No. 130930

IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	**Appeal from the Appellate Court of Illinois, First District, Nos. 1-22-1859 & 1-23-0328 (consolidated)**
Respondent-Appellant.	)	
vs.	)	**There on Appeal from the Circuit Court of Cook County, Illinois, No. 93 CR 22656**
CORWYN BROWN,	)	
Petitioner-Appellee.	)	**Hon. James B. Linn, Presiding**

AMICUS BRIEF IN SUPPORT OF PETITIONER-APPELLEE

Andrea Louise Lewis
Sara Louise Sommervold
CENTER ON WRONGFUL CONVICTIONS
NORTHWESTERN PRITZKER SCHOOL OF LAW
375 East Chicago Ave.
Chicago, IL 60611
(312) 503 2391
andrea.lewis@law.northwestern.edu

Shobha L. Mahadev
CHILDREN AND FAMILY JUSTICE CENTER
BLUHM LEGAL CLINIC
NORTHWESTERN PRITZKER SCHOOL OF LAW
375 East Chicago Avenue
Chicago, IL 60611
(312) 503-8576
s-mahadev@law.northwestern.edu

ILLINOIS PRISON PROJECT
53 West Jackson, Suite 452
Chicago, IL 60604
(312) 324-4463

E. King Poor
James I. Kaplan
Christopher E. Gay
QUARLES & BRADY LLP
155 N. Wacker Drive, Suite 3200
Chicago, Illinois 60606
(312) 715-5000
king.poor@quarles.com
Counsel for Illinois Prison Project

Mira DeJong
RESTORE JUSTICE FOUNDATION
P.O. Box #101099
Chicago,60610
(312) 809-6992
mira@illinoisprisonproject.org

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STATEMENT OF AMICI

Center on Wrongful Convictions. Founded in 1999, the Center on Wrongful Convictions (CWC) at Northwestern University Pritzker School of Law is dedicated to identifying and rectifying wrongful convictions, wrongful sentencing, and other serious miscarriages of justice. It does so through direct client representation, public education, and advancement of legal reform. To date, the Center has exonerated or freed more than fifty innocent people from states around the country and obtained relief from extreme sentences for more than a dozen individuals, many of whom were under age 21 at the time of the crimes for which they were sentenced. Its attorneys have developed special expertise in relevant areas including youth in the criminal legal system, criminal punishments, and the Illinois Constitution. As such, the CWC has a particular interest in upholding the protections of the state constitution and preventing a miscarriage of justice in the form of death-in-prison sentences for the individuals who are least likely to pose a permanent danger to the community.

Children and Family Justice Center. The Children and Family Justice Center (CFJC), part of Northwestern Pritzker School of Law's Bluhm Legal Clinic, was established in 1992 as a legal service provider for children, youth, and families, as well as a research and policy center dedicated to teaching and training law students. The CFJC advocates on policy issues affecting children and young adults in the Illinois legal system and directly represent youth in areas that include juvenile delinquency and the criminal

legal system. Over its 33-year history, the CFJC has served as *amicus curiae* in numerous state and United States Supreme Court cases based on its expertise in the conviction and sentencing of children and young adults in the legal system.

Illinois Prison Project. Through advocacy, public education, and direct representation, the Illinois Prison Project (IPP) works on behalf of thousands of individuals incarcerated in the State of Illinois. IPP firmly believes that no person is their worst act and has won the release of over 170 people since opening its doors in 2019. IPP represents incarcerated people in clemency, parole, resentencing, and medical release proceedings, among other methods, to pursue the release of individuals serving excessive sentences. In 2020, IPP petitioned for clemency on behalf of more than 100 incarcerated people sentenced to life in prison as a habitual offender for their third or subsequent Class X felony conviction. Many of those who IPP represents have a predicate offense that took place before their 21st birthday. IPP strongly supports a criminal legal system that recognizes emerging adults' strong potential for rehabilitation and that allows for growth, compassion and meaningful review.

Restore Justice. Founded in 2015, Restore Justice is a state-wide policy organization dedicated to the significant and growing population of individuals serving life or de facto life sentences for convictions they received as children or young adults. Restore Justice advocates for fairness, humanity, and compassion throughout the Illinois criminal legal system; creates and

supports policies that allow those who are rehabilitated to go home; and promotes system changes to ensure those who are incarcerated, their families, and victim families have opportunities for healing and justice. Restore Justice recognizes the inherent dignity of every human being, including those who have committed serious crimes. In Illinois, Restore Justice led the effort to abolish life without parole sentences for most people under 21. Before abolishing life without parole sentences for young people, Restore Justice's advocacy ensured passage of the 2019 Youthful Parole Law, which created the first new parole opportunities in Illinois since 1978. Restore Justice's policy initiatives are derived from research and lived experience and leverage the leadership of people directly impacted by juvenile life without parole sentences.

INTRODUCTION

The law and public policy of the State of Illinois have long reflected the fact that younger people who offend have greater potential for rehabilitation than older adults. Moreover, our state Constitution requires sentencing practices that account for each person's rehabilitative potential. But a life sentence without parole ends any hope of rehabilitation. At the center of this case is whether offenses committed by younger persons should serve as predicates for life sentences without parole—that will continue to extinguish any such hope.

The question in this case calls for a straightforward statutory construction. In 2021, the General Assembly made parallel amendments to

both subsections of Illinois' General Recidivism statute. This Court has already held that one subsection applies retroactively. Yet the State argues that the other, identically worded subsection, should be applied prospectively. With this brief, the amici seek to assist the Court by providing further understanding as to why the legislature when amending two subsections of the same statute never intended that young persons who committed qualifying offenses while under the age of 21 should continue to endure life sentences under one subsection, but under the other subsection, those who committed qualifying offenses under the age of 21 would be relieved of less harsh sentences. None of that makes sense, let alone conforms to Illinois law or policy.

The first part of the brief discusses the structure and language of the statute at issue and the split of appellate court authority that the legislature sought to clarify with the two identical amendments. The second part of the brief draws on the long history of Illinois law and policy of treating younger offenders less harshly—with the goal of promoting their rehabilitation—and why interpreting one subsection to be retroactive, but not the other, would produce absurd and unjust consequences contrary to that policy. Finally, the third part of the brief draws on that same history to demonstrate that an interpretation of the statute that assumes the legislature intended to clarify one subsection, but not the other, would also violate the Illinois Constitution's proportionate penalties clause.

ARGUMENT

I. The legislature never intended that two amendments with identical language and effective dates would be retroactive for only one subsection, but not the other.

Two subsections comprise the "General Recidivism Provisions" of Section 5-4.5-95 of the Unified Code of Corrections, the statute at issue here. Subsection 95(a) defines "habitual criminals" as follows:

> Every person who has been twice convicted in any state or federal court of an offense that contains the same elements as an offense now (the date committed after the 2 prior convictions) classified in Illinois as a Class X felony, criminal sexual assault, aggravated kidnapping, or first degree murder, and is who is thereafter convicted of a Class X felony, criminal sexual assault, or first degree murder, committed after the 2 prior convictions, shall be adjudged an habitual criminal.

730 ILCS 5-4.5-95 (a)(1)("subsection 95(a)"). The mandatory penalty for a "habitual criminal" is natural life in prison, regardless of whether the defendant would have received a lesser penalty for a first or second conviction for the same offense. *See id*. § 95(a)(5).

The other recidivist subsection, 95(b), addresses sentencing for those who were twice previously convicted of Class 2 or greater forcible felonies. Subsection 95(b) is structured the same way as subsection 95(a), in that two prior convictions serve as predicates for a more severe sentence after a third conviction:

> When a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 forcible felony after having twice been convicted in any state or federal court of an offense that contains the same elements as an offense now (the date of the Class 1 or Class 2 forcible felony was committed) classified in Illinois as a Class 2 or greater Class forcible felony and those charges are separately brought and tried

> and arise out of different series of acts, that defendant shall be sentenced as a Class X offender.

Id. § 95(b) ("subsection 95(b)"). The sentencing range for a Class X offense is 6 to 30 years in prison. 730 ILCS 5/5-4.5-25.

Before the 2021 amendments, each subsection was silent as to whether offenses committed by juvenile or emerging adults qualified as prior convictions that triggered the more severe sentence. That silence gave rise to a split of authority between the First and Fourth Districts, prompting identical amendments that placed age limits on the first qualifying offense for both subsections. 730 ILCS 5-4.5-95 (West 2021).

A. The General Assembly's 2021 amendments to subsections 95(a) and (b) resolved a split in authority that affected youthful defendants sentenced under both subsections.

In *People v. Miles*, 2020 IL App (1st) 180736, the defendant challenged the validity of his classification as a Class X offender for sentencing purposes under subsection 95(b) where he had committed the first crime at age 15. *Id.* ¶¶ 1, 3. Thereafter, the Juvenile Court Act was amended to, among other changes, raise the minimum age of "excluded minors" to 16. *Id.* ¶ 6. Therefore, the defendant argued, his first offense would have been resolved in juvenile court, such that he "would not have been subject to criminal laws." *Id.* ¶ 7. In other words, that offense did not result in a qualifying prior criminal conviction, and the court could not apply the harsher Class X sentencing scheme.

In *Miles*, the State's contrary argument relied on two decisions that addressed prior juvenile convictions under the parallel subsection 95(a). *Id.* ¶ 18. The State cited *People v. Banks*, 212 Ill. App. 3d 105, 107-08 (5th Dist. 1991) holding that a first juvenile conviction qualified for a habitual criminal sentence under subsection 95(a) because "[n]o exception [in the statute] is made for convictions obtained while the defendant was a juvenile." *Id.* at 107. The State also relied on *People v. Bryant,* 278 Ill. App. 3d 578 (1st Dist. 1996), which, relying on *Banks*, again concluded that a juvenile's first prior conviction qualified for habitual criminal sentencing under subsection 95(a). *Id.* at 58.

The court in *Miles* did not, however, follow *Banks* and *Byrant* because they were decided before the amendments making the defendant's offense subject to the exclusive jurisdiction of the juvenile court. *Id.* ¶ 21. As a result, the court then held that the offense would have led to a "juvenile adjudication," rather than a qualifying conviction, and vacated the sentence. *Id.* ¶ 22.

Eight months after *Miles*, the Fourth District in *People v. Reed,* 2020 IL App (4th) 180533 reached the opposite conclusion on the same question. In *Reed*, the court held that a prior conviction for a crime committed as a juvenile was in fact a qualifying offense for Class X sentencing, reasoning that the statutory elements for a prior conviction had not changed, and that the age of the offender was never an element of the offense. *Id.* ¶¶ 27-28.

Shortly after *Reed* gave rise to a split of authority with *Miles*, the legislature resolved the conflict by enacting a bill that simultaneously amended both recidivist subsections. The amendments for both subsections were worded identically; they only applied if "[t]he first offense was committed when the person was 21 years of age or older." 730 ILCS 5/5-4.5-95(a)(4)(E) and 95(b)(4). The effective date for the two amendments was also identical. (P.A. 101-652, eff. July 1, 2021).

B. The General Assembly intended both amendments to clarify, not change, subsections 95(a) and 95(b).

Then, in *People v. Stewart*, 2022 IL 126116, the Court held that because the 2021 amendment to subsection 95(b) was enacted after the split arose between *Miles* and *Reed*, the legislature intended to "clarify the meaning of the original statute," not change it. *Id.* ¶ 22. Accordingly, the Court concluded that the defendant's 2013 offense when he was 17 years old did not qualify to trigger the recidivist penalty. *Id.* ¶ 22.

Like subsection 95(b), subsection 95(a) was silent as to a defendant's age for the first two offenses. And like the amendment to subsection 95(b), the amendment to subsection 95(a) specified that the first qualifying offense must have been committed when the defendant was at least age 21. It follows then that there is no sound reason to believe that the legislature clarified subsection 95(b), but then used the same language to substantively change subsection 95(a).

The State does not deny that subsections 95(a) and (b) were equally silent as to the ages for prior offenses. Instead, the State claims that by deleting the minimum age of 18 for the *third* offense as part of the 2021 amendments, the legislature intended to substantively change, not clarify, subsection 95(a). (St. Br. at 27-28). But this argument overlooks that a 2016 amendment setting age 18 for the third offense did not address the first two offenses. The more sound interpretation of the legislature's action is that because it was clarifying that a higher age of 21 was required for the first offense, it no longer made sense to include the lower age for the third offense. Removing an obstacle to logically clarifying the original meaning did not make it any less of a clarification.

II. The legislature never intended to create a result contrary to Illinois public policy by clarifying one recidivist subsection, but not the other.

When determining legislative intent, courts may consider the consequences of construing a statute one way or another. *People v. Garcia*, 241 Ill.2d 416, 421 (2011). And courts should always assume that the legislature did not wish to create absurd or unjust consequences. *Id.*; *People v. Gaytan*, 2015 IL 116223, ¶ 23.

Here, the State makes no mention of the very real consequences of its proposed reading of subsection 95(a), which would undermine over a century of Illinois public policy to treat youth as a mitigating factor when assigning criminal penalties. For instance, under the State's rationale, a person who was sentenced under subsection 95(b) before the 2021 amendment and who

committed their first Class X offense at age 20 and their third at age 40, could be resentenced to at most 30 years in prison. But a person who was sentenced under subsection 95(a) before the amendment and who committed their *last* predicate Class X offense at age 18 must serve our law's harshest sentence—natural life in prison. The legislature could not have intended to punish people who continued offending well into adulthood less harshly than those whose only offenses occurred when they were not yet mature.

A. For more than a century, Illinois courts and the legislature have recognized that young people are distinct from mature adults and should be given distinct protections under the law.

A historical review makes clear that neither the General Assembly nor Illinois courts would support an interpretation of a statute that would essentially prevent juveniles from receiving a less harsh sentence under one scheme, only to subject them to this State's harshest sentence under the other. Indeed, history shows the opposite: Illinois policy, legislation, and court decisions have long recognized that young people are presumed to be immature well beyond age 18.

1. Protecting youth in the penal context

For more than a century, Illinois courts have recognized the differences between adulthood and youth, affording additional protections focused on rehabilitation and the long-term success of the child. Steven A. Drizin, *The Juvenile Court at 100*, 83 Judicature 8, 11 (July-August 1999). This awareness materialized in early legislative action by the General Assembly

that afforded even young people up to age 21 enhanced sentencing protections and opportunities for rehabilitation.

Illinois was the first state in the nation to establish a separate juvenile court in 1899. Annie Keller, *A Look at the Inception and Evolution of the Juvenile Legal System in Illinois*, 27 Pub. Int. L. Rep. 76, 76 (2022). Recognizing the need for enhanced protections, the Illinois juvenile court was designed to function differently than the typical criminal courtroom: "court proceedings were informal, non-adversarial, and closed to the public." Drizin, 83 Judicature at 11.

Moreover, the legislature and Illinois courts "have long been aware that less than mature age can extend into young adulthood – and they have insisted that sentences take into account that reality of human development." *People v. Haines*, 2021 IL App (4th) 190612, 188 N.E.3d 825, 835, *as modified on denial of reh'g* (Nov. 19, 2021). In 1891, the Illinois legislature established the Illinois State Reformatory, which housed boys between the ages of 10 and 21 years old in lieu of sentencing them to the penitentiary. *See People ex. rel. Bradley v. Superintendent, etc., of Illinois State Reformatory*, 148 Ill. 413, 416-17 (1894). Undergirding this legislation was, as the Supreme Court explained, "the humane and benign intention of the general assembly to afford a means for the reformation of youthful criminals." *Id.* at 418-19. The Court described "a marked distinction between persons of mature age and

those who are minors,—the habits and characters of the latter are presumably, to a large extent, as yet unformed and unsettled." *Id.* at 423.

The Court also recounted the lengths to which the legislature went to limit for minors the "highly penal" sentence that could be imposed and concluded:

> It is manifest that the sentences provided for in the statute establishing the reformatory…are not of so purely a penal character as those imposed upon adults convicted of like offenses; but that the primary object of the statute is the reformation and amendment of those committed to the reformatory.

Id. at 424. Notably, the legislation that created the state reformatory defined "minors" as individuals up to age 21. *Id.* at 422-23.

Then, in 1914, Illinois created a Boys Court, the "first and only socialized criminal court in America equipped with full power to try and sentence young men between seventeen and twenty-one." Michael Willrich, *City of Courts: Socializing Justice in Chicago* 210 (2003); Michael Willrich, *Boyz to Men...and Back Again? Revisiting a Forgotten Experiment in Juvenile Justice*, 86 Judicature 258, 259 (March-April 2003). The Boys' Court filled the role between the juvenile court, whose jurisdiction ceased on a child's 17th birthday, and the traditional criminal justice system. *Id.*[1] Judges had wide discretion to pursue rehabilitative outcomes in lieu of prison sentences,

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[1] That court operated until 1969, by which time juvenile justice administration had taken hold nationally. Willrich, *Boyz to Men*, supra, at 259.

including "probation, a court-as-signed job, [or] checking in with a Catholic 'Big Brother' or other religious agent." *Id.* at 261. In describing the purpose of the Boys' Court, one judge referred to its population as "plastic young violators of the law, boys upon the threshold of manhood, about to be charged with the responsibility of adult citizens." *Id.* at 260.

This recognition has endured in modern times. Illinois juvenile court jurisdiction extends until a young person reaches age 21. *See* 705 ILCS 405/5-755(1) (West 1999). Indeed, the Juvenile Court Act defines a "minor" as a person under the age of 21. 705 ILCS 405/1- 3(10) (West 2021); 705 ILCS 405/5-105(10) (West 2021). And as more information emerges on brain development and the areas that remain underdeveloped until well into one's twenties, the General Assembly has continued this long history of youth-based sentencing protections in ways that prioritize rehabilitation over punishment.

In *Miller v. Alabama*, the U.S. Supreme Court held that mandatory life-without-parole sentences for youth under age 18 were unconstitutional. *Miller v. Alabama*, 567 U.S. 460, 489 (2012). The *Miller* Court relied on scientific evidence of developmental differences between children and adults and wrote that "children cannot be viewed simply as miniature adults." *Id.* Psychological and scientific studies, as detailed by the Court, have found "transient rashness, proclivity for risk, and inability to assess consequences" in children, which "both lessen a child's 'moral culpability' and enhance the

prospect that, as the years go by and normal neurological development occurs, his 'deficiencies will be reformed.'" *Id.* at 472 (quoting *Roper v. Simmons*, 543 U.S. 551, 570 (2005)).

The General Assembly readily accepted the underlying rationale for the *Miller* decision, enacting reforms that aligned with the science mentioned therein. For example, in 2014, the General Assembly raised the age of juvenile court jurisdiction for both misdemeanors and felonies to age 18. *Karen U. Lindell & Katrina L. Goodjoint, Rethinking Justice for Emerging Adults, Juvenile Law Center* 1, 27 (2020). The following year, the legislature passed a bill that eliminated the mandatory transfer of 15-year-olds from juvenile court to adult criminal court and raised the age to even consider a transfer to criminal court from 15 to 16. Pub. Act 99-0258 (eff. Jan. 1, 2016). The same bill required courts to consider an enumerated list of mitigating factors before determining the appropriate sentence for persons under age 18. *Id.*

In 2019, the Court determined that constitutional concerns for juvenile defendants arise not just in sentences of life without parole, but even in *de facto* life sentences of more than 40 years' imprisonment. *People v. Buffer*, 2019 IL 122327, 137 N.E.3d 763, 774. The same year, the General Assembly reinstated parole in Illinois for most individuals who were under 21 at the time of their crimes. *See* 730 ILCS 5/5-4.5-115(b) (West 2019). And as of 2024, that youthful parole law applies to all individuals under age 21 at the time of

the offense. Pub. Act 102-1128 (amending 730 ILCS 5/5-4.5-115 b) (eff. Jan. 1, 2024).

The General Assembly's message for over a century continues to be clear: young people are different, even into young adulthood, and their criminal penalties must "take into account that reality of human development." *Haines*, 2021 IL App (4th) 190612, ¶ 47.

2. Legislation protecting youth in other contexts

In quasi-criminal and non-criminal contexts too, both before and after the amendments to subsections 95(a) and (b), the General Assembly has passed legislation aimed at protecting young people below the age of 21. Illinois law prohibits the sale and delivery to persons under the age of 21 of alcohol, see 235 ILCS 5/10-1 (West 2015), cannabis, see 410 ILCS 705/10-15 (West 2019), and tobacco products, electronic cigarettes, and alternative nicotine products, see 720 ILCS 675/1 (West 2022); *see also* Traci L. Toomey, et al., *The Minimum Legal Drinking Age: History, Effectiveness, & Ongoing Debate*, 20 Alcohol Health Res. World 213-218 (1996) (discussing the drinking age as 21 decades ago).

Illinois law has also distinguished between young people and mature adults in situations requiring the ability to weigh risks and rewards before making decisions. Applicants for a driver's license who are between the ages of 18 and 21 must complete a driver education course, just as juvenile applicants to obtain a driver's license or instruction permit must. 625 ILCS 5/6-103(1) (West 2018). Persons under age of 21 may only be issued a credit

card with either confirmation that the person can make the minimum required payments or the agreement of a cosigner or guarantor older than 21. See 815 ILCS 140/7.2 (West 2010). With respect to the handling of property more generally, the Illinois Uniform Transfers to Minors Act defines "minor" as anyone under age 21, 760 ILCS 20/2(12) (West 2000), and implements a process for a custodian to manage property transferred for a minor's benefit while the minor assumes only limited rights and duties with respect to the property. See 760 ILCS 20/12(b) (West 1986). And the statutory definitions of "developmental disability" and "intellectual disability" in most contexts include disabilities manifesting before an individual turns 22 years old. See, *e.g.*, 405 ILCS 5/1-106 and 405 ILCS 5/1-116.

At bottom, the General Assembly has long recognized that young people ages 17 to 21 are not mature adults, and should not be treated as such at sentencing. This recognition emerged long before the statutes at issue, has persisted throughout our history, and is embedded in the fabric of our society. It makes little sense that in 2021, the General Assembly developed an intent to punish young people *more* harshly than fully mature adults, and *only* in the narrow context of recidivist sentencing.

B. Interpreting subsection 95(a) to deny resentencing to individuals whose offenses occurred before the age of presumptive maturity does not align with the general goals of recidivist laws.

Recidivism laws like subsections 95(a) and (b), whereby two prior convictions trigger a more severe sentence for a third conviction, are

generally intended to punish individuals who persist in offending despite receiving the opportunity to learn and change from their previous convictions. Such laws create a class of criminals who cannot be deterred by other less restrictive means. See e.g., *Parke v. Raley,* 506 U.S. 20, 26–27 (1992) ("States have a valid interest in deterring and segregating habitual criminals"; *In re Preston,* 176 Cal. App. 4th 1109, 1115 (2009); *Jones v. State*, 861 So. 2d 1261, 1263 (Fla. Dist. Ct. App. 2003) (" The legislative intent of the Act is to deter prison releasees from committing further serious crimes."); *State v. Davidson*, 360 Or. 370, 387, 380 P.3d 963, 973 (2016) ("[O]ne of the purposes of statutes that provide enhanced penalties for repeat offenders is to recognize that some offenders simply are not deterred by criminal sanctions and such people likely will continue to re-offend if released from confinement."). See also *Trial & Sentencing of Youth as Adults in the Illinois Justice System: Transfer Data Report*, Ill. Juv. Just. Comm'n 1, 3 (July 2021).

Laws like these that impose mandatory life sentences without parole for people who committed their crimes while still presumed to be biologically immature is inherently at odds with this State's policy of recognizing the rehabilitative potential of youth. And recidivist offender laws are not new; they have existed since the 1920s. Harper G. Street, *Breaking the Chains of a Habitually Offensive Penal System: An Examination of Louisiana's Habitual-Offender Statute with Recommendations for Continued Reform*, 82 La. L. Rev. (2022). The Court should presume that the General Assembly, when

considering legislation meant to "increase the punishment of persons who fail to learn to respect the law after suffering the initial penalties and embarrassment of conviction," *Jones v. State*, 861 So. 2d 1261, 1263 (Fla. Dist. Ct. App. 2003), did not seek to impose the law's harshest penalty, life in prison without parole, on those least likely to reoffend.

C. Disciplinary trends move downward as young people mature, which aligns with the General Assembly's intent to treat youth differently.

Criminal conduct committed by young people—whether viewed on its own or considered as an aggravating sentencing factor—should be subject to different legal standards than adult conduct because of young people's unique capacity for rehabilitation. Young people's inherent malleability means that their juvenile behavior is not a reliable predictor of who they will be ten, twenty, or thirty years later.

In recognition of this fact, the Supreme Court explained in *Roper* that "if the child's brain is still growing until either twenty or twenty-five . . . subjecting a child to adult punishment . . . is irrational. We do not know who that child will be in five years or ten years. Just as teenagers' bodies change as they mature, so do their brains."[2] *Roper*, 543 U.S. at 571. To insist that a person be *permanently* incarcerated as a "habitual criminal" makes no

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[2] *See* Ellen Marcus & Irene Marker Rosenberg, *After Roper v. Simmons: Keeping Kids Out of Adult Criminal Court*, 42 San Diego L. Rev. 1151, 1180 (2005).

sense when such a sentence relies on conduct that reflects the inherently *transient* immaturity and impetuosity of youth.

There is ample evidence that young people grow and change, as reflected by disciplinary trends and by demographics. Given proper social, educational, and community support, most young people do grow out of their youthful immaturity and recklessness and desist from engaging in criminal behavior. This phenomenon is referred to as the *age-crime curve*, the steady increase in arrest rate from adolescence to mid-twenties, with a subsequent sharp drop-off around ages 25 and 26 as a person develops greater impulse and behavior control.[3]

Despite abundant data that mature adults are far less likely to violate prison rules or commit new crimes, far too many elderly Illinoisians remain incarcerated on long sentences resulting from their juvenile mistakes. This unnecessary incarceration places a great burden on the state, some of which would be lessened if we did not continuously incarcerate individuals who have aged out of their crimes yet have no path for release.

Mr. Durant

Mr. Durant, of *People v. Durant*, 2024 IL App (1st) 211190-B, is one such individual who was sentenced to life in prison under the "habitual criminal"

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[3] *See* Lila Kazemian, Ph.D., National Institute of Justice, *Pathways to Desistance From Crime Among Juveniles and Adults: Applications to Criminal Justice Policy and Practice* at 4, November 2021, https://www.ojp.gov/pdffiles1/nij/301503.pdf.

statute, whose crimes reflected immaturity, not inherent criminality.[4] In a population of approximately 28,850 people serving prison terms in the State of Illinois, Mr. Durant was one of approximately 70 people sentenced to life in prison as a habitual offender with a first predicate Class X offense that took place *before* their 21st birthday.[5] For Mr. Durant's first Class X offense, he broke into a home and stole $200 to $300 worth of property when he was only 16 years old.

Over the years, it has cost Illinois taxpayers great sums to keep him in prison. Mr. Durant, who is now 56 years old, suffered from a stroke in 2021. Additionally, he has only one kidney, and his remaining kidney is severely damaged. He also suffers from gout and often experiences painful and demobilizing swelling. Mr. Durant's complex medical needs, which include daily medications for high blood pressure, cholesterol and pain management, as well as post-stroke follow-up care and management of his kidney disease, were not adequately met in prison and continued imprisonment further endangered his condition.

The appellate court in Mr. Durant's case determined that the amendment to subsection 95(a) was just as much a clarification as subsection 95(b) and

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[4] Mr. Durant granted permission to use his personal information and narrative for this brief.

[5] Illinois Department of Corrections, Prison Population Data Sets: Prison Population on 12-31-24 Data Set, Illinois Department of Corrections (last visited April 27, 2025), https://idoc.illinois.gov/reportsandstatistics/prison-population-data-sets.html.

remanded his case for resentencing. *Durant*, 2024 IL App (1st) 211190-B. In a special concurrence, Justice Hyman observed:

> For the Illinois legislature, the Illinois Supreme Court, and the majority in this case, the answer, as it applies to Class X for convictions before the age of 21, aligns with Illinois's evolving view on juvenile justice, taking into account the root causes of delinquency, developmental immaturity, and greater potential for rehabilitation.

Id. ¶47. In December 2024, the trial court had the benefit of weighing Mr. Durant's prior convictions against his rehabilitation over the last 23 years, among other factors, including Mr. Durant's declining health and reentry plan, in determining an appropriate sentence. Ultimately, the trial court resentenced Mr. Durant to a term of years equivalent to time served, and Mr. Durant was released.

Rather than incurring annual costs of upwards of $100,000,[6] Mr. Durant was released from prison and he is now eligible to earn income and pay taxes. Mr. Durant is proof that criminal behavior in youth does not necessarily reflect who a person will become as a mature adult. In April 2025, Mr. Durant was recognized in a graduation ceremony from St. Leonard's Ministries in Chicago for successfully completing programming and

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[6] See The Illinois Department of Corrections, Financial Impact Statement, https://idoc.illinois.gov/content/dam/soi/en/web/idoc/reportsandstatistics/documents/FY24-Financial-Impact-Statement.pdf. "Cost of incarcerating an individual in a Department facility during Fiscal Year 2024 was $49,271 per year and $4,106 per month." And it's estimated that older people cost 2 to 5 times more than average.

coursework. Since his release in January 2025, Mr. Durant has resided at St. Leonard's Ministries, taking full advantage of their reentry programming, job training and counseling services. He started a small cleaning business; he has regular appointments with his healthcare providers and is markedly in better health as a result; and Mr. Durant has spent precious time with his family, reconnecting with his daughter who was a young girl when he was sentenced to life in prison.

Mr. Simmons

Mr. Durant is not alone in showing that serving life sentences after engaging in crime during their youth are capable of rehabilitation and aging out of crime. At age 16, Brian Simmons was convicted of home invasion.[7] Then, at age 19, he robbed a store with a BB gun and was convicted of armed robbery. Following a third conviction for armed robbery, Mr. Simmons was sentenced to life in prison.

In 2024, after Mr. Simmons had served 27 years, the State's Attorney of Winnebago County petitioned to resentence Mr. Simmons pursuant to 725 ILCS 5/122-9. The State's Attorney recognized that the inherent features of youth matter and that Mr. Simmons' original sentence no longer advanced the interests of justice. The trial court agreed, and resentenced Mr. Simmons to a term of years equivalent to time served. *People v. Simmons*, case no.

[7] Mr. Simmons granted permission to use his personal information and narrative for this brief.

96CF2965. Like Mr. Durant, Mr. Simmons has completed job training and programming and has remained employed full-time since his release. He is engaged to be married and happily lives a productive law-abiding life.

Individuals like Mr. Durant and Mr. Simmons, who received life sentences because of acts they committed as youths, should not be condemned to die in prison without a meaningful review of who they are now as elderly individuals. They certainly should not be denied that opportunity based on a reading of the habitual offender statute that conflicts with the legislature's intent, and that would penalize them far more harshly than people who began engaging in the same, or perhaps worse, conduct as mature adults.

III. Regardless of the legislature's intent, interpreting one subsection as a clarification, but not the other, would violate Article I, Section 11 of the Illinois Constitution.

Even if the General Assembly had somehow intended to clarify one subsection but not the other—and nothing suggests it did—the resulting statutory scheme would violate Article I, section 11 of the Illinois Constitution. Article I, section 11 recognizes not just the seriousness of the offense, but also the importance of rehabilitation: "All penalties shall be determined both according to the seriousness of the offense *and with the objective of restoring the offender to useful citizenship*." (emphasis added)). The first clause is often referred to as the "proportionate penalties clause." *People v. Clemons*, 2012 IL 107821, ¶ 37. The second clause referring to "restoring the offender to useful citizenship" adds "the requirement that

penalties be determined with the objective of rehabilitating the offender and in accordance with the seriousness of the crime." *Id.* at ¶ 39 (quoting proceedings from 1970 Constitutional Convention).

Here, subjecting a person to mandatory life without parole who committed every applicable offense during their teen years, while giving courts discretion to impose much lower sentences on those who offend well into adulthood, flouts the notion of proportionality. A punishment is disproportionate to the offense if it is "cruel, degrading, or so wholly disproportioned to the offense as to shock the moral sense of the community." *People v. Miller*, 202 Ill. 2d 328, 338 (2002) ("*Leon Miller*") (internal quotation marks omitted). This Court has yet to dictate the kinds of punishment that meet this standard, because it recognizes that "as our society evolves, so too do our concepts of elemental decency and fairness which shape the 'moral sense' of the community." Id. at 339. It has, however, stressed the importance of the "longstanding distinction made in this state between adult and juvenile offenders." *Id.* at 341.

If the amendment to subsection 95(b) is a clarification and applies retroactively—and the State does not dispute that it is—but the same text added to subsection 95(a) is not retroactive, then that must shock the conscience. As Justice Hyman explained in his concurring opinion in *Durant*, "Illinois law [has long] recognized the special status of juvenile offenders for the purposes of applying the principles under the proportionate penalties

clause." 2024 IL App (1st) 211190-B, ¶ 48 (quoting *People v. Moore*, 2023 IL 126461, ¶ 41, internal quotation omitted). And if the amendment to subsection 95(a) were deemed to be a new law rather than a clarification, it would defy a tradition in this State that has only deepened over time. See *supra* Part II.A.1. Rather than protecting youth from the most punitive consequences as we always have, the sentencing scheme would reserve the harshest punishments for the youngest of individuals. Meanwhile, people who committed multiple crimes as mature adults would be receive lower sentences than people who were less likely to reoffend.

Second, the interpretation that the State urges, in addition to creating unconstitutionally disproportionate sentences, would run afoul of the rehabilitative goal of the proportionate penalties clause. In *Leon Miller*, this Court denounced sentences for youth that unfairly imply that, regardless of a person's actual culpability, he "is incorrigible and incapable of rehabilitation for the rest of his life." *Id.* at 343.

The General Assembly has rightfully embraced the reality that even emerging adults up to age 21 have an inherently high capacity for rehabilitation. Consider the youthful parole bill. During debates, Senator Harmon emphasized that the bill was a response to "the fundamental notion [in *Miller*] that juvenile offenders are simply wired differently and have a propensity, much more so than older offenders, to be rehabilitated." 100th Ill.

Gen. Assem., Senate Proceedings, May 31, 2017, at 31 (statements of Senator Harmon). He continued:

> [T]he science of brain development suggests that young people don't reach the age of fully formed brains at eighteen or at twenty-one. It's not till the mid twenties . . .[T]here is no judge on the planet who can look at a nineteen year old and say, I know for a fact that you're the kind of young person who is going to mature and rehabilitate in prison or you're the kind who is never going to get out of prison.

Id. at 36.

Declining to apply *Stewart* to subsection 95(a) would "thwart[] the proportionate penalties clause." *Durant*, 2024 IL App (1st) 211190-B, ¶ 52 (Hyman, J. concurring). Using prior offenses committed before the age of full maturity to count toward a life sentence—but not for a less harsh Class X sentence—defies any logical sense of proportionality. What is more, it would deny restoring useful citizenship to the very population that is most likely to be rehabilitated. All this should shock the conscience in a state that for generations has recognized exactly what Mr. Durant has shown: that young people who offend often change for the better.

CONCLUSION

Illinois law and public policy all reinforce that the legislature never intended to clarify only one of the two recidivist subsections and not the other. Further, to do that would also violate the proportionate penalties clause.

The appellate court's decision should be affirmed.

Respectfully submitted,

By: Andrea Louise Lewis

Andrea Louise Lewis
Sara Louise Sommervold
CENTER ON WRONGFUL CONVICTIONS
NORTHWESTERN PRITZKER SCHOOL OF LAW
375 East Chicago Ave.
Chicago, IL 60611
(312) 503 2391
andrea.lewis@law.northwestern.edu

Shobha L. Mahadev
CHILDREN AND FAMILY JUSTICE CENTER
BLUHM LEGAL CLINIC
NORTHWESTERN PRITZKER SCHOOL OF LAW
375 East Chicago Avenue
Chicago, IL 60611
(312) 503-8576
s-mahadev@law.northwestern.edu

ILLINOIS PRISON PROJECT
53 West Jackson, Ste. 452
Chicago, IL 60604
(312) 324-4463

E. King Poor
James I. Kaplan
Christopher E. Gay
QUARLES & BRADY LLP
155 N. Wacker Drive, Suite 3200
Chicago, Illinois 60606
(312) 715-5000
king.poor@quarles.com
Counsel for Illinois Prison Project

Mira DeJong
RESTORE JUSTICE ILLINOIS
PO Box 101099
Chicago, Illinois 60610
(312) 809-0992
mira@illinoisprisonproject.org

RULE 341 CERTIFICATE OF COMPLIANCE FOR AMICUS BRIEF

I, E. King Poor, an attorney, certifies that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 6,425 words.

/s/E. King Poor

No. 129906

IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	**Appeal from the Appellate Court of Illinois, First District, Nos. 1-22-1859 & 1-23-0328 (consolidated)**
Respondent-Appellant.	)	
vs.	)	**There on Appeal from the Circuit Court of Cook County, Illinois, No. 93 CR 22656**
CORWYN BROWN,	)	
Petitioner-Appellee.	)	**Hon. James B. Linn, presiding**

NOTICE OF FILING AND CERTIFICATE OF SERVICE FOR AMICUS BRIEF

Under penalties as provided under Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth below are true and correct.

I, E. King Poor, an attorney, certify that I have this day caused the Amicus Brief to be filed electronically with the Clerk of the Court and served via EFileIL to all counsel of record to their email addresses on file with the Court:

Kwame Raoul
ATTORNEY GENERAL OF ILLINOIS

Jane Elinor Notz
Solicitor General

Katherine M. Doersch
Criminal Appeals Division Chief

John P. Moynihan
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
eserve.criminalappeals@ilag.gov

Counsel for Respondent-Appellant People of the State of Illinois

Arianne Stein
Assistant Appellate Defender
OFFICE OF THE STATE APPELLATE DEFENDER
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
1stdistrict.eserve@osad.state.il.us

Counsel for Petitioner-Appellee

Dated: June 16, 2025

By: */s/ E. King Poor*
E. King Poor