No. 100873-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

MICHAEL REYNOLDS,
Petitioner.

BRIEF OF AMICI CURIAE FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY, AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON, KING COUNTY DEPARTMENT OF PUBLIC DEFENSE, TEAMCHILD, WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, AND WASHINGTON DEFENDER ASSOCIATION IN SUPPORT OF PETITIONER

Jessica Levin, WSBA #40837
Robert S. Chang, WSBA #44083
Melissa R. Lee, WSBA #38808
RONALD A. PETERSON LAW CLINIC
SEATTLE UNIVERSITY SCHOOL OF LAW
1112 East Columbia St.
Seattle, WA 98122
Tel: (206) 398-4167
levinje@seattleu.edu
changro@seattleu.edu
leeme@seattleu.edu
Counsel for Amicus Curiae

FRED T. KOREMATSU CENTER
FOR LAW AND EQUALITY

Additional counsel listed on next page

La Rond Baker, WSBA #43610
Jazmyn Clark, WSBA #48224
ACLU OF WASHINGTON FOUNDATION
P.O. Box 2728
Seattle, WA 98111
(206) 624-2184
baker@aclu-wa.org
jclark@aclu-wa.org

Counsel for Amicus Curiae
ACLU OF WASHINGTON

Katherine Hurley, WSBA #37863
Brian Flaherty, WSBA #41198
KING COUNTY DEPARTMENT OF PUBLIC DEFENSE
710 2nd Ave, Suite 200
Seattle WA 98104
katherine.hurley@kingcounty.gov
brian.flaherty@kingcounty.gov

Counsel for Amicus Curiae
KING COUNTY DEPARTMENT OF PUBLIC DEFENSE

Sara Zier, WSBA #43075
TEAMCHILD
PO Box 1512
Tacoma, WA 98401
(253) 507-8435
sara.zier@teamchild.org

Counsel for Amicus Curiae
TEAMCHILD

Mark Middaugh, WSBA #51425
WACDL AMICUS COMMITTEE
600 University Street, Suite 3020
Seattle, WA 98101
(206) 919-4269
mark@middaughlaw.com

Counsel for Amicus Curiae
WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Alexandria "Ali" Hohman, WSBA #44104
Cindy Arends Elsberry, WSBA #23127
WASHINGTON DEFENDER ASSOCIATION
110 Prefontaine Pl S Ste 610
Seattle, WA 98104-2626
ali@defensenet.org
cindy@defensenet.org

Counsel for Amicus Curiae
WASHINGTON DEFENDER ASSOCIATION

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IDENTITY AND INTEREST OF AMICI

The identity and interest of amici are set forth in the Motion for Leave to File accompanying this brief.

INTRODUCTION

When the POAA was approved by voters in 1993, the existing statutory definition of "offender" meant that children prosecuted in adult court were swept under the broad reach of the POAA and treated the same as adults. We didn't know any better then. We know better now. We now understand that "children are less criminally culpable than adults." *State v. Moretti*, 193 Wn.2d 809, 823, 446 P.3d 609 (2019) (citing *State v. Bassett*, 192 Wn.2d 67, 87, 428 P.3d 353 (2018)). The POAA still gives the same aggravating weight to strike offenses committed by children as to those committed by adults. But strike offenses committed by children—whose culpability is categorically diminished by the neurobiological differences of the developing brain—cannot aggravate the guilt of the third strike to the same extent as a strike committed by an adult.

This Court's longstanding precedent guarantees that proportionality review of recidivist punishment encompasses all strike offenses. *State v. Fain*, 94 Wn.2d 387, 390, 617 P.2d 720 (1980). Since *Fain*, review of all three strikes under article I, section 14 has coexisted alongside this Court's acknowledgment that recidivist punishment does not present double jeopardy or due process problems because it does not re-punish someone for earlier crimes, but instead is viewed as enhanced punishment for the last strike. *Fain*, 94 Wn.2d at 390-91 (citing *State v. Lee*, 87 Wn.2d 932, 937, 558 P.2d 236 (1976); *State v. Le Pitre*, 54 Wash. 166, 168, 103 P. 27 (1909)).

Yet this characterization of recidivist punishment has never displaced this Court's obligation to examine all strike offenses to ensure that the earlier crimes *in fact* sufficiently aggravate the guilt of the last conviction to justify the more severe punishment. *See, e.g.*, *Fain*, 94 Wn.2d at 397-98 (analyzing relatively minor nature of Fain's three crimes to strike down habitual offender sentence); *State v. Witherspoon*,

180 Wn.2d 875, 887-91, 329 P.3d 888 (2014) (POAA sentence withstood article I, section 14 proportionality review because of the serious nature of *all three crimes*). This comprehensive scope of review is the only way to assess "the disproportionality between the nature of his crimes and the life sentence imposed as punishment for the three offenses." *Fain*, 94 Wn.2d at 391.

This Court should also consider the extreme race disproportionality that exists for those serving death in prison sentences based on a juvenile strike.[1] The comparative

[1] In the amicus memorandum supporting review filed on June 24, 2022, and accepted by this Court on July 5, 2022, counsel for amici represented to this Court that they had submitted Public Records Act requests to the Department of Corrections to enable amici to obtain "additional data to present to this Court regarding how many people are serving life without parole based on strike offenses committed as children, and the race disproportionality among that group." Amicus Memorandum in Support of Review, at 12. Since submitting the amicus memorandum, counsel have obtained additional information (both from DOC and from other sources, detailed in the Appendix) enabling a more precise examination of the number of POAA three-strikers serving death in prison sentences based on juvenile strikes, and the race

Black/white race disproportionality ratio of those serving POAA sentences, excluding those with Robbery 2 convictions, is 10.5, more than double the 2020 figure of 4.7 comparative Black/white disproportionality ratio for incarceration. When considering the subset of those serving death in prison sentences based on a juvenile strike offense, again excluding Robbery 2, the comparative Black/white disproportionality ratio jumps to 17.2. Barring the use of a juvenile strikes would provide a race-neutral approach to addressing one area where there is extreme race disproportionality.

ARGUMENT

I. This Court Should Categorically Bar the Use of Juvenile Strikes Because a Crime Committed By a Child Can Never Justify the Enhanced Penalty of a Death in Prison Sentence.

Proportionality review of POAA sentences requires consideration of all three strike offenses to comport with article

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disproportionality of this group. *See generally* Appendix (Appx.) of Amici Curiae.

I, section 14. This is required regardless of whether the sentence imposed is viewed as punishment for all three strikes, as this Court has understood since *Fain*, 94 Wn.2d at 390-91, or whether the sentence imposed is viewed as punishment for the last strike that is enhanced by the two prior crimes. Not all previous strike offenses justify the sentencing enhancement of the third strike. *Fain*, 94 Wn.2d at 402 (overturning life sentence for recidivist with less serious crimes); *see also Moretti*, 193 Wn.2d at 826 (earlier strike offenses "aggravate[] the guilt of the last conviction and justif[y] a heavier penalty for the crime"). A juvenile strike cannot, by definition, aggravate the guilt of the third strike to the same degree as a strike offense committed by an adult.

A. Review of All Three Strikes in Proportionality Review Is Necessary to Determine Whether the Prior Crimes Justify an Enhanced Penalty for the Third Strike.

Since *Fain*, this Court has reviewed all three offenses to determine whether recidivist punishment is cruel in violation of

article I, section 14. *Fain*, 94 Wn.2d at 397-98 (examining "each of the crimes that underlies his conviction as a habitual offender");[2] *Witherspoon*, 180 Wn.2d ¶ 27 (upholding POAA sentence after examining serious nature of the first two strike offenses);[3] *State v. Thorne*, 129 Wn.2d 736, 773-74, 921 P.2d 514 (1996), *abrogated on other grounds by Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004) (considering previous convictions to determine if punishment was disproportionate under *Fain* factor 4); *State v. Manussier*, 129 Wn.2d 652, 677, 921 P.2d 473 (1996)

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[2] *Hart v. Coiner*, 483 F.2d 136 (1973), the case that *Fain* relied upon to adopt the proportionality analysis under article I, section 14, also explicitly required consideration of all strikes. *Id.* at 140-41 (analyzing nature and gravity of all three strikes); *Fain*, 94 Wn.2d at 396-97 (adopting proportionality test from *Hart*).

[3] *Witherspoon* also suggested, in dicta, that the "differences between children and adults" recognized in *Graham* and *Miller* might have application in proportionality analysis under article I, section 14, based on the offender's age at commission of "all three of his strike offenses." *Id.* ¶¶ 29-31 (emphasis added) (declining to apply *Graham* and *Miller*, because Witherspoon was over 18 at the time of all three strike offenses).

(explicitly considering "each of the offenses underlying his conviction as a persistent offender" and noting the two prior strikes were for serious crimes (cleaned up)); *State v. Rivers*, 129 Wn.2d 697, 713, 714, 921 P.2d 495 (1996) (discussing all three strikes as the "basis for the convictions and sentence in this appeal" under *Fain* factor 4); *Lee*, 87 Wn.2d at 937, 937 n.4 (noting prior convictions and finding sentence not disproportionate); *see also Bassett*, 192 Wn.2d 84–85 (*Fain* adopted individual proportionality analysis because it fit the challenge Fain brought—that his sentence "was grossly disproportionate to his *crimes*") (emphasis added). Fidelity to this Court's precedent requires review of all strikes.[4]

[4] *Moretti* suggested that, in the context of individual proportionality review, factor 1 "focuses on the nature of the current offense, not the nature of past offenses," *Moretti*, 193 Wn.2d at 832. This Court should clarify that *Moretti* did not undercut prior proportionality decisions that guarantee inquiry into all three crimes. This characterization of the "focus" of proportionality review, if taken to mean past offenses are not considered at all, would sub silentio reverse *Fain*, *Thorne*, *Manussier*, and *Rivers*. Usually, more is required to reverse 40 years of settled Washington jurisprudence. *See State v. Studd*,

Further, since *Fain*, this Court has not permitted this characterization of the punishment being for the last strike to displace its obligation to examine all three crimes when undertaking proportionality review of recidivist punishment. *Moretti* acknowledged the possibility that a categorical challenge based on juvenile strikes might lead to a different outcome, assuming proper evidence and argument that the mitigating qualities of youth contributed to those offenses. *See* 193 Wn.2d at 824 ("[defendants] have not produced any evidence that their youth contributed to the commission of the instant offenses, or even that youth contributed to their prior offenses").

The State makes much of the principle that recidivist statutes do not impose cumulative punishment, but rather impose an enhanced penalty justified by the earlier crimes. Supp. Br. of Resp't at 23-24 (citing *Moretti*, *Lee*, *LePitre*). The

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137 Wn.2d 533, 548, 973 P.2d 1049 (1999) ("We will not overrule such binding precedent *sub silentio*.").

State is correct that this principle is long-established and repeated in this Court's decisions. But the State fails to understand that this Court in *Fain* already harmonized this principle with review of all three strikes under article I, section 14. *Fain*, 94 Wn.2d at 390-91 (citing *Lee*, 87 Wn.2d at 937; *LePitre*, 54 Wash. at 168).

This Court has never allowed this principle—rejecting characterization of recidivist punishment as "cumulative"—to displace its obligation to look at all strikes to determine if the punishment is cruel. *Supra* at 5-7 (collecting this Court's article I, section 14 POAA proportionality cases reviewing all strikes). Instead, this principle has enabled recidivist statutes to exist, because courts have "long deferred to the legislative judgment that repeat offenders may face an enhanced penalty because of their recidivism." *Fain*, 94 Wn.2d at 390-91 (citing *Lee*, *LePitre*). *Lee* and *LePitre* trace directly back to seminal decisions announcing this principle to insulate recidivist schemes from challenges based on double jeopardy, ex post

facto, and due process concerns.[5] The cases cited by *Lee* and *LePitre* did not involve proportionality challenges under either the Eighth Amendment or article I, section 14. *See supra* n.5.[6]

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[5] *See Lee*, 87 Wn.2d at 239 (citing *State v. Miles*, 34 Wn.2d 55, 61-62, 207 P.2d 1209 (1949)). *Miles* rejected defendant's proportionality claim based on the principle that habitual offenders "are not punished the second time for the earlier offense, but the repetition of criminal conduct aggravates their guilt and justifies heavier penalties when they are again convicted," 34 Wn.2d at 62 (citing *Graham v. West Virginia*, 224 U.S. 616, 623, 32 S. Ct. 583, 56 L. Ed. 917 (1912)), and that "punishment is for the new crime only," *id*. (citing *McDonald v. Massachusetts*, 180 U.S. 311, 312, 21 S. Ct. 389, 45 L. Ed. 542 (1901)). *Graham* and *McDonald* did not involve Eighth Amendment challenges, but instead involved challenges based on double jeopardy, due process, and ex post facto challenges. *McDonald*, 180 U.S. 311 (double jeopardy and ex post facto); *Graham*, 224 U.S. at 623 (citing *McDonald*, 180 U.S. at 312-13) (due process and double jeopardy).

See also LePitre, 54 Wash. at 168 (dismissing claims that recidivist punishment violated double jeopardy, ex post facto, jury trial rights, or cruel and unusual punishment in one sentence: "It [the habitual criminal statute] merely provides an increased punishment for the last offense." (citing *In re Miller*, 110 Mich. 676, 68 N.W. 990 (1896))). *Miller*, a two-paragraph opinion, dismissed an ex post facto challenge to a statute preventing those with criminal history from seeking a sentence reduction. 110 Mich. at 676.

[6] The State is also correct that the United States Supreme Court has invoked the same principle in more recent cases to uphold recidivist schemes against challenges based on ex post facto

The Court should decline to adopt the State's oversimplification of the case law, which would fundamentally reshape proportionality review by focusing *exclusively* on the third strike, effectively overruling decades of this Court's decisions. Instead, because the penalty for a third strike is enhanced by the

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and double jeopardy challenges; like in the cases of *Graham* and *McDonald*, discussed *supra* n.5, the Court in these more recent cases did not address proportionality. *Gryger v. Burke*, 334 U.S. 728, 732, 68 S. Ct. 1256, 92 L. Ed. 1683 (1948) (double jeopardy and ex post facto); *United States v. Rodriquez*, 553 U.S. 377, 386, 128 S. Ct. 1783, 170 L. Ed. 2d 719 (2008) (concerning statutory interpretation question regarding predicates under the Armed Career Criminal Act). And both *Gryger* and *Rodriquez* ultimately relied on *Graham*, discussed *supra* n.5, and *Moore v. Missouri*, 159 U.S. 673, 676-77, 16 S. Ct. 179, 40 L. Ed. 301 (1895) (rejecting challenge to habitual criminal statute based on double jeopardy).

In *Rummel*, which severely limited proportionality review of recidivist punishment under the Eighth Amendment, the Court never suggested that review was truncated to only the final strike, but rather rested its analysis on deference to states' discretion to define when recidivists should be isolated from society. *See generally Rummel v. Estelle*, 445 U.S. 263, 268, 100 S. Ct. 1133, 1136, 63 L. Ed. 2d 382 (1980); *see also id.* at 295 (Powell, J., dissenting) (analyzing all three of Rummel's crimes).

prior strikes, proportionality review encompasses all three strikes.

B. Juvenile Strikes Cannot Aggravate the Guilt of the Third Strike Sufficiently to Warrant a Death in Prison Sentence.

The threshold inquiry of the categorical proportionality analysis is consideration of the "culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question." *Bassett*, 192 Wn.2d at 83. We now understand that "children are less criminally culpable than adults." *Moretti*, 193 Wn.2d at 823 (citing *Bassett*, 192 Wn.2d at 87). A strike committed by a child, whose culpability is always diminished by the neurobiological differences of the developing brain, cannot aggravate the guilt of the third strike to the same degree as a strike committed as an adult—an issue that *Moretti* never reached. *Moretti*, 193 Wn.2d at 821 n.5.

Use of juvenile strikes to justify a death in prison sentence not only violates the categorical proportionality

principles of article I, section 14, but is also contrary to this Court's repeated pronouncements that mandatory sentencing schemes that fail to take into account the diminished culpability of children are constitutionally infirm. *Bassett*, 192 Wn.2d ¶¶ 35, 44; *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017); *State v. Gilbert*, 193 Wn.2d 169, 438 P.3d 133 (2019).

C. There Is an Emerging National Consensus Against Use of Juvenile Strikes in Recidivist Schemes.

Mr. Reynolds has amply demonstrated a national consensus against the imposition of life without parole sentences for three strikes. Pet'r's Supp. Br. at 17-18. There are also significant indicia of an emerging national consensus against use of juvenile strikes in recidivist schemes. As of 2012, there were seven jurisdictions that either completely barred[7] or

[7] Kentucky, Ky. Rev. Stat. Ann. § 532.080(2)(b), (3)(b); New Mexico, N.M. Stat. Ann. § 31-18-23(C).

otherwise limited[8] the use of juvenile strikes.[9]

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[8] North Dakota's habitual offender scheme categorically precludes use of juvenile strikes. N.D. Cent. Code § 12.1-32-09(1)(c). North Dakota's separate "dangerous special offender" scheme, although grouped with the habitual offender scheme in the same sentencing enhancement statute, does not preclude the use of a juvenile crime from counting as a strike. N.D. Cent. Code § 12.1-32-09(1)(d).

New Jersey's Persistent Offender Statute prohibits the use of offenses committed under the age of 18. N.J. Rev. Stat.§ 2C:44-3(a) (persistent offender must be 21 and have committed two prior crimes on two different occasions when at least 18). New Jersey's three strikes statute, N.J. Stat. Ann. § 2C:43-7.1(a), does not bar use of juvenile strikes when imposing LWOP where both qualifying crime and two strikes are murder, aggravated manslaughter, kidnapping in the 1st degree, more serious degrees of rape and robbery, or carjacking with injury or use of force.

Oregon bars the use of juvenile strikes if they were committed when the person was under 16, Or. Rev. Stat. § 161.725(3)(a); a separate sex offender statute imposes LWOP after three strikes with no age restriction on the strike offenses. Or. Rev. Stat. § 137.719.

Alabama and New York have youthful offender schemes. A juvenile convicted in adult court can request youthful offender status, which precludes the use of that crime in both jurisdictions' recidivist punishment scheme. Alabama Code 15-19-1 *et seq* (establishing youthful offender procedure); *Ex parte Thomas*, 435 So. 2d 1324, 1326 (Ala. 1982); *Craig v. State*, 645 So. 2d 349, 350 (Ala. Crim. App. 1994) (a youthful offender adjudication cannot be used to enhance a sentence under the Habitual Felony Offender Act); N.Y. Penal Law § 60.10.

[9] *See also* Beth Caldwell, *Twenty-Five to Life for Adolescent*

Since 2012, two additional jurisdictions have barred or otherwise explicitly limited the use of juvenile strikes. In 2013, Wyoming, as part of its *Miller*-fix statute, excluded convictions of juveniles in adult court from counting as strike offenses under its habitual offender statute. Wyo. Stat. Ann. § 6-10-201(b)(ii) (permitting life without parole only after three or more previous convictions for "offenses committed after the person reached the age of eighteen (18) years of age").[10] In 2021, Illinois passed a law preventing the habitual criminal statute from applying unless "[t]he first offense was committed

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Mistakes: Juvenile Strikes as Cruel and Unusual Punishment, 46 U.S.F. L. Rev. 581, 628 n.282 (2012) (as of 2012, identifying eight jurisdictions that "prohibit or limit the circumstances under which convictions of juvenile offenders in adult court may be used for future sentencing enhancement under three strikes laws"). The jurisdictions amici identified overlap with Professor Caldwell's analysis, except for her inclusion of Wisconsin. Amici have not included Wisconsin in their analysis, as the case cited in Professor Caldwell's analysis, *State v. Geary*, 289 N.W.2d 375 (Wis. 1980), was decided before repeal of the youthful offender exception.

[10] Juvenile strikes can still be used under the three-strikes non-LWOP provision. Wyo. Stat. Ann. § 6-10-201(b)(i).

when the person was 21 years of age or older." 730 Ill. Comp. Stat. 5/5-4.5-95(a)(4)(E) (effective July 2, 2021), https://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=073000050K5-4.5-95.

The changes in Wyoming and Illinois barring juvenile strikes are indicative of the emerging national consensus, and this "direction of change" is as important as the current landscape. *Roper v. Simmons*, 543 U.S. 551, 566, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (quoting *Atkins v. Virginia*, 536 U.S. 304, 315, 122 S. Ct. 2442, 153 L. Ed. 2d 335 (2002)).

None of the other state or federal cases cited by this Court in *Moretti* in its national consensus analysis fully address proportionality. *Moretti*, 193 Wn.2d at 822. The two state cases entirely evade the core question of whether use of juvenile strikes implicates proportionality concerns.[11] The federal cases

[11] *Counts v. State*, 2014 WY 151, 338 P.3d 902 (Wyo. 2014) (on "substandard" briefing on collateral review, declining to find *Miller* applicable to use of juvenile strike offenses but failing to conduct proportionality review); *State v. Green*, 412

cited by this Court in *Moretti* likewise never reach the issue of proportionality on the merits.[12]

When *Graham v. Florida* was decided, only thirteen

S.C. 65, 770 S.E.2d 424 (Ct. App. 2015) (declining to engage in meaningful proportionality review under Eighth Amendment and finding *Miller* inapplicable because offender was an adult at time of sentencing as a persistent offender).

[12] *See United States v. Hoffman*, 710 F.3d 1228, 1232 (11th Cir. 2013) (declining to consider proportionality challenge to use of juvenile strikes under Comprehensive Drug Abuse Prevention and Control Act because *Roper* and *Miller* did "not deal specifically—or even tangentially—with sentence enhancement" (cleaned up)); *United States v. Scott*, 610 F.3d 1009, 1018 (8th Cir. 2010) (rejecting individual proportionality argument to use of juvenile strikes; declining to acknowledge the import of *Roper* and *Graham*, instead relying on *United States v. Smalley*, 294 F.3d 1030 (8th Cir. 2002)—a case decided before *Roper*—that permitted juvenile court adjudications to enhance subsequent sentences for adult convictions); *United States v. Mays*, 466 F.3d 335 (5th Cir. 2006) (declining to consider proportionality challenge to use of juvenile strikes under Comprehensive Drug Abuse Prevention and Control Act; declining to acknowledge applicability of *Roper* because there was no national consensus that sentencing enhancement based upon juvenile conviction contravenes modern standards of decency). *But see United States v. Howard*, 773 F.3d 519, 528, 31-32 (4th Cir. 2014) (relying on *Graham* and *Miller* in concluding district court had focused too heavily on Howard's juvenile criminal history in sentencing him as a career offender, given the diminished culpability of juvenile offenders).

jurisdictions prohibited JLWOP for nonhomicide crimes. 560 U.S. 48, 62, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), *as modified* (July 6, 2010). Now, at least nine jurisdictions prevent or otherwise severely limit the use of juvenile strike offenses—with two of those having occurred within the last decade. That, combined with the fact that most states do not mandate death in prison sentences upon a third strike even for adults, shows a clear national consensus against condemning people to die in prison based on a childhood strike offense.

D. In Exercising Independent Judgment, This Court Should Focus on the Diminished Culpability of a Juvenile Strike, Rather than on Subsequent Criminal Behavior as an Adult.

This Court's independent judgment must be exercised to answer the right question: whether a juvenile strike can justify an enhanced penalty for the third strike (not whether LWOP can be imposed after a third strike as an adult).

Like in *Bassett*, "the case for retribution is weakened," 192 Wn.2d ¶ 37, as the "'[t]he heart of the retribution rationale

relates to an offender's blameworthiness' and children have diminished culpability," *id.* (quoting *Miller*, 567 U.S. 460, 472, 132 S. Ct. 2455, 138 L. Ed. 2d 407 (2012) (cleaned up)). A strike offense committed by a child cannot, by definition, aggravate the third strike to the same degree as a strike committed by an adult. The POAA gives the same retributive consequences to a juvenile strike, which is a failure to adjust retribution according to blameworthiness.

Allowing juvenile strikes to aggravate the punishment of the third strike serves no deterrent effect, because "'the same characteristics that render juveniles less culpable than adults'—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment." *Id.* (quoting *Miller*, 567 U.S. at 472 (quoting *Graham*, 560 U.S. at 72)). Here again, by definition, because children as a class are less likely to consider potential punishment, a child who commits a strike offense will be far less likely to consider potential future punishment than an adult who commits a strike offense.

Nor does this practice serve any rehabilitative purpose. Rather, the POAA allows the deck to be stacked against a child before he can even vote, open a bank account, enlist in the army, or serve on a jury. Nor must the existence of subsequent adult strike offenses cut against the rehabilitative ideal, because rehabilitation is not an overnight process. Writing off the potential for rehabilitation based on two subsequent adult strikes ignores that those who come into contact with the criminal legal system often face huge obstacles in pursuing rehabilitation, due to the weight of collateral consequences and the trauma caused by incarceration.[13]

While this Court has upheld the POAA's goal of incapacitation in the form of a life sentence after three adult strikes, it has also recognized that incapacitation for life

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[13] *See generally* Task Force 2.0, Race and the Criminal Justice System, *Report and Recommendations to Address Race in Washington's Juvenile Legal System: 2021 Report to the Washington Supreme Court* (2021), https://digitalcommons.law.seattleu.edu/korematsu_center/118/.

involves a determination of incorrigibility, which "is inconsistent with youth." *Bassett*, 192 Wn.2d ¶ 38 (cleaned up). The legislative judgment that three strikers must be incapacitated for life must not fall on Mr. Reynolds and the other 22 people sentenced to die in prison based on juvenile strikes, who have committed only two adult strike offenses. And SRA sentences will ensure those who continue to commit serious crimes are punished.

Finally, the practice is cruel because it does not recognize that children charged with a strike offense may interfere with the best outcome of their own cases. As the Supreme Court recognized in *Miller*, children must not be treated as adults at sentencing, as "it ignores that [they] might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, [their] inability to deal with police officers or prosecutors (including on a plea agreement) or [their] incapacity to assist [their] own attorneys." 567 U.S. at 477–78 (citing *Graham*, 560 U.S. at 78 ("[T]he

features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings")); *J.D.B. v. North Carolina*, 564 U.S. 261, 269, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011) (accounting for children's responses to interrogation that differ from adults)).

II. The Race Disproportionality of Those Serving Death in Prison Sentences Based on a Juvenile Strike Is Even Starker than All Three-Strikers, Both Before and After Removal of Robbery 2 Strikes.

This Court is well aware of Washington's long history of severe race disproportionality in incarceration. In 2011, this Court was presented with evidence-based conclusions that observed disproportionalities in incarceration could not be due solely to differential crime commission rates, that facially neutral policies had a disparate impact on people of color, and that "racial and ethnic bias distorts decision-making in the criminal justice system, contributing to disparities."[14] A recent

[14] Research Working Group, Task Force on Race and the Criminal Justice System, *Preliminary Report on Race and Washington's Criminal Justice System*, 35 Seattle U. L. Rev.

analysis of criminal sentencing in Washington over the last four decades has illuminated how actions by the electorate, legislature, prosecutors, and courts have resulted in Black defendants receiving long and life sentences at a disproportionate rate.[15]

The POAA is a significant contributor to this incarceration disproportionality. The racially disproportionate impact of the three-strikes POAA data presented by Mr. Reynolds is severe. Pet'r's Supp. Br. at 39 (overrepresentation in all POAA sentences of Black people by a factor of **8.4** after removal of Robbery 2 strikes). Whether before or after the removal of Robbery 2 from the strike list, the racial

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623, 629 (2012), 87 Wash. L. Rev. 1, 6 (2012), 47 Gonz. L. Rev. 251, 256 (2012); Presentation by Race and Criminal Justice System Task Force, Mar. 2, 2011, https://www.tvw.org/watch/?eventID=2011031372.

[15] *See generally* Katherine Beckett & Heather D. Evans, *About Time: How Long and Life Sentences Fuel Mass Incarceration in Washington State* (Feb. 2020), https://www.aclu-wa.org/docs/about-time-how-long-and-life-sentences-fuel-mass-incarceration-washington-state.

disproportionality of those sentenced to die in prison based on a juvenile strike is even more severe.

Amici identified the class of three-strikers serving life without parole sentences based on crimes committed as children.[16] The following table summarizes the data.[17]

Table: Race of POAA Population with Relative and Comparative Race Disproportionality

	All POAA n = 455	**All POAA, excluding Rob 2 n = 272**	**POAA w/juvenile Strike n = 30**	**POAA w/juvenile strike, excluding Rob 2 n = 23**
White	52%	54%	37%	39%
	Rel. disp. = .77	Rel. disp. = .8	Rel. disp. = .55	Rel. disp. = .58
Black	41%	37%	47%	44%
	Rel. disp. = 9.3	Rel. disp. = 8.4	Rel. disp. = 10.7	Rel. disp. = 10
	Comp. B/W disp. = 12.1	Comp. B/W disp. = 10.5	Comp. B/W disp. = 19.5	Comp. B/W disp. = 17.2

By 2021, there were 30 people, including Mr. Reynolds, sentenced to die in prison based on a juvenile strike. Black

[16] Appx. at 1-6 (Declaration of Jessica Levin) (explaining methodology for determining which POAA cases involved juvenile strikes).
[17] Appx. at 13-16 (charts and graphs demonstrating racial disproportionality).

people made up 47% of this group, while white people made up only 37%. Appx. at 13. Black people with juvenile strikes are overrepresented relative to their share of the population by a factor of **10.7**, while white people with juvenile strikes are underrepresented relative to their share of the population by a factor of .55. *Id.* at 13-16.

After excluding those with Robbery 2 strikes, 23 people remain sentenced to die in prison as a result of juvenile strikes. *Id.* at 14. Of these 23 people, 10 are Black, 9 are white. In other words, 44% are Black, 39% are white. *Id.* Black people with juvenile strikes are overrepresented relative to their share of the population by a factor of **10**, while white people with juvenile strikes are underrepresented relative to their share of the population by a factor of .58. *Id.* at 14-16.

And whether before or after the removal of Robbery 2 from the strike list, in comparing all POAA three-strikers with the subset of those with a juvenile strike, there is a notable divergent trend—the percentage of Black people with a juvenile

strike increases whereas the white percentage decreases. This reveals an even starker degree of comparative disproportionality among the group with juvenile strikes. Appx at 16. The 2020 comparative Black/white disproportionality ratio for incarceration, generally, is 4.7.[18] The data shows that comparative race disproportionality for all POAA sentences, 12.1 (incl. Robbery 2) or 10.5 (excl. Robbery 2), is more than double the baseline comparative disproportionality for incarceration. Appx at 16. The comparative Black/white disproportionality ratio of POAA sentences with juvenile strikes is even more extreme: **19.5** (incl. Robbery 2), or **17.2** (excl. Robbery 2). *Id.* at 16.

This severe racial disproportionality undermines the penological goals of the POAA, which this Court must reckon with as it exercises its independent judgment under the

[18] Task Force 2.0, Race and the Criminal Justice System, *Race and Washington's Criminal Justice System: 2021 Report to the Washington Supreme Court* 4, 20 (2021), https://digitalcommons.law.seattleu.edu/korematsu_center/116.

categorical proportionality analysis. *See State v. Gregory*, 192 Wn.2d 1, 24, 427 P.3d 621 (2018) ("Given our conclusion that the death penalty is imposed in an arbitrary and racially biased manner, it logically follows that the death penalty fails to serve penological goals."). This striking racial disproportionality also underscores the racial arbitrariness that forms the basis of Mr. Reynolds' "as administered" challenge to the three-strikes portion of the POAA.

CONCLUSION

Mr. Reynolds and the other 22 people sentenced to die in prison due to their juvenile strikes face the harshest punishment available in Washington, due to conduct that this Court has already recognized as categorically less deserving of punishment. This Court should categorically bar juvenile strikes under the POAA.

CERTIFICATE OF COMPLIANCE WITH RAP 18.17

Undersigned counsel certifies that, pursuant to RAP 18.17(b), the document contains 4,999 words, exclusive of

words contained in the appendices, title sheet, table of contents, table of authorities, certificates of compliance and signature blocks, and pictorial images, and therefore meets the word count limitation of amicus curiae memoranda of 5,000 words as required by RAP 18.17(c)(6).

DATED this 5th day of December, 2022.

Respectfully Submitted:

/s/ Jessica Levin
Jessica Levin, WSBA #40837
Robert S. Chang, WSBA #44083
Melissa R. Lee, WSBA #38808
Counsel for Amicus Curiae
FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY

La Rond Baker, WSBA #43610
Jazmyn Clark, WSBA #48224
Counsel for Amicus Curiae
ACLU OF WASHINGTON

Katherine Hurley, WSBA #37863
Brian Flaherty, WSBA #41198
Counsel for Amicus Curiae
KING COUNTY DEPARTMENT OF PUBLIC DEFENSE

Sara Zier, WSBA #43075
Counsel for Amicus Curiae
TEAMCHILD

Mark Middaugh, WSBA #51425
Counsel for Amicus Curiae
WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Alexandria "Ali" Hohman, WSBA #44104
Cindy Arends Elsberry, WSBA #23127
Counsel for Amicus Curiae
WASHINGTON DEFENDER ASSOCIATION

No. 100873-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

MICHAEL REYNOLDS,
Petitioner.

APPENDIX SUBMITTED BY AMICI CURIAE

Jessica Levin, WSBA #40837
Robert S. Chang, WSBA #44083
Melissa R. Lee, WSBA #38808
RONALD A. PETERSON LAW CLINIC
SEATTLE UNIVERSITY SCHOOL OF LAW
1112 East Columbia St.
Seattle, WA 98122
Tel: (206) 398-4167
levinje@seattleu.edu
changro@seattleu.edu
leeme@seattleu.edu
Counsel for Amicus Curiae

FRED T. KOREMATSU CENTER
FOR LAW AND EQUALITY

Additional counsel listed on next page

La Rond Baker, WSBA #43610
Jazmyn Clark, WSBA #48224
ACLU OF WASHINGTON FOUNDATION
P.O. Box 2728
Seattle, WA 98111
(206) 624-2184
baker@aclu-wa.org
jclark@aclu-wa.org

Counsel for Amicus Curiae
ACLU OF WASHINGTON

Katherine Hurley, WSBA #37863
Brian Flaherty, WSBA #41198
KING COUNTY DEPARTMENT OF PUBLIC DEFENSE
710 2nd Ave, Suite 200
Seattle WA 98104
katherine.hurley@kingcounty.gov
brian.flaherty@kingcounty.gov

Counsel for Amicus Curiae
KING COUNTY DEPARTMENT OF PUBLIC DEFENSE

Sara Zier, WSBA #43075
TEAMCHILD
PO Box 1512
Tacoma, WA 98401
(253) 507-8435
sara.zier@teamchild.org

Counsel for Amicus Curiae
TEAMCHILD

Mark Middaugh, WSBA #51425
WACDL AMICUS COMMITTEE
600 University Street, Suite 3020
Seattle, WA 98101
(206) 919-4269
mark@middaughlaw.com

Counsel for Amicus Curiae
WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Alexandria "Ali" Hohman, WSBA #44104
Cindy Arends Elsberry, WSBA #23127
WASHINGTON DEFENDER ASSOCIATION
110 Prefontaine Pl S Ste 610
Seattle, WA 98104-2626
ali@defensenet.org
cindy@defensenet.org

Counsel for Amicus Curiae
WASHINGTON DEFENDER ASSOCIATION

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No. 100873-2

IN THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. MICHAEL REYNOLDS, Petitioner.	Declaration of Jessica Levin

I, Jessica Levin, declare as follows under penalty of perjury:

1. In the amicus memorandum supporting review filed on June 24, 2022, and accepted by this Court on July 5, 2022, I represented to this Court that I had submitted Public Records Act requests to the Department of Corrections (DOC) to enable amici to obtain "additional data to present to this Court regarding how many people are serving life without parole based on strike offenses committed as children, and the race disproportionality among that group." Amicus Memorandum in Support of Review, at 12.

2. Since submitting the amicus memorandum in support of review, I have obtained additional information (both from DOC in response to the Public Records Act requests, and from other sources, detailed below) that has enabled me to determine which POAA three-strikers are

serving life without parole based on juvenile strikes, and the demographics of this group.

3. This group represents a subset of the data presented by Mr. Reynolds in his supplemental brief of all three-strikes sentences under the POAA. (The same data was presented in the Opening Brief of Appellant in *State v. Raymond Brown*, No. 38493-4-III, https://www.courts.wa.gov/content/Briefs/A03/384934%20Appellant.pdf.) That data was compiled from the Sentencing Guidelines Commission (SGC) and Caseload Forecast Council (CFC) publications, as articulated in the declaration of Lila J. Silverstein that accompanies the appendix submitted by Mr. Reynolds in the instant case, and by Mr. Brown in No. 38493-4-III.

4. To generate this subset of data, I took the data set presented in the appendix to Mr. Reynolds' supplemental brief (the same data set presented in *State v. Brown*) before the second-degree robbery defendants had been filtered out, and created a new column to indicate whether any of the strike offenses was committed as juvenile ("Y" indicates juvenile strike; "N" indicates no juvenile strikes).

5. The juvenile strike column was populated ("Y"/"N") by analyzing at least one of the following data sets to determine the age at the time of the first strike offense: 1) the Sentencing Guidelines Commission and Caseload Forecast Council data populated into the original spreadsheet created by Lila Silverstein that contained each defendant's date of birth, year of first strike, and

listed the three strike offenses by crime type;[1] 2) a spreadsheet provided by the Department of Corrections in response to undersigned counsel's Public Records Act request that listed the criminal history of all POAA prisoners (by DOC inmate number) that were identified by DOC as having juvenile criminal history; the spreadsheet includes the cause number for every crime in the person's criminal history (both juvenile adjudications and adult offenses), including the age at the time of each of their crime;[2] 3) judgment and sentences of three-strikes POAA prisoners provided by DOC to undersigned counsel in response to Public Records Act requests;[3] and 4) a spreadsheet created by Columbia Legal Services in publishing *Washington's Three Strikes Law: Public Safety & Cost Implications of Life Without Parole* (2010), https://columbialegal.org/wp-content/uploads/2019/03/CLS-Report_Washingtons-

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[1] These documents are publicly available, and links are provided in both the Appendix in the instant case and in *State v. Brown*, No. 38493-4-III.

[2] The DOC spreadsheet is available here: https://law.seattleu.edu/media/school-of-law/documents/centers-and-institutes/korematsu-center/p-15680-copy-of-sp4056-persistent-offender-accountability-act-v2.xlsx

[3] On file with undersigned counsel. Undersigned counsel requested all POAA judgment and sentences identified in the DOC spreadsheet detailing POAA prisoners with juvenile criminal history, but the DOC response to the records request is still incomplete, so judgments and sentences for every three-strikes POAA prisoner are still not in possession of undersigned counsel.

Three-Strikes-Law.pdf.[4]

6. For sentences before 2009, where both the birth year and year of the first strike was included in the SGC/CFC reports, I used at least one of three methods to determine the existence of a juvenile strike.

    a. The first method was to input a "Y" where the age at the time of the first strike offense was indicated as under 18 in the Columbia Legal Services spreadsheet generated for its Three Strikes Report.
    b. The second method was to sort by approximate age at time of first strike, which was a column included in the original data set compiled from SGC/CFC reports, and which was based on subtracting the birth year from the first strike year. If the approximate age of the first strike was <20, I cross-checked the cause number/case number against the Columbia Legal Services spreadsheet and/or the DOC spreadsheet to confirm the existence of a juvenile strike.
    c. The third method was to determine the existence of a juvenile strike directly from individual judgment and sentences provided by DOC to undersigned counsel.

7. For sentences after 2009, CFC stopped providing the first strike year in its POAA summaries. To determine "Y"/"N" for post-2009 POAA sentences, I followed this methodology: If the individual's cause number did not appear on the DOC spreadsheet, I presumed no juvenile

[4] The spreadsheet is on file with undersigned counsel; the creation of that spreadsheet is explained in the accompanying Declaration of Melissa Lee.

strike (entered “N”). If the POAA cause number did show on DOC spreadsheet, I looked at the offense specified as the first strike in the CFC reports and confirmed the age at the time of the first strike on the DOC spreadsheet was under 18 (entered "Y").

8. After determining which cases had juvenile strikes, I filtered out all cases that did not involve a juvenile strike (using the Excel sorting function), leaving 30 total cases involving juvenile strikes. I then filtered out those cases that involved second-degree robbery defendants (7 excluded, leaving 23 total), using Excel’s filter feature. A spreadsheet of both groups is included below.

9. For the 23 remaining defendants, I noted whether they were in DOC custody by entering their name into the DOC inmate search tool. *See* https://www.doc.wa.gov/information/inmate-search/.

10. I then created graphs of defendant race, both for the larger data set of 30 individuals with juvenile strikes, and the smaller data set of 23 individuals with juvenile strikes, using Excel’s charting feature.

11. In comparing the racial breakdown of the POAA to the racial breakdown of Washington’s population, I used the same data as Mr. Reynolds’ counsel – data from the United States Census Bureau. *See* https://www.census.gov/quickfacts/fact/table/WA/PST045221.The Census Bureau notes that its total slightly exceeds 100% because it gathers data from multiple sources.

12. I swear under penalty of perjury that the above statements are true, that I applied the foregoing protocols,

and that the following spreadsheet and charts are correct to the best of my belief and knowledge.

Date this 5th day of December, 2022.

Jessica Levin, WSBA No. 40837

No. 100873-2

IN THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. MICHAEL REYNOLDS, Petitioner.	Declaration of Melissa Lee

I, Melissa Lee, declare as follows under penalty of perjury:

1. In 2010, when I was a staff attorney of the Institutions Project at Columbia Legal Services, I was the primary author of a report on the Three Strikes Law. *See* Columbia Legal Services, *Washington's Three Strikes Law: Public Safety & Cost Implications of Life Without Parole* (2010), https://columbialegal.org/wp-content/uploads/2019/03/CLS-Report_Washingtons-Three-Strikes-Law.pdf.

2. The sentencing data included in the report was generated from both the 2008 Sentencing Guidelines Commission (SGC) data on the POAA,[5] as well as review of all

[5] https://www.cfc.wa.gov/PublicationSentencing/PersistentOffender/Persistent_Offender_asof20080630.pdf

POAA three-strikes judgment and sentences identified in the SGC data. I obtained the judgment and sentences identified in the 2008 SGC POAA report by submitting a Public Records Act request to the Department of Corrections requesting the judgment and sentences of each person serving a life without parole sentence under the three-strikes provision of the POAA.

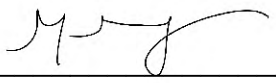
3. Once I obtained all the judgment and sentences, I generated a master spreadsheet that tracked each POAA three strikes sentence, including but not limited to DOC inmate number, name, POAA cause number and case number, date of birth, date of each strike offense, and age at the time of each strike offense.

4. When this Court accepted review of Mr. Reynolds' case, I obtained the original spreadsheet that I generated to author *Washington's Three Strikes Law: Public Safety & Cost Implications of Life Without Parole*. I confirmed that the spreadsheet was in the original format and had not been changed since I originally constructed it.

5. I provided the spreadsheet to Jessica Levin, who used the data to determine which POAA three-strikers had juvenile strikes.

6. I swear under penalty of perjury that the above statements are true, that I applied the foregoing protocols, and that the following spreadsheet and charts are correct to the best of my belief and knowledge.

Date this 5th day of December, 2022.



Melissa Lee, WSBA No. 38808

POAA Prisoners with Juvenile Strikes Through FY 2021, Including Robbery 2

CaseNum	CauseNum	Sent Date	County	Race	Offenses	Juvenile Predicate?	Rob 2?	In DOC Custody
2001091915	00-1-05161-3	9/28/2001	Pierce	Black	Rape 1, att manslaughter (?), att rob 1	Y	N	Y
1996080841	95-1-04872-4	8/22/1996	Pierce	Black	Kidnap 1, rob 1, rape 1	Y	N	Y
2000041773	99-1-00929-4	4/18/2000	Thurston	Black	Assault 2 x 2, att manslaughter (?)	Y	N	Y
2001041159	99-1-03828-4	4/13/2001	Pierce	Black	Assault 1, Rob 1 x2	Y	N	Y
2003070357	02-1-01012-9	7/16/2003	Cowlitz	Black	ROC 2, assault 2 x2	Y	N	Y
2006080966	05-1-06802-3	8/11/2006	King	Black	murder 2, rob 1, assault 2	Y	N	Y
2006100850	06-1-00814-8	10/23/2006	Pierce	Black	att murder 1, rob 1, assault 2	Y	N	Y
2018070916	15-1-02459-1	7/12/2018	Spokane	Black	Murder 1, rob 1 consp., rob 1, burg 1, assault 2	Y	N	Y
2019102061	17-1-07239-3	10/7/2019	King	Black	murder 1, rob 1 x2	Y	N	Y
2000060978	97-1-05897-6	6/30/2000	King	Black	Rape 3, Rob 1, stat rape 2	Y	N	Y
2018080083	14-1-01397-9	8/3/2018	Yakima	Latino	Assault 1, rob 1, assault 2	Y	N	Y
1998120362	98-1-00140-5	12/22/1998	Grant	Latino	Assault 1 x2, assault 2	Y	N	Y
2012100077	11-1-00359-6	10/1/2012	Yakima	Latino	Assault 1, assault 2 x2	Y	N	Y
2016091148	15-1-00031-7	9/28/2016	Grant	Latino	VUCSA del w/ SM, assault 2, rob 1	Y	N	Y
2007040064	06-1-02822-2	4/5/2007	Snohomish	White	assault 2 x2, burg 1	Y	N	Y
2008081338	07-1-02207-0	8/13/2008	Yakima	White	Assault 1, rob 2, rob 2 DW, Rape 3	Y	N	Y

2008100566	08-1-00735-6	10/15/2008	Cowlitz	White	Assault 2, burg 1 x2	Y	N	Y
1999051096	98-1-00829-3	5/13/1999	Cowlitz	White	Att assault 1, assault 2, burg 1	Y	N	Y
1999071215	98-1-00481-1	7/29/1999	Pierce	White	Murder 1, "robbery armed," "assault /battery w/ DW"	Y	N	Y
2006050436	05-1-00652-3	5/12/2006	Yakima	White	Assault 1, burg 1, assault 2	Y	N	N
2020011882	18-1-01747-1	1/17/2020	King	White	Rape 2, att. Rob 1, rob 1, burg 1	Y	N	Y
2013120712	13-1-00155-2	12/13/2013	Island	White	Assault 2 x2, burg 1 x2, rob 1	Y	N	Y
2015070920	14-1-00704-4	7/16/2015	Spokane	White	Assault 1, assault 2 FA att., rob 1	Y	N	Y
1996060661	95-1-01817-5	6/11/1996	Pierce	Black	Rob 1 x2, Rob 2	Y	Y	N
1995030572	94-1-04687-1	3/16/1995	Pierce	Black	Rob 1 x2, Rob 2	Y	Y	N
2006098066	06-1-00814-6	9/21/2006	Clark	Black	Kidnap 1, rob 2 x2	Y	Y	Y
2006120341	03-1-00563-7	12/8/2006	King	Black	Kidnap 1, rob 2, assault 2	Y	Y	N
1998101185	98-1-01076-6	10/30/1998	Thurston	Native Amer.	Rob 2, robbery, drug del w/ FA	Y	Y	Y
2001040561	00-1-01381-3	4/13/2001	King	White	Rob 2, rob 1, assault 1	Y	Y	N
2012061617	11-1-03625-2	6/27/2012	Spokane	White	Rob 1 x2, rob 2	Y	Y	N

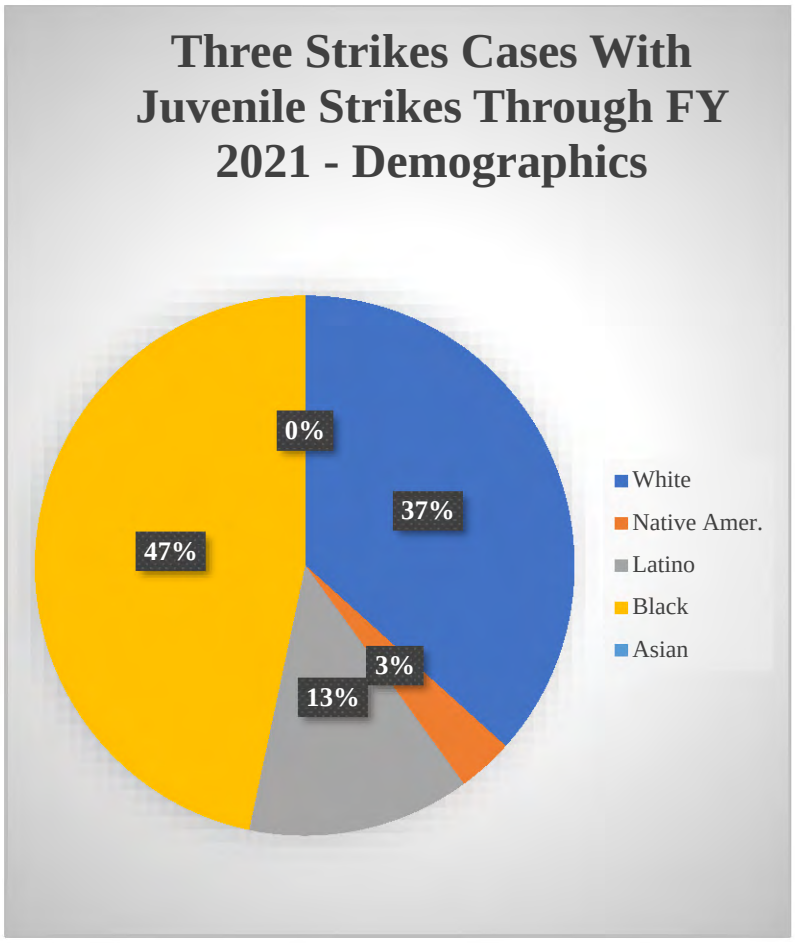
POAA Prisoners with Juvenile Strikes Through FY 2021, Excluding Robbery 2

CaseNum	CauseNum	Sent Date	County	Race	Offenses	Juvenile Predicate?	Rob 2?	In DOC Custody
2001091915	00-1-05161-3	9/28/2001	Pierce	Black	Rape 1, att manslaughter (?), att rob 1	Y	N	Y
1996080841	95-1-04872-4	8/22/1996	Pierce	Black	Kidnap 1, rob 1, rape 1	Y	N	Y
2000041773	99-1-00929-4	4/18/2000	Thurston	Black	Assault 2 x 2, att manslaughter (?)	Y	N	Y
2001041159	99-1-03828-4	4/13/2001	Pierce	Black	Assault 1, Rob 1 x2	Y	N	Y
2003070357	02-1-01012-9	7/16/2003	Cowlitz	Black	ROC 2, assault 2 x2	Y	N	Y
2006080966	05-1-06802-3	8/11/2006	King	Black	murder 2, rob 1, assault 2	Y	N	Y
2006100850	06-1-00814-8	10/23/2006	Pierce	Black	att murder 1, rob 1, assault 2	Y	N	Y
2018070916	15-1-02459-1	7/12/2018	Spokane	Black	Murder 1, rob 1 consp., rob 1, burg 1, assault 2	Y	N	Y
2019102061	17-1-07239-3	10/7/2019	King	Black	murder 1, rob 1 x2	Y	N	Y
2000060978	97-1-05897-6	6/30/2000	King	Black	Rape 3, Rob 1, stat rape 2	Y	N	Y
2018080083	14-1-01397-9	8/3/2018	Yakima	Latino	Assault 1, rob 1, assault 2	Y	N	Y
1998120362	98-1-00140-5	12/22/1998	Grant	Latino	Assault 1 x2, assault 2	Y	N	Y
2012100077	11-1-00359-6	10/1/2012	Yakima	Latino	Assault 1, assault 2 x2	Y	N	Y
2016091148	15-1-00031-7	9/28/2016	Grant	Latino	VUCSA del w/ SM, assault 2, rob 1	Y	N	Y
2007040064	06-1-02822-2	4/5/2007	Snohomish	White	assault 2 x2, burg 1	Y	N	Y

2008081338	07-1-02207-0	8/13/2008	Yakima	White	Assault 1, rob 2, rob 2 DW, Rape 3	Y	N	Y
2008100566	08-1-00735-6	10/15/2008	Cowlitz	White	Assault 2, burg 1 x2	Y	N	Y
1999051096	98-1-00829-3	5/13/1999	Cowlitz	White	Att assault 1, assault 2, burg 1	Y	N	Y
1999071215	98-1-00481-1	7/29/1999	Pierce	White	Murder 1, "robbery armed," "assault /battery w/ DW"	Y	N	Y
2006050436	05-1-00652-3	5/12/2006	Yakima	White	Assault 1, burg 1, assault 2	Y	N	N (Not in DOC inmate database -kept in data set because if alive, he may still be entitled to relief)
2020011882	18-1-01747-1	1/17/2020	King	White	Rape 2, att. Rob 1, rob 1, burg 1	Y	N	Y
2013120712	13-1-00155-2	12/13/2013	Island	White	Assault 2 x2, burg 1 x2, rob 1	Y	N	Y
2015070920	14-1-00704-4	7/16/2015	Spokane	White	Assault 1, assault 2 FA att., rob 1	Y	N	Y

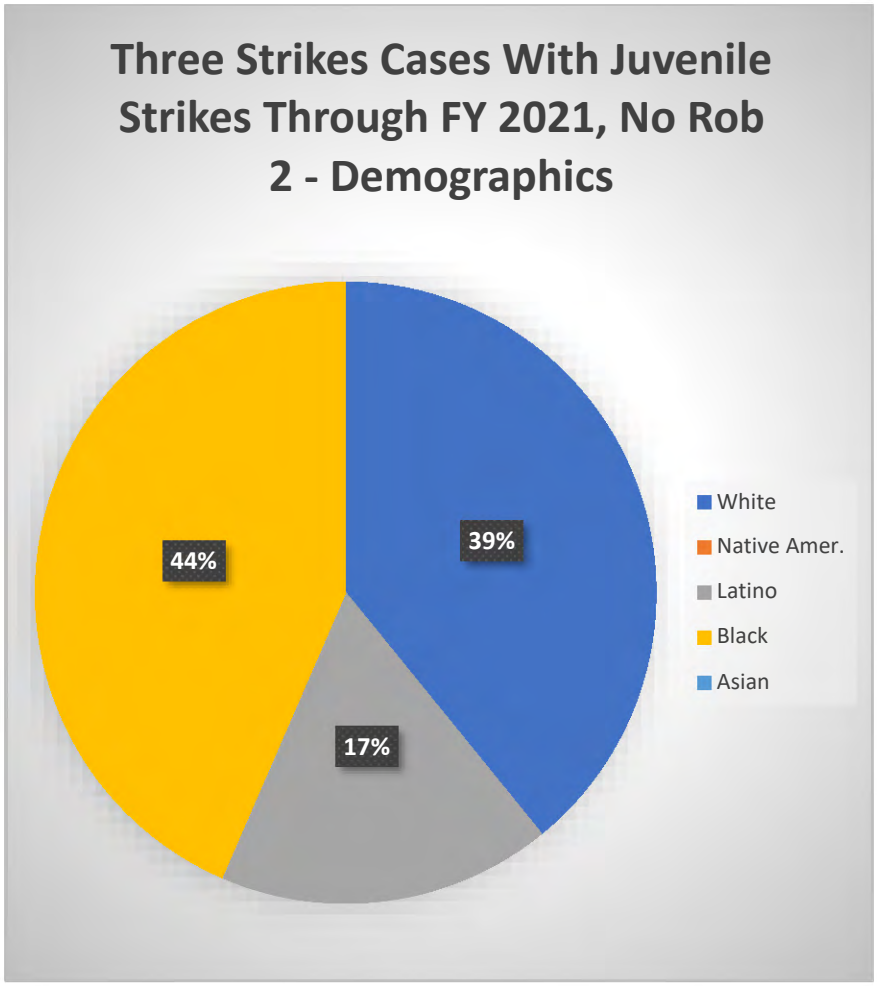
All Three Strikes Cases with Juvenile Strikes Through Fiscal Year 2021:

Race:	White	11
	Native Amer.	1
	Latino	4
	Black	14
	Asian	0
	All:	**30**



All Three Strikes Cases with Juvenile Strikes Through Fiscal Year 2021, Rob 2 Strikes Removed:

Race:	White	9
	Native Amer.	0
	Latino	4
	Black	10
	Asian	0
	All:	**23**



Washington State Racial Demographics

From https://www.census.gov/quickfacts/fact/table/WA/PST045221

Black	4.4%
Native Amer. & PI	2.7%
Asian	9.6%
Latino	13.0%
White	67.5%
Two or More	4.9%
Total:	102.1%

Note: The total slightly exceeds 100% because the Census Bureau draws its numbers from different data sources.

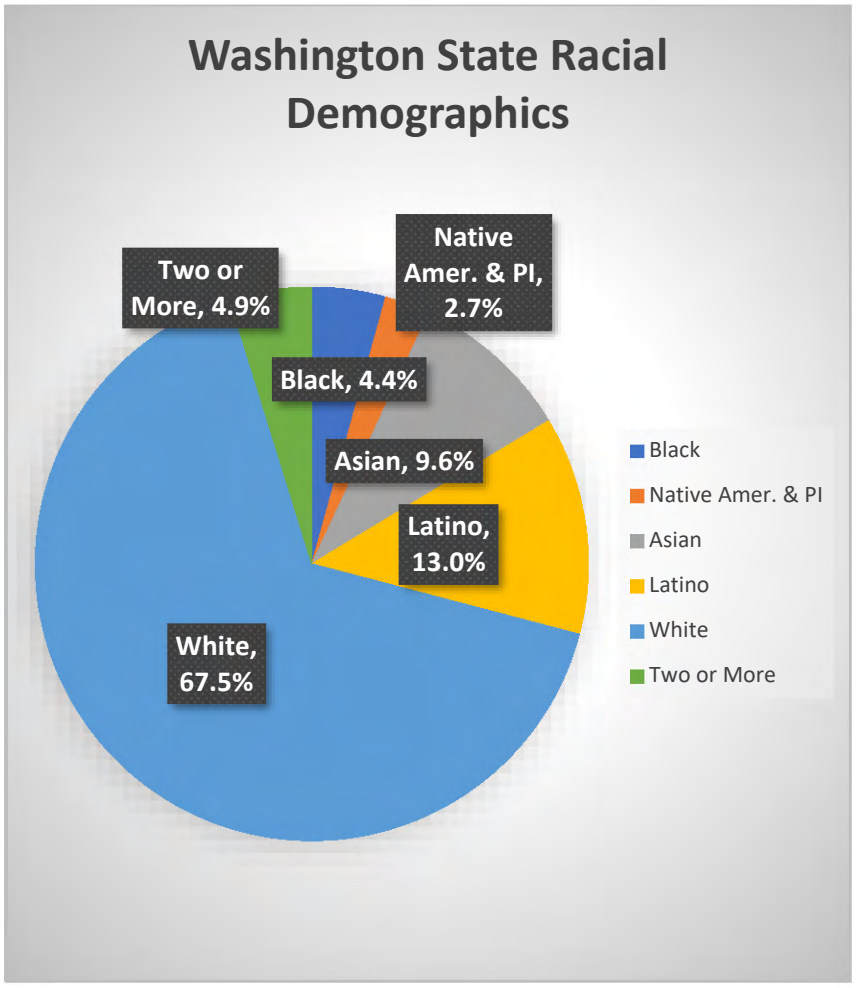


Table: Race of POAA Population with Relative and Comparative Race Disproportionality

	All POAA n = 455	**All POAA, excluding Rob 2 n = 272**	**POAA w/juvenile Strike n = 30**	**POAA w/juvenile strike, excluding Rob 2 n = 23**
White	52%	54%	37%	39%
	Rel. disp. = .77	Rel. disp. = .8	Rel. disp. = .55	Rel. disp. = .58
Black	41%	37%	47%	44%
	Rel. disp. = 9.3	Rel. disp. = 8.4	Rel. disp. = 10.7	Rel. disp. = 10
	Comp. B/W disp. = 12.1	Comp. B/W disp. = 10.5	Comp. B/W disp. = 19.5	Comp. B/W disp. = 17.2

Relative disproportionality (rel. disp.) is calculated by dividing the percentage of the POAA population by the percentage of that same group in the population as a whole (e.g., 47 ÷ 4.4 = 10.68), which means that the relative disproportionality of Black people with juvenile strikes are overrepresented relative to their share of the population by a factor of **10.7**.

Comparative disproportionality (comp. disp.) is calculated by dividing the relative disproportionality of the overrepresented group by the relative disproportionality of the control group (i.e., white) (e.g., the comparative Black/white disproportionality ratio of those with juvenile strikes before the removal of robbery 2 from the strike list is 10.7 ÷ .55 = **19.5**).

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on December 5, 2022, the forgoing 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 Seattle, Washington, this 5th day of December, 2022.

/s/ Jessica Levin
Jessica Levin
Counsel for Amicus Curiae
FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY

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- wapofficemail@washapp.org

Comments:

Sender Name: Jessica Levin - Email: levinje@seattleu.edu
Address:
901 12TH AVE
KOREMATSU CENTER FOR LAW & EQUALITY
SEATTLE, WA, 98122-4411
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