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No. 97890-5

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON

Appellee

v.

TONELLI ANDERSON

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON FOR KING COUNTY

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BRIEF OF *AMICI CURIAE* COMMUNITY PASSAGEWAYS,  
CHOOSE 180, ROOTED REENTRY, CREATIVE JUSTICE,  
JUVENILE LAW CENTER, THE FRED T. KOREMATSU  
CENTER FOR LAW AND EQUALITY, THE AMERICAN  
CIVIL LIBERTIES UNION OF WASHINGTON,  
COLUMBIA LEGAL SERVICES, STATE OFFICE OF  
PUBLIC DEFENSE, KING COUNTY DEPARTMENT OF  
PUBLIC DEFENSE, AND TEAMCHILD

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## **I. IDENTITY AND INTEREST OF *AMICI CURIAE***

The identity and interests of *Amici Curiae* Community Passageways, CHOOSE 180, Rooted Rentry, Creative Justice, Juvenile Law Center, the Fred T. Korematsu Center for Law and Equality, the American Civil Liberties Union of Washington, Columbia Legal Services, Office of Public Defense, King County Department of Public Defense, and TeamChild are set forth in the Motion for Leave to Participate as *Amici Curiae*, filed concurrently with this brief.

## **II. STATEMENT OF THE CASE**

*Amici* adopt the Statement of the Case in Appellant Tonelli Anderson’s brief.

## **III. ARGUMENT**

It is well established “that imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.” *Miller v. Alabama*, 567 U.S. 460, 474, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012); *see also Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010),

*Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). Because the decision to impose a life sentence on a child has “extremely high stakes” and the exercise of judicial discretion “produces the unacceptable risk that children undeserving of a life without parole sentence will receive one,” the Washington Supreme Court has held that life without parole sentences for young people are categorically unconstitutional, and that the constitution also does not allow for sentencing children to terms that amount to *de facto* life sentences. *State v. Bassett*, 192 Wn.2d 67, 90, 428 P.3d 343 (2018); *State v. Haag*, 198 Wn.2d 309, 329-30, 495 P.3d 241 (2021). In resentencing an individual whose offenses occurred as a child “a trial court must place greater emphasis on mitigation factors than on retributive factors.” *Haag*, 198 Wn.2d at 317; *see also* RCW 10.95.030. In this case, the sentence imposed on Tonelli failed to account for the impact of racial bias and condemns him to a life behind bars without any legitimate penological purpose. The case should be remanded for resentencing.

**A. RACIAL BIAS INFECTS WASHINGTON'S CRIMINAL LEGAL SYSTEM AND COMPOUNDS THE RISK THAT AN UNJUST LIFE SENTENCE WILL BE IMPOSED**

Race plays an outsized, often aggravating, role in determining which youth are sent to adult court, in how the causes of youth crime are assessed, and in the exercise of judicial discretion at sentencing. Race plays a significant role in determining which young people are seen as children, less culpable, and capable of rehabilitation, and which young people are seen as adult predators who are irredeemable despite their youth. The absence of any judicial accounting for the impact of bias creates an “unacceptable risk,” *Bassett*, 192 Wn.2d at 90, that race will influence the imposition of *de facto* life sentences on Washington youth and exacerbate existing racial disparities in life and lengthy sentences imposed for adolescent crimes.

**1. The Criminal Legal System Disproportionately Levies Punishment Against Black And Other Children Of Color**

The disproportionate punishment imposed on Black, Indigenous, and youth of color has roots in a racist history.

Tonelli's original sentence was in 1998, during an era rife with racialized media attention to violent crime. In the 1980s and 1990s, headlines emerged depicting inner-city youth as "hedonistic . . . 'youngsters' from 'badland' neighborhoods who 'murder, assault, rape, rob, burglarize, deal [. . .] drugs, join [. . .] gangs and create [. . .] disorder.'" Elizabeth R. Jackson-Cruz, *Social Constructionism and Cultivation Theory in Development of the Juvenile "Super-Predator"* 6 (Mar. 2019) (M.A., thesis, University of South Florida) (Scholar Commons) (quoting William J. Bennett, John J. DiIulio, Jr. & John P. Walters, *Body Count: Moral Poverty—And How to Win America's War Against Crime and Drugs* 27 (Simon & Schuster) (1996)), <https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=9011&context=etd>. The dominant media coverage of violent crime created a "moral panic" of increased numbers of violent young criminals that was replete with racist undertones. Lori Dorfman & Vincent Schiraldi, *Off Balance: Youth, Race & Crime in the News* 17-24 (Apr. 2001), <http://www.bmsg.org/sites/default/>

files/bmsg\_other\_publication\_off\_balance.pdf; Vincent M. Southerland, *Youth Matters: The Need to Treat Children Like Children*, 27 J. Civ. Rts. & Econ. Dev. 765, 771-73 (2015). Youth who engaged in criminal conduct were cast as “violent, morally deficient, and of color.” Southerland, *supra*, at 770-71. This resulted in an overrepresentation and miscasting of Black and Brown youth as perpetrators of violent crimes. *Id.* at 769-72.

In 1995, Professor John DiIulio, Jr. coined the term “Super-Predator.” See John DiIulio, *The Coming of the Super-Predators*, Wkly. Standard (Nov. 27, 1995), <https://www.washingtonexaminer.com/weekly-standard/the-coming-of-the-super-predators>. These “hardened, remorseless juveniles” were framed as a pressing “demographic crime bomb,” *id.*, who “seem not merely unrecognizable but alien.” John J. DiIulio, Jr., *My Black Crime Problem, and Ours*, City Journal (Spring 1996), <https://www.city-journal.org/html/my-black-crime-problem-and-ours-11773.html>. This narrative used racist tropes to further stoke fear—broadly attributing “moral poverty” to “[B]lack

inner-city neighborhoods” and families and specifically and repeatedly calling attention to gang violence and “predatory street criminals” in Black communities. DiIulio, *supra*, *The Coming of the Super-Predators*. Such depictions disassociated youth of color from the mitigating qualities of youth. Southerland, *supra*, at 773. Yet, the predicted upward trend in youth violence never materialized. Youth arrest rates for violent crimes dropped by almost half between 1994 and 2009. OJJDP, *Juvenile Arrest Rate Trends: Violent Crimes, Statistical Briefing Book* (November 16, 2020), [https://www.ojjdp.gov/ojstatbb/crime/JAR\\_Display.asp?ID=qa05218&selOffenses=35](https://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05218&selOffenses=35). The ultimate discrediting of the “super-predator” concept as “utter madness,” Elizabeth Becker, *As Ex-Theorist on Young ‘Super-predators,’ Bush Aide has Regrets*, N.Y. Times (Feb. 9, 2001), <https://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html>, did little to stem the mass incarceration of Black youth that we see today. The legislative shift to “get tough” on youth crime was well



underway. Between 1992 and 1997 almost all states made it easier to transfer youth to adult court, subjecting them to harsher penalties, including life without parole sentences. Southerland, *supra*, at 780.

Washington's lawmakers adopted the practice of declining youth to adult court in 1994 and made it more expansive in 1997, at the height of this over-criminalizing of Black youth. *See* Laws of 1997, ch. 338, § 20; Laws of 1994, 1st Spec. Sess., ch. 7, § 519. Tonelli was initially sentenced to die in prison as the national panic about supposedly irredeemable Black youth was at its height.

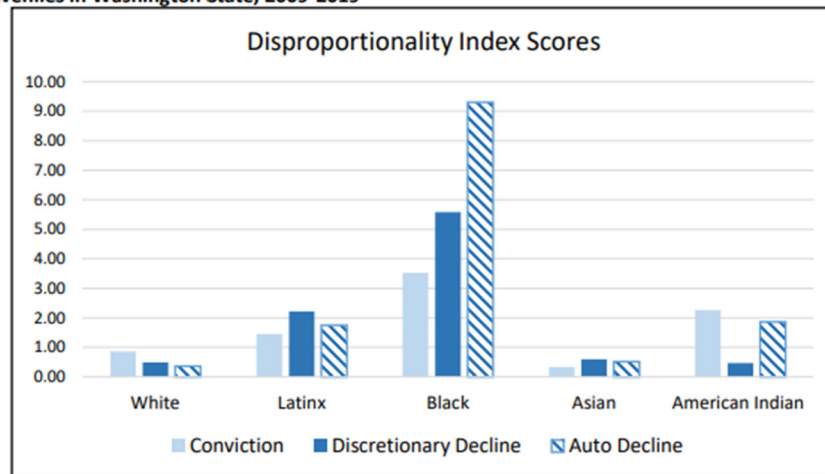
Youth of color have historically been, and remain, disproportionately prosecuted as adults in Washington. *See* Heather D. Evans & Steven Herbert, *Juveniles Sentenced as Adults in Washington State, 2009–2019* 4 (2021), [https://www.opd.wa.gov/documents/00866-2021\\_AOCreport.pdf](https://www.opd.wa.gov/documents/00866-2021_AOCreport.pdf).

Washington's Sentencing Guidelines Commission found in 2001, 2005, and 2007 that youth of color were disproportionately over-

represented in both automatic and discretionary decline. *See* Nella Lee, Wash. State Sent’g Guidelines Comm’n, *Juvenile Offenders: A Study of Disproportionality and Recidivism*, 5 (2001), [http://www.cfc.wa.gov/PublicationSentencing/DisparityDisproportionality/Juvenile\\_DisproportionalityRecidivism\\_FY2001.pdf](http://www.cfc.wa.gov/PublicationSentencing/DisparityDisproportionality/Juvenile_DisproportionalityRecidivism_FY2001.pdf); Wash. State Sent’g Guidelines Comm’n, *Disproportionality and Disparity in Juvenile Sentencing: Fiscal Year 2005 4* (2005), [https://www.cfc.wa.gov/PublicationSentencing/DisparityDisproportionality/Juvenile\\_DisparityDisproportionality\\_FY2005.pdf](https://www.cfc.wa.gov/PublicationSentencing/DisparityDisproportionality/Juvenile_DisparityDisproportionality_FY2005.pdf); Wash. State Sent’g Guidelines Comm’n, *Disproportionality and Disparity in Juvenile Sentencing: Fiscal Year 2007 4* (2008), [http://www.cfc.wa.gov/PublicationSentencing/DisparityDisproportionality/Juvenile\\_DisparityDisproportionality\\_FY2007.pdf](http://www.cfc.wa.gov/PublicationSentencing/DisparityDisproportionality/Juvenile_DisparityDisproportionality_FY2007.pdf). Recent research confirms that between 2009 and 2019, Black children in Washington were adjudicated in adult court at 11.4 times (discretionary decline) and at 25.8 times (automatic decline) the rate of white children. Evans & Herbert, *supra* at 20. The study

further demonstrated that Latinx, Asian, and American Indian children are also subjected to automatic and discretionary decline at rates greater than white children. *Id.*

**Figure 4. Disproportionality Index Scores for Conviction, Discretionary Decline and Auto Decline Rates of Juveniles in Washington State, 2009-2019**



*Id.* at 21 Figure 4. Neither criminal history nor offense type explain these disparities. *Id.* at 8, 20-26. Across Washington, in 2009, Black children comprised only 6 percent of the juvenile population but accounted for 31 percent of the transfers to adult court. *The Task Force on Race and the Criminal Justice System, Juvenile Justice and Racial Disproportionality: A Presentation to the Washington Supreme Court* 12 (2012).

## **2. Black People And Other People Of Color Are Disproportionately Punished With Life And Other Lengthy Sentences**

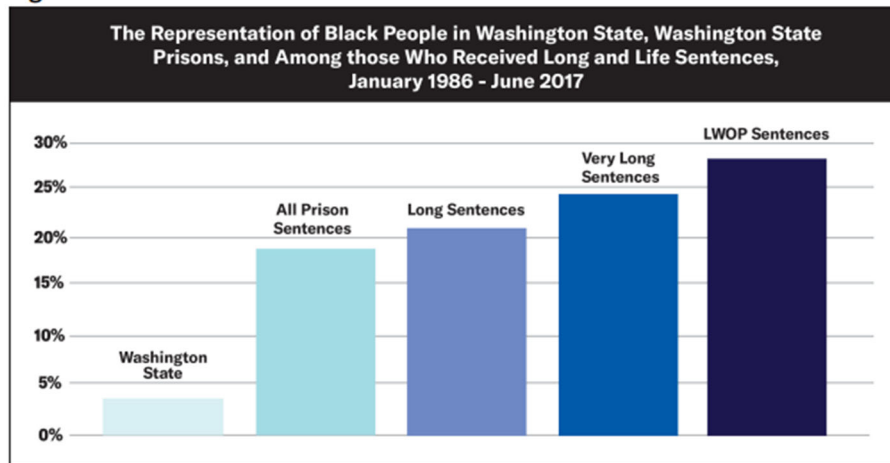
In 2016, people of color comprised 67.5 percent of those serving life and long-term sentences nationally—and nearly half (48.3 percent) are Black. Ashley Nellis, The Sent’g Project, *Still Life: America’s Increasing Use of Life and Long-Term Sentences* 14 (2017), <https://sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences>. These sentencing disparities are particularly prevalent for youth in the adult system. One out of every 17 persons sentenced to life was a child at the time of the offense, comprising 5.7 percent of those serving life sentences. *Id.* at 16. According to a 2017 review of national data, there are 7,346 people serving parole-eligible life sentences for youth offenses and an additional 2,089 people serving sentences of 50 or more years for youth offenses. *Id.* at 17. These sentences are overwhelmingly imposed on youth of color (80.4 percent), with the majority imposed on Black youth (55.1 percent). *Id.* In the years before *Graham* and *Miller*, courts

sentenced Black youth to life imprisonment without parole *ten times* more often than white youth. Letter from the U.S. & Int'l Hum. Rts. Orgs. to the Comm'n on the Elimination of Racial Discrimination ("CERD") 3 (June 4, 2009), <https://perma.cc/8KB2-E4CM>.

Washington data likewise shows that for both juvenile and adult court offenses, youth of color are given lengthier sentences than their white peers. Black youth in the juvenile system receive longer sentences than white youth; the average length of stay for a Black child incarcerated in Washington's juvenile prison in 2018 was 409 days, compared with 322 days for white children. Wash. State Dep't Child., Youth & Fam., *Washington State Juvenile Justice Report to the Governor & State Legislature* 89 Exhibit 5.6 (Aug. 2020), <https://dcyf.wa.gov/sites/default/files/pdf/2020WA-PCJJgov.pdf>. Similar disparity is present in the adult system. The Washington State Institute for Public Policy found that white defendants receive shorter sentences than Black defendants, and that the impact of those disparities are most

pronounced for the most serious crimes. Wash. State Inst. for Pub. Pol’y, *Examining Washington State’s Sentencing Guidelines: A Report for the Criminal Sentencing Task Force* 21-22 (May 2021), [In Washington, Black people are egregiously over-represented among those receiving life and \*de-facto\* life sentence because they comprise 3.5 percent of the population but over 28 percent of those sentenced to over 40 years in prison. Katherine Beckett & Heather D. Evans, \*About Time: How Long and Life Sentences Fuel Mass Incarceration in Washington State. A\*](http://www.wsipp.wa.gov/ReportFile/1736/Wsipp_Examining-Washington-State-s-Sentencing-Guidelines-A-Report-for-the-Criminal-Sentencing-Task-Force_Report.pdf#:~:text=The%20Washington%20State%20Criminal%20Sentencing%20Task%20Force%20%28CSTF%29,examine%20felony%20sentencing%20in%20Washington%20State%20Superior%20Courts. BIPOC defendants sentenced for the most serious crimes receive an average sentence of 317 months compared with a sentence of 294 months for white defendants. <i>Id.</i></a></p></div><div data-bbox=)

*Report for the ACLU of Washington 28* (February 2020),  
<https://www.aclu-wa.org/docs/about-time-how-long-and-life-sentences-fuel-mass-incarceration-washington-state>.



*Id.* Figure 9. Approximately one out of four people sentenced to life or long sentences are aged 25 or younger at the time of sentencing. *Id.* at 28-29. Black and Brown young people are both more likely to be transferred to the adult criminal legal system, and more likely to face life or long sentences once there.

### **3. Black Youth Are Presumed To Be More Culpable Than Their White Counterparts**

Bias specifically impacts evaluations of whether a young person is determined to be dangerous or deserving of a mitigated

or reduced sentence, with race often serving as a silent aggravator. Nationwide, Black youth are disproportionately sentenced to life without parole, a disproportionality that *increased* after *Miller*. The Campaign for the Fair Sentencing of Youth, *Tipping Point: A Majority of States Abandon Life-Without-Parole Sentences for Children* 10 (2018), <https://cfsy.org/wp-content/uploads/Tipping-Point.pdf>. Overall, since the 1990s, more than 70 percent of life without parole sentence for juveniles were imposed on youth of color, with over 60 percent imposed on Black youth. *Id.* Since *Miller* was decided, racial disparities in youth life sentences increased; as of 2018, almost 72 percent of children sentenced to life without parole after *Miller* are Black. *Id.*

These disparities are not surprising given that research confirms that children of color, especially Black children, are perceived as more adult-like and more dangerous than their white peers. One study found that members of the public consider Black children as young as age 10 significantly less innocent and



older than non-Black children. Phillip Atiba Goff et. al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. Personality & Soc. Psychol. 526, 529 (2014), <https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf>.

For example, people perceive Black children who are 14 to 17 years old to be only as innocent as non-Black young adults who are 18-21. *Id.* The same study found that police officers overestimated the age of Black felony suspects by 4.5 years, meaning that a Black 13-year-old would be perceived as nearly 18. *Id.* at 535. Both members of the public and police officers deemed Black individuals more culpable if they were suspected of committing a crime. *Id.* at 532, 535. As the authors of the study noted, “[O]ur findings suggest that, although most children are allowed to be innocent until adulthood, Black children may be perceived as innocent only until deemed suspicious.” *Id.* at 541. Black girls are also more likely to be viewed as behaving older than their age and more likely to take on adult roles and responsibilities. Rebecca Epstein, Jamila J. Blake, & Thalia

González, Georgetown L. Ctr. on Poverty & Ineq., *Girlhood Interrupted: The Erasure of Black Girls' Childhood* 8 (2020), <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf>.

Legal professionals also succumb to the influence of bias when evaluating dangerousness and culpability in Black and Brown defendants. Studies of probation reports, controlling for offense severity and prior record, found that probation officers were more likely to ascribe Black youths' delinquent behavior to their negative attitude and personality traits, and more likely to ascribe white youth's delinquent behavior to external environmental issues beyond their control. See George S. Bridges and Sara Steen, *Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms*, 63 Am. Soc. Rev. 554, 561 (1998), [http://www2.law.columbia.edu/fagan/courses/law\\_socialscience/juvenile\\_justice/documents/Fall\\_2005/Class%207%20-%20DMC/Bridges%20and%20Steen\\_Racial%20Disparities%20and%](http://www2.law.columbia.edu/fagan/courses/law_socialscience/juvenile_justice/documents/Fall_2005/Class%207%20-%20DMC/Bridges%20and%20Steen_Racial%20Disparities%20and%20)

20Attributional%20Stereotypes.pdf; *see also State v. B.O.J.*, 194 Wn.2d 314, 332, 449 P.3d 1006 (2019) (González. J., concurring) (describing a Washington juvenile parole report containing racially coded and unfounded characterizations of defendant that was relied on to impose a manifest injustice disposition). These perceptions lead to a heightened assessment of the risk of Black youth, Bridges & Steen, *supra*, at 563-64, and more punitive sentencing recommendations for them. *See* Laura Beckman & Nancy Rodriguez, *Race, Ethnicity, and Official Perceptions in the Juvenile Justice System: Extending the Role of Negative Attributional Stereotypes*, 48 *Crim. Just. & Behav.* 1536, 1540, 1550 (2021) (finding that juvenile court officials were more likely to link youth of color to negative internal attributions, which in turn led to decreased probability of diversion).

**4. People Of Color Are More Likely To Receive Aggravated Sentences And White People Are More Likely To Receive Mitigated Sentences**

In Washington, Black and Brown people are more likely than white people to be harmed by discretion to impose aggravated sentences. *See Wash. State Inst. for Pub. Pol’y, supra*, at 32-33. Compared with white people, higher percentages of Black and Hispanic people receive aggravated or enhanced sentences. *Id.* Black people facing aggravated sentences also receive harsher deviations from the standard sentence than do white people. *Id.* at 33. For aggravated sentences, white people, on average, received an aggravated departure that was 86 percent of the maximum sentence range while people of color, on average, received an aggravated departure that was 146 percent of the maximum sentence range. *Id.*

Racial disparities and disproportionalities are consistently present throughout the criminal legal system, including when system actors are asked to evaluate whether a criminal defendant should receive a mitigated or aggravated sentence. Because the

sentencing court here did not address racial disproportionality and imposed a *de-facto* life sentence, this Court should hold that there was an unacceptable risk that racial bias infected the sentence here, and remand for resentencing with a full consideration of youth as a mitigating factor.

**B. THE SENTENCE HERE DOES NOT SERVE THE PENOLOGICAL GOALS OF RETRIBUTION, DETERRENCE, INCAPACITATION, OR REHABILITATION**

Under the categorical bar analysis, a sentence violates the prohibition on cruel and unusual punishment when 1) there is objective indicia of a national consensus against the sentencing practice at issue; and 2) the court's own independent judgment weighs finding the punishment cruel. *Bassett*, 192 Wn.2d at 85-87. Both factors are present here. Moreover, the fact that Tonelli committed another crime as an emerging adult does not distinguish his case from that of other youth.

## **1. Life Sentences For Children Serve No Penological Goals**

There is no legitimate punitive purpose advanced by imposing a life sentence with no opportunity for release on a child. The “heart of the retribution rationale relates to an offender’s blameworthiness” and children’s diminished capacity makes them less blameworthy. *Bassett*, 192 Wn.2d at 87-88 (quoting *Miller*, 567 U.S. at 472).

Life sentences do not deter or prevent crime. “[T]he same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence.” *Roper*, 543 U.S. at 571. As the Supreme Court recognized, “[b]ecause juveniles’ ‘lack of maturity and an underdeveloped sense of responsibility . . . often result in impetuous and ill-considered actions and decisions,’ they are less likely to take a possible punishment into consideration when making decisions.” *Graham*, 560 U.S. at 72 (second alteration in original) (citation omitted) (quoting *Johnson v. Texas*, 509 U.S.

350, 367, 113 S. Ct. 2658, 125 L. Ed. 2d 290 (1993). The National Research Council and National Institute of Justice have both concluded that the length of a prison sentence has little to no correlation with deterring crime. Nat'l Inst. of Just., U.S. Dep't of Just., *Five Things About Deterrence* (2016), <https://www.ojp.gov/pdffiles1/nij/247350.pdf>; Nat'l Res. Council of the Nat'l Academies, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 139-40 (2014), <https://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes#:~:text=The%20growth%20of%20incarceration%20in%20the%20United%20States,the%20ir%20families%20and%20communities%2C%20and%20for%20U.S.%20society.> In contrast, the evidence indicates that as sentence length increases, any deterrent effect decreases. Melissa Hamilton, *Some Facts About Life: The Law, Theory, and Practice of Life Sentences*, 20 Lewis & Clark L. Rev. 803, 821-822 (2016).

“The penological goal of incapacitation is especially concerning [in the context of youth] given the fact that the sentence ‘makes an irrevocable judgment about that person[]’ that is at odds with what we know about children’s capacity for change.” *Bassett*, 192 Wn.2d at 89 (second alteration in original) (quoting *Graham*, 560 U.S. at 74). The overwhelming majority of people age out of crime. Nat’l Res. Council of the Nat’l Academies, *supra*, at 143-45. Many people who initially received life sentences as youth have been safely released to their communities. In Philadelphia, researchers reviewed 174 cases involving people who were released after originally being sentenced to life for an offense that occurred during youth. Tarika Daftary-Kapur & Tina M. Zottoli, *Resentencing of Juvenile Lifers: The Philadelphia Experience* 5 (2020), <https://www.msudecisionmakinglab.com/philadelphia-juvenile-lifers>. Of those, only six were re-arrested, and only two cases resulted in new convictions. *Id.* at 10. These rates of re-offense for people released after being sentenced to life for an offense that occurred



during youth were far lower than the national rates of re-offense for people released after a homicide conviction. *Id.*

A life sentence also serves no rehabilitative purpose. Rather, life sentences provide a “denial of hope” and “no chance for fulfillment outside prison walls” or for “reconciliation with society.” *Graham*, 560 U.S. at 70, 79 (first quoting *Naovarath v. State*, 105 Nev. 525, 526, 779 P.2d 994 (1989)). Youth who have been sentenced to life in prison often have faced significant trauma in childhood, and need supports to further their maturation. In 2012, the Sentencing Project released findings from a survey of over two-thirds of the people who had been sentenced to life in prison as juveniles and found that: 79 percent witnessed violence in their homes regularly, fewer than half were attending school at the time of their offense, and 47 percent were physically abused. Ashley Nellis, The Sent’g Project, *The Lives of Juvenile Lifers: Findings from a National Survey* 2-3, 7 (2012), <https://www.sentencingproject.org/wp-content/uploads/2016/01/The-Lives-of-Juvenile-Lifers.pdf>. Even young people

without significant adverse childhood experiences are more susceptible to outside pressures, more impulsive, and less forward thinking. *Roper*, 543 U.S. at 569-70; *Miller*, 567 U.S. at 470-71. Accordingly, young people who have committed serious crimes “need positive adult-youth interactions, feedback loops, and learning opportunities that help them with the developmental tasks of impulse control, judgment, future orientation, and emotional maturity.” Patrick McCarthy, Vincent Schiraldi, & Miriam Shar, *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model* 5 (2016), <https://www.ojp.gov/pdffiles1/nij/250142.pdf>. Those very opportunities are inaccessible for a person serving a life sentence in a rigid, deeply controlled, often harsh and dangerous environment. *Id.*; see also Wash. Dep’t Corr., *Policy 500.000: Education and Vocational Programs in Prisons* §§ III.C, IV.F (2021) (specifying that release date is one of the primary considerations for assigning people to educational and vocational programming), <https://doc.wa.gov/information/policies/default.aspx?show=500>;

Marsha L. Levick & Robert G. Schwartz, *Practical Implications of Miller and Jackson: Obtaining Relief in Court and Before the Parole Board*, 31 L. & Ineq. 369, 393-94 (2013).

**2. Strong Scientific And Jurisprudential Consensus Demonstrates That Developmental Immaturity Mitigates Criminal Conduct By Older Adolescents**

The fact that Tonelli committed another crime as an emerging adult in the community does not distinguish his case from those of other adolescents. The State asserts that 9.94A.730 bars Tonelli from petitioning for his release by the Indeterminate Sentencing Review Board, meaning that Tonelli will serve the entirety of his sentence in prison. Allowing for exceptions to the *Miller* fix statute and subjecting Tonelli to a lifelong prison sentence goes against the reasoning and principles underlying *Miller* and its progeny. Moreover, Tonelli's actions between ages 18 and 19 were, like those of other adolescents ages 18-25, influenced by his youthful attributes shared with younger teens, including the heightened susceptibility to peer influences, impulsivity, and ability to change that mitigate the culpability of

juveniles. As this Court recognized in *In re Monschke*, “biological and psychological development continues into the early twenties,” well beyond the age of adult court jurisdiction, and “many youthful defendants older than 18 share the same developing brains and impulsive behavioral attributes as those under 18.” 197 Wn.2d 305, 313, 322, 482 P.3d 276 (2021) (first quoting Elizabeth S. Scott, Richard J. Bonnie & Laurence Steinberg, *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L. Rev. 641, 642 (2016)). Like their younger peers, 18- and 19-year-olds are more impulsive, less likely to plan for the future, more volatile in emotionally charged situations, more susceptible to peer pressure, and more amenable to rehabilitation. *See, e.g.*, Laurence Steinberg et al., *Around the World, Adolescence is a Time of Heightened Sensation Seeking and Immature Self-Regulation*, 21 Dev. Sci. 1, 10-13 (2017); Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 Child Dev. 28, 39-41 (2009); Laurence

Steinberg et al., *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 Dev. Psych. 1764, 1774-76 (2008).

Accordingly, a young adult offense should not be an arbitrary bar to consideration of youthfulness, but considered in the larger context of continued psychological development.

**C. SENTENCING YOUTH TO LIFE IN PRISON IGNORES THEIR CAPACITIES TO MAKE MEANINGFUL CONTRIBUTIONS TO THEIR COMMUNITIES IN THE FUTURE**

Beyond the direct impact on young people sentenced to life in prison, lifetime incarceration has a significant impact on communities, including lower economic output by people who are incarcerated, visitation expenses, interrupted family relationships, increased risks to children, homelessness, evictions and lower property values, and poorer health outcomes.

Michael McLaughlin et al., Inst. for Advancing Just. Res. & Innovation, *The Economic Burden of Incarceration in the United States* 11-19 (2016), <https://www.prisonpolicy.org/scans/iajre/>

the\_economic\_burden\_of\_incarceration\_in\_the\_us.pdf.

Researchers estimate that incarceration in the United States creates an aggregate annual burden of 1 trillion dollars—eleven times direct spending on incarceration: “more than 90 percent of the costs of incarceration do not appear on government budgets.” *Id.* at 20-23. Given the disproportionate imposition of life and long sentences on Black and Brown communities, the economic and social impacts are also disproportionately borne by communities of color.

In *Amici’s* experience, young people who commit serious crimes can become powerful contributors to their communities, and the community benefits when people who have rehabilitated are released from incarceration. For example, DeShaun Nabors currently serves as a Community Ambassador for Community Passageways. At age 24, DeShaun committed several robberies. Telephone Interview with DeShaun Nabors, Community Ambassador, Community Passageways (Dec. 3, 2021). Facing serious criminal charges and a long sentence in prison, he entered

Community Passageways’ Deep Dive program, which provides intensive education and mentorship for young people who have engaged in violence. *Id.* The program, in DeShaun’s words, “changed my life. I was so young; I didn’t have the right mindset or the tools to avoid negative influences. I learned all of that in Deep Dive.” *Id.* DeShaun was ultimately sentenced to house arrest, which allowed him to mentor over 50 other young people with Community Passageways and to support his family by serving as the primary caregiver for his two-year-old daughter. *Id.* DeShaun says, “Sending people away takes away from what they can do for the community. All the people I’ve mentored, all the support I’ve been able to give my family—that’s been possible because I was able to change my mindset and stay in the community.” *Id.*

Paul Sutton, who currently serves as a peer mentor with Community Passageways, was incarcerated at age 20 and spent 27 years behind bars. Telephone Interview with Paul Sutton, Peer Mentor, Community Passageways (Dec. 1, 2021). A few years

into his incarceration, Paul's son was murdered; after his son's tragic death, Paul had what he calls an "epiphany of recovery" that led to deep reflection on the impact of violent crime in his community. *Id.* Paul began to reckon both with the impact of the violence that he had perpetrated and with the ways in which he and his family had also been victims of violence. *Id.* Paul was an active participant in the Black Prisoners' Caucus and University Beyond Bars, devoting his time to supporting others' rehabilitation. *Id.* Since his release two years ago, Paul has mentored hundreds of young people, and works to help address the root causes of violence. *Id.* He has reconnected with his children and become an active presence in their lives. *Id.* Paul says, "I have so many peers who have been released from prison and who are working every day to improve the lives of those around them. Our families, coworkers, colleagues, neighbors all missed out on what we could have done for years, if we hadn't all been locked up." *Id.* Because Paul did not have the opportunity to demonstrate his rehabilitation, he was unable to



secure his release sooner and contribute to his broader community until long after he had matured.

Andrea Altheimer, who serves as the Director of Reentry Services at Community Passageways, was able to demonstrate her rehabilitation and secure her release. Andrea was released from incarceration after serving over 20 years of a 40-year sentence. Telephone Interview with Andrea Altheimer, Director of Reentry Services, Community Passageways (Dec. 1, 2021). During her incarceration, Andrea was able to identify her unaddressed trauma and the ways in which that trauma contributed to her crime. *Id.* Andrea helped found the Women's Village at Washington Corrections Center for Women and led its peer mentorship sub-council. *Id.* During that time, Andrea mentored hundreds of other incarcerated women, focusing on access to education, healing trauma, and self-empowerment. *Id.* In 2019, the prosecutor concluded that Andrea's sentence was excessive and supported her resentencing. *Id.* Since her release, Andrea continued to mentor young women and people being

released from incarceration; she has developed a six-week curriculum and support network for people returning to community from incarceration and works directly to help people find jobs, housing, and positive connections. *Id.* She reflects,

So many of the women I did time with continued to come back into the system because they weren't connected to anything positive in the community—their family, relationships, jobs all contributed to their trauma. I wanted to create a support system where people have someone who is consistently there for them and can help people being released have a sense of belonging.

*Id.*

DeShaun, Paul, and Andrea are three “living examples of a person's ability to change if he or she has the will and opportunity to do so.” *In re Bar Application of Simmons*, 190 Wn.2d 374, 398, 413 P.3d 1111 (2018). Their stories exemplify not just the contributions that people who have committed crimes can make, but also the talent that cannot return to communities when incarcerated people are denied the opportunity to demonstrate their rehabilitation and secure their release.

#### IV. CONCLUSION

Tonelli Anderson, like a disproportionate number of Black young men before him, is serving a life sentence after being processed through a system marked by racial bias at every stage. At resentencing, the court failed to account for the impact of this racial bias. The sentence in this case also fails to account for the scientific research and evidence that clearly establishes that young people convicted of serious crimes are capable of change and rehabilitation, and that Tonelli has changed. Sentencing Tonelli to die in prison serves no legitimate purpose, deprives the community of his future contributions, and continues the harsh impacts of a racially disproportionate criminal legal system.

RESPECTFULLY SUBMITTED,

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Dated: December 23, 2021

## V. CERTIFICATE OF COMPLIANCE

I certify under RAP 18.17(b) that, excluding the parts exempt, the word count of this document is 4,859 words, as calculated by the word processing software used.

/s/ Marsha L. Levick

Marsha L. Levick

## **CERTIFICATE OF SERVICE**

I declare under penalty of perjury under the laws of the State of Washington, that on December 23, 2021, the foregoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Philadelphia, Pennsylvania this 23rd day of December, 2021.

/s/ Marsha L. Levick  
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