allow him to make meaningful contributions to his community and the public upon his release on parole.

### **LEGAL FRAMEWORK**

#### **A. Death-By-Incarceration Sentences for People Who Do Not Kill or Intend To Kill Are Unconstitutional**

86. Defendant's enforcement of 61 Pa.C.S. § 6137(a), resulting in the denial of a meaningful opportunity for release from prison and death-by-incarceration for Plaintiffs, violates Article I, § 13 of the Constitution of the Commonwealth of Pennsylvania prohibiting "cruel punishments."

87. Art. I, § 13 provides at least as much protection as the federal constitution's prohibition on "cruel and unusual punishments" in the Eighth Amendment, *see Commonwealth v. Edmunds*, 586 A.2d 887, 894 (Pa. 1991), which in turn prohibits the most severe punishments for categories of defendants with diminished culpability.
88. The U.S. Supreme Court has recognized that sentences of life-without-parole are among the harshest punishments, akin to the death penalty in their severity and irrevocability, and thus deserving of enhanced constitutional scrutiny. *See e.g. Graham v. Florida*, 560 U.S. 48, 69 (2010) ("Life without parole sentences share some characteristics with death sentences that are shared by no other sentences."); *Miller v. Alabama*, 567 U.S. 460 (2012); *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016); *see also Campbell v. Ohio*, 138 S.Ct. 1059, 1059-60 (2018) (cert. denied) (Sotomayor, J., concurring) ("Our Eighth Amendment jurisprudence developed in the capital context calls into question whether a defendant should be condemned to die in prison without an appellate court having passed on whether that determination properly took account of his circumstances, was imposed as a result of bias, or was otherwise imposed in a 'freakish manner.'")
89. In *Graham v. Florida*, the Court held that children younger than 18 years of age who did not kill or intend to take a life constituted a category of defendants with diminished culpability who could not be sentenced to life-without-parole-consistent with the Eighth Amendment. *Graham*, 560 U.S. at 75.
90. In *Miller v. Alabama*, the Court extended its analysis of youth as a category of diminished culpability to homicide offenses, holding that life-without-parole could not be imposed on a child whose "crime reflects unfortunate yet transient immaturity." *Miller*, 567 U.S. at 479 (internal quotations and citations omitted); *see also Montgomery*, 136

S.Ct. at 734 (noting that even if age is considered before sentencing a child to life without parole, the sentence still violates the Eighth Amendment if the child's crime reflects transient immaturity).

91. The *Miller* Court reasoned that a defendant's youth diminished her culpability to such an extent that a sentence of life-without-parole was excessive in light of the government's legitimate penological purposes. *See Miller*, 567 U.S. at 479 ("By making youth and all that accompanies it irrelevant to imposition of that harshest prison sentence, such a [sentencing] scheme poses too great a risk of disproportionate punishment.") (internal parentheses omitted).
92. That youth was a category of diminished culpability rendering the most extreme punishments beyond the constitutional reach of the federal government was first recognized in *Roper v. Simmons*, 543 U.S. 551 (2005), which held that the death penalty was an unconstitutional punishment for offenses committed by children younger than 18.
93. *Roper* itself built on previous Supreme Court decisions that held the death penalty unconstitutional for other categories of defendants with diminished culpability. *See e.g. Atkins v. Virginia*, 536 U.S. 304 (2002) (holding capital punishment for individuals with an intellectual disability unconstitutional); *Enmund v. Florida*, 458 U.S. 782, (1982) (holding capital punishment for individuals who did not kill, attempt to kill, or intend to kill unconstitutional).
94. Namely, as far back as 1982, the Supreme Court recognized that the death penalty was categorically cruel and unusual punishment in violation of the Eighth Amendment when imposed on defendants who did not kill or intend to take a life. *Enmund*, 458 U.S. 782.

95. Thus, under *Enmund*, read *in pari materia* with *Graham*, *Miller* and *Montgomery*, and analyzed in light of the failure of life-without-parole sentences to serve legitimate penological interests when imposed on defendants who did not kill nor intend to kill as part of their crime, *see infra*, the Parole Board's enforcement of 61 Pa.C.S. § 6137 denying parole eligibility to people serving life sentences for felony murder convictions in Pennsylvania violates the Pennsylvania Constitution's prohibition on cruel punishments, which is at least coextensive with the federal prohibition, and must be enjoined.
96. As noted above, in analyzing the constitutionality of Plaintiffs' death-by-incarceration sentences, this Court must also assess whether the sentences are proportionate in relation to legitimate penological purposes of deterrence, incapacitation, retribution, and rehabilitation. *Miller*, 567 U.S. at 470 (assessing proportionality by analyzing a punishment in relation to penological purposes); *Graham*, 560 U.S. at 67 ("In this inquiry the Court also considers whether the challenged sentencing practice serves legitimate penological goals."); *Kennedy v. Louisiana*, 554 U.S. 407, 441-46 (2008); *Roper*, 543 U.S. at 571-72.
97. With respect to each of these penological purposes, Plaintiffs' sentences are demonstrably disproportionate and excessive.
98. There is a longstanding consensus among experts that longer, harsher sentences do not increase the deterrent effect of a penalty, no matter the offense. *See, e.g.*, Paul H. Robinson & John M. Darley, *Does Criminal Law Deter? A Behavioural Science Investigation*, 24(2) Oxford J. of Legal Studies 173 (2004).

99. At a minimum, for deterrence to have any effect, individuals must be aware of the penalty associated with their contemplated criminal act. This basic requirement is absent in Plaintiffs' cases, as they are being punished for a result they did not commit or intend. The concept of deterrence does not align with punishing people for the unintended consequences of their actions.
100. Incapacitation is also an unavailing rationale for Plaintiffs' sentences. Aging and rehabilitated people who have spent decades in prison, like Plaintiffs, even for violent crime, present a statistically low risk for re-offending on any offense.
101. One national study found that among individuals previously convicted of a crime, those older than 55 were ten times less likely to commit a further criminal offense as compared to those in their early 20s. James Austin & Lauren-Brooke Eisen, *How Many Americans are Unnecessarily Incarcerated?*, Brennan Institute for Justice at 36 (2016).
102. In a 2004 nationwide study, people released from a life sentence were less than one-third as likely to be rearrested within three years of their release compared to the overall re-arrest rate within that time span. Ashley Nellis, *Throwing Away the Key*, 23(1) Fed. Sent. R. 28 (2010).
103. Strikingly, in Pennsylvania, between 1933-2005, only 2.5% of people who were released after their life sentences were commuted were ever reincarcerated for a new criminal conviction on any offense. See Advisory Committee on Geriatric and Seriously Ill Inmates, Joint State Government Committee of the General Assembly of the Commonwealth of Pennsylvania, *A Report of the Advisory Committee on Geriatric and Seriously Ill Inmates* at 77 (2005).

104. For those whose sentences were commuted when they were at least 50 years old, only one out of 99 was reincarcerated for any reason. *Id.*
105. More recently, according to a 2018 review of 230 people released from prison in Pennsylvania who were initially sentenced to death-by-incarceration for homicide offenses committed when they were juveniles, only one had been rearrested or reincarcerated as of April 2018. Samantha Melamed, *35 Years in prison, then 150 days of freedom: Philly's first juvenile lifer back in jail*, Philadelphia Inquirer (April 27, 2018).
106. An even more recent study of 269 people from Philadelphia who were formerly sentenced to death-by-incarceration for homicide offenses committed when they were juveniles found that, of the 174 who had been released, the recidivism rate was only 1.14% (defined as reconviction for any offense). Tarika Daftary-Kapur, Ph.D. & Tina M. Zottoli, Ph.D., *Resentencing of Juvenile Lifers: The Philadelphia Experience* (April 30, 2020) <https://www.montclair.edu/newscenter/2020/04/30/new-study-finds-1-recidivism-rate-among-released-philly-juvenile-lifers/>.
107. Comparative state data provides further support. A study of 368 people convicted of murder in New York found that none were incarcerated for a new violent offense within three years of their release from prison. Marie Gottschalk, *Days Without End: Life Sentences and Penal Reform*, Prison Legal News (January 15, 2012).
108. In California, out of 860 people who were paroled between 1995-2011 after serving sentences for murder, less than one percent were reincarcerated for a new felony conviction, and none were convicted of crimes eligible for a life sentence. Nazhol Ghandnoosh, *Delaying a Second Chance: The Declining Prospects for Parole on Life Sentences*, The Sentencing Project at 29 (2017).

109. Death-by-incarceration sentences for those who did not kill or intend to kill as part of their crime are disproportionate according to retributivist logic as well, evidenced by the fact that this penalty is identical to that imposed on more than 4,000 people convicted of first-degree criminal homicide in Pennsylvania. Retribution, the penological concept of punishment in proportion to the heinousness of the criminal act committed, is rather vengeance without principle in Plaintiffs' cases, since their punishment is identical to that imposed on people whose culpability is greater under the Eighth Amendment.
110. As for rehabilitation, life without parole "forfeits altogether the rehabilitative ideal." *Graham*, 560 U.S. at 74.
111. As stated above, and as Plaintiffs are prepared to demonstrate at an evidentiary hearing, Plaintiffs' sentences are unconstitutionally excessive in light of Eighth Amendment jurisprudence because death-by-incarceration sentences fail to satisfy legitimate penological interests when imposed on those who do not kill or intend to kill. *Edmunds*, *Graham* and *Miller*, when read together and assessed in light of the failure of Plaintiffs' sentences to further legitimate penological purposes, compel a prohibition on DBI sentences for felony murder under Pennsylvania's cruel punishments clause.

**B. The *Edmunds* factors favor parole eligibility for Plaintiffs**

112. Under *Com. v. Edmunds*, 586 A.2d 887, 894 (Pa. 1991), the anti-cruelty protection of Art. I, § 13 of the Pennsylvania Constitution provides as much and greater protection than the Eighth Amendment of the federal constitution.
113. In assessing a claim that a Pennsylvania constitutional provision provides greater protection than its federal constitutional counterpart, the courts of this commonwealth use the four-part test outlined in *Edmunds*: (1) the text of the Pennsylvania constitutional provision; (2) the history of the provision, including Pennsylvania case law; (3) related

case law from other states; and (4) policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence.

The text of Article I, § 13

114. The text of Art. I, § 13, declaring that “cruel punishments [shall not be] inflicted” can and should be interpreted to afford broader protection than the prohibition against “cruel and unusual punishments” in the Eighth Amendment. *C.f. Commonwealth v. Baker*, 78 A.3d 1044, 1051–55 (Pa. 2013) (Castille, J., concurring) (discussing distinct analysis for determining whether Pennsylvania cruel punishments prohibition provides greater protection than federal Constitution’s cruel and unusual punishments prohibition).
115. States are not bound to the federal interpretation of the federal counterpart to state constitutional provisions, even when they share identical language, and less so when there are notable textual differences between the provisions, as here. *See id.* (Pennsylvania’s anti-cruelty provision does not “require[] lock step devotion to federal law interpreting the Eighth amendment); *see also Commonwealth v. Muniz*, 164 A.3d 1189, 1220 (Pa. 2017) (comparing the PA and federal *ex post facto* constitutional provisions).
116. Pennsylvania courts have specifically recognized that the textual difference between the state’s anti-cruelty provision and the Eighth Amendment is significant and signals a need for a different analysis. *See Baker*, 78 A.3d at 1054.
117. Interpreting Pennsylvania’s anti-cruelty provision as coextensive with the Eighth Amendment would thus, among other things, render the federal language as “mere surplusage.” *See Harmelin v. Michigan*, 501 U.S. 957, 967 (1991) (noting the difference between “cruel” and “unusual” in the federal Constitution).

The history of Article I, § 13

118. Moreover, nikhilu in the history of Art. 1, § 13 limits its protection to the scope of the Eighth Amendment. The Pennsylvania state constitution is not modeled after the federal constitution, and states are only obligated to treat federal standards as baseline protections. *See Edmunds*, at 896; *Baker*, 78 A.3d 1044, 1054. Indeed, Pennsylvania’s anti-cruelty provision was ratified a year after the Bill of Rights’ prohibition against punishments that are both cruel and unusual, suggesting that the omission of “and unusual” serves a distinct purpose.
119. Notwithstanding the findings by Pennsylvania courts that certain rights secured by Article I, § 13 are coextensive with those secured by the Eighth Amendment, Pennsylvania courts are not “absolved of the duty to independently review a properly presented state constitutional claim” of broader protection than the federal constitutional counterpart. *Baker*, 78 A.3d at 1054.

Related State Law

120. The jurisprudence of states with anti-cruelty constitutional provisions that are similar or identical to Art. I, § 13 also recognize that there is a not-trivial distinction between their state provisions and the anti-cruelty clause of the Eighth Amendment, and held that their provisions provide broader protection. *State v. Bassett*, 482 P.3d 343 (Wash. 2018).
121. In Washington state, which has an anti-cruelty constitutional provision that is textually identical to Article I, Sec. 13 of the Pennsylvania Constitution, the state’s Supreme Court specifically acknowledged that its constitutional provision ought to provide greater protection than the Eighth Amendment “because it prohibits conduct that is merely cruel;

it does not require that the conduct be both cruel and unusual.” *Id.* at 349 (quoting *State v. Dodd*, 120 Wn.2d 1, 21 (1992)).

122. Other state courts have made similar distinctions, characterizing the difference between their state constitution’s “cruel *or* unusual” language and the federal constitution’s “cruel *and* unusual” as a substantive distinction. See *People v. Carmony* 26 Cal. Rptr. 3d 365, 378 (2005) (referring to the distinction as “purposeful and substantive rather than merely semantic”); *Armstrong v. Harris*, 773 So.2d 7,17 (Fla. 2000) (deciding that, within its state constitutional provision, “cruel” and “unusual” were to be defined “individually and disjunctively”); *State v. Mitchell* 577 N.W.2d 481, 488 (Minn. 1998) (referring to the textual difference as “not trivial”); *People v. Bullock*, 485 N.W.2d 866, 872 (Mich. 1992) (describing the textual difference as “not appear[ing] to be accidental or inadvertent”).

#### Policy Considerations

123. In addition, there are critical policy considerations that support interpreting Pennsylvania’s anti-cruelty provision more broadly than the Eighth Amendment in the case of death-by-incarceration sentences for felony murder.
124. As an initial matter, *see supra*, Pennsylvania is an outlier both within the United States and globally in the number of people serving death-by-incarceration sentences.
125. The mandatory nature of Pennsylvania’s death-by-incarceration sentencing scheme for people convicted of felony-murder also poses too great a risk of disproportionate punishment. Importantly, the prohibition on parole eligibility for all individuals serving a life sentence was passed in the 1941 Parole Act, against a backdrop of a functioning commutation system, which could address the undue severity of DBI sentences in appropriate cases. As discussed above, however, over the last few decades, commutations

for DBI sentences have become virtually non-existent—down to eight total over a more than two decades, from 1995 to 2018. *A Way Out* at 18, 37

126. The complete absence of any individualized assessment when it comes to imposing DBI sentences in Pennsylvania is in stark contrast to the death penalty, to which the Supreme Court has compared the severity of life without parole sentences, *see supra*. Indeed, the Pennsylvania legislature has required individualized sentencing in nearly every sentencing scenario except DBI sentences.
127. Death-by-incarceration sentences for felony murder also lead to incongruous results in Pennsylvania. For example, while individuals under the age of 18 convicted of first-degree homicide may be considered for parole, in appropriate recognition of their diminished culpability based on youth, people over the age of 18 convicted of second-degree murder are barred from parole eligibility, despite their diminished culpability based on the absence of their intent to kill or taking of a life.
128. Racial disparities among people serving DBI in Pennsylvania are also remarkably high, especially among the population serving DBI for felony-murder, *see supra*.
129. Like the U.S. prison population generally, the population of people serving DBI in Pennsylvania is also aging or elderly. *See* Joshua Vaughn, “What Does Death By Incarceration Look Like in Pennsylvania? These Elderly, Disabled Men Housed in a State Prison,” *The Appeal* (Nov. 20, 2019) <https://theappeal.org/death-by-incarceration-pennsylvania-photo-essay/>. Plaintiffs reflect this reality, who are all in their 40s, late 50s or 60s, having spent over 20, 30 and 40 years in prison for crimes committed when they were in their late teens and early 20s. Yet criminologists have long found that an individual’s involvement in crime correlates strongly to age, and that older incarcerated

people pose little public safety risk. *A Way Out* at 20; Marc Mauer, *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, The Sentencing Project (November 5, 2018) <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/>. Indeed, social science research shows that older individuals who have been released from prison, including those convicted of homicide-related or other serious offences, have extremely low recidivism rates, Elizabeth Gaynes et al., “The High Costs of Low Risk: the Crisis of America’s Aging Prison Population,” The Osborne Association at 18 (May 2018) <http://www.osborneny.org/resources/the-high-costs-of-low-risk/the-high-cost-of-low-risk/>, and that people tend to “age out” of crime in their 30s and 40s, including those who have committed violent or more serious offenses. See Joshua Vaughn, “Aging into Crime: Pennsylvania Deals with Aging Prison Population,” The Sentinel (Dec. 7, 2018): [https://cumberlink.com/news/local/closer\\_look/aging-into-crime-pennsylvania-deals-with-aging-prison-population/article\\_3284ba88-8066-595c-a922-73b4327338f1.html](https://cumberlink.com/news/local/closer_look/aging-into-crime-pennsylvania-deals-with-aging-prison-population/article_3284ba88-8066-595c-a922-73b4327338f1.html); Dana Goldstein, “Too Old to Commit Crime?,” N.Y. Times (Mar. 20, 2015) <https://www.nytimes.com/2015/03/22/sunday-review/too-old-to-commit-crime.html>. Plaintiffs exemplify this low public safety risk and high capacity for rehabilitation. *A Way Out* at 23–24, 53–70.

130. The aging death-by-incarceration population in Pennsylvania also presents serious and costly public health concerns, which have become particularly and painfully obvious in the era of COVID-19. Many incarcerated people have physiological ages that are at least ten to 15 years older than their actual age, which has led many prisons to lower the age considered elderly to 50-55 years of age. See Meredith Greene et al., “Older Adults in

Jail: High Rates and Early Onset of Geriatric Conditions,” 6:3 Health & Justice at 1, 4–5 (2018),

[https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5816733/pdf/40352\\_2018\\_Article\\_62.pdf](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5816733/pdf/40352_2018_Article_62.pdf)

f. Aging people in prison are at heightened risk for the early onset of many chronic, debilitating, and/or geriatric conditions even as compared to the already at-risk general prison population. *See id.*, at 4–7. This includes conditions like dementia and other cognitive impairments, incontinence, and multimorbidity—having two or more serious medical conditions, such as diabetes, hypertension, heart disease, lung disease, cancer, stroke, and Hepatitis C. *Id.*, *see also*, High Costs of Low Risks, at 22–23.

131. These poor health conditions, exacerbated by the conditions of incarceration, put the aging prison population at high risk of contracting COVID-19 and other infectious diseases that can lead to serious complications or death. *See* Rachel E Lopez et al., Pandemic in PA Prisons (2020),

<https://www.drexel.edu/~media/Files/law/academics/clinical/clc/CLC-pandemic-pa-prisons-report.ashx?la=en>; U.S. Gov. Accountability Office, BlogWatch, COVID-19 Potential Impact on Prisons' Population & Health Care Costs, May 13, 2020, <https://blog.gao.gov/2020/05/13/covid-19-potential-impact-on-prisons-populations-and-health-care-costs/>.

132. The specialized medical care needs of the aging prison population also account for a highly disproportionate portion of prison expenditures. “At America’s Expense: The Mass Incarceration of the Elderly,” ACLU 26–29 (2012),

[https://www.aclu.org/sites/default/files/field\\_document/elderlyprisonreport\\_20120613\\_1.pdf](https://www.aclu.org/sites/default/files/field_document/elderlyprisonreport_20120613_1.pdf). For example, Pennsylvania, spends an estimated \$66,000 a year to incarcerate an

older person. Ashley Nellis, “Pennsylvania Is Poised for Much-needed Criminal Justice Reform, but Can We Abolish Life Without Parole?”, Philadelphia Inquirer (Jan. 28, 2019) <https://www.inquirer.com/opinion/commentary/pennsylvania-incarceration-life-without-parole-prison-sentencing-20190128.html>. Yet, the specialized needs of an increasing aging prison population have grown past the prison system’s capability to provide effective and humane care. *See* High Costs of Low Risk, at 22. This reality, together with the low risk to public safety and strong indicators of rehabilitation among Plaintiffs and other aging incarcerated people serving long sentences, reflect the cruel punishment inherent in death-by-incarceration sentences.

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM:**

#### **VIOLATION OF RIGHT TO BE FREE FROM CRUEL PUNISHMENTS UNDER ARTICLE I, § 13**

133. The parole board’s enforcement of 61 Pa.C.S. § 6137, in denying Plaintiffs any opportunity to be considered for parole due to their mandatory life sentences pursuant to felony murder convictions, and thus effectuating their death-by-incarceration for offenses in which they did not kill or did not intend to kill any victim, violates Art. I, § 13 of the Pennsylvania state constitution prohibiting “cruel punishments.”
134. Art. I, § 13 is at least coextensive with the protections of the Eighth Amendment of the U.S. Constitution, which requires punishment to be proportionate to the offense and serve legitimate penological interests. *See Miller*, 567 U.S. at 469; *Graham*, 560 U.S. at 59, 71-74.

135. Life-without-parole sentences have been recognized as among the most severe forms of punishment, akin to the death penalty in their severity and irrevocability. *Graham*, 560 U.S. at 69-70.
136. Defendants who do not kill or intend to kill as part of their crime constitute a category of offender with diminished culpability relevant for evaluating the constitutionality of the harshest punishments under the Eighth Amendment. *See Enmund*, 458 U.S. at 798; *Graham*, 560 U.S. at 69.
137. Life-without-parole sentences, as among the most severe punishments, are disproportionate and fail to serve legitimate penological interests when applied to defendants who did not kill or intend to kill as part of their crime of conviction and thus have lessened culpability, and constitute cruel and unusual punishment in violation of the Eighth Amendment.
138. Plaintiffs' life-without-parole sentences for felony murder convictions, where they did not kill or intend to kill as part of their crime of conviction, constitute cruel punishment in violation of Art. I, § 13, which provides at least as much protection as the Eighth Amendment.
139. The parole board violates Art. I, § 13 by enforcing the statute prohibiting parole for Plaintiffs and effectuating their death-by-incarceration.

**SECOND CLAIM:**

**VIOLATION OF RIGHT TO BE FREE FROM CRUEL PUNISHMENTS UNDER  
ARTICLE I, § 13– EDMUNDS FACTORS**

140. The parole board's enforcement of 61 Pa.C.S. § 6137, in denying Plaintiffs any opportunity to be considered for parole due to their mandatory life sentences pursuant to felony murder convictions, and thus effectuating their death-by-incarceration for offenses

in which they did not kill or intend to kill any victim, violates Art. I, § 13 of the Pennsylvania state constitution prohibiting “cruel punishments.”

141. Under the factors identified in *Com. v. Edmunds*, 586 A.2d 887, 894 (Pa. 1991), Art. I, § 13 provides greater protection than the Eighth Amendment of the U.S. Constitution. The textual difference between the two provisions is purposeful and significant, as “cruel punishments” encompasses a broader sweep than the prohibition against “cruel and unusual punishments,” as recognized by courts of other jurisdictions interpreting comparable provisions.
142. Important policy considerations also call for greater protection under Art. I, § 13, including the large number of people serving death-by-incarceration sentences in Pennsylvania, extraordinary racial disparities in this group, the aging nature of this population, and the lack of any public safety rationale supporting permanent incarceration.
143. Plaintiffs’ death-by-incarceration sentences for felony murder convictions, where they did not kill or intend to kill as part of their crime of conviction, constitute cruel punishments in violation of Art. I, § 13.
144. The parole board violates Art. I, § 13 by enforcing the statute prohibiting parole for Plaintiffs and effectuating their death-by-incarceration.

#### **PRAYER FOR RELIEF**

145. Plaintiffs seek for this Court to declare 61 Pa.C.S. § 6137 unconstitutional under the Pennsylvania Constitution as applied to individuals serving life sentences for felony murder convictions, including all those sentenced pursuant to second-degree murder convictions after 1974, and those who are serving life sentences for first-degree homicide that were imposed for felony murder offenses occurring prior to 1974.

146. Plaintiffs further seek for this Court to order the Pennsylvania Board of Probation and Parole to develop plans for review of these cases, including the minimum number of years that must be served prior to consideration for parole, the criteria governing such parole reviews, and the procedural protections that will be in place to ensure a meaningful opportunity for release.
147. Plaintiffs request an evidentiary hearing so that this Court may develop a record in regard to whether application of 61 Pa.C.S. § 6137 to those who did not take a life or intend to take a life is unjustified when considered in relation to legitimate penological purposes.
148. Plaintiffs further request an evidentiary hearing so that this Court may develop a record in regard to whether application of 61 Pa.C.S. § 6137 to those who did not take a life or intend to take a life is unjustified in light of the factors identified in *Com. v. Edmunds*, 586 A.2d 887, 894 (Pa. 1991), including the factor allowing for consideration of Pennsylvania-specific policy concerns.
149. Additionally, Plaintiffs specifically request an order that Defendant reviews each of the Plaintiffs' cases for consideration of parole.

DATED: July 8, 2020

/s/ Bret Grote

Bret D. Grote, Esq.  
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