

IN THE SUPREME COURT OF MARYLAND

SCM-REG-0028-2024
September Term, 2024

JAMES RUSSELL TRIMBLE,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

On Writ of Certiorari to the Appellate Court of Maryland

BRIEF OF AMICI CURIAE

THE PUBLIC JUSTICE CENTER,
THE AMERICAN CIVIL LIBERTIES UNION OF MARYLAND,
THE BALTIMORE ACTION LEGAL TEAM, AND
THE CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH

IN SUPPORT OF PETITIONER, BY WRITTEN CONSENT

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STATEMENT OF INTEREST

The Public Justice Center (“PJC”) is a non-profit civil rights and anti-poverty legal organization established in 1985. Adopting a race equity lens, PJC uses impact litigation, public education, and legislative advocacy to reform the law for its clients. Its Appellate Advocacy Project expands and improves representation of disadvantaged persons and civil rights issues before the Maryland and federal appellate courts. PJC has a demonstrated commitment to upholding the rights of individuals facing detention or incarceration, and to opposing institutional racism and pursuing racial equity in the judicial system. *See, e.g., In re MP*, SCM-REG-0003-2023 (amicus); *Belton v. State*, COA-REG-00082-2022 (amicus); *Washington v. State*, COA-REG-0015-2022 (amicus); *Smith v. State*, COA-REG-0061-2021 (amicus). The Statements of Interest of other Amici are contained in the attached Appendix.

INTRODUCTION

In response to United States Supreme Court decisions recognizing that “children are constitutionally different from adults for purposes of sentencing,” *see e.g., Miller v. Alabama*, 567 U.S. 460, 471 (2012), the Maryland General Assembly enacted the Juvenile Restoration Act (“JUVRA”) which “brought Maryland into compliance with these federal cases by ‘ma[king] three significant changes to Maryland’s sentencing practices for juvenile offenders convicted as adults,’” *Trimble v. State*, 262 Md. App. 452, 460 (2024) (quoting *Malvo v. State*, 481 Md. 72, 85 (2022)). Specifically, JUVRA bans life-without-parole sentences for minors, allows courts to depart from mandatory

minimum sentences for minors charged as adults, and, relevant here, introduces a sentence reduction mechanism for an offense committed as a minor.

The sentence reduction mechanism, codified as Maryland Code, Criminal Procedure Article (“CP”) § 8-110-, provides individuals a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *See Jedlicka v. State*, 481 Md. 178, 197 (2022). Upon petition, a circuit court may grant a sentence reduction if it determines that the “individual is not a danger to the public” and “the interests of justice will be better served by a reduced sentence.” CP § 8-110(c). To make this determination, the court must consider enumerated factors, including the individual’s age; whether the person has substantially complied while incarcerated, completed educational programing, and demonstrated maturity and rehabilitation; the diminished culpability of a minor as compared to an adult; and any other factor it deems relevant. CP § 8-110(d). This law reflects the legislature’s recognition that minors, even those who commit serious offenses, are capable of growth and rehabilitation and should have the opportunity to rebuild their lives.

ARGUMENT

Research in developmental psychology and neuroscience consistently shows that the human brain does not fully mature until the mid-twenties, particularly in areas governing impulsivity, susceptibility to peer influence, and the capacity for rehabilitation. *See Miller*, 567 U.S. at 472 (highlighting these “distinctive attributes of youth”). By treating a minor’s age as an aggravating factor, the Court would disregard well-established neuroscience—a factor the U.S. Supreme Court has instructed should be

considered—while also failing to align with JUVRA’s legislative purpose, including the explicit requirement to consider the diminished culpability of a youth as compared to an adult. Furthermore, contrary to legislative intent, Maryland would fall behind the national shift toward justice reform. Thus, this Court should make clear that a movant’s age is a mitigating factor.

Additionally, relying on a decades-old antisocial personality disorder (“ASPD”) diagnosis as evidence of an individual’s irremediability contradicts the legislative purpose of providing minors a meaningful opportunity for rehabilitation and reintegration into society. An ASPD diagnosis should not bar a sentence reduction, particularly given the broadness of ASPD criteria, the potential for diagnostic inaccuracies, the developmental changes that can occur with age, and the possibility of effective treatment and remission.

Accordingly, Amici urge this Court to vacate the order denying Mr. Trimble’s motion for sentence reduction.

I. Courts Should Not Treat the Individual’s Age at the Time of the Offense as an Aggravating Factor

Maryland’s intent in passing the Juvenile Restoration Act was to align its juvenile sentencing laws with U.S. Supreme Court rulings that recognize the developmental differences between minors and adults, acknowledging that youth are less culpable due to their impulsivity, susceptibility to peer influence, and greater capacity for rehabilitation. *See, e.g., Roper v. Simmons*, 543 U.S. 551 (2005). Late Adolescence and emerging

adulthood¹ (referring in this brief to the age range between fifteen and twenty-five, covering the last years of legal minority and the remaining developmental years of legal majority) are critical periods of ongoing cognitive, emotional, and psychosocial development that differ fundamentally from adulthood. Developmental psychology and neuroscience have demonstrated that youth, including those over the legal age of majority, both lack the full capacity for mature judgment and are more amenable to rehabilitation. Thus, treating age—such as Mr. Trimble’s age of seventeen at the time of the offense—as an aggravating factor undermines both the legislative intent and runs afoul of modern science.

A. The U.S. Supreme Court Has Concluded that Minors, Including Seventeen Year Olds, Are Developmentally Different from Adults

The Supreme Court has recognized that minors are less culpable than adults because of their developmental differences and heightened capacity for rehabilitation. *See e.g., Roper*, 543 U.S. 551 (banning the death penalty for minors); *Graham v. Florida*, 560 U.S. 48 (2010) (striking life-without-parole sentences for children convicted of “nonhomicide” offenses and requiring “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation”); *Miller*, 567 U.S. 460 (concluding that mandatory life-without-parole sentences violate the Eighth Amendment when

¹ Emerging adulthood, spanning from eighteen to the mid-twenties, is a distinct life phase marked by significant brain development, “comparable to the remarkable changes that occur during early childhood.” Karen Lindell & Katrina Goodjoint, *Rethinking Justice for Emerging Adults: Spotlight on the Great Lakes Region*, Juvenile Law Center 3 (2020), <https://jlc.org/sites/default/files/attachments/2020-09/JLC-Emerging-Adults-9-2.pdf>.

imposed on youth); *Montgomery v. Louisiana*, 577 U.S. 190 (2016) (holding *Miller* retroactive in cases on state collateral review).

Approximately twenty years ago, the *Roper* Court, relying on then-emerging scientific research, held that imposing the death penalty on minors— specifically, a seventeen-year-old, like Mr. Trimble, in that case —violates the Eighth Amendment’s ban on cruel and unusual punishment. The Court concluded that youth cannot be classified as “the worst offenders” because (1) they lack “maturity” and have an underdeveloped sense of responsibility which results in “impetuous and ill-considered actions and decisions,” (2) they are more vulnerable to negative influences and external pressures, including peer pressure; and (3) their character is “not as well formed as that of an adult” making their personality traits “more transitory,” “less fixed,” and capable of change. *Roper*, 543 U.S. at 569–70.

In the series of decisions following *Roper*, the Court focused on these three “distinctive attributes of youth,”—impulsivity; susceptibility to peer pressure; and the capacity for change. *See Graham*, 560 U.S., at 75 (offenders must be given “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”); *Miller*, 567 U.S. at 477–78 (emphasizing that courts must consider “immaturity, impetuosity, and failure to appreciate risks and consequences,” the “family and home environment that surrounds him,” the impact of “familial and peer pressures,” legal incompetencies in dealing with police and prosecutors, and potential for rehabilitation); *Montgomery*, 577 U.S. at 212 (minors whose crimes reflect “only

transient immaturity—and who have since matured—[should] not be forced to serve a disproportionate sentence in violation of the Eighth Amendment”).

These cases all underscore the understanding that adolescents, including those who were seventeen years old at the time of the alleged crime—such as the youth in *Roper* and *Montgomery*—and Mr. Trimble—are fundamentally different from adults in their cognitive and emotional development.

B. The Use of Adolescence as a Penalty Contradicts Established Science on Adolescent and Emerging Adult Brain Development

Continuing advances in brain research have transformed the understanding of late adolescent and young adult brain development. Studies show that, in contrast with cognitive advancements, emotional and social maturity continue to develop throughout emerging adulthood. Even those with cognitive capacities similar to adults remain more impulsive and susceptible to external pressures, making it difficult for them to fully appreciate the consequences of their actions. As the U.S. National Institutes of Mental Health has recognized, these findings “have altered long-held assumptions about the timing of brain maturation,” showing that the brain does not become recognizably “adult” until after the age of twenty. National Institute of Mental Health, *The Teen Brain: Still Under Construction* 2 (2011).

The three attributes identified in *Roper*—impulsivity, susceptibility to peer pressure, and the capacity for change—support the argument that a seventeen-year-old’s age should not be treated as an aggravating factor. *See Roper*, 543 U.S. at 569–70. In fact, in order to align with *Roper*’s underpinning, it would be more just to extend these

considerations beyond the legal age of majority, potentially into the mid-twenties, to better reflect the current understanding of brain maturation.²

1. Risk-Taking and Impulsivity

The regions of the brain associated with mature decision making continue to develop into the twenties. See B. J. Casey, *Beyond Simple Models of Self-Control to Circuit-Based Accounts of Adolescent Behavior*, 66 Ann. Rev. Psych. 295 (2015). While cognitive development may plateau around age sixteen, social and emotional maturity continues to develop throughout adolescence and young adulthood. Grace Icenogle et al., *Adolescents' Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a "Maturity Gap" in a Multinational, Cross-Sectional Sample*, 43 L. & Hum. Behav. 69 (2019). Therefore, although older adolescents and emerging adults might have logical reasoning skills that approximate those of adults, they often lack self-restraint, appropriate risk and reward evaluation, and future-oriented thinking. *Id.*

Empirical research confirms that late adolescents and emerging adults are more impulsive than adults and less able to exercise self-control. Seventeen-year-olds scored significantly lower than adults on measures of “temperance,” which included “impulse control” and “suppression of aggression,” and were less likely than adults to mention possible long-term consequences, evaluate both risks and benefits, and examine possible alternative options. Elizabeth Cauffman & Laurence Steinberg, *(Im)Maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18

² Amici acknowledge the limits of the statute at issue and thus do not intend to suggest that the Court has the power to do so.

Behav. Sci. & L. 741, 748–749 (2000). Meanwhile, while emerging adults function similarly to adults in calm situations, in circumstances of “hot” cognition—the ability to think in emotionally arousing situations—the brain of an eighteen to twenty-one-year-old functions like that of a sixteen or seventeen-year-old. Alexandra Cohen et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts*, 27 Psych. Sci. 549, 549–562 (2016).

Furthermore, late adolescents and emerging adults evaluate risks and benefits differently than those in their late twenties and thirties. Sensation-seeking peaks at age nineteen and self-regulation does not reach full development until ages twenty-three through twenty-six. Laurence Steinberg et al., *Around the World, Adolescence is a Time of Heightened Sensation Seeking and Immature Self-Regulation*, 21 Developmental Sci. 1, 1–2 (2017).

These age-related differences in behavior are associated with ongoing development of structural and functional connectivity between the ventral striatum and the prefrontal cortex. During early adolescence, certain brain regions—notably the ventral striatum, which plays a key role in reward processing, decision-making, and motivation—mature in ways that lead to riskier behavior. Kathryn Mills et al, *The Developmental Mismatch in Structural Brain Maturation During Adolescence*, 36 Developmental Neuroscience 147, 147–160 (2014). Neuroimaging studies show that a heightened sensitivity to rewards dominates adolescent and early adult decision-making. *Id.*; Eveline Crone et al., *Annual Research Review: Neural Contributions to Risk-Taking in Adolescence – Developmental Changes and Individual Differences*, 57 J. Child Psych.

& Psychiatry 353, 359 (2016). Functional MRI studies show that between early adolescence and adulthood, the development of the amygdala—the portion of the brain that is primarily responsible for emotional responses, especially in situations involving anxiety, fear, or rage—elevates the brain’s sensitivity to emotional triggers. K. Suzanne Scherf et al., *The Amygdala: An Agent of Change in Adolescent Neural Networks*, 64 Hormones and Behav. 298, 298–313 (2013).

The prefrontal cortex, which is responsible for higher-order functions like decision-making and impulse control, continues developing well into the mid-twenties. Crone, *supra*, at 355. Structural MRIs reveal that gray matter—the tissue in the brain responsible for information processing—decreases throughout the twenties, while white matter, which facilitates communication between brain regions, continues to develop throughout the twenties and into the thirties. Kathryn Mills et al., *Structural Brain Development Between Childhood and Adulthood: Convergence Across Four Longitudinal Samples*, 141 Neuroimage 273 (2016). The reduction of gray matter reflects a pruning process that optimizes cognitive functioning by eliminating inefficient neural connections. Crone, *supra*, at 357. Meanwhile, the growth of white matter enables individuals to regulate anxiety, manage fear, and improve social skills. *Id.* Overall, the changes in gray and white matter during adolescence and emerging adulthood contribute to improved cognitive abilities and emotional regulation, but also help explain why this group still experiences challenges with impulsivity, emotional responses, and decision-making.

In sum, the prefrontal cortex—the area of the brain associated with reasoning and executive function—remains underdeveloped into the mid-twenties, while the brain’s reward centers are relatively overexpressed, heightening adolescents’ and young adult’s tendency for risky and impulsive behavior. Thus, “expecting the experience-based ability to resist impulses . . . to be fully formed prior to age eighteen or nineteen would seem on present evidence to be wishful thinking.” Franklin Zimring, *Penal Proportionality for the Young Offender*, in *Youth on Trial* 271, 280, 282 (Thomas Grisso & Robert G. Schwartz eds., 2000).

2. Susceptibility to External Influences

During adolescence, the brain systems responsible for social interactions undergo substantial changes. Compared to children and adults, adolescents and emerging adults exhibit increased activity in the brain’s reward centers when exposed to various social stimuli like social feedback. Dustin Albert et al., *The Teenage Brain: Peer Influences on Adolescent Decision Making*, 22 *Current Directions in Psych. Sci.* 114, 116(2013). This heightened sensitivity makes young people especially responsive to and motivated by the opinions and actions of their peers. *Id.* Being in an emotionally charged context causes the adolescent and emerging adult brain to function in a way that appears “younger” than its actual age. Marc Rudolph et al., *At Risk of Being Risky: The Relationship Between “Brain Age” Under Emotional States and Risk Preference*, 24 *Developmental Cognitive Neuroscience* 93, 102 (2017).

Peer influence is particularly strong when it comes to risky behavior. Adolescents and young adults are more likely to engage in such behavior in the presence of peers than

when alone or with adults, whereas peer presence has little impact on adults' risk-taking behavior. Albert, *supra*, at 115; Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 *Developmental Rev.* 78, 90–91 (2008) (the presence of peers increases risk-taking by 50% among young adults with an average age of twenty, but had no effect on older adults with an average age of thirty-four). One study found that eighteen to twenty-two-year-olds took more risks when with same-age peers compared to when they were alone or with slightly older peers. Karol Silva et al., *Adolescents in Peer Groups Make More Prudent Decisions When a Slightly Older Adult Is Present*, 27 *Ass'n Psych. Sci.* 322, 327–329 (2015).

This sensitivity to peer pressure explains why many offenses committed by teens and young adults tend to involve peers. Center for Law, Brain, & Behavior, *White Paper on the Science of Late Adolescence*, Mass. Gen. Hosp. 24 (2022), <https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence/>; Albert, *supra*.

“Numerous . . . self-report studies have documented that it is statistically aberrant to refrain from crime during adolescence.” Terrie Moffitt, *Adolescent-Limited and Life-Course Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 *Psych. Rev.* 674, 685–686 (1993); Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 *Developmental Rev.* 339, 344 (1992) (explaining that such behavior is “virtually a normative characteristic of adolescent development”).

When crime rates are plotted against age, both the total number of offenses and frequency of offending are highest during adolescence. Moffitt, *supra*, at 675. Violent crimes and less serious offenses both “peak sharply” in late adolescence—around age seventeen —

and “drop precipitously in young adulthood.” *Id.* In short, what social science has told us about the relationship between peer-influence and antisocial behavior in adolescents and emerging adults is that “[a] necessary condition for an adolescent to stay law-abiding is the ability to deflect or resist peer-pressure, a cognitive process that is not fully developed until adulthood.” Zimring, *supra*, at 280–81.

3. Capacity for Change

As the brain matures, the vast majority of youth will naturally age out of lawbreaking. Terrie Moffit, *Male Antisocial Behaviour in Adolescence and Beyond*, 2 *Nature Hum. Behav.* 177 (2018); Maryann Davis et al., *Reducing Recidivism and Symptoms in Emerging Adults with Serious Mental Health Conditions and Justice System Involvement*, 42 *J. Behav. Health Serv. & Rsch.* 172, 172–190 (2015). Research shows that 40% to 60% of justice-involved youth stop offending by early adulthood. National Institute of Justice, *From Youth Justice Involvement & Young Adult Offending*, <https://nij.ojp.gov/topics/articles/youth-justice-involvement-young-adult-offending>. Many individuals who offend between the ages of eighteen and twenty would have likely abstained from criminal behavior naturally in the following years. *Id.* Additionally, only 1.14% of individuals released after receiving a juvenile life without parole sentence recidivate. Tarika Daftary-Kapur & Tina Zottoli, *Resentencing of Juvenile Lifers: The Philadelphia Experience*, Montclair State Univ. (2020).

It is extremely difficult, however, to predict with accuracy whether an adolescent’s criminal behavior will persist into adulthood. Thomas Grisso, *Double Jeopardy: Adolescent Offenders with Mental Disorders* 64–65 (2005); John Edens et al., *Assessment*

of “Juvenile Psychopathy” and Its Association with Violence: A Critical Review, 19 Behav. Sci. & L. 53, 59 (2001). This is because these actions are often driven by youthful characteristics such as impulsivity, poor decision-making in “hot cognition” contexts, and susceptibility to peer influence. *White Paper, supra*, at 38.

The capacity for individuals to “age out” is further linked to the enhanced connectivity between the ventral striatum and prefrontal cortex. *Id.* at 36-37. During late emerging adulthood, these connections strengthen to support goal-directed behavior and adaptive learning strategies. Wouter van den Bos et al., *Striatum–Medial Prefrontal Cortex Connectivity Predicts Developmental Changes In Reinforcement Learning*, 22 Cerebral Cortex 1247 (2012). They also enable individuals to update and refine their decision-making processes based on rewards for “successful” decisions, as these age groups show a greater responsiveness to such rewards than to punishment. *Id.*

Incarceration disrupts young people’s opportunities to learn, grow, and acquire life skills, while isolating them from critical support networks and healthy social connections. Lindell, *supra*, at 10. During this period of brain development, social environment, including family, peers, school, workplace, and community, play a vital role. Laurence Steinberg et al., *Reentry of Young Offenders from the Justice System: A Developmental Perspective*, Youth Violence Juv. Just. 25–26 (2004). Thus, it is not surprising that incarcerated youth develop psychosocial maturity at significantly slower rates compared to peers who remain in the community. Gina Erickson & Shelly Schaefer, *Context Matters: Juvenile Correctional Confinement and Psychosocial Development*, 9 J. of Crim. Psych. 44–59 (2019).

C. By Treating Late Adolescence as an Aggravating Factor, Maryland Would Fail to Adapt to Evolving Science and National Juvenile Justice Reforms

In light of evolving scientific understanding of brain development, continuing since the U.S. Supreme Court’s pronouncements on the subject, “more than a dozen states have introduced or implemented reforms to protect emerging adults from some punishments that would be unduly harsh given their stage of development.” Ashley Nellis & Devyn Brown, *Still Cruel and Unusual: Extreme Sentences for Youth and Emerging Adults*, The Sent’g Project 7 (Aug. 2024), <https://www.sentencingproject.org/app/uploads/2024/09/Still-Cruel-and-Unusual-Extreme-Sentences-for-Youth-and-Emerging-Adults.pdf> [hereinafter “*Still Cruel*”].

Several state legislatures have extended reforms to emerging adults. For instance, in 2019, Illinois passed a law permitting parole review after ten or twenty years for most offenses, with the exception of life-without-parole sentences, if the individual was under twenty-one at the time of the crime. Pub. Act 100-1182, 2018 Ill. Laws 8923. The law also requires that at least one parole board member have expertise in adolescent development and that the board give great weight to the characteristics of youth and subsequent growth in its decisions. *Id.* Three years later, Illinois ended life-without-parole for individuals under twenty-one in most cases, allowing for parole review after forty years. Pub. Act 102-1128, 2022 Ill. Laws 9391. In 2018, California expanded parole eligibility to individuals who were under the age of twenty-six at the time of the offense, Cal. Penal Code § 3051 (2018), and in 2021, the District of Columbia amended its Second Look Amendment Act to expand eligibility to people who were under twenty-

five at the time of the crime, D.C. Code § 24-403.03. Connecticut and Rhode Island also permit earlier parole hearings for those who were under twenty-one and twenty-two, respectively, at the time of the offense. Conn. Gen. Stat. § 54-125a; R.I. Gen. Laws § 13-8-13; *see also* Becky Feldman, *The Second Look Movement: A Path to Fairer Sentencing*, The Sent’g Project 30–31 (2024), <https://www.sentencingproject.org/app/uploads/2024/05/Second-Look-Movement.pdf>.

Furthermore, courts in Massachusetts, Michigan, and Washington have extended the *Miller* holding—that mandatory life-without-parole sentences violate the Eighth Amendment when imposed on minors—to emerging adults. *Still Cruel, supra*, at 7-8. These changes reflect growing recognition of the need to account for the ongoing neurological and psychological development of young people when considering sentences.

By allowing courts to treat late adolescence as an aggravating factor, Maryland would fall behind on juvenile justice reforms that reflect both evolving scientific understanding and the national trend towards recognizing the capacity for change in emerging adults. The General Assembly did not intend that outcome.

D. Treating Age as an Aggravating Factor Disproportionately Impacts Black Youth

While Mr. Trimble is white, the lower court’s interpretation of CP § 8-110 will disproportionately impact Black individuals. *See, e.g.*, Pet’r’s Br. at 27–28 (four of the five individuals described are Black).³ At the time of JUVRA’s enactment, 87% of those

³ The individuals’ races were determined by reviewing public case filings.

initially eligible were Black. Campaign for the Fair Sentencing of Youth, *Juvenile Restoration Act Fact Sheet (HB 409/SB 494) 2* (2021), https://cfsy.org/wp-content/uploads/HB409_SB494_JuvenileRestorationAct_FACTSHEET-1.pdf. Black youth represented 31% of Maryland’s population between the ages of ten and seventeen but accounted for over 82% of minors sentenced to life-without-parole. Equal Justice Institute, *Maryland Bans Life Without Parole for Children* (Apr. 2021), <https://eji.org/news/maryland-bans-life-without-parole-for-children/>. Thus, Maryland had the nation’s highest proportion of Black youth sentenced to life-without-parole. *Id.* Delegate Jazz Lewis, who sponsored the bill in the House of Delegates, emphasized this disparity, stating “[t]he fact of the matter is that these sentences are reserved almost exclusively for Black children.” *Id.*

This reflects the landscape in which JUVRA was enacted, as Maryland is not alone in this trend. Black people make up 62% of people serving juvenile life-without-parole across the nation, Josh Rovner, *Juvenile Life Without Parole: An Overview*, The Sent’g Project 4 (Apr. 2023), <https://www.sentencingproject.org/app/uploads/2023/04/Juvenile-Life-Without-Parole.pdf>, and 53% of youth sentenced to life-without-parole or a virtual life sentence, which is a term of years that exceeds life expectancy but not with parole, *Still Cruel, supra*, at 6. In Alabama, Georgia, Louisiana, Maryland, and Mississippi, Black individuals make up at least 80% of juvenile life-with-parole sentences. *Id.*

Being both Black and young further increases the likelihood of receiving a life sentence. *Id.* Two-thirds of people under the age of twenty-six who were sentenced to life-without-parole were Black, compared to only half of older individuals who received

the same sentence. Ashley Nellis & Niki Monazzam, *Left to Die in Prison: Emerging Adults 25 and Younger Sentenced to Life Without Parole*, The Sent’g Project 2 (June 2023), <https://www.sentencingproject.org/app/uploads/2023/09/Left-to-Die-in-Prison-Emerging-Adults-25-and-Younger-Sentenced.pdf>. Additionally, 52% of juveniles serving life-with-parole are Black, compared with 40% of adults. *Still Cruel, supra*, at 6.

Nationwide, the process of “adultification”⁴ disproportionately affects Black youth, leading to over-policing, over-charging, and over-detention. Research “suggests that Black children may be viewed as adults as soon as thirteen, with average overestimations of Black children[’s ages] exceeding four and half years in some cases,” while the period of time during which white youth are not expected to be fully responsible for their actions can extend into their late twenties. Phillip Atiba Goff, et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. Personality & Soc. Psych. 526, 541 (2014). Thus, “although most children are allowed to be innocent until adulthood, Black children may be perceived as innocent only until deemed suspicious.” *Id.*

JUVRA was intended and has the potential to mitigate the harms of the over-incarceration and adultification of Black youth; limiting its effectiveness by using age as

⁴ “Adultification” refers to the phenomenon whereby Black children are viewed as “less innocent and more adult-like than their white peers,” leading to disproportionate policing and criminalization of Black youth. Rebecca Epstein et al., *Girlhood Interrupted: The Erasure of Black Girls’ Childhood*, Georgetown Law: Center on Poverty and Inequality 2 (2017), <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf>.

an aggravating factor would instead perpetuate disproportionate impacts on Black individuals.

In sum, the lower court’s interpretation undermines CP § 8-110, preventing it from effectively addressing the issue it was designed to remedy. This misreading fails to align with the law’s purpose, ultimately hindering the potential for youth rehabilitation.

II. A Pre-Existing Antisocial Personality Disorder Diagnosis Should Not Preclude a Reduction of Sentence

Relying on a decades-old ASPD diagnosis as evidence of an individual’s irremediability is inconsistent with the scientific understanding of the disorder and contradicts the legislative purpose of providing minors with a meaningful opportunity for rehabilitation and reintegration into society. A long-ago ASPD diagnosis should not bar a sentence reduction, especially considering the broadness of ASPD criteria, the potential for diagnostic inaccuracies, developmental changes that can occur with age, and the possibility of remission.

A. Given the Broad Criteria for an ASPD Diagnosis, a Previous Diagnosis Is Not a Reliable Predictor of an Individual’s Potential for Rehabilitation

ASPD is defined as a “pervasive pattern of disregard for and violation of the rights of others” occurring since age fifteen years. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 659 (5th ed., text rev. 2022). To meet the criteria, an individual must be at least eighteen years old and display at least three of the following behaviors:

1. Failure to conform to laws and social norms as indicated by repeatedly performing acts that are grounds for arrest

2. Deceitfulness
3. Impulsivity or failure to plan ahead
4. Irritability and aggressiveness, evidenced by repeated physical fights or assaults
5. Reckless disregard for safety of oneself or others
6. Consistent irresponsibility, as indicated by repeated failure to maintain steady employment or meet financial obligations
7. Lack of remorse for harmful actions.

Id.

These diagnostic criteria, while intended to capture enduring patterns of behavior, are so comprehensive that they may apply to a significant number of individuals, particularly incarcerated persons. While the criteria are intended to identify enduring features of a person's personality, they are "so broad as to include the vast majority rather than a small minority of criminals." James Wulach, *Diagnosing the DSM-III Antisocial Personality Disorder*, 14 Pro. Psych.: Rsch. and Prac 330, 330 (1983). In fact, "[ASPD] is the most common psychiatric disorder among people who have been incarcerated," with some studies indicating that 47% of incarcerated individuals have been diagnosed with ASPD, and others reporting rates as high as 78%. Jason Schnittker et al. *Neither Mad nor Bad? The Classification of Antisocial Personality Disorder Among Formerly Incarcerated Adults* 265 Soc. Sci. & Med. (2020), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8278498/>.

The difficulty with these broad criteria is that incarcerated persons are more likely to exhibit these behaviors not because they suffer from a personality disorder, but as a result of their environment. Given that "failure to conform to laws" and engaging in behaviors that are "grounds for arrest" are part of the diagnostic criteria, it is unsurprising

that a large number of incarcerated individuals may appear to meet the requirements for the disorder. *Id.* Eliminating arrest as criterion “reduces the prevalence of ASPD by more than 50%, even among formerly incarcerated persons.” *Id.* Moreover, incarceration itself is uniquely suited to producing the symptoms of ASPD, making it difficult to discern whether these behaviors are permanent or merely responses to the prison environment. *Id.* Some behaviors, such as aggressiveness or deceitfulness, may be survival mechanisms in prison, while others, such as difficulties in maintain steady employment or meeting financial obligations, can stem from the difficulties of reintegration after release. *Id.*

Studies have highlighted the imprecision associated with diagnosing ASPD, pointing to variations in symptoms, the absence of symptom weighting, and the potential for other disorders such as substance abuse. Mark Cunningham & Thomas Reidy, *Don't Confuse Me with the Facts: Common Errors in Violence Risk Assessment at Capital Sentencing*, 26 *Crim. Just. & Behav.* 20, 21 (1999); Kathleen Wayland & Sean O'Brien, *Deconstructing Antisocial Personality Disorder and Psychopathy: A Guidelines-Based Approach to Prejudicial Psychiatric Labels*, 42 *Hofstra L. Rev.* 519, 523 (2013) [hereinafter “*Deconstructing ASPD*”]. Symptoms such as impulsiveness, for instance, are subjective and can vary widely from person to person. *Deconstructing ASPD, supra*, at 540–41. Furthermore, due to the lack of symptom weighting, as each criterion receives equal weight regardless of severity, it is impossible to account for differences in severity. *Id.* Thus, “stealing newspapers is equated with a bank heist, and having no fixed address for 30 days is treated the same as having no known address for five years.” *Id.* ASPD

symptoms can overlap with other disorders, further complicating accurate diagnosis. *Id.*; Cunningham, *supra*, at 33 (noting overlap between criteria for ASPD and substance abuse disorders).

Given the broad criteria for ASPD and the potential for environmental influences to mimic its symptoms, a diagnosis may not be a reliable predictor of an individual's behavior or potential for rehabilitation.

B. Due to the Potential for Misdiagnosis, the Court Should Exercise Caution in Allowing a Mental Health Diagnosis to Outweigh Other Factors

Prior to relying on a decades-old diagnosis, a court should consider the potential for diagnostic inaccuracies. While psychiatrists are often perceived as possessing an “aura of scientific infallibility” with “superior, almost superhuman powers . . . which are magical,” Michael Perlin, *Mental Disability Law: Civil and Criminal Section 3–4* (2d ed. 1998), the pressure to make definitive diagnoses can lead to errors, as they may rely on their own biases or past experiences with similar cases, *see* Pat Croskerry, *The Importance of Cognitive Errors in Diagnosis and Strategies to Minimize Them*, 78 Acad. Med. 775, 777 (2003).

Studies have shown that psychiatric diagnoses can be incorrect, challenging the the problematic assumption that psychiatric diagnoses are inherently accurate and beyond reproach. In one study, eight individuals feigned auditory hallucinations to gain admission to psychiatric hospitals, and all were diagnosed with psychiatric disorders despite having no mental illness. David Rosenhan, *On Being Sane in Insane Places*, 179 Science 250 (1973). Even after ceasing to simulate symptoms, their deception went

undetected by hospital staff, although other patients noticed their lack of symptoms. *Id.* The BBC performed a similar experiment involving ten subjects, five with mental health impairments and five without. BBC, *How Mad Are You?* (BBC Television Broadcast 2008). After a week of testing and observation by three experts, the team correctly diagnosed two participants, misdiagnosed one, and incorrectly identified two healthy participants as having mental health problems. *Id.*

Further compounding the risk of misdiagnosis is a tendency within psychiatry to err on the side of caution by labeling healthy individuals as ill rather than the other way around. This tendency is based on the reasoning that it is “more dangerous to misdiagnose illness than health,” and it is safer to assume someone is ill than to risk missing a true case of mental illness. Rosenhan, *supra*, at 252.

The environment in which diagnoses are made can also contribute to inaccuracies. For example, when psychiatrists rely on prior experience with similar cases or make assumptions based on pattern recognition, they may fall victim to what is known as the “gambler’s fallacy,” prematurely concluding that the current case mirrors a past one without conducting a thorough, individualized evaluation. Croskerry, *supra*, at 777. Such errors can result in misdiagnosis, especially in a setting as fraught with complexity as jail or prison, where an individual’s behavior may be shaped by the harsh environment rather than a personality disorder.

The risk of misdiagnosis is further compounded by implicit biases, which can significantly influence the diagnosis of conditions such as ASPD. Howard Garb, *Race Bias and Gender Bias in the Diagnosis of Psychological Disorders*, 90 Clinical Psych.

Rev. (2021); Lisa Cooper, *et al.*, *The Associations of Clinicians' Implicit Attitudes About Race with Medical Visit Communication and Patient Ratings of Interpersonal Care*, Am. Public Health Ass'n (2012) (finding that two-thirds of participating Baltimore-area primary care doctors exhibited implicit bias against Black individuals). In fact, women and people of color are 20% to 30% more likely than white men to receive a medical misdiagnosis. Liz Szabo, *Medical Mistakes are More Likely in Women and Minorities*, NBC News (Jan. 15, 2024), <https://www.nbcnews.com/health/health-news/medical-mistakes-are-likely-women-minorities-rcna133726>. They are also more vulnerable to being over-diagnosed with mental health disorders. Garb, *supra*.

Black individuals are at the highest risk of being misdiagnosed. Studies show that Black adults are much more likely than white adults to be diagnosed with psychotic disorders, such as schizophrenia, even when they show clear signs of severe depression. Robert Schwartz & David Blankenship, *Racial Disparities in Psychotic Disorder Diagnosis: A Review of Empirical Literature* 4 World J. Psychiatry 133 (2014); Alison Lynch & Michael Perlin, *I See What Is Right and Approve, but I Do What Is Wrong: Psychopathy and Punishment in the Context of Racial Bias in the Age of Neuroimaging*, 25 Lewis & Clark L. Rev. 453, 473 (2021). Similarly, Black teenagers are more likely to be diagnosed with conduct disorder than their white peers, and Black male teenagers are disproportionately diagnosed with schizophrenia compared with any other group, while white adolescents tend to be diagnosed with depression. MP DelBello et al., *Effects of Race on Psychiatric Diagnosis of Hospitalized Adolescents: A Retrospective Chart Review*, 11 J. Child Adolescent Psychopharmacology 95, 95 (2001); Patti Verbanas,

African Americans More Likely to be Misdiagnosed with Schizophrenia, Rutgers Study Finds, Rutgers Today (March 2019), <https://www.rutgers.edu/news/african-americans-more-likely-be-misdiagnosed-schizophrenia-rutgers-study-finds>. One study found that medical professionals were more likely to pair faces of Black individuals with words related to psychotic disorders as opposed to mood disorders and that being white and having a higher level of training were the strongest predictors of associating Black faces with such disorders. Amalia Londono Tobon et al, *Racial Implicit Associations in Psychiatric Diagnosis, Treatment, and Compliance Expectations*, *Academic Psychiatry* 23–33 (2021).

Neuroimaging research studies have shown that when white observers, especially those with high levels of racial bias, observe Black individuals, their amygdala—the brain structure responsible for processing threats—becomes more activated than when observing white individuals. Lynch, *supra*, at 472. This heightened response to Black faces may contribute to a greater tendency to interpret behaviors by Black individuals as dangerous or threatening, potentially influencing the psychiatric evaluation process. Furthermore, behaviors exhibited by Black individuals are more often perceived as “dangerous” compared to identical behaviors displayed by white individuals, and Black individuals more likely to be diagnosed by forensic examiners as having a mental disease or defect. Lynch, *supra*, at 473. Accordingly, while “the issue of racial bias in the context of expert testimony on ASPD . . . has not been well researched, . . . ‘[i]t is difficult to imagine that implicit racial bias does not come into play when the defendant is

labeled “antisocial.””” *Id.* (quoting Kathleen Wayland & Sean O’Brien, *Implicit Bias and Capital Decision-Making*, 43 Hofstra L. Rev. 751, 767 (2015)).

Due to the real possibility of misdiagnosis, the Court should exercise caution when considering whether and to what extent to allow a mental health diagnosis to outweigh other factors under JUVRA.

C. The Possibility of ASPD Remission, Especially with Age, Counsels Against Using a Previous Diagnosis to Determine Rehabilitation Potential

Historically, individuals diagnosed with mental disabilities, including those with diagnoses like ASPD, have been stereotyped as dangerous and in need of institutionalization. Michael Perlin, *Sanism and the Law*, 15 Am. Med. Ass’n J. Ethics 878 (2013). This perspective reflects a broader societal tendency to view people with mental disabilities as objects of fear, rather than individuals capable of improvement or change. American Psychiatric Association, *Stigma and Discrimination*, <https://www.psychiatry.org/patients-families/stigma-and-discrimination>. Media portrayals reinforce this notion, often depicting individuals with mental health conditions as irredeemable, *see id.* (describing study which found that viewing the film *Joker*, which portrays a person with a mental health condition who becomes violent, “was associated with higher levels of prejudice toward those with mental illness”), or “stabilized” but not fully reintegrated into society, perpetuating the stereotypes that these individuals cannot lead normal lives outside institutional settings, Kirstin Fawcett, *How Mental Illness is Misrepresented in the Media*, U.S. News (Apr. 16, 2015), <https://health.usnews.com/>

health-news/health-wellness/articles/2015/04/16/how-mental-illness-is-misrepresented-in-the-media.

There is growing recognition that ASPD, like other mental disorders, can be successfully treated. Over time, many individuals diagnosed with ASPD experience significant changes in behavior. Donald Black, *The Natural History of Antisocial Personality Disorder*, 60 Can. J. Psychiatry 309, 309 (2015). Studies suggest that ASPD symptoms tend to improve as individuals reach their fourth decade of life. *Id.* One study which followed 524 individuals diagnosed with ASPD in adulthood found that 12% experienced complete remission of symptoms by their thirties or forties and another 27% showed improvement, though they did not fully remit. *Id.* The median age for improvement was thirty-five, and importantly, there was “no age beyond which improvement seemed impossible.” *Id.* Similarly, a later study of seventy-one men diagnosed with ASPD found that by the time they reached their fifties, 27% had remitted and 31% had shown some improvement. *Id.* These findings suggest that individuals diagnosed with ASPD in their youth may, in fact, experience significant changes in behavior as they age, with a sizable percentage outgrowing the disorder.

Allowing continued confinement of individuals diagnosed with ASPD, especially when the diagnosis is from decades before and contradicted by more recent, substantial, and uncontroverted evidence, is unconscionable. Against the backdrop of the science on ASPD, Mr. Trimble’s rehabilitative record is truly remarkable. A pre-existing ASPD diagnosis should not bar a sentence reduction, especially given the broadness of the diagnostic criteria, potential for diagnostic inaccuracies, and developmental changes that

can occur with age. These factors, combined with the influence of the prison environment, the role of racial bias in psychiatric diagnoses, and the public stigma attached to those with mental health disorders, make it clear that an individual's ASPD diagnosis may not reflect their true psychological state or their potential for rehabilitation. Therefore, the Court should consider these complexities and provide an opportunity for reevaluation of the sentence based on more accurate, individualized evidence of Mr. Trimble's current mental state and likelihood for rehabilitation.

CONCLUSION

For these reasons, Amici Curiae respectfully urge this Court to rule for the Petitioner.

Respectfully submitted,

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CERTIFICATE OF RULES COMPLIANCE

1. This brief contains 6,483 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Sahar Atassi
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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 20-201(g), on January 7, 2025, the foregoing Brief of Amici Curiae was served via the MDEC File and Serve Module, and that, pursuant to Rule 8-502(c), two copies each were mailed, postage prepaid, first-class, to:

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APPENDIX

The **American Civil Liberties Union of Maryland** (“ACLU of Maryland”) has advocated for changes to Maryland’s parole scheme for lifers for the better part of the last decade, representing individuals serving life sentences, meeting with both juvenile and non-juvenile lifers and their families seeking legal assistance, and by filing suit in *MRJI v. Hogan* on behalf of juvenile lifers. The ACLU of Maryland routinely appears before this and other courts on questions of constitutional law like the issues presently before this Court. The ACLU of Maryland provides *pro bono* representation to juvenile lifers (and non-juvenile lifers) in parole and court proceedings. This Amicus has significant firsthand experience in how counsel help people serving life sentences overcome bias and demonstrate their maturity and rehabilitation to the outside world.

The **Baltimore Action Legal Team** (“BALT”) is a community lawyering organization that formed in April 2015 in response to a call from community organizations for legal assistance. BALT transitioned from providing emergency response services during the Baltimore Uprising to working towards addressing structural causes of its symptoms. This work includes close partnerships with community organizations in presenting legal education, policy advocacy, and legal representation. BALT operates under 501c3 status. BALT has an interest in this case because of its commitment to reducing over-incarceration in the justice system and supporting people and communities to advance.

The **Campaign for the Fair Sentencing of Youth** (“CFSY”) is a national nonprofit that leads efforts to implement fair and age-appropriate sentences for youth, with a focus on abolishing life without parole and other extreme sentences for children. CFSY engages in public education and communications efforts to provide decision-makers and the broader public with the facts, stories, and research that will help them to fully understand the impacts of these sentences upon individuals, families, and communities. Through partnerships with advocacy organizations, businesses, and other stakeholders, CFSY supports survivors of youth violence, those incarcerated as children who are still serving or have been released, and their respective families and communities.