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***VIA OVERNIGHT MAIL***

Clemency and Pardons Board  
Office of the Governor  
Legislative Building  
416 – 14th Avenue Southwest  
P.O. Box 40002  
Olympia, WA 98504-0002

**Re: Barry C. Massey, Jr.: Request for Reduction of Sentence  
Institution Number 942583**

Dear Clemency and Pardons Board:

In 1988, Barry Massey was convicted of the aggravated first degree murder of Paul Wang. Mr. Massey was an accomplice in a robbery that went terribly wrong and resulted in Mr. Wang's death. Mr. Massey was only 13 years old at the time of the crime and 15 when convicted. He received a mandatory minimum sentence of life imprisonment without the possibility of parole; to date, he is the youngest person in the country to serve such a sentence. Now, over 19 years after his incarceration, Mr. Massey has proven himself to be fully rehabilitated, of good moral character, and ready to reenter society.

For the reasons set forth below, Mr. Massey respectfully requests that this Board recommend that his sentence be reduced to 20 years, with a release date of January 10, 2007. Such a recommendation is appropriate for three reasons. First, Mr. Massey's exemplary conduct in prison as well as the educational, vocational and psychological skills he has developed, ensure that he will be a productive member of society. Second, although he takes full responsibility for Mr. Wang's death, Mr. Massey's age, lack of criminal record, and psychological capacity at the time of the crime cast doubt on the extent of his culpability. Because the trial court had no discretion when imposing Mr. Massey's sentence, this Board is the first entity to consider these factors. Third, a reduction in Mr. Massey's sentence would allow him to pursue his long-standing efforts at reaching out to troubled youth and, as a result, would provide a benefit to the community.

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The Board need not just rely on the arguments set forth in this letter, but may refer to the 28 letters of support, including those provided by members of the Department of Corrections and prison volunteers, many of whom have seen Mr. Massey's personal and emotional growth over the last 20 years. In addition, the Board may rely on recent actions by the Washington State Legislature and Governor Gregoire that demonstrate an evolving belief that sentences of life imprisonment may not be appropriate in cases like Mr. Massey's. Finally, the Board may rely on the personal statement of Mr. Massey, as he describes his growth during his years in prison and his efforts to come to terms with his role in taking Mr. Wang's life. In light of this information, we respectfully assert that a reduction in Mr. Massey's sentence to twenty years is appropriate.

### **I. Background<sup>1</sup>**

At the outset, it is essential to state that Mr. Massey takes full responsibility for Mr. Wang's death. *See Ex. 2.* Mr. Massey's acceptance of his role in this crime has led to his extraordinary growth during his incarceration.

In January 1987, Mr. Massey was 13 years old and in the 7th grade. Despite suffering from significant developmental deficiencies, the teachers and staff at Mr. Massey's school testified that Mr. Massey worked hard at his studies. Mr. Massey was cooperative and polite, accepting of guidance and authority, and non-aggressive. However, the difficulty he had in his classes made Mr. Massey feel awkward and inferior to his classmates. While in the 7th grade, Mr. Massey was befriended by a troubled older boy, Michael Harris. Although the 15 year old Mr. Harris had a reputation for being a bully, other students looked up to him. He was nice to Mr. Massey; the friendship made Mr. Massey feel more accepted by his peers at school and gave him the attention that Mr. Massey felt he was missing at home. The boys' friendship developed in a typical fashion – meeting after school to ride bikes, play sports, or work on Mr. Harris's paper route. Sadly, this friendship would end with the death of Mr. Wang.

Although initially the boys had a typical friendship, that changed in late 1986 when Mr. Harris convinced Mr. Massey to break into a home on Mr. Harris's paper route. Wanting to preserve his friendship, Mr. Massey agreed. He believed that they would simply be going

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<sup>1</sup> Absent a reference to a specific exhibit, the facts contained in this petition are taken from transcripts of Mr. Massey's declination hearing or the trials of Mr. Massey or Mr. Harris. Due to the volume of the transcripts, they are not included with this petition, but we can provide those documents if the Board believes that review of those materials would be helpful.

into the home to take a few items and then leave. In the course of the break-in, the boys were startled by the home owner, an elderly woman. As they attempted to flee the house, the boys knocked the woman over. They later anonymously called 911 to make sure she was not harmed. Thankfully, the woman was not seriously injured. Mr. Massey took nothing from the home; Mr. Harris took a few items, including a gun.

After the burglary, Mr. Massey shied away from Mr. Harris. The boys saw each other in school, however, and their friendship resumed. Again, they engaged in typical activities for boys their age. However, after school on Friday, January 9, 1987, Mr. Harris convinced Mr. Massey to spend the night at his house rather than go home. Mr. Massey had never stayed away from his home without permission. Indeed, his absence from home was so out of the norm that his mother searched for him and contacted the police to report Mr. Massey as missing. At some point in the night, Mr. Harris asked Mr. Massey to go to Steilacoom with him in the morning to take some items from a store. Mr. Massey thought that the boys would simply go into the store, take a few things, and leave. This idea was reinforced when Mr. Harris suggested they make ski masks so that they would not be recognized by the store owner.

Mr. Massey's understanding of what would happen did not materialize. Mr. Harris brought the gun he stole in the previous burglary, assuring Mr. Massey that it would only be used to scare the store owner. The boys went into the store but left because there were customers present. They returned a second time to see if anyone was inside; Mr. Massey believed that if no one was there they would leave again to put on their ski masks and return to take candy, soda, and fishing supplies. However, once inside the store, Mr. Harris walked to the counter, pulled the gun, and told the store owner, Mr. Wang, to freeze and give him money. Mr. Wang, who was standing behind the store counter, reached to open the register, and Mr. Harris shot him. Mr. Massey recalls hearing a second gun shot and seeing Mr. Wang disappear behind the counter.

Mr. Massey was unable to comprehend what had happened and felt like he was "caught in a dream, things were happening that were not supposed to happen." Ex. 2 at 2. He recalls being frozen in place until Mr. Harris yelled at him to start taking items from the store and place them outside. Mr. Massey started putting candy and other items in his pockets while Mr. Harris forced open the register and took the money inside, giving Mr. Massey a few coins. As Mr. Massey moved items out of the store, he saw Mr. Harris remove a fishing knife from a display and bend down behind the counter where Mr. Wang had fallen. Mr. Massey was unable to see what was happening because the counter was made of solid wood; he remembers: "It seemed like it wasn't happening and I didn't think there was anything I could do." Ex. 2 at 3.

Mr. Harris then directed Mr. Massey to flee the store with the stolen items. Unsure of what to do, Mr. Massey followed Mr. Harris up a hill along some railroad tracks where the boys dropped several items from the store. Mr. Harris also hid the gun. As they ran, Mr. Harris repeatedly told Mr. Massey not to say anything if he was caught because, unlike Mr. Massey, Mr. Harris would be in trouble due to his previous criminal record. They then walked out of the woods and hitched a ride in a passing truck. Shortly after driving away, a police officer pulled the truck over and removed Mr. Massey because he had been reported by his mother as a runaway. Mr. Harris was allowed to leave. By this time, another customer of Mr. Wang's store had called 911, and police were looking for the perpetrators. As the officer who had detained Mr. Massey was calling in that she had located the subject of a missing child report, a K-9 unit emerged from the woods and identified Mr. Massey. Mr. Massey was placed under arrest and transported to jail for booking and interrogation.

## **II. Mr. Massey Is Fully Reformed**

### **A. Difficulties in the Early Years of Mr. Massey's Incarceration**

Mr. Massey was initially incarcerated when he was only 13 years old. During that time and as he proceeded through trial, Mr. Massey was held at the Rehman Hall Juvenile Corrections Center. While there, Mr. Massey was provided with educational services; he was described by teachers there as being "a cooperative and dedicated worker" who made significant academic progress. A program coordinator from Rehman Hall described Mr. Massey as "a kind of kid who is willing to invest in people trying to help him." He further described Mr. Massey as someone who did very well and responded appropriately to authority while in detention. It was originally anticipated that Mr. Massey would remain in a juvenile facility even if convicted. At his declination hearing, the State called witnesses from the Department of Corrections and the Department of Health and Human Services, each of whom testified that due to his age, Mr. Massey would be placed in a juvenile detention facility regardless of whether he was sentenced as a juvenile or as an adult. In ordering that Mr. Massey be declined, the juvenile court judge relied upon that testimony. Unfortunately, it was inaccurate; upon sentencing, although he was only 15, Mr. Massey was placed immediately into an adult correctional facility.

Being transferred to an adult facility was a major setback for Mr. Massey. His limited mental capacity and emotional condition led to the difficulties that Mr. Massey would come to face during the early stages of his incarceration. When Mr. Massey was assessed for special education placement in fifth grade, the tests showed that Mr. Massey was functioning at only the second to third grade level. Psychological evaluations performed after Mr. Massey's

arrest also showed that he had developmental deficiencies with respect to his intellectual and emotional functions. *See Exs. 3-5.*

Shortly after his transfer, out of concerns about his "vulnerability to problems in the adult inmate population," a psychological evaluation was performed on Mr. Massey. It revealed that Mr. Massey, as to be expected from an immature 15-year old with developmental disabilities, was completely unprepared to be incarcerated with adults. One test suggested that Mr. Massey had a "high level[] of suggestibility" and might be "easily influenced by others in [his] peer group." It was also revealed that Mr. Massey had "an unusually high level of dependency for his age," and "significant concern[s] about personal safety." The evaluation also indicated that Mr. Massey might act in order to "evoke nurturance and protection." It was noted that Mr. Massey had a "pattern of 'fringe' involvement in deviant peer activities, associating with others as a means of peer acceptance and only occasionally taking part in anti-social activities as a sign of solidarity and support." Testing also indicated that Mr. Massey was depressed and "struggling intensely with existential 'meaning of life' issues, vacillating back and forth between a sense of personal integrity and personal regret." In conclusion, the psychologist predicted the following:

"[I]t is highly likely that Barry will remain vulnerable to more predatory inmates for some time. His maturity level is below that of his peers in both cognitive and social sophistication, and it could be expected that he would be seen as a target for sexual and other types of predators within the prison system at large."

\* \* \*

"Given the profile of a young man who would do just about anything for acceptance and/or to avoid abandonment, peer group influences become paramount in Barry's ability to make a reasonable adjustment to prison life."  
*See Ex. 5.*

While this behavior was predicted by a Department of Corrections' psychiatrist, at the time there was little empirical evidence regarding brain development of juveniles available. However, in subsequent years an established body of scientific literature has recognized that the brains of adolescents are physiologically different than the brains of adults. The American Medical Association has observed that the behavioral differences between adults and adolescents that have been long-recognized by the psychiatric community are in fact based on anatomical differences between the brains of adolescents and adults.

"Modern brain research technologies developed a body of data in the late 1990s ... that provides a compelling picture of the inner workings of the adolescent brain. Adolescents' behavioral immaturity mirrors the anatomical immaturity of their brains. To a degree never before understood, scientists can now demonstrate that adolescents are immature not only to the observer's naked eye, but in the very fibers of their brains."

Amicus Brief of the American Medical Society, et al., *Roper v. Simmons*, 543 U.S. 551, \*9-10 (2005) attached hereto as Ex. 6. These differences in adolescent brain development have a direct bearing on an adolescent's ability to control impulses, judge or understand future consequences, make moral judgments, and assess risks. *Id.* at 13-14.

In other words, even a juvenile that is functioning at a high level has a limited capacity to understand the consequences of his or her actions. Mr. Massey, however, was not functioning at a high level. He was not even functioning at a level commensurate with other children his age.

The transfer to an adult facility was terrifying for Mr. Massey. He was removed from Rehman Hall, strip searched, forced to leave all of his personal belongings, and then placed in the Intensive Management Unit ("IMU"), which is a solitary confinement setting. Because he was so young, the Department of Corrections felt it had no option other than to so segregate Mr. Massey for his own protection. As a result, Mr. Massey was kept in his cell, by himself, for 23 hours a day.

A short while later, Mr. Massey was transferred to the Monroe Correctional Complex Special Offender Center ("SOC"), where it was expected that he would be better protected. This change in environment did not materially improve the conditions of Mr. Massey's confinement; he was surrounded by mentally disturbed inmates who spent much of their time screaming or banging on their cell doors. As before, Mr. Massey was confined to his cell for 23 hours a day. After months of being held in solitary confinement in the SOC, Mr. Massey was desperate to get out of that environment. He was told by another inmate that if he got into a fight he would have to be transferred, so he punched another inmate.

Mr. Massey was transferred, and so at the age of 15, was placed in the general population of an adult prison. He was assaulted shortly thereafter and for his protection was again placed back in solitary confinement in the IMU until he turned 16. When he was released permanently into the general population, the predictions set forth in his psychological evaluation came to fruition. He learned quickly that to survive in the general population he would have to play along with the expectations of other inmates. Therefore, Mr. Massey

associated himself with hardened, older convicts and younger inmates who were involved in gang activity. Although he typically stayed on the periphery of the activities of these groups and never officially joined any gang, Mr. Massey did incur a number of infractions and lost focus on his education. Ultimately, as a result of several infractions in 1991 and 1992, he was sent to IMU at the Washington State Penitentiary in Walla Walla.

**B. Mr. Massey Accepts Responsibility for His Involvement in Mr. Wang's Death and for His Own Future**

While housed in Walla Walla's IMU, Mr. Massey spent time contemplating his involvement in Mr. Wang's death, his actions while incarcerated, and his future. Mr. Massey has explained the process he went through while in isolation:

"What I realized was that I needed to start accepting my role in the crime, accepting the fact that I had a hand in the death of a man. In my mind, I'm just as guilty as Mike because I was there. Since that time I have cried many times thinking about Mr. Wang's family, my family, breaking my mother's heart and what pain and suffering I have caused. As a child at the time of the crime and during the first few years in prison, I could not fully understand everything that was taking place. Growth does not occur overnight, but my realization in IMU was the first step in the growth process for me. It was a step to say I need to make some kind of change to get off my knees and do something with my life. Now, I understand the meaning of the loss of life and the consequences of a person's actions. So I believe I have a responsibility to myself, to Mr. Wang's family, and to society to give back. When you participate in taking something so precious, you've got to give back so much." Ex. 2 at 5.

When Mr. Massey emerged from IMU, he had accepted his responsibility for this crime and was determined to turn his life around. That determination led Mr. Massey over time to reject the negativity of prison life by maintaining a clean infraction record, obtaining an education and employment, and developing and participating in positive programming. As a result, he has earned the respect of guards, inmates, volunteers and his employers.

**1. Mr. Massey Has Been Infraction Free Since 1996**

Perhaps the clearest evidence of Mr. Massey's turnaround is his infraction record: he has had no infractions since 1996. Ex. B; Ex. 8. As a result, he has been classified to allow him to reside in the lowest possible level of security available for his conviction grade, and has

