Case Number: SU-2022-0092-MP
Filed in Supreme Court
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**STATE OF RHODE ISLAND**
**SUPREME COURT**

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| Joao Neves,<br>v.<br>State of Rhode Island | SU-2022-0092-MP<br>(PM-2022-0259 below) |
| Keith Nunes<br>v.<br>State of Rhode Island | SU-2022-0093-MP<br>(PM-2022-0901 below) |
| Pablo Ortega<br>v.<br>State of Rhode Island | SU-2022-0094-MP<br>(PM-2022-0260 below) |
| Mario Monteiro<br>v.<br>State of Rhode Island | SU-2023-0167-MP<br>(PM-2023-00921 below) |

On Certiorari from Grants of Post-Conviction Relief
Entered in the Superior Court, Providence County

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# BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER, THE SENTENCING PROJECT, THE GAULT CENTER, NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, AND PRISON POLICY INITIATIVE IN SUPPORT OF RESPONDENTS JOAO NEVES, KEITH NUNES, PABLO ORTEGA, AND MARIO MONTEIRO

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# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

**Page(s)**

## UNITED STATES SUPREME COURT CASES



## OTHER FEDERAL CASES



## STATUTES

## OTHER AUTHORITIES

Case Number: SU-2022-0092-MP
Filed in Supreme Court
Submitted: 2/16/2024 3:18 PM
Envelope: 4490371
Reviewer: Zoila Corporan

## IDENTITY AND INTEREST OF *AMICI CURIAE*

**Juvenile Law Center** fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center's legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential amicus briefs in state and federal courts across the country to ensure that laws, policies, and practices in states in states in states affecting youth advance racial and economic equity and are consistent with children's unique developmental characteristics and human dignity.

**The Sentencing Project** is a national nonprofit organization established in 1986 to engage in public policy research, education, and advocacy to promote effective and humane responses to crime. The Sentencing Project has produced a broad range of scholarship assessing the merits of extreme sentences in jurisdictions throughout the United States. Because this case concerns life sentences for individuals who, as evidenced by scientific principles, have a diminished culpability for their actions and enhanced capacity for change, it raises questions of fundamental importance to The Sentencing Project.

**The Gault Center**, formerly the National Juvenile Defender Center, was created to promote justice for all children by ensuring excellence in the defense of youth in delinquency proceedings. Through systemic reform efforts, training, and technical assistance, the Gault Center seeks to ensure all young people enjoy full constitutional protections and recognition of their status as still-developing adolescents. The Gault Center (as the National Juvenile Defender Center) has participated as *amicus curiae* before the United States Supreme Court and federal and state courts across the country.

The **National Association of Criminal Defense Lawyers** (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL is the only nation-wide professional bar association for both public defenders and private criminal-defense lawyers, and its members include not only lawyers serving in those roles, but also military defense counsel, law professors, and judges. Consistent with NACDL's mission of advancing the proper, efficient, and fair administration of justice, NACDL files numerous *amicus* briefs each year in federal and state courts—all to the end of providing assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole.

The **Prison Policy Initiative** is a non-profit, non-partisan organization that conducts research and engages in advocacy regarding the harms caused by mass incarceration.

## SUMMARY OF ARGUMENT

In its brief, the State argues that the Supreme Court's decisions in *Roper v. Simmons,* 543 U.S. 551 (2005), *Graham v. Florida,* 560 U.S. 48 (2010), and *Miller v. Alabama,* 567 U.S. 460 (2012) (collectively, the "Juvenile Sentencing Cases") are inapplicable to this case. (State's Br. 34-35). The State could not be more wrong. Through its decisions in the Juvenile Sentencing Cases, the Supreme Court relied upon scientific research dictating that youthful offenders be treated differently from adult offenders and spared the harshest of punishments by the state. Respondents Neves, Nunes, Ortega, and Monteiro were sentenced prior to *Roper*,[1] and thus did not benefit from the Court's requirement that "sentencing courts must take into

[1] **Joao Neves**: committed crime at age 16.5; pled guilty to first-degree murder and multiple charges of robbery and assault; sentenced in 2000 to life plus multiple concurrent 10-year sentences running consecutively to the life sentence. (State's Br. 1-3). **Manuel Monteiro:** committed crime at age 17; convicted by jury of first-degree murder, conspiracy, using a firearm, and multiple assault and weapons charges; sentenced in 2002 to two life sentences plus additional concurrent term sentences. (*Id*. at 11). **Keith Nunes:** committed crime at age 18; convicted by jury of first-degree murder and multiple other charges; sentenced in 2000 to life for murder, followed by multiple concurrent 10-year sentences. (Id. at 5-6). **Pablo Ortega**: committed crime at age 19; pled guilty to first degree murder and one conspiracy charge; sentenced in 2002 to life plus a 5-year consecutive sentence (*Id*. at 8).

Case Number: SU-2022-0092-MP
Filed in Supreme Court
Submitted: 2/16/2024 3:18 PM
Envelope: 4490371
Reviewer: Zoila Corporan

account the age of the defendant at the time he or she committed the offense(s) of conviction before imposing life sentences."[2] (State's Br. 35). While the Juvenile Sentencing Cases were not relevant at the time of Respondents' sentencing hearings, the Supreme Court's jurisprudence is nevertheless highly relevant to the adoption and interpretation of R.I. Gen. Laws § 13-8-13(e) [hereinafter Section 13-8-13(e)]. More importantly, these decisions are relevant to understanding the harmful consequences that will result if the law is not applied to youthful offenders like Respondents.

Meanwhile, the State's legal arguments as to why Respondents and similarly situated youthful offenders should not be entitled to release simply do not hold up to scrutiny. These arguments have been addressed by the Superior Court's decision below and in Respondents' brief. *Amici* do not intend to address those arguments further. Instead, *Amici* will address the harmful impact the State's arguments will impose on young people if successful.

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[2] If their youth was considered at all it likely would have been in a negative light, given that Respondents were sentenced during the "*super-predator*" era when racist mythmaking from the 1990s about the inherent dangerousness of Black and Brown youth led to significant increases in young people being transferred for adult prosecution where they often received extreme sentences. Carroll Bogert & Lynnell Hancock*, Superpredator: The Media Myth That Demonized a Generation of Black Youth*, Marshall Project (Nov. 20, 2020), http://tinyurl.com/yh9wpjc2; James Forman Jr. & Kayla Vinson, *The Superpredator Myth Did a Lot of Damage. Courts Are Beginning to See the Light*, N.Y. Times (Apr. 20, 2022), https://www.nytimes.com/2022/04/20/opinion/sunday/prison-sentencing-parole-justice.html.

Case Number: SU-2022-0092-MP
Filed in Supreme Court
Submitted: 2/16/2024 3:18 PM
Envelope: 4490371
Reviewer: Zoila Corporan

The fact is that Section 13-8-13(e) undermines one of the most powerful prosecutorial tools in the State's arsenal for pressuring youthful offenders into guilty pleas, ensuring their convictions if they refuse, and ultimately increasing the length of their incarceration once they are sentenced. The tool is "charge stacking," the practice of charging a criminal defendant with multiple separate crimes, or charges, for what is essentially one criminal act, and subjecting them accordingly to more extreme and consecutive sentences upon a finding of guilt. Charge stacking, not recidivism or serial crime, is the reason Respondents are each serving life plus multiple and consecutive sentences. And while it may be ubiquitous in practice, charge stacking has come under increased scrutiny and criticism for the harms it causes, including its role in exacerbating racial disparities in sentencing and driving mass incarceration.

Charge stacking is uniquely problematic when applied to young people. Not only are the extreme sentences created by charge stacking counter to the Supreme Court's jurisprudence, but the lack of appreciation and understanding for the multitude of charges and sentences that could be imposed for their actions coupled with the undue power and influence to force guilty pleas, all make the use of charge stacking against youthful offenders not only wrong, but quite possibly a violation of the Eighth Amendment.

Case Number: SU-2022-0092-MP
Filed in Supreme Court
Submitted: 2/16/2024 3:18 PM
Envelope: 4490371
Reviewer: Zoila Corporan

# ARGUMENT

## I. THE U.S. SUPREME COURT JUVENILE SENTENCING CASES ARE RELEVANT TO THE APPLICATION OF SECTION 13-8-13(e)

### A. In *Roper*, *Graham*, And *Miller*, The Supreme Court Relied Upon Scientific Research Affirming Key Developmental Differences Between Youth And Adults

The Juvenile Sentencing Cases established as a matter of settled constitutional law that children are developmentally different from adults and require individualized consideration of their youthful characteristics before receiving harsh adult punishments. *See Roper,* 543 U.S. at 578-79 (striking down the juvenile death penalty as unconstitutional); *Graham*, 560 U.S. at 75, 82 (striking down life without parole sentences for juveniles convicted of nonhomicide offenses and requiring "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation"); *Miller*, 567 U.S. at 465 (striking down mandatory imposition of life without parole sentences for juveniles convicted of homicide).

In *Roper*, the first of the Juvenile Sentencing Cases, the Supreme Court analyzed and adopted established behavioral research to conclude that youth cannot be classified as "the worst offenders" based on three distinct characteristics: 1) they lack "maturity" and have an underdeveloped sense of responsibility which results in "impetuous and ill-considered actions and decisions," *Roper*, 543 U.S. at 569 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)); 2) they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure"

Case Number: SU-2022-0092-MP
Filed in Supreme Court
Submitted: 2/16/2024 3:18 PM
Envelope: 4490371
Reviewer: Zoila Corporan

and have limited control over their environment; 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, *id.* at 569-71. The Court found that these developmental differences—which it has relied on across all of its juvenile sentencing jurisprudence—make young people's conduct "not as morally reprehensible as that of an adult." *Id.* at 570 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (2005)).

In 2012, considering both the behavioral science as well as more recent neuroscience, the Court barred mandatory life without parole sentences for youth convicted of homicide and delineated specific factors that should be considered before sentencing youth to life without parole. *Miller*, 567 U.S. at 471-72, 477-78. These included "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. *Id.* at 477-78. In *Miller*, the Court recognized that "imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." *Id.* at 474. Because youth have diminished culpability, they have greater prospects for reform, making them "less deserving of the most severe punishments." *Id.* at 471 (quoting *Graham*, 560 U.S. at 68).

The Eighth Amendment jurisprudence established by the Juvenile Sentencing Cases "flows from the basic 'precept of justice that punishment for crime should be graduated and proportioned to [the] offense.'" *Roper*, 543 U.S. at 560 (alteration in original) (quoting *Atkins v. Virginia*, 536 U.S. 304, 311 (2002)). To meet the Eighth Amendment's proportionality requirement, the *Miller* factors require courts to take into account "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 567 U.S. at 480.

Four years after *Miller*, the Court held in *Montgomery* that "a State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole." *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016). The Court cautioned, however, that the state's parole system must "ensure[] that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment." *Id.* In other words, the Court found that even those juveniles sentenced to life with parole for homicide have Eighth Amendment rights to proportionate sentences that allow for a meaningful opportunity for release when their crimes reflected transient immaturity.[3]

[3] In *Jones v. Mississippi*, the Supreme Court once again affirmed its holdings in *Miller* and *Montgomery*, finding that lifetime incarceration is unconstitutional for youthful offenders whose crime reflects transient immaturity. 593 U.S. 98, 106 n.2 (2021).

### B. Adolescents And Older Teens Are Developmentally Similar And Youth Generally Desist From Criminal Behavior As They Reach Maturity

Research shows that older youth, including those above 18, share the same neurological and psychological traits, making them equally less culpable and less deserving of the most serious punishments meted out for adults. Indeed, researchers have established that the regions of the brain associated with immature decision making and reduced culpability relied on in the Juvenile Sentencing Cases, *see Miller*, 567 U.S. at 471-72, continue to develop into the twenties, *see* Catherine Lebel & Christian Beaulieu, *Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood*, 31 J. Neurosci. 10937, 10937 (2011); Adolf Pfefferbaum et al., *Variation in Longitudinal Trajectories of Regional Brain Volumes of Healthy Men and Women (Ages 0 to 85 Years) Measured with Atlas-Based Parcellation of MRI*, 65 NeuroImage 176, 189 (2013). Sensation-seeking peaks at age 19 and self-regulation does not reach full development until ages 23 through 26. 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 (2018).

Developmental psychology has also shown that though reasoning improves throughout adolescence and into adulthood, it is tied to and limited by the adolescent's psychosocial immaturity. *See* Laurence Steinberg & Elizabeth Scott,

*Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psych. 1009, 1011-13 (2003). Even if an adolescent has "adult-like" cognitive capacity to apply in certain "cold" decision making contexts, the adolescent's sense of time, lack of future orientation, pliable emotions, calculus of risk and gain, and vulnerability to pressure will often drive the teen to make very different decisions than an adult would make in emotionally stressful or "hot" situations. *See* Elizabeth Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 Future Child. 15, 20-22 (2008); *see* Alexandra O. Cohen et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 Psych. Scis. 549, 559 (2016) ("Young adulthood is a time when cognitive control is still vulnerable to negative emotional influences, in part as a result of continued development of lateral and medial prefrontal circuitry."); 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 Law & Hum. Behav. 69, 71 (2019).

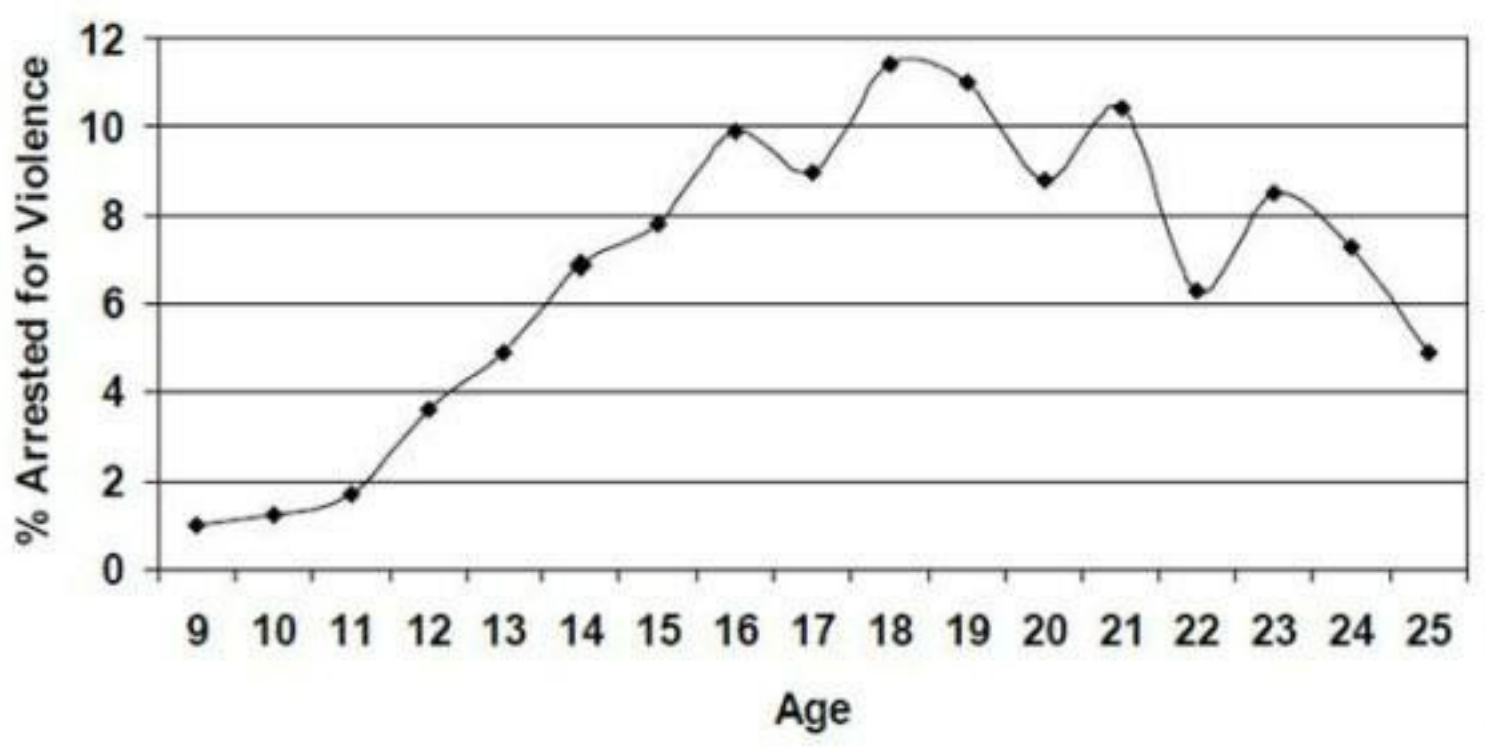
The parts of the brain associated with impulse control, propensity for risky behavior, vulnerability, and susceptibility to peer pressure are still developing well into late adolescence and into the twenties. Elizabeth S. Scott, Richard J. Bonnie & Laurence Steinberg, *Young Adulthood as a Transitional Legal Category: Science,*

*Social Change, and Justice Policy*, 85 Fordham L. Rev. 641, 642 (2016) (citing Laurence Steinberg, *Age of Opportunity: Lessons from the New Science of Adolescence* 5 (2014)) ("Over the past decade, developmental psychologists and neuroscientists have found that biological and psychological development continues into the early twenties, well beyond the age of majority."); *see also* Laurence Steinberg, *Does Recent Research on Adolescent Brain Development Inform the Mature Minor Doctrine?*, 38 J. Med. & Phil. 256, 263-64 (2013).

A comprehensive 2019 report from the National Academies of Sciences explains this shift in the understanding of adolescence, noting that "the unique period of brain development and heightened brain plasticity . . . continues into the mid-20s," and that "most 18–25-year-olds experience a prolonged period of transition to independent adulthood, a worldwide trend that blurs the boundary between adolescence and 'young adulthood,' developmentally speaking." Nat'l Acads. of Scis., Eng'g & Med., *The Promise of Adolescence: Realizing Opportunity for All Youth* 22 (Richard J. Bonnie & Emily P. Backes eds., 2019) (emphasis omitted), ht tps://www.ncbi.nlm.nih.gov/books/NBK545481/pdf/Bookshelf_NBK545481.pdf. The report concludes it would be "arbitrary in developmental terms to draw a cut-off line at age 18." *Id.*

Crime data supports the science, demonstrating the existence of an "age-crime curve." Specifically, criminal conduct is most common when individuals are young

and drops dramatically as adulthood is reached. Robert J. Sampson & John J. Laub, *Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70*, 41 Criminology 555, 585 (2003).




*From Youth Justice Involvement to Young Adult Offending Figure 1: An Example of the Age-Crime Curve*, Nat'l Inst. of Just. (2014), https://nij.ojp.gov/media/image/2776. Adulthood is marked by greater maturity, complete brain development, and factors that encourage desistance from crime, like family and work responsibilities. The combination of these factors results in a natural cessation in crime by the end of one's thirties and typically much sooner. There is perhaps no other area in criminological research so clear as the predictability of criminal conduct over the life course. *See From Youth Justice Involvement to Young Adult Offending*, Nat'l Inst. of Just. (2014), https://nij.ojp.gov/topics/articles/youth-justice-involvement-young-adult-offending.

Case Number: SU-2022-0092-MP
Filed in Supreme Court
Submitted: 2/16/2024 3:18 PM
Envelope: 4490371
Reviewer: Zoila Corporan

Based on this evidence, numerous lawmakers, scholars, practitioners and advocates urge an earlier review and rebuttable presumption of release from prison, and emphasize that it is especially important for youth and late adolescents. The Sentencing Project, the Vera Institute of Justice, the American Civil Liberties Union, Families Against Mandatory Minimums, the American Law Institute, and the American Bar Association are among the national groups which publicly support second look provisions and sentence caps for youth and emerging adults.[4]

### C. The Rhode Island General Assembly Recognized The Unique Characteristics Of Youth And Emerging Adulthood In Passing Section 13-8-3(e)

Rhode Island is among a growing number of states to recognize the science on emerging adulthood in enacting or amending laws affecting sentencing and release for youthful offenders who commit crimes after age 18.[5] In Rhode Island's

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[4] *See, e.g.*, Nazgol Ghandnoosh, The Sent'g Project, *A Second Look at Injustice* 9-10, 22-23, 34 (2021), https://www.sentencingproject.org/app/uploads/2022/10/A-Second-Look-at-Injustice.pdf; Marta Nelson et al., Vera Inst. of Just., *A New Paradigm for Sentencing in the United States* 26-28, 37-38, 43-44 (2023), https://www.vera.org/downloads/publications/Vera-Sentencing-Report-2023.pdf; *Coalition Letter Supporting the Second Look Act*, ACLU (Dec. 19, 2019), https://www.aclu.org/documents/coalition-letter-endorsing-second-look-act; *The Harms of Extreme Sentences and the Need for Second Look Laws,* FAMM, https://famm.org/wp-content/uploads/Second-Look-Principles-FINAL.pdf (last visited Feb. 13, 2024); Am. Bar Ass'n, *Resolution 502* 5-6 (2022), https://www.americanbar.org/content/dam/aba/administrative/news/2022/08/hod-resolutions/502.pdf.

[5] *See, e.g.*, Wyo. Stat. Ann. §§ 7-13-1002, 7-13-1003 (providing eligibility to offenders under 30 for placement in a youthful transition program and to a sentence reduction); Conn. Gen. Stat. Ann. § 54-125a (providing earlier parole eligibility to

case, the Youthful Offender Parole Act, enacted in 2021 and informally named for Mr. Monteiro, requires parole review after 20 years for those whose crimes occurred before they turned 22 years old.

By enacting Section 13-8-13(e), the General Assembly recognized that youthful offenders, including older youth, because of their developmental differences and heightened capacity for change, merit an earlier opportunity for parole consideration than older offenders.[6] The law follows from the extensive body of scientific research showing that the brain continues to mature well into a person's twenties and that these older adolescents as a whole take more risks, are more impulsive, and are more easily influenced by their peers than adults. *See supra* Section I.B.

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people under 21 at the time of their offense); Cal. Penal Code § 3051 (providing youth offender parole hearings to inmates who committed crimes when they were under 26); Ill. Comp. Stat. 5/5-4.5-115 (providing inmates who committed crimes when they were under 21 parole eligibility after 10-20 years); D.C. Code Ann. § 24-403.03 (allowing judges discretion to review sentences for offenders under 25 years old at the time of their offense after 15 years).

[6] A one-pager published on the General Assembly's website summarizes Governor Daniel J. McKee's criminal justice reform package and notes that the reforms would be "[r]esponsive to psychological and neurobiological research attesting to the diminished culpability of juveniles and emerging adults." *Governor Daniel J. McKee's FY 2022 Criminal Justice Reform Proposal*, State of R.I. Gen. Assembly (Apr. 8, 2021), https://www.rilegislature.gov/Special/comdoc/House%20Finance/04-08-2021--Article%2013%20Hearing%20Criminal%20Justice%20Reform%20Proposal%20One-Pager.pdf.

Indeed, in a hearing on an earlier version of Section 13-8-13(e), 2021-H5144, which would have shortened the first parole review date to 15 years for individuals who committed offenses prior to age 18,[7] Representative Julie Casimiro, one of the bill's sponsors, described the research on adolescent brain development as a critical driver of the proposed legislation:

> There has been a great deal of work done in the area of juvenile justice reform and the adolescent brain. We should not be sentencing our children to life sentences for crimes committed when their brains were not fully developed. . . . Juveniles have the distinct ability to grow and change and they deserve a second chance down the road. . . . Modern neuroscience demonstrates that teens are impulsive, risk seeking, and easily influenced by peer pressure, all traits that can lead them to a crime. But because they are still maturing, they are less likely to commit another crime as they grow up. For these reasons, justices across the country found they deserve an opportunity to reform themselves and be released back into their communities for a meaningful period of time after their incarceration.

Uprise RI, *RI House Judiciary Committee Discusses the Juvenile Offender Parole Act*, at 1:15-2:33, YouTube (Mar. 4, 2021), https://www.youtube.com/watch?v=B7vd390r0R4; *see also* Steve Ahlquist, *The Juvenile Offender Parole Act Would Allow a Second Chance at Life*, Uprise RI (Mar. 4, 2021), https://upriseri.com/juvenile-offender-parole-act/.

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[7] H. B. 5144, 2021 Gen. Assemb. (R.I.), https://webserver.rilegislature.gov/BillText21/HouseText21/H5144.htm. Substantive testimony on Section 13-8-13 specifically could not be found.

Applying Section 13-8-13(e) to Respondents and all youthful offenders who committed crimes under the age of 22—regardless of the number of charges and sentences imposed—is consistent with the U.S. Supreme Court's jurisprudence from the Juvenile Sentencing Cases and follows the expanding body of developmental neuroscience and behavioral science research in which the Court rooted its decisions. Section 13-8-13(e) was enacted in recognition that individuals like Respondents Monteiro, Neves, Nunes, and Ortega merit the opportunity to demonstrate to the parole board that the people they were over 20 years ago are not who they are today.

### D. Section 13-8-13(e) Is Consistent With Calls For A Twenty-Year Sentence Cap

Long-term imprisonment beyond 20 years is hard to justify even beyond the special considerations for youth. Though it makes intuitive sense that greater punishment will "send a message" that crime is unacceptable, the impulse to send people to prison for increasingly longer sentences as a general or specific deterrent to crime is flatly discredited by scholarly research. Daniel S. Nagin, *Deterrence: A Review of the Evidence by a Criminologist for Economists*, 5 Ann. Rev. Econ. 83, 86-88, 101 (2013); *see also* Daniel S. Nagin, & Greg Pogarsky, *Integrating Celerity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence*, 39 Criminology 865, 865 (2001). Renowned criminologist Daniel Nagin and colleagues have examined the impact of increased punishment on

crime deterrence in dozens of studies and failed to find any effects. Nagin, *supra*, at 86-88, 101.

From a public safety standpoint, there are diminishing returns on continuing to incapacitate a person beyond the point of their dangerousness. *Id.* at 101. A wealth of research on patterns of offending suggests that the average criminal career spans approximately ten years.[8] Extending the typical prison term to a maximum of 20 years with few exceptions responds to the person's risk of offending without unduly incarcerating people beyond their threat to public safety. Sentencing expert Marc Mauer has written that "to the extent that incarceration is imposed primarily for incapacitation, judges and policymakers should be cognizant that each successive year of incarceration is likely to produce diminishing returns for public safety." Marc Mauer, *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev. 113, 122 (2018); *see also* Marc Mauer & Ashley Nellis, *The Meaning of Life: The Case for Abolishing Life Sentences* 131-136 (2018).

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[8] Alfred Blumstein & Alex R. Piquero, *Restore Rationality to Sentencing Policy*, Criminology & Pub. Pol'y 679, 683 (2007); *see also* Lila Kazemian, Nat'l Inst. of Just., *Pathways to Desistance From Crime Among Juveniles and Adults: Applications to Criminal Justice Policy and Practice* 5 (2021), https://www.ojp.gov/pdffiles1/nij/301503.pdf; Lila Kazemian & David P. Farrington, *Advancing Knowledge About Residual Criminal Careers: A Follow-Up to Age 56 From the Cambridge Study in Delinquent Development*, 57 J. Crim. Just. 1, 2-3 (2018); Alex Piquero et al., *Criminal Career Patterns*, in *From Juvenile Delinquency to Adult Crime: Criminal Careers, Justice Policy, and Prevention* 14, 40-41 (Rolf Loeber & David P. Farrington eds., 2012).

In addition, people serving parole-eligible life sentences rely on a realistic hope for release that provides an incentive to engage in self-development programming. States including Rhode Island have statutes allowing life with parole and life without parole; the imposition of life with parole implies that the sentencer intended for this realistic hope for release. Scholar Marieke Liem conducted qualitative interviews of dozens of people serving life sentences and writes "Hope and the loss of hope distinguish lifers from other [prisoners]." Marieke Liem, *After Life Imprisonment: Reentry in the Age of Mass Incarceration* 84 (2016).

It is commonly the case that long-term prisoners with the opportunity for parole review make good use of their time in prison, availing themselves of programs that enhance their education, address issues of mental health and substance use disorder, and develop vocational skills. Mauer & Nellis, *supra*, at 48. Restorative justice initiatives in prison include repairing the harm caused to victims and communities, promoting healing, and accepting responsibility for one's role in the crime. They have been studied in the most sophisticated research methods and found to be a cost-effective means of reducing recidivism. Lawrence W. Sherman et al., *Are Restorative Justice Conferences Effective in Reducing Repeat Offending? Findings from a Campbell Systematic Review*, 31 J. Quantitative Criminology 1, 1 (2014). Restorative justice and other rehabilitation endeavors can facilitate successful release without depriving freedom forever.

Case Number: SU-2022-0092-MP
Filed in Supreme Court
Submitted: 2/16/2024 3:18 PM
Envelope: 4490371
Reviewer: Zoila Corporan

Imposing a 20-year limit with few exceptions creates a paradigm change from retribution to rehabilitation as policymakers and prison administrators reckon with large prison populations and the fact that nearly everyone they put in prison would eventually come home. These individuals need effective programs and services to ensure that they can safely return.

## II. THE STATE SEEKS TO PRESERVE THE POWER AND INFLUENCE IT WIELDS OVER YOUTHFUL OFFENDERS THROUGH CHARGE STACKING

Respondents are not serial criminals. Respondents have simply been subjected to charge and sentence stacking. Stacking works by dividing up crime and multiplying punishment; and the more serious the offense, the greater the likelihood it can and will be divided into multiple separate and legally defined "crimes," with each one carrying a separate and independent sentence that can run concurrently or consecutively. *See Stacked: Where Criminal Charge Stacking Happens–And Where it Doesn't*, 136 Harvard L. Rev. 1390, 1390 (2023). In the case of Mr. Monteiro, who used a gun in the commission of a murder, his one crime automatically became two consecutive life sentences. While charge stacking as a practice is longstanding, *id*., its use by prosecutors to pursue and secure extreme sentences and swift guilty pleas has become pervasive and abusive, exacerbating racial disparities and inviting criticism and calls for its abandonment. When used against youthful offenders it may even violate the Eighth Amendment. Should the State succeed in its arguments

against the just application of Section 13-8-13(e) to Respondents, it will only serve to encourage and expand the harmful use of charge stacking against youthful offenders in Rhode Island. This cannot be allowed to happen.

### A. Charge Stacking Undermines The General Assembly's Express Effort To Reduce Extreme Sentences And This Court's Effort To Eliminate Racial Disparities In The Justice System

The use of charge stacking by prosecutors to secure convictions and impose longer (consecutive) sentences is not a new or even recent phenomenon. *See* John. F. Stinneford, *Dividing Crime, Multiplying Punishments*, 48 U.C. Davis L. Rev. 1955, 1957 (2015). However, in the last few decades, particularly in the wake of "three strikes" and other tough on crime measures passed in the 1980s-1990s, the practice has become ubiquitous and is a central tool driving excessive sentences today. Indeed, one study shows that while crime has been declining overall since the 1990s, the number of charges being filed against criminal defendants has been increasing and leading to longer sentences. *See* Heather Shoenfield et al., *Maximizing Charges: Overcriminalization and Prosecutorial Practices During the Crime Decline*, in *After Imprisonment: Special Issue* 145, 168-71 (Austin Sarat ed., 2019) (analyzing Florida felony charge and conviction data from 1995 through 2015).

Charge stacking advantages prosecutors in a number of ways. First, the more crimes a prosecutor can charge against a criminal defendant, the greater the

likelihood of securing a conviction on at least one of those charges. *See Stacked, supra*, at 1393-94, 1400-11 (reviewing charging data for several states and finding that convictions tend to increase with the number of charges and that state prosecutors use charge stacking more frequently than federal prosecutors).

Second, stacked charges lead to longer combined sentences as multiple sentences may, and in cases like Monteiro's, *must* be served consecutively. Miranda A. Galvin, *Stacking Punishment: The Imposition of Consecutive Sentences in Pennsylvania*, 21 Criminology & Pub. Pol'y 567, 568 (2022). Whether and when multiple convictions lead to sentences being applied consecutively versus concurrently is "entirely unstructured" and can vary greatly. *Id*. (citing Richard S. Frase, *The Treatment of Multiple Current Offenses*, in *Criminal History Enhancements Sourcebook* 91 (Richard S. Frase et al. eds., 2015)). In response to the danger of excessive consecutive sentences, the Model Penal Code now recommends that sentencing commissions develop guidelines that (1) include a general presumption in favor of concurrent sentences, and (2) cap total sentences at twice the presumptive sentence for the most serious offense. Model Penal Code: Sentencing § 9.07(2), (7) (Am. L. Inst. 2023).

Third, the increased likelihood of conviction coupled with the likelihood of excessive and consecutive sentences upon conviction make charge stacking a powerful bargaining tool used by prosecutors to extract guilty pleas. In Rhode Island,

based on 2019 data from the National Center for State Courts ("NCSC"), out of 39,354 criminal cases resolved, only 36 had gone to trial. Ronald Fraser, *Opinion/Fraser: Rhode Island's Do-It-Yourself Justice System*, Providence J. (Oct. 18, 2021), https://www.providencejournal.com/story/opinion/2021/10/18/opinion-fraser-rhode-islands-do-yourself-justice-system/6093909001/. Meanwhile, NCSC national data from 2016-2017 shows that of felony cases that do go to trial, one third of them ended in dismissal or acquittal. *Id.* Accordingly, there are many who plead guilty who would not be found guilty at trial. The "trial penalty" imposed on criminal defendants who opt to exercise their right to trial, however, according to the National Association of Criminal Defense Lawyers, "is now so severe and pervasive it has virtually eliminated the constitutional right to a trial." Casey J. Bastian, *The Power of the Prosecutor in America: Abuse, Misconduct, Unaccountability, and Miscarriages of Justice*, Crim. Legal News (Apr. 2023), https://www.criminallegalnews.org/news/2023/mar/15/power-prosecutor-america-abuse-misconduct-unaccountability-and-miscarriages-justice/.

Charge stacking also exacerbates racial inequities as the harms imposed on criminal defendants are felt most acutely by Black and Brown defendants. Since 2019, recognizing the widespread use of charge stacking to impose excessively long sentences, the threat of those sentences to coerce guilty pleas, and the racial disparities in arrests, the NAACP called for a complete and total ban on the practice.

*Resolution: Opposition to Charge Stacking*, NAACP (2019), https://naacp.org/resources/opposition-stacking-charges. The NAACP's concerns and resolution have been validated by the American Bar Association's recently released 2023 Plea Bargain Task Force Report:

> The Task Force collected testimony from experts in the field who demonstrated that throughout the plea process similarly situated defendants of color fare worse than white defendants. Black defendants in drug cases, for instance, are less likely to receive favorable plea offers that avoid mandatory minimum sentences and, as a result, receive higher sentences for the same charges as white defendants. ***The same is true for gun cases, in which Black defendants are more often subjected to charge stacking—a technique that allows prosecutors to pile on many charges, increasing the likely sentence after trial and the government's leverage during plea negotiations—than white defendants***. In fact, across all charges the Task Force found evidence of significant racial disparities in prosecutorial decisions to drop or reduce charges.

Thea Johnson, Am. Bar Ass'n Crim. Just. Section, *2023 Plea Bargain Task Force Report* 7 (2023) (emphasis added), https://www.americanbar.org/content/dam/aba/publications/criminaljustice/plea-bargain-tf-report.pdf.

In 2020, this Court issued Executive Order 2020-15 establishing the Committee on Racial and Ethnic Fairness in the Rhode Island Courts and charged the committee with "identify[ing] and confront[ing] areas where racism, inequality, and discrimination may exist in our judicial system." R.I. Sup. Ct., *Executive Order 2020-15* 3 (2020), https://www.courts.ri.gov/Courts/SupremeCourt/SupremeExec

Orders/2020-15.pdf. Among the areas the committee was charged with investigating was plea bargains. *Id.* Applying Section 13-8-13(e) to Respondents is consistent with the goals of this Court in confronting discrimination and inequality. The Court should seize the opportunity presented to limit the harms of charge stacking.

### B. Charge Stacking Is Uniquely Problematic When Applied To Youthful Offenders, Raising Eighth Amendment Concerns

The use of charge stacking as a tool to generate the most severe punishment for an underlying offense conflicts with the Juvenile Sentencing Cases' requirement that youth be treated differently and not subjected to the most severe forms of punishment. *See supra* Section I.A. Similarly, its use as a tool to coerce guilty pleas takes advantage of young people's unique vulnerabilities.

As the Supreme Court first identified in *Roper*, impulsivity and vulnerability to outside pressures are among the defining characteristics of adolescence. *Roper*, 543 U.S. at 569. Due to their lack of foresight, trouble weighing risks and rewards or performing cost-benefit analyses, and difficulty in planning for the future, adolescents struggle to appreciate the repercussions of their actions. *See* Steinberg & Scott, *supra*, at 1011-12. This lack of understanding and foresight puts young people at a significant disadvantage in legal proceedings—particularly in the context of plea decisions, which can result in a multitude of convictions and multiple consecutive sentences.

The science of adolescent brain development has been applied to plea decisions and confirms that young people's differing thought processes render them uniquely vulnerable to making shortsighted decisions in plea negotiations. Studies show that youth are more likely than adults to plead guilty when offered a superficial sentence incentive—in the study, receiving one year of probation instead of two—regardless of guilt. Rebecca K. Helm et al., *Too Young to Plead? Risk, Rationality, and Plea Bargaining's Innocence Problem in Adolescents*, 24 Psych. Pub. Pol'y & L. 180, 182, 189 (2018). In the plea context, "even not-guilty adolescents . . . ,adolescents . . . who will receive a felony for pleading guilty, and adolescents . . . for whom the chance of conviction at trial is low, are influenced [more than postcollege aged adults] by a superficial sentence length incentive." *Id.* at 189. Adolescents are also far more likely than adults to plead guilty to crimes they did not commit. *Id.* at 180, 189; Allison D. Redlich & Reveka V. Shteynberg, *To Plead or Not to Plead: A Comparison of Juvenile and Adult True and False Plea Decisions*, 40 Law & Hum. Behav. 611, 616-17, 620 (2016) (finding adolescents asked to assume innocence were more than twice as likely as adults to plead guilty). One study found this to be true even when pleading guilty conflicted with the youths' stated value of not wanting to plead guilty when innocent. Helm et al., *supra*, at 189. Researchers attributed this to differences in the adolescent thought process, concluding that "the mental representations that [adolescents] use to process plea

decisions do not cue their values, and, hence, [adolescents] fail to retrieve and apply appropriate values during their plea decision making." *Id.* (first citing Kentaro Fujita & H. Anna Han, *Moving Beyond Deliberative Control of Impulses: The Effect of Construal Levels on Evaluative Associations in Self-Control Conflicts*, 20 Psych. Sci. 799 (2009), and then citing Valerie F. Reyna, *A New Intuitionism: Meaning, Memory, and Development in Fuzzy-Trace Theory*, 7 Judgment & Decision Making 332 (2012)).

Moreover, adolescents have "a much stronger tendency . . . to make choices in compliance with the perceived desires of authority figures." Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings on Adolescent Development and Juvenile Justice*, 7 Victims & Offenders 428, 440 (2012) (citing Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. & Hum. Behav. 333 (2003)). This can cause youth to make decisions against their best interests. *See also* Erika Fountain, *Adolescent Plea Bargains: Developmental and Contextual Influences of Plea Bargain Decision Making* 53, 57 (May 2, 2017) (Ph.D. dissertation, Georgetown University), https://repository.library.georgetown.edu/bitstream/handle/10822/1043881/Fountain_georgetown_0076D_13752.pdf (suggesting that the high stakes nature of the plea process may create a "hot," or emotionally charged, environment

that overwhelms adolescents' ability to make reasoned decisions and resist authoritative pressures).

The Supreme Court has recognized the unique susceptibility of youth to authoritative pressure, specifically in the context of interrogations. *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011). In *J.D.B.*, the Court explained "that children 'generally are less mature and responsible than adults,' . . . 'lack the experience, perspective, and judgment to avoid choices that could be detrimental to them,' . . . [and] 'are more vulnerable or susceptible to . . . outside pressures' than adults." *Id.* at 272 (fourth alteration in original) (first quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115-116 (1982); then quoting *Bellotti v. Baird*, 443 U.S. 622, 635 (1979); and then quoting *Roper*, 543 U.S. at 569).

Their impulsivity and susceptibility to authoritative pressure make young people uniquely vulnerable when making plea decisions. Allison D. Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, 62 Rutgers L. Rev. 943, 953 (2010) (suggesting that "[l]imited one-time plea offers, the authority of prosecutors, and other social influence compliance-gaining tactics" in plea negotiations may increase the likelihood that a teenager will plead guilty even if innocent). Given their unique vulnerability, imposing on young people a series of stacked charges and the possibility of numerous consecutive sentences creates overwhelming pressure to plead guilty, regardless of guilt.

While Eighth Amendment precedent from the Supreme Court has upheld extreme sentences created by consecutively stacked charges, the First Circuit has suggested that precedent must be revisited in light of the Juvenile Sentencing Cases. *See United States v. Rivera–Ruperto*, 884 F.3d 25, 25-26 (2018) (applying *Harmelin v. Michigan*, 501 U.S. 957 (1991) to uphold a mandatory 160-year sentence that was the result of multiple stacked drug charges pursuant to 18 U.S.C. § 924(c)). The First Circuit recognized "the draconian results that could follow from the 'stacking' of § 924(c) sentences, [and] the Eighth Amendment implications of doing so when multiple § 924(c) convictions are handed down at a single trial or across a pair of trials," but was compelled by precedent to uphold the 160-year sentence for what it viewed as a non-violent crime. *Id.* at 42. The First Circuit pointed to the Juvenile Sentencing Cases as requiring a different approach to the Eighth Amendment than the one contemplated by the Supreme Court in *Harmelin*. *Id.* at 46-47. Given the unique harms imposed on youthful offenders from excessive charge stacking, such an inquisition is likely warranted, and should give this Court pause in assessing the veracity of the State's arguments and their impact on youth.

## CONCLUSION

For the foregoing reasons, *Amici Curiae* respectfully request that the decision below from the Superior Court be upheld, and Respondents be released in

accordance with their pre-existing parole decisions issued by the Rhode Island Parole Board.

Respectfully submitted,

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# CERTIFICATE OF SERVICE

I hereby certify that, on the 16th day of February, 2024:

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