

STATE OF MICHIGAN  
IN THE SUPREME COURT

**People of the State of Michigan**

Plaintiff-Appellee,

v.

**John Antonio Poole**

Defendant-Appellant.

Supreme Court No. 161529

Court of Appeal No. 352569

Circuit Court No. 02-000893-02-FC

**Filed under AO 2019-6**

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**Mr. Poole's Supplemental Brief on Appeal**

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**Maya Menlo (P82778)**

**Assistant Defender**

**Adrienne Young (P77803)**

**Assistant Defender**

State Appellate Defender Office  
3031 West Grand Blvd, Suite 450  
Detroit, Michigan 48202  
(313) 256-9833  
mmenlo@sado.org

Date: November 15, 2021

*Counsel for John Antonio Poole*

**Table of Contents**

Index of Authorities ..... i

Statement of Jurisdiction ..... xii

Statement of the Questions Presented.....xiii

Summary of the Argument.....1

Procedural Posture .....3

Statement of Facts .....4

Arguments.....6

**I. Mr. Poole’s successive motion for relief from judgment is based on a retroactive change in law. It also presents a claim of new evidence.....6**

    a. Mr. Poole’s successive motion for relief from judgment is based on the retroactive change announced in *Miller* and *Montgomery*..... 6

    b. Mr. Poole’s successive motion for relief from judgment also presents a claim of new evidence. .... 8

**II. The United States Supreme Court’s decisions in *Miller v Alabama* and *Montgomery v Louisiana* should be applied to people who are 18 to 25 years old at the time they commit a crime and who would otherwise be subject to mandatory life without the possibility of parole.....9**

    a. Mandatory LWOP for young adults is disproportionate and violates the Michigan Constitution.....10

        1. *Mandatory LWOP for young adults is too severe, even given the gravity of first-degree murder*..... 11

            i. Young adults’ brains are not fully developed. Their culpability is diminished and they are more capable of rehabilitation than older adults. .... 11

(1) *Young adults exhibit recklessness, impulsivity, and risk-taking*..... 14

(2) *Young adults are vulnerable to negative influences*.....17

(3) *Young adults are more capable of change than older adults*. .... 18

ii. There is societal consensus that young adults exhibit youthful immaturity and deserve protection..... 21

iii. Mandatory LWOP is too severe because it does not allow a sentencing court to consider a young adult’s individual circumstances..... 24

2. *Mandatory LWOP for young adults is disproportionate compared to penalties imposed on other offenders in Michigan*. .... 25

3. *Only 17 other states automatically sentence young adults to LWOP for premeditated murder*..... 28

4. *Mandatory LWOP does not advance the penological goal of rehabilitation*. .... 33

b. The Michigan Constitution offers broader protection than the Eighth Amendment and prohibits mandatory LWOP for young adults..... 34

c. A mandatory LWOP sentence is unconstitutional as applied to Mr. Poole under Const 1963, art 1, § 16. .... 36

d. Mandatory LWOP for young adults is disproportionate and violates the Eighth Amendment. .... 38

Conclusion.....40

Relief Requested.....41

Certificate of Compliance.....42

## Index of Authorities

<u>Cases</u>	<u>Page(s)</u>
<i>Atkins v Virginia</i> , 536 US 304 (2002).....	9, 39
<i>Brackett v Focus Hope, Inc.</i> , 482 Mich 269 (2008) .....	7
<i>Cruz v United States</i> , No. 11-CV 787, 2018 WL 1541898 (D Conn, 2018) .....	12
<i>Eddings v Oklahoma</i> , 455 US 104 (1982) .....	39
<i>Estelle v Gamble</i> , 429 US 97 (1976) .....	39
<i>Graham v Florida</i> , 560 US 48 (2010).....	passim
<i>Grievance Administrator v Underwood</i> , 462 Mich 188 (2000) .....	6
<i>Harmelin v Michigan</i> , 501 US 957 (1991).....	35
<i>Jones v Mississippi</i> , 593 US __ (2021).....	6, 10, 36
<i>Matter of Monschke/Matter of Bartholomew</i> , 197 Wash2d 305 (2021) .....	30
<i>Miller v Alabama</i> , 567 US 460 (2012) .....	passim
<i>Montgomery v Louisiana</i> , 577 US 190 (2016) .....	passim
<i>People v Bullock</i> , 440 Mich 15 (1992).....	passim
<i>People v Carp</i> , 496 Mich 440 (2016) .....	33
<i>People v Coles</i> , 417 Mich 523 (1990).....	36
<i>People v Dipiazza</i> , 286 Mich App 137 (2009) .....	37
<i>People v Hallack</i> , 310 Mich App 555 (2015).....	2
<i>People v Hawkins</i> , 468 Mich 488 (2003).....	6
<i>People v Kennedy</i> , 502 Mich 206 (2018) .....	9
<i>People v Lockridge</i> , 498 Mich 358 (2015) .....	36
<i>People v Lorentzen</i> , 387 Mich 167 (1972) .....	passim
<i>People v Manning</i> , 506 Mich 1033 (2020) .....	3, 7
<i>People v Milbourn</i> , 435 Mich 630 (1990) .....	9, 34, 36, 38
<i>People v Miles</i> , 454 Mich 90 (1997).....	3, 40
<i>People v Mire</i> , 173 Mich 357 (1912).....	35
<i>People v Poole</i> , 476 Mich 863 (2006).....	xii

<i>People v Skinner</i> , 502 Mich 89 (2018) .....	24
<i>People v Steanhouse</i> , 500 Mich 453 (2017).....	9, 34, 38
<i>People v Whalen</i> , 412 Mich 166 (1981) .....	3, 40
<i>Roper v Simmons</i> , 543 US 551 (2005) .....	passim
<i>Rummel v Estelle</i> , 445 US 263 (1980) .....	9
<i>Sharp v State</i> , 16 NE3d 470 (Ind App, 2014).....	31
<i>Solem v Helm</i> , 463 US 277 (1983) .....	9
<i>Weems v United States</i> , 217 US 349 (1910).....	9, 35, 39

### Constitutions

Const 1963, art 1, § 16 .....	passim
US Const, Am VIII .....	35, 38
US Const, Am XIV .....	38

### Statutes

13 VT Stat § 2303.....	29
13 VT Stat § 2311.....	29
15 USC 1637(c)(8) .....	22
15 USC 1681b(c)(1) .....	22
17-A ME Rev Stat § 1603.....	28
18 USC 922(b)(1) .....	22, 23
21 Okla Stat § 701.9 .....	28
21 USC 387f.....	21
22 Okla Stat § 996.1.....	22
23 USC 158.....	21
42 USC 300gg-14.....	22
720 Ill Comp Stat § 5/5-4.5-20(a).....	28
Ala Code § 15-20A-4, § 15-19-1.....	23
Alas Stat § 12.55.125 .....	28
Cal Penal Code § 190.2 .....	29

Cal Penal Code § 3051(a)(1)..... 23

Colo Rev Stat § 18-1.3-407(1)(c)(2) ..... 23

Conn Gen Stat § 53a-35a, § 53a-54b ..... 29

DC Code § 22-2104..... 28

Fla Stat § 958.04 ..... 23

Ga Code § 16-5-1 ..... 28

Ga Code § 42-7-2(7) ..... 23

Hawaii Rev Stat § 706-656, § 706-657 ..... 29

Hawaii Rev Stat § 706-667(1), 712-1256(1) ..... 23

Ind Code § 11-14-1-5 ..... 23

Ind Code § 35-50-2-3 ..... 28

Kan Stat § 21-6620, § 21-5401(a)(6), § 21-6617 ..... 29

Ky Rev Stat § 532.030..... 28

MCL 28.425b(7)(a) ..... 22

MCL 388.1606(4)(l) ..... 21

MCL 388.1606(l)(i)-(ii) ..... 21

MCL 400.647 ..... 22

MCL 436.1109(6)..... 21

MCL 712A.1(1)(i)..... 26

MCL 750.210(2)(e)..... 28

MCL 762.11 ..... 26

MCL 769.25 ..... 25, 26

MCL 791.234(6)..... 27

Md Code Crim Law § 2-201 ..... 28

Mont Code § 45-5-102(2) ..... 28

NC Gen Stat § 15A-145.2..... 22

ND Cent Code § 12.1-32-01..... 28

Nev Rev Stat § 200.030 ..... 28

NJ Stat § 2C:11-3 ..... 28

NJ Stat § 2C:43-5 ..... 22

NY CPL § 720.10..... 22  
 NY Penal Law § 70.00..... 28  
 Ohio Rev Code § 2929.02 ..... 28  
 Or Rev Stat § 163.115 ..... 28  
 RI Gen Laws § 11-23-2..... 28  
 SC Code § 16-3-20 ..... 28  
 SC Code § 24-19-10(d)(ii) ..... 22  
 Tenn Code § 39-13-202..... 28  
 Tex Penal Code § 12.31, § 12.32 ..... 29  
 Utah Code § 76-5-203..... 28  
 Va Code § 18.2-10..... 28  
 VA Code § 19.2-311(B)(1)..... 22  
 W Va Code § 61-2-1 ..... 29  
 Wis Stat § 939.50 ..... 29  
 Wy Stat § 6-2-101..... 29

Rules

MCR 6.502(G)..... xii, 3  
 MCR 6.502(G)(2) .....passim  
 MCR 6.502(G)(3)(a) ..... 8  
 MCR 6.508(D)..... 3  
 MCR 6.508(D)(3)(a) ..... 3, 40  
 MCR 6.508(D)(3)(b)(iv)..... 3, 40

Bills and Public Acts

2019 PA 109..... 26  
 Pub L No 90-351, § 901, 82 Stat 197, 225-26 (1968)..... 23

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Cauffman et al., <i>Age Differences in Affective Decision Making as Indexed by Performance on the Iowa Gambling Task</i> , 46 <i>Dev Psychol</i> 193 (2010) .....	16
Cohen et al., <i>The Impact of Emotional States on Cognitive Control Circuitry and Function</i> , 28 <i>J Cogn Neurosci</i> 446 (2016) .....	16
Cohen et al., <i>When Does a Juvenile Become an Adult? Implications for law and policy</i> , 88 <i>Temple L Rev</i> 769 (2016) .....	16
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## Statement of Jurisdiction

John Antonio Poole was convicted in the Wayne County Circuit Court by jury trial and was sentenced to mandatory life without the possibility of parole on August 13, 2002. 651a; 672a. Mr. Poole appealed as of right, challenging his conviction but not his sentence. The Court of Appeals affirmed his convictions. 1a-5a. This Court denied leave. *People v Poole*, 476 Mich 863 (2006).

Mr. Poole filed motions for relief from judgment on August 6, 2007, and on October 23, 2015. 6a-8a. Both were denied and Mr. Poole's convictions and sentence remain unchanged. *Id.*

In 2016, the United States Supreme Court held that the rule of *Miller v Alabama*, 567 US 460 (2012) is retroactive. *Montgomery v Louisiana*, 577 US 190 (2016). Mr. Poole filed the instant motion for relief from judgment on January 29, 2019. 9a. The circuit court determined his successive motion was procedurally barred by MCR 6.502(G) because *Miller* did not apply retroactively to Mr. Poole. 51a-52a. Mr. Poole filed an application for leave to appeal the denial in the Court of Appeals. The Court of Appeals (Fort Hood, Murray, and Stephens, JJ.) denied leave to appeal, reasoning that Mr. Poole had not established an exception to the general rule that a movant may not appeal the denial of a successive motion for relief from judgment under MCR 6.502(G). 53a.

Mr. Poole filed an application for leave to appeal in this Court. This Court granted leave, ordered the circuit court to appoint counsel, and ordered Mr. Poole to file a supplemental brief addressing: "(1) whether the defendant's successive motion for relief from judgment is 'based on a retroactive change in the law,' MCR 6.502(G)(2), where the law relied upon does not automatically entitle him to relief; and (2) if so, whether the United States Supreme Court's decisions in *Miller v Alabama*, 567 US 460 (2012), and *Montgomery v Louisiana*, 577 US 190 (2016) should be applied to defendants who are over 17 years old at the time they commit a crime and who are convicted of murder and sentenced to mandatory life without parole, under the Eighth Amendment to the United States Constitution or Const 1963, art 1, § 16, or both." 54a.

## Statement of the Questions Presented

*First Question:*

Is Mr. Poole's successive motion for relief from judgment based on a retroactive change in law? Does it also present a claim of new evidence?

Mr. John Antonio Poole answers:        Yes.

The Court of Appeals answered:        No.

*Second Question:*

Should the United States Supreme Court's decisions in *Miller v Alabama* and *Montgomery v Louisiana* be applied to people who are 18 to 25 years old at the time they commit a crime and who would otherwise be subject to mandatory life without the possibility of parole?

Mr. John Antonio Poole answers:        Yes.

The Court of Appeals made no answer.



## Summary of the Argument

Youth are more impulsive, more inclined to take risks, and less able to assess consequences than adults. *Miller v Alabama*, 567 US 460, 471-472 (2012). This lessens their moral culpability. *Id.* Youth are also more capable of reform than adults—they have a “heightened capacity for change”. *Id.* at 479. For these reasons, mandatory life without the possibility of parole for those age 17 and younger violates the Eighth Amendment. *Id.* at 465.

The science underpinning *Miller* extends beyond 17-year-olds. Neurobiological and psychological research conclusively demonstrates people age 18 to 25 share key immaturities with minors. This is because the portion of the brain responsible for impulse control, judgment, and long-term planning is not fully developed until one’s mid-twenties.

Sentencing people with underdeveloped brains to die in prison is inconsistent with our society’s evolving standards of decency. This Court should apply the principles underlying *Miller* to people who were between 18 and 25 years old at the time of their crimes.

This includes John Antonio Poole, who at age 18 shot and killed a man at the behest of a much older, influential adult—his own uncle. When Mr. Poole was 18 years old, he was homeless and had a ninth-grade education. He had never met his father. His mother was dependent on crack cocaine and unable to care for him. It was in this context that he committed the offense for which he is serving mandatory life without the possibility of parole.

Mr. Poole was sentenced to die in prison under a mandatory sentencing scheme. The sentencing court could not account for Mr. Poole’s immaturity at the time of his crime, his vulnerability to negative influences, or his character and potential for rehabilitation.

In the 20 years since his offense, Mr. Poole has become an American Sign Language interpreter and served the Michigan Department of Corrections in that capacity; served as an aide to elderly incarcerated persons, helping them bathe and dress; and earned a position as Special Activities Clerk at Richard Handlon Correctional Facility. He expects to

graduate from Calvin College with an Associate's Degree in March 2022 and then pursue his Bachelor's Degree. Mr. Poole has not received a single prison misconduct in more than ten years.

Our state constitution provides even more protection against disproportionate punishment than the Eighth Amendment. Const 1963, art 1, § 16; *People v Bullock*, 440 Mich 15, 30 (1992); *People v Hallack*, 310 Mich App 555, 568 (2015). This Court should hold that Mr. Poole's mandatory life-without-parole sentence is unconstitutional and that Const 1963, art 1, § 16 categorically bars mandatory LWOP for young adults age 18 to 25.

## Procedural Posture

Mr. Poole filed a pro se successive motion for relief from judgment challenging the constitutionality of his mandatory life-without-parole (LWOP) sentence under *Miller*, *Montgomery*, and the Michigan Constitution. The circuit court determined his successive motion was procedurally barred by MCR 6.502(G). 51a-52a. The Court of Appeals likewise denied leave to appeal on the basis of MCR 6.502(G). 53a.

The courts below erred. Mr. Poole should have been permitted to file his successive motion and appeal its denial because it is “based on” *Miller*. Per *Montgomery*, *Miller* is “a retroactive change in law that occurred after [his] first motion for relief from judgment.” MCR 6.502(G)(2); see also *People v Manning*, 506 Mich 1033 (2020).

Mr. Poole is entitled to relief under MCR 6.508(D). Mr. Poole satisfies the “good cause” requirement of MCR 6.508(D)(3)(a) because the instant motion, based on *Montgomery*, is the only one he has filed since the United States Supreme Court issued *Montgomery* in 2016. 8a. He is suffering “actual prejudice” because his mandatory LWOP sentence is unconstitutional and therefore invalid. MCR 6.508(D)(3)(b)(iv); *People v Miles*, 454 Mich 90, 96 (1997), citing *People v Whalen*, 412 Mich 166, 169-170 (1981). The remedy is resentencing where Mr. Poole will have the opportunity to present mitigating evidence and where the court will have the discretion to impose either LWOP or a term of years.

## Statement of Facts

In 2001, John Antonio Poole was 18 years old and homeless. *PSIR* at 3. Mr. Poole never knew his father. *Id.* at 15. He had a ninth-grade education. *Id.* at 1, 7. Against all odds, Mr. Poole had minimal contact with the criminal legal system. *Id.* at 5.

Harold Varner, then 42 years old, is Mr. Poole's uncle. 212a; 350a. Mr. Varner has a college degree and owned properties, including four apartment buildings. 212a; 341a; 353a.

Mr. Varner was involved in a disagreement over a real estate transaction. 312a; 617a. Mr. Varner paid 18-year-old Mr. Poole \$300 to kill Henry Covington, who was involved in the real estate dispute. 318a; 564a; 617a-618a.

On the day of the offense, Mr. Varner and his property manager picked up Mr. Poole. 562a-563a; 617a-618a. Mr. Varner gave Mr. Poole a .357 caliber handgun. 562a; 617a-618a.

Mr. Varner's property manager drove Mr. Poole to the decedent's home. 563a; 617a-618a. Mr. Varner drove in a separate vehicle. 1a-2a; 563a. He circled the block while Mr. Poole committed the crime. 362a.

Mr. Covington was sitting in a vehicle outside his home. 320a-321a. Mr. Poole shot into the car, killing Mr. Covington. 562a.

About a week after the offense, Mr. Varner was arrested for Mr. Covington's murder. 507a-509a. Mr. Varner requested to speak with police. 509a-510a. He asked police for leniency in the Covington case in exchange for providing information about a separate murder case. 99a-102a; 127a; 519a-523a.

Mr. Varner gave police a statement implicating himself in a separate murder. 519a-523a. Mr. Varner also told the police that Mr. Poole shot Mr. Covington. 523a-525a.

Mr. Poole was convicted of first-degree premeditated murder and related weapons offenses. 651a. He was sentenced to serve mandatory life without the possibility of parole. 670a.

Mr. Varner was also convicted in connection with this case, but of second-degree rather than first-degree murder. 651a. Separately, Mr. Varner pled guilty to an additional count of second-degree murder for an unrelated killing that occurred in 1998. 676a. Mr. Varner will be eligible for parole in December 2021. 680a.

## Arguments

- I. **Mr. Poole’s successive motion for relief from judgment is based on a retroactive change in law. It also presents a claim of new evidence.**

### **Standard of Review**

This Court reviews de novo questions of law, including the interpretation of a court rule. *People v Hawkins*, 468 Mich 488, 497 (2003).

### **Discussion**

MCR 6.502(G)(2) permits Mr. Poole’s successive motion for relief from judgment because his motion is “based on a retroactive change in law” and because it “presents a claim of new evidence”.

- a. **Mr. Poole’s successive motion for relief from judgment is based on the retroactive change announced in *Miller and Montgomery*.**

In *Miller v Alabama*, the United States Supreme Court prohibited mandatory life-without-parole (LWOP) sentences for those under age 18 and held that a sentencing court must consider their youth and attendant characteristics before deciding whether to impose LWOP. 567 US at 479. In *Montgomery v Louisiana*, the Court made the *Miller* holding retroactive. 577 US 190; *Jones v Mississippi*, 593 US \_\_; 141 S Ct 1307, 1316 (2021).

Mr. Poole’s motion cited *Miller* and *Montgomery* as the basis for the relief requested. 10a-11a. His motion is “based on” the retroactive change *Miller* announced. To interpret MCR 6.502(G)(2), this Court begins with the plain language of the rule. *Grievance Administrator v Underwood*, 462 Mich 188, 193-194 (2000). When the language is unambiguous, the Court enforces the meaning expressed without further construction or interpretation. *Id.* Common words must be understood to have their everyday, plain meaning. *Id.*

If “base” is a common word, this Court utilizes a lay dictionary. *Brackett v Focus Hope, Inc.*, 482 Mich 269, 276 (2008). If it is a legal term of art, this Court turns to a legal dictionary. *Id.* Here though, because “the definitions are the same in both a lay dictionary and legal dictionary, it is unnecessary to determine whether the phrase is a term of art, and it does not matter to which type of dictionary this Court resorts.” *Brackett*, 482 Mich at 276.

Merriam-Webster’s Collegiate Dictionary (11th ed) defines the verb “base” as:

- 1 : to make, form, or serve as a base for
- 2 : to find a base or basis for—usu[ally] used with on or upon.

Black’s Law Dictionary (11th ed) defines “base,” in relevant part, as:

1. To make, form, or serve as a foundation for <the left hand based her chin>.
2. To establish (an agreement, conclusion, etc.); to place on a foundation; to ground <the claim is based in tort>.
3. To use (something) as the thing from which something else is developed <their company is based on an abiding respect for the employees>.

MCR 6.502(G)(2) does not require that the law relied upon automatically entitle Mr. Poole to relief. A successive motion need not be based on a *dispositive* retroactive change in law. The Michigan Court Rules contain no such condition. They require only that a retroactive change in law “serve as a foundation for” the successive motion.

Since *Miller* serve[s] as a foundation for Mr. Poole’s successive motion for relief from judgment, MCR 6.502(G)(2) authorizes the motion. *People v Manning*, 506 Mich 1033 (2020) (Clement, J., concurring).

**b. Mr. Poole's successive motion for relief from judgment also presents a claim of new evidence.**

MCR 6.502(G)(2) also permits a successive motion for relief from judgment if the motion presents “a claim of new evidence that was not discovered before the first [motion for relief from judgment].” New evidence includes “changes in a field of scientific knowledge”. MCR 6.502(G)(3)(a).

Mr. Poole's motion met the requirements of MCR 6.502(G)(2) because his claims were based on new scientific evidence. Mr. Poole argued his successive motion was permitted because new “scientific research . . . indicate[s] that 18-year-olds exhibit the same hallmark features of youth that justified the decision in *Miller*.” 10a. Mr. Poole cited recent discoveries regarding emotional regulation, risk-taking behavior, and impulse control that show the brain continues to develop into one's mid-twenties. 36a-39a.

When the trial court rejected Mr. Poole's motion, it addressed both the retroactive change and the new evidence provisions of MCR 6.502(G)(2). 51a. Likewise, in its order denying Mr. Poole's application for leave to appeal, the Court of Appeals determined that Mr. Poole, “failed to demonstrate the entitlement to an application of *any of the exceptions* to the general rule that a movant may not appeal the denial of a successive motion for relief from judgment.” 53a (emphasis added; citations omitted).

In his application to this Court, Mr. Poole cited modern research on brain development. Mr. Poole's Application for Leave to Appeal at p 14; Appendix C to Mr. Poole's Application for Leave to Appeal. Both the retroactive change in law and the new evidence provisions of MCR 6.502(G)(2) permit Mr. Poole to file a successive motion for relief from judgment.



- II. The United States Supreme Court’s decisions in *Miller v Alabama* and *Montgomery v Louisiana* should be applied to people who are 18 to 25 years old at the time they commit a crime and who would otherwise be subject to mandatory life without the possibility of parole.**

### **Standard of Review**

This Court reviews constitutional questions de novo. *People v Kennedy*, 502 Mich 206, 213 (2018). This Court is the ultimate authority on the meaning and application of the Michigan Constitution. *People v Bullock*, 440 Mich 15, 27 (1992).

### **Discussion**

Proportionality is central to the Michigan Constitution’s prohibition against cruel or unusual punishment. *Bullock*, 440 Mich at 32-33; *People v Lorentzen*, 387 Mich 167, 176 (1972). If a sentence is disproportionate, it is unconstitutional. *Id.* See also *People v Steanhouse*, 500 Mich 453, 459 (2017), citing *People v Milbourn*, 435 Mich 630, 636 (1990).

Like our state constitution, the Eighth Amendment to the federal constitution requires a sentence to be proportionate. “Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment and goes far beyond the manner of determining a defendant’s sentence.” *Montgomery*, 577 US at 206. See also *Roper v Simmons*, 543 US 551, 560 (2005), citing *Weems v United States*, 217 US 349, 367 (1910); *Atkins v Virginia*, 536 US 304, 311 (2002); *Solem v Helm*, 463 US 277, 284 (1983); *Rummel v Estelle*, 445 US 263, 271-274 (1980) (acknowledging the proportionality rule applies to both death penalty cases and non-death cases). The harshest penalty must be reserved for the most culpable people who commit the most serious offenses. *Miller*, 567 US at 474-475; *Graham v Florida*, 560 US 48, 69 (2010).

The characteristics of youth mitigate culpability and weaken rationales for the most severe forms of mandatory punishment. *Miller*, 567 US at 472-473. Specifically, youth exhibit “diminished culpability

and a heightened capacity for change.” *Jones*, 141 S Ct at 1316, citing *Miller*, 567 US at 479. Therefore, in cases involving a defendant under the age of 18, a sentencing court must “follow a certain process—considering an offender’s youth and attendant characteristics—before imposing” either LWOP or a term of years. *Jones*, 141 S Ct at 1316, quoting *Miller*, 567 US at 489. During that process, “the sentencer affords individualized ‘consideration’ to, among other things, the defendant’s ‘chronological age and its hallmark features.’” *Id.*, quoting *Miller*, 567 US at 477.

The Court’s reasoning in *Miller* and *Montgomery* applies to young adults<sup>1</sup> as well as juveniles. Because young adults’ brains are not fully developed, they share key characteristics with those under age 18. Section II(a)(1)(i), *infra*. Society recognizes that young adults are vulnerable and deserve protection. Section II(a)(1)(ii), *infra*. Mandatory LWOP is disproportionate for young adults; the *Miller* sentencing process should apply instead.

**a. Mandatory LWOP for young adults is disproportionate and violates the Michigan Constitution.**

Michigan’s test for proportionality evaluates (1) the severity of the sentence imposed compared to the gravity of the offense, (2) the penalty imposed for the offense compared to penalties imposed on other offenders in the same jurisdiction, (3) the penalty imposed for the offense in Michigan compared to the penalty imposed for the same offense in other states, and (4) whether the penalty imposed advances the

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<sup>1</sup> For the purposes of this brief, people age 18 to 25 will be referred to as “young adults”. The scientific literature cited *infra* in Section II(a)(1)(i) describes this age group using various terms. For example, the National Academies of Sciences, Engineering, and Medicine refer to people age 18 to 25 as “older adolescents.” Drs. Jennifer Tanner and Jeffrey Arnett describe the same group as “emerging adults.” In his book, *Age of Opportunity*, Dr. Laurence Steinberg uses the term “adolescence” to refer to the period from age 10 until 25.

penological goal of rehabilitation. *Bullock*, 440 Mich at 33-34, citing *Lorentzen*, 387 Mich at 176-181.

**1. Mandatory LWOP for young adults is too severe, even given the gravity of first-degree murder.**

The first *Bullock* factor compares the severity of the sentence to the gravity of the offense. 440 Mich at 33. Young adults convicted of first-degree murder in Michigan receive the harshest penalty available to anyone in the state. “Imprisoning an offender until he dies alters the remainder of his life ‘by a forfeiture that is irrevocable.’” *Miller*, 567 US at 475, quoting *Graham*, 560 US at 69.

A sentence of LWOP requires a young defendant to serve “more years and a greater percentage of his life in prison than an adult offender.” *Id.*, quoting *Graham*, 560 US at 70. “The penalty when imposed on a teenager, as compared with an older person, is therefore ‘the same . . . in name only.’” *Id.*, quoting *Graham*, 560 US at 70.

While first-degree murder is an extremely grave offense, mandatory LWOP is too severe for young adults. because their brains are still developing. This mitigates their culpability and heightens their capacity for rehabilitation. For many young adults, LWOP is excessive punishment.

**i. Young adults’ brains are not fully developed. Their culpability is diminished and they are more capable of rehabilitation than older adults.**

A 2019 Consensus Study Report from the National Academies of Science explains, “[T]he unique period of brain development and heightened brain plasticity . . . continues into the mid-20s,” and therefore it would be “arbitrary in developmental terms to draw a cut-off line at age 18.”<sup>2</sup>

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<sup>2</sup> National Academies of Sciences, Engineering, and Medicine at 22. See Index of Authorities, *supra* at v-xi, for full citations.

Dr. Laurence Steinberg is a developmental psychologist who specializes in adolescence. Dr. Steinberg served as the lead scientist on the American Psychological Association’s amicus briefs in *Roper* and *Graham*. His work was cited in both *Miller* and *Roper*. Since *Miller*, Dr. Steinberg has published numerous articles concluding that the relevant parts of the brain—i.e., the regions and functions relevant to risky behavior and susceptibility to outside influences—are still developing past age 18.<sup>3</sup>

Dr. Steinberg has testified about recent, substantial advances in adolescent brain development research.<sup>4</sup> In the mid to late 2000s, “virtually no research . . . looked at brain development during late adolescence or young adulthood. . . . People began to do research on that period of time toward the end of that decade and as we moved into 2010 and beyond, there began to accumulate some research on development in the brain beyond age 18, so we didn’t know a great deal about brain development during late adolescence until much more recently.”<sup>5</sup> Now, based on current research, Dr. Steinberg is “[a]bsolutely certain” that the developmental characteristics underpinning *Roper*, *Miller*, and *Graham* also apply beyond age 17.<sup>6</sup>

Likewise, Dr. BJ Casey, an expert on adolescent brain development and self-control at Yale University, explains, “The decisions made in *Roper* and *Miller* were based largely on behavioral evidence of differences between youths and adults, with little knowledge or

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<sup>3</sup> See, e.g., Scott, Bonnie, & Steinberg, 85 Fordham L Rev 641; Steinberg et al., 21 Dev Sci e12532; Steinberg, 38 J Med & Phil 256.

<sup>4</sup> See also Spear & Silveri (compiling contemporary research on the adolescent brain and noting the ten-fold increase in the number of publications on the topic since the year 2000).

<sup>5</sup> *Cruz v United States*, No. 11-CV 787, 2018 WL 1541898, at \*25 (D Conn, 2018), (quoting transcript of Dr. Steinberg’s testimony during September 13, 2017 Hearing), vacated and remanded, 826 F Appx 49 (CA 2, 2020).

<sup>6</sup> *Id.* at \*16.

appreciation of the functionally significant and legally relevant brain changes throughout adolescence and into young adulthood. That evidence is now available and further confirms the behavioral science. Not only do these findings apply to *Roper*, *Miller*, and *Montgomery* but they also inform the extension of these decisions beyond 18 years.”<sup>7</sup>

The conclusion that youth are constitutionally different for purposes of sentencing is based “not only on common sense—on what ‘any parent knows’—but on science and social science as well.” *Miller*, 567 US at 471, quoting *Roper*, 543 US at 569.

Children under 18 are less deserving of the harshest penalties due to “three significant gaps between juveniles and adults.” *Id.* Those are:

- (1) Youth display “a lack of maturity and an underdeveloped sense of responsibility, leading to **recklessness, impulsivity, and heedless risk-taking.**”
- (2) They “are more **vulnerable . . . to negative influences and outside pressures**, including from their family and peers; . . . and lack the ability to extricate themselves from horrific, crime-producing settings.”
- (3) They are “less fixed” in their character and **more capable of change** than adults.

*Id.* (emphasis added) (internal citations omitted).

Current scientific research shows these three significant gaps persist after an individual turns 18, into the mid-twenties. Young adults are neurobiologically much more like teenagers than previously thought, particularly in terms of their limited ability to exercise self-control, their

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<sup>7</sup> Casey et al., 5 Ann Rev Criminol 7.1, 7.14; see also American Bar Association, *ABA Resolution 111* at 6 (“[R]esearch has consistently shown that [brain] development actually continues beyond the age of 18” and that “the line drawn by the U.S. Supreme Court no longer fully reflects the state of the science on adolescent development.”).

vulnerability to outside influences, and their capacity for rehabilitation.<sup>8</sup> These ‘three gaps’ are discussed in turn.

(1) *Young adults exhibit recklessness, impulsivity, and risk-taking.*

Young adults’ brains are very similar to early adolescents’ brains—and very different from fully developed brains. In particular, the brain systems responsible for self-control, planning, and resistance to outside pressure are not fully developed until the mid-twenties.<sup>9</sup>

The Court in *Miller* described the “failure to appreciate risks and consequences” as one of the “hallmark features” of youth that renders mandatory LWOP unconstitutional. *Miller*, 567 US at 477. Risky decision-making is most common among those in their late teens and early twenties.<sup>10</sup> Deaths from drunk driving, unintended pregnancies, binge drinking, and arrests all peak during this period.<sup>11</sup> This is because the brain systems that regulate impulse control are not fully developed until one’s twenties.<sup>12</sup>

From puberty through the mid-twenties, the brain essentially “rewires” itself.<sup>13</sup> Areas of the brain rewire at different paces, causing a

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<sup>8</sup> National Academies of Sciences, Engineering, and Medicine at 22; Sawyer et al., 2 *Lancet Child Adolesc Health* 223.

<sup>9</sup> National Academies of Sciences, Engineering, and Medicine at 51-54.

<sup>10</sup> Gardner & Steinberg, 41 *Dev Psychol* 625, 631; Scott, Bonnie, & Steinberg, 85 *Fordham L Rev* 641, 656-657; Braams et al., 35 *J Neuroscience* 7226, 7235-7236; Shulman & Cauffman, 50 *Dev Psychol* 167, 172, 174.

<sup>11</sup> Willoughby et al., 89 *Brain Cogn* 70, 76-78; Weigard et al., 17 *Dev Sci* 71, 72.

<sup>12</sup> Scott, Bonnie, & Steinberg, 85 *Fordham L Rev* 641, 647; Icenogle et al., 43 *Law Hum Behav* 69, 83.

<sup>13</sup> Arain et al., 9 *Neuropsych Disease and Treatment* 449, 452; Otero & Barker, “The Frontal Lobes and Executive Functioning” at 29, 33; Giedd, 1021 *Ann NY Acad Sci* 77; Marek et al., 13 *PLoS Biol* e1002328;

delay in young adults' social and emotional maturity as compared to their intellectual maturity.<sup>14</sup> The parts of the brain responsible for logical reasoning and basic information processing mature earlier than the parts of the brain responsible for weighing risks and consequences.<sup>15</sup>

The prefrontal cortex is the principal area of the brain in charge of cognitive and executive functions, including impulse control, weighing risks and rewards, and decision-making in complex situations.<sup>16</sup> The prefrontal cortex is the last region of the brain to develop—its construction is not complete until age 25.<sup>17</sup>

The limbic system, which drives emotion and governs sensation- and reward-seeking, develops well before the prefrontal cortex.<sup>18</sup> Until the prefrontal cortex is fully developed, it cannot effectively counterbalance the limbic system.<sup>19</sup> This results in heightened and uninhibited “sensation-seeking” until the mid-twenties.

Sensation-seeking is the pursuit of “novel, varied, and highly stimulating experiences and the willingness to take risks in order to attain them.”<sup>20</sup> It is characterized by over-focusing on rewards at the

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Blakemore, 61 *Neuroimage* 397, 398; Ernst, 89 *Brain Cogn* 104, 105; Lebel & Beaulieu, 31 *J Neurosci* 10937.

<sup>14</sup> Steinberg et al., 64 *Am Psychol* 583, 586-587, 590-591, figures 1-2.

<sup>15</sup> Steinberg et al., *Are Adolescents Less Mature Than Adults?*, p 592.

<sup>16</sup> National Academies of Sciences, Engineering, and Medicine at 51.

<sup>17</sup> Arain et al., 9 *Neuropsych Disease and Treatment* 449, 450, 453; Dosenbach et al., 329 *Sci* 1358; Casey, 66 *Ann Rev Psychol* 295, 303.

<sup>18</sup> Van Leijenhorst et al., 51 *Neuroimage* 345, 346; National Academies of Sciences, Engineering, and Medicine at 54, 62.

<sup>19</sup> Arain et al., 9 *Neuropsych Disease and Treatment* 449, 453; Shulman et al., 17 *Dev Cogn Neurosci* 103, 113; Casey et al., 52 *Dev Psychobiol* 225, 226. For a summary of several current neurodevelopmental models, see Demidenko et al., 44 *Dev Cogn Neurosci* 100798.

<sup>20</sup> Steinberg et al., 44 *Dev Psychol* 1764, 1765.

expense of an accurate estimation of costs.<sup>21</sup> In addition, changes in the levels of certain neurotransmitters and hormones during young adulthood contribute to heightened impulsivity and emotional volatility at the same time the prefrontal cortex's governing capabilities are limited.<sup>22</sup>

The result is that young adults are less able than older adults to anticipate the consequences of their actions and exercise impulse control.<sup>23</sup> Young adults are more short-sighted and less capable of planning.<sup>24</sup> They are more prone than older adults to engage in immature decision-making and to pursue rewarding, immediately gratifying, socially encouraged, and risky activities.<sup>25</sup>

The condition of young adults' brains (developed limbic system but underdeveloped prefrontal cortex) makes them especially attracted to immediate rewards, both material and social.<sup>26</sup> This helps to contextualize teenaged Mr. Poole's behavior: he committed a horrific crime in exchange for \$300 and his uncle's approval. His young brain was ill-equipped to evaluate the risks and consequences of his actions.

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<sup>21</sup> *Id.* at 1764.

<sup>22</sup> Arain et al., 9 *Neuropsych Disease and Treatment* 449, 450; National Academies of Sciences, Engineering, and Medicine at 44-45; Lopez et al., 29 *J Primary Prevent* 5, 22.

<sup>23</sup> Steinberg et al., 80 *Child Dev* 28, 35, 40; Arain et al., 9 *Neuropsych Disease and Treatment* 449, 453, figure 3.

<sup>24</sup> Steinberg et al., 80 *Child Dev* 28, 40-41; Steinberg et al., 44 *Dev Psychol* 1764, 1776; Arnett, 12 *Dev Rev* 339, 352-353.

<sup>25</sup> Icenogle et al., 43 *Law Hum Behav* 69, 72, 84-85; Steinberg & Icenogle, 1 *Ann Rev Dev Psychol* 21, 32; Cohen et al., 28 *J Cogn Neurosci* 446; Cohen et al., 27 *Psychol Sci* 549; Cohen et al., 88 *Temple L Rev* 769, 786-787; Rudolph, 24 *Dev Cogn Neurosci* 93; Blakemore & Robbins, 15 *Nature Neurosci* 1184.

<sup>26</sup> Casey, 66 *Ann Rev Psychol* 295, 299, 302; Cauffman et al., 46 *Dev Psychol* 193; Steinberg et al., 21 *Dev Sci* e12532.



There is scientific consensus that young adults like 18-year-old Mr. Poole demonstrate the same traits “recklessness, impulsivity, and heedless risk-taking” that render mandatory LWOP unconstitutional for younger teenagers. *Miller*, 567 US at 471, quoting *Roper*, 543 US at 570. The fact that young adults’ brains are still developing lessens their culpability and weakens the rationale for mandatory LWOP. See *Miller*, 567 US at 471-472, citing *Graham*, 560 US at 68, 71-72. Because young adults are less able to consider the potential consequences of their actions, they are also less likely to be deterred by a mandatory LWOP sentence. *Id.*

(2) *Young adults are vulnerable to negative influences.*

Young adults “are more vulnerable [than adults] to negative influences and outside pressures, including from their family and peers.” *Miller*, 567 US at 472 (quotations and internal citations omitted). Research demonstrates that, like their younger counterparts, individuals age 18 to 25 are more susceptible than older adults to pressure from peers and elders.<sup>27</sup>

The presence of peers increases young adults’ risk-taking tendencies by heightening their emotions and exacerbating their deficiencies in judgment.<sup>28</sup> In the presence of peers, young adults are more sensitive to the potential rewards than the potential costs of a decision.<sup>29</sup> Further, individuals in their late teens are acutely sensitive to the potential of social rejection, which increases conformity with their peers.<sup>30</sup> After age

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<sup>27</sup> Gardner & Steinberg, 41 *Dev Psychol* 625, 631-634; Knoll et al., 60 *J Adolesc* 53, 59 (2017).

<sup>28</sup> Smith et al., 11 *Dev Cogn Neurosci* 75, 76; Scott, Bonnie, & Steinberg, 85 *Fordham L Rev* 641, 649; Michaels, 40 *NYU Rev L and Soc Change* 139, 163; Steinberg, 28 *Dev Rev* 78, 90-91; Albert & Steinberg, “Peer influences on adolescent risk behavior”, p 211.

<sup>29</sup> O’Brien et al., 21 *J Rsch on Adolesc* 747; Weigard, 17 *Dev Sci* 71.

<sup>30</sup> Blakemore, 9 *Nature Revs Neurosci* 267, 269.

24, however, adults are less likely to make risky decisions in the presence of their peers.<sup>31</sup>

Young adults' vulnerability to outside influence makes them less culpable and less worthy of retribution. *Miller*, 567 US at 471-472, citing *Graham*, 560 US at 68, 71-72. Because young adult brains share key traits with juvenile brains, the diminished culpability principle discussed in *Miller* applies to young adults like Mr. Poole.

Mr. Poole's decades-older uncle influenced and encouraged him to commit the offense. Mr. Poole's father was never part of his life, and his mother was absent for frequent, extended periods.<sup>32</sup> Mr. Poole lacked guidance and support. Mr. Varner, his uncle and a trusted adult, was an influential figure in Mr. Poole's life.

Mr. Varner also provided a monetary incentive to convince Mr. Poole to shoot the decedent. Mr. Poole's 18-year-old brain prioritized his uncle's approval and short-term financial gains over long-term consequences. He was unable to adequately weigh the costs of his actions. His uncle's encouragement and the allure of an immediate reward combined to influence 18-year-old Mr. Poole to commit the crime for which he is serving LWOP.

The sentencing court did not, and could not, account for Mr. Poole's youth. Under Michigan's current sentencing scheme, the mitigating circumstances of incomplete brain development are excluded from consideration for young adults like Mr. Poole.

(3) *Young adults are more capable of change than older adults.*

Like juveniles, young adults have a heightened capacity for change and rehabilitation. "Neuroplasticity" or "neuronal plasticity" is the potential of the brain's neuronal circuits to be modified by experience. The brain exhibits especially high levels of plasticity during the first two decades of life. Recent research confirms that young adults exhibit high

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<sup>31</sup> Gardner & Steinberg, 41 Dev Psychol 625.

<sup>32</sup> These facts would be established at Mr. Poole's resentencing hearing.

potential for change<sup>33</sup> and that identity formation continues well into young adulthood.<sup>34</sup>

From age 18 to 25, individuals become more assertive and decisive, show increases in self-control and ability to resist outside influence, become more reflective, deliberate and planful, and demonstrate decreases in aggressiveness and alienation.<sup>35</sup> Past the age of 22, for example, individuals exhibit substantial increases in conscientiousness characterized by discipline<sup>36</sup> and emotional stability.<sup>37</sup>

These developments correspond to desistance from crime.<sup>38</sup> Research shows that criminal offending wanes as youth mature.<sup>39</sup> The “age-crime

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<sup>33</sup> Aoki, Romeo, & Smith, 1654 *Brain Resch* 85, 85-86; Steinberg, *Age of Opportunity*, pp 21-22; Kays, Hurley, & Taber, 24 *J Clin Neuropsych & Clin Neurosci* 118.

<sup>34</sup> Steinberg, Steinberg, *Age of Opportunity*, p 26; Roberts, Walton, & Viechtbauer, 132 *Psychol Bull* 1 (2006); Arnett, “Identity Development from Adolescence to Emerging Adulthood”, p 53.

<sup>35</sup> Tanner & Arnett, “The Emergence of ‘Emerging Adulthood’ ”, pp 39, 42; Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-taking*, pp 97-98; Shulman & Cauffman, 50 *Dev Psychol* 167, 173; Weigard et al., 17 *Dev Sci* 71.

<sup>36</sup> Roberts & Mroczek, 17 *Curr Dir Psychol Sci* 31, 33.

<sup>37</sup> Cohen et al., *When Is an Adolescent an Adult?*, 27 *Psychol Sci* 549, 559-560.

<sup>38</sup> Sweeten, Piquero, & Steinberg, 49 *J Youth and Adolesc* 921; Monahan, Steinberg, & Cauffman, 45 *Dev Psychol* 1520.

<sup>39</sup> Steinberg et al., *Psychosocial Maturity and Desistance from Crime*, pp 3, 7-8; Monahan et al., 45 *Dev Psychol* 1654, 1665.

curve” holds that crime generally peaks in the late teen years and declines dramatically after age 25.<sup>40</sup>

Research also shows that those age 18 to 25 are highly amenable to intervention and rehabilitation.<sup>41</sup> Even those who exhibit callous, unemotional traits demonstrate less of these traits with age.<sup>42</sup>

The United States Supreme Court has recognized a child’s character is not as “well formed” as an adult’s, his traits are “less fixed”, and his actions are less likely to be “evidence of irretrievably depraved character.” *Roper*, 543 US at 570. This is also true of young adults: a key hallmark of the young adult brain is its high level of neuroplasticity, or ability to change.

Mr. Poole is a prime example of a young adult’s capacity for rehabilitation. As an adult, he has served his community through meaningful work as an American Sign Language Interpreter, an aide to the elderly, and now as a Special Activities Clerk. Now 38 years old, Mr. Poole is a successful student at Calvin College. He is a model prisoner, with no misconducts—major or minor—in over ten years. Mr. Poole has fulfilled the potential for redemption that is characteristic of young adults.

The United States Supreme Court relied on the science of brain development to hold that mandatory LWOP is disproportionate for those under age 18. The science now available to this Court shows that people age 18 to 25 exhibit the impaired judgment and impulse control, vulnerability to outside influence, and capacity for rehabilitation that makes mandatory LWOP unconstitutional for juveniles. This supports

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<sup>40</sup> Monahan et al., 25 *Dev and Psychopathology* 1093; Mulvey et al., 22 *Dev and Psychopathology* 453, 471; see, e.g., United States Department of Justice, *Crime in the United States: 2019*, Table 38.

<sup>41</sup> Tanner & Arnett, “The Emergence of ‘Emerging Adulthood’”, p 42 ; Dahl et al., 554 *Nature* 441.

<sup>42</sup> Casey et al., 5 *Ann Rev Criminol* 7.1, 7.14; Baskin-Sommers, 3 *J Abnorm Child Psychol* 1529; Hawes, Price, & Dadds, 17 *Clin Child Fam Psychol Rev* 248 (2014).

a finding under *Bullock*'s first factor that mandatory LWOP is too severe for young adults.

**ii. There is societal consensus that young adults exhibit youthful immaturity and deserve protection.**

Punishment schemes must keep pace with society's evolving standards of decency. *Miller*, 567 US at 469-70; *Lorentzen*, 387 Mich at 178-179. This relates to *Bullock*'s first factor, since harsh sentences that do not comport with society's standards are too severe. Society has recognized that youthful immaturity, impulsivity, and vulnerability persist even after a person turns 18 years old. Therefore, many laws protect young adults even after they reach the age of majority.<sup>43</sup> For instance:

- All fifty states require a person to be 21 years old to purchase alcohol. See 23 USC 158 (National Minimum Drinking Age Act). See also MCL 436.1109(6).
- The federal minimum age for sale of tobacco is now 21. 21 USC 387f. Prior to the federal increase, 19 states and Washington, DC, as well as at least 540 localities, had already raised the legal age to purchase tobacco to 21.<sup>44</sup>
- In Michigan, a general education student may attend public high school up to age 20. MCL 388.1606(4)(l). This upper age limit increases to 22 for a general education student who is homeless and is in a program focused on educating students with extreme barriers to education, and increases to 26 for a special education student. MCL 388.1606(l)(i)-(ii).

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<sup>43</sup> Ryan, 97 Wash U L Rev 1131, 1137-1141.

<sup>44</sup> Campaign for Tobacco Free Kids.

- Twenty-eight states, including Michigan, the District of Columbia, and nine Tribes allow young people to remain in foster care beyond the age of 18.<sup>45</sup>
- A range of state laws provide for extension of parental support obligations past a child's eighteenth birthday.<sup>46</sup>
- An individual under age 21 cannot open a credit card without a cosigner. 15 USC 1637(c)(8).
- Consumer reporting agencies are prohibited from furnishing non-consumer-initiated reports on those under age 21, unless the underage consumer consents. 15 USC 1681b(c)(1).
- The Affordable Care Act allows dependent children to remain covered by their parents' health insurance until age 26. 42 USC 300gg-14.
- For purposes of federal student aid, the federal government considers those under age 24 to be legal dependents of their parents.<sup>47</sup>
- Michigan law prohibits a person under 21 from obtaining a concealed carry permit. MCL 28.425b(7)(a).
- Federal law prohibits federally licensed firearms sellers from selling any firearm or ammunition, other than a shotgun or rifle, to anyone who is under 21 years old. 18 USC 922(b)(1).

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<sup>45</sup> National Conference of State Legislatures, *Older Youth in Foster Care*; MCL 400.647 (providing that “[a] youth who exited foster care after reaching 18 years of age but before reaching 21 years of age may reenter foster care and receive extended foster care services”).

<sup>46</sup> Ryan, 97 Wash U L Rev 1131, 1150 (compiling support laws).

<sup>47</sup> United States Department of Education Office of Federal Student Aid, *Dependency Status*, available at <<https://studentaid.ed.gov/sa/fafsa/filling-out/dependency>> (accessed October 13, 2021).

In enacting 18 USC 922(b)(1), Congress cited the “causal relationship between the easy availability of firearms” and “youthful criminal behavior”, and noted that firearms had been widely sold to “emotionally immature, or thrill-bent juveniles and minors prone to criminal behavior.”<sup>48</sup>

Eighteen States, including Michigan, recently defended 18 USC 922(b)(1) in an amicus brief filed in the US Court of Appeals for the Fourth Circuit in September 2021.<sup>49</sup> The States explained that brain science supports limiting young adults’ access to firearms: “Contemporary scientific evidence explains why this conclusion was a reasonable one for Congress to draw: Because the human brain does not fully develop until one’s mid-to-late twenties, young people tend to have lower self-control and make more impulsive decisions.”<sup>50</sup>

In the criminal context, many states define “youthful offender” to include those up to age 21, 26, or some age in between, and afford leniency and protection to these individuals. For example: Alabama, Ala Code § 15-20A-4, § 15-19-1 *et seq.* (up to 21); California, Cal Penal Code § 3051(a)(1) (up to 26); Colorado, Colo Rev Stat § 18-1.3-407(1)(c)(2) (up to 25); Florida, Fla Stat § 958.04 (up to 21); Georgia, Ga Code § 42-7-2(7) (up to 25); Hawai‘i, Haw Rev Stat § 706-667(1), 712-

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<sup>48</sup> Omnibus Crime Control and Safe Streets Act of 1968, Pub L No 90-351, § 901, 82 Stat 197, 225-26 (1968).

<sup>49</sup> Brief of Amici Curiae Illinois, California, Connecticut, Delaware, the District of Columbia, Hawaii, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington in Support of Defendants-Appellees’ Petition for Rehearing or Rehearing En Banc, *Hirschfeld v Bureau of Alcohol, Firearms, Tobacco, & Explosives*, No. 3:19-cv-05106-JCC, September 3, 2021, appended hereto.

<sup>50</sup> *Id.* at 17. The States’ amicus brief cites to pages 16-20 of the amicus brief filed in the same case by the Giffords Law Center to Prevent Gun Violence. The Giffords Brief is appended to this brief.

1256(1) (up to 22); Indiana, Ind Code § 11-14-1-5 (up to 21); New Jersey, NJ Stat § 2C:43-5 (up to 26); North Carolina, NC Gen Stat § 15A-145.2 (up to 22); New York, CPL § 720.10 (up to 19); Oklahoma, 22 Okla Stat § 996.1 (up to 26); South Carolina, SC Code § 24-19-10(d)(ii) (up to 25); Virginia, VA Code § 19.2-311(B)(1) (up to 21); Vermont (extended juvenile court jurisdiction up to age 21, effective July 1, 2022). This demonstrates widespread recognition that youth matters beyond age 17 in adjudicating criminal cases.

These many examples demonstrate consensus that people do not become fully mature adults on their eighteenth birthday. Society treats young adults as more vulnerable and more deserving of protection than older adults. Mandatory LWOP for young adults does not meet society's evolving standards of decency and is too severe, even given the gravity of the offense.

**iii. Mandatory LWOP is too severe because it does not allow a sentencing court to consider a young adult's individual circumstances.**

This Court has determined that, “[t]o be constitutionally proportionate, punishment must be tailored to a defendant’s personal responsibility and moral guilt.” *Bullock*, 440 Mich at 39 (quotation marks and citation omitted). Current brain development research demonstrates that, like minors, young adults exhibit “transient rashness, proclivity for risk, and inability to assess consequences” and “heightened capacity for change.” *Miller*, 567 US at 472, 479 (quotation marks and citation omitted); Section II(a)(1)(i), *supra*. These traits lessen “moral culpability” and “diminish the penological justifications for imposing the harshest sentences”, even for the gravest of crimes. *Miller*, 567 US at 472. Yet Michigan courts automatically sentence every young adult convicted of first-degree murder to LWOP without any opportunity to account for the mitigating properties of youth.

Further, the most severe sentence is disproportionate where individual factors reduce a young adult’s blameworthiness. For example, devastating life and family circumstances, past trauma, or influence by other parties to engage in criminal activity may mitigate a young adult’s culpability. See *Miller*, 567 US at 477-478, 489; *People v Skinner*, 502



Mich 89, 114-115 (2018). Each of these factors is relevant to Mr. Poole and weighs against an LWOP sentence. But the sentencing court could not consider Mr. Poole's circumstances; it was required to impose LWOP. This resulted in a disproportionate and unconstitutional sentence.

In *Lorentzen*, this Court held that a 20-year mandatory minimum punishment for selling marijuana was too severe, in part because it applied equally to "a first offender high school student as it [would] to a wholesaling racketeer." 387 Mich at 176. There, the Court acknowledged a young person without a significant criminal history—like Mr. Poole—is less deserving of a harsh penalty than a career criminal.

Even considering the gravity of first-degree murder, mandatory LWOP is too severe for young adults. It does not account for factors that diminish a young adult's "personal responsibility and moral guilt." *Bullock*, 440 Mich at 39. *Bullock's* first factor therefore disfavors mandatory LWOP for young adults.

**2. *Mandatory LWOP for young adults is disproportionate compared to penalties imposed on other offenders in Michigan.***

The second *Bullock* factor compares mandatory LWOP to the penalty for other offenders in the same jurisdiction. 440 Mich at 33. Mandatory LWOP for young adults convicted of first-degree murder stands in stark contrast to the sentencing options for 17-year-olds convicted of the same crime. Expansion of both Michigan's Holmes Youthful Trainee Act (HYTA) and juvenile court jurisdiction also provide apt comparisons.

***(Re)sentencing following Miller and Montgomery***: Pursuant to *Miller*, people who were under the age of 18 at the time of their crimes may not be sentenced to mandatory LWOP. 567 US at 465. In Michigan, unless the prosecutor files a motion for LWOP and the sentencing court determines the unique circumstances warrant a sentence of LWOP, a 17-year-old convicted of first-degree murder shall be sentenced to a minimum term of not less than 25 to more than 40 years. MCL 769.25. Following *Montgomery*, those whose LWOP sentences were already final

when *Miller* was decided are entitled to a resentencing hearing where the same provisions apply. 577 US at 206; see MCL 769.25.

By contrast, even very young adults like Mr. Poole are subject to mandatory LWOP. Mr. Poole turned 18 less than a year prior to the offense and was therefore developmentally indistinguishable from a 17-year-old. If Mr. Poole happened to be 17 years old rather than 18 at the time of the offense, he may well be serving 25 years in prison rather than LWOP. This is particularly so given Mr. Poole's mitigating circumstances: for example, his destitute living environment; complete abandonment by his father; his mother's frequent, protracted absence; lack of support and guidance; his uncle's role in orchestrating the offense; and his limited prior criminal history.

***HYTA expansion to age 26:*** The Michigan Legislature recently relied on scientific research to expand HYTA to allow even more young adults to avoid a criminal record. See MCL 762.11. In 2015, the Legislature increased the HYTA eligibility cutoff from 21 to 24 years old. 2015 PA 0031. In 2020, the Legislature further expanded eligibility, raising the cutoff age to 26 years old. 2020 PA 1049. During the Michigan House Judiciary Committee's hearing on the latest HYTA expansion bill, legislators cited developments in brain science in support of including 24- and 25-year-olds.<sup>51</sup>

***Raise the Age:*** In 2019, Governor Whitmer signed a package of bills to raise the age of adult prosecutions from 17 to 18 years old.<sup>52</sup> At the time, Michigan was one of just four states that automatically prosecuted

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<sup>51</sup> House Judiciary Committee, December 16, 2020, at 30:05-40:20, <<https://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=JUDI-121620.mp4>> (accessed October 12, 2021).

<sup>52</sup> *Governor Whitmer Signs Bipartisan Bills to Raise the Age for Juvenile Offenders*, Michigan.gov (October 31, 2019), available at <<https://www.michigan.gov/whitmer/0,9309,7-387-90487-511513--,00.html>> (accessed October 12, 2021); See MCL 712A.1(1)(i), amended effective October 1, 2021, by 2019 PA 109.

17-year-olds as adults.<sup>53</sup> In support of the Raise the Age legislation, Genesee County Prosecutor David Leyton said, “We might have a separate court for young people say between the ages of 18 and 24 because they’re still not fully developed. The whole idea of making 17-year-olds juveniles is because they’re not fully developed[.]”<sup>54</sup> Likewise, in considering the bill, the Michigan Legislature acknowledged that research “overwhelmingly documents that adolescent brains do not fully develop until closer to 25 years of age.”<sup>55</sup>

***Mandatory LWOP for other offenses:*** There are only a handful of offenses in Michigan for which LWOP is mandatory. See MCL 791.234(6) (providing that persons sentenced to mandatory life for the following offenses are not eligible for parole: first-degree murder; possession of explosives or other injurious substances with malicious intent causing death; selling adulterated drugs with the intent to kill or cause serious impairment of two or more individuals, resulting in death; several felonies that involve intent to kill or cause serious impairment and result in death; several felonies that involve possession of harmful biological or chemical substances and results in death; and recidivist first-degree criminal sexual conduct against a child). Of course, individuals under age 18 do not face mandatory LWOP for these offenses. *Miller*, 567 US at 465; *Graham*, 560 US at 74.

Aside from first-degree murder, the crimes for which Michigan mandates LWOP involve repeat sexual assaults of children under 13 or

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<sup>53</sup> *Id.*

<sup>54</sup> Ramey, *Michigan’s ‘Raise the Age’ Law Effective in 2021, Not Retroactive*, ABC 12 News (October 31, 2019), available at <<https://www.abc12.com/content/news/Michigans-Raise-the-Age-law-effective-in-2021-not-retroactive-564187811.html>> (accessed October 12, 2021).

<sup>55</sup> House Fiscal Agency, *Legislative Analysis: Raise the Age*, p 2, December 20, 2019, available at <<https://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-4133-67514053.pdf>> (accessed October 12, 2021).

conduct that endangers the lives of many people and results in death—for example, possession of explosives with intent to intimidate, injure, or kill, causing death, MCL 750.210(2)(e). Mandatory LWOP is rare and is reserved for the most blameworthy individuals. Young adults, due to their still-developing brains, are less blameworthy than adults and are often less deserving of the harshest punishment.

It is disproportionate for 18-year-old Mr. Poole to automatically receive the same LWOP sentence as a middle-aged adult who detonates a bomb in an office building or repeatedly rapes small children. For a young adult like Mr. Poole, a sentencing court should consider mitigating evidence of youth and use that evidence to fashion a proportionate sentence. The second *Bullock* factor weighs in favor of striking down mandatory LWOP for young adults.

**3. *Only 17 other states automatically sentence young adults to LWOP for premeditated murder.***

*Bullock*'s third factor compares Michigan's penalty to penalties imposed for the same offense in other jurisdictions. 440 Mich at 33-34. Michigan's LWOP mandate is a minority position: thirty-two states take a contrary approach.

Twenty-six states and the District of Columbia never mandate LWOP for premeditated murder.<sup>56</sup> A person convicted of premeditated

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<sup>56</sup> The following 26 states never mandate LWOP for premeditated murder: Alaska, Alaska Stat § 12.55.125; District of Columbia, DC Code § 22-2104; Georgia, Ga Code § 16-5-1; Idaho, § 18-4004; Illinois, 720 Ill Comp Stat § 5/5-4.5-20(a); Indiana, Ind Code § 35-50-2-3; Kentucky, Ky Rev Stat § 532.030; Maine, 17-A Me Rev Stat § 1603; Maryland, Md Code Crim Law § 2-201; Montana, Mont Code § 45-5-102(2); Nevada, Nev Rev Stat § 200.030; New Jersey, NJ Stat § 2C:11-3; New Mexico, § 31-18-14; New York, NY Penal Law § 70.00; North Dakota, ND Cent Code § 12.1-32-01; Ohio Rev Code § 2929.02; Oklahoma, 21 Okla Stat § 701.9; Oregon, Or Rev Stat § 163.115; Rhode Island, RI Gen Laws § 11-23-2; South Carolina, SC Code § 16-3-20; Tennessee, Tenn Code § 39-13-202; Utah, Utah Code § 76-5-203; Virginia, Va Code § 18.2-10; Washington\*;

murder in these states can present mitigating evidence to the sentencer and/or the parole board. Six more states mandate LWOP for premeditated murder only where aggravating circumstances are proven.<sup>57</sup>

In *Graham*, the United States Supreme Court prohibited LWOP for juvenile nonhomicide offenders where 39 jurisdictions permitted that sentence. 560 US at 62. Similarly, in *Miller*, the Court banned mandatory LWOP for juveniles even though 29 jurisdictions permitted it. 567 US at 482. Only 18 states, including Michigan, impose mandatory LWOP on young adults.

A person convicted of first-degree murder who was under 18 at the time of the crime is most likely not serving LWOP. Nationwide, following *Miller*, just 3.2% of people who were serving mandatory LWOP for crimes committed before age 18 were resentenced to LWOP.<sup>58</sup> By contrast, 73.6% received a term-of-years sentence, i.e., LWOP was not reimposed.<sup>59</sup> The median term-of-years sentence is 25 years.<sup>60</sup> The

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West Virginia, W Va Code § 61-2-1; Wisconsin, Wis Stat § 939.50; Wyoming, Wy Stat § 6-2-101.

<sup>57</sup> The following six states mandate LWOP for premeditated murder only where aggravating circumstances are proven: California, Cal Penal Code § 190.2; Connecticut, Conn Gen Stat § 53a-35a, § 53a-54b; Hawai'i, Haw Rev Stat § 706-656, § 706-657; Kansas, Kan Stat § 21-6620, § 21-5401(a)(6), § 21-6617; Texas, Tex Penal Code § 12.31, § 12.32; Vermont, 13 Vt Stat § 2303, 13 Vt Stat § 2311.

<sup>58</sup> Campaign for the Fair Sentencing of Youth, *National Trends in Sentencing Children to Life Without Parole*, February 2021, available at <<https://cfsy.org/wp-content/uploads/CFSY-National-Trends-Fact-Sheet.pdf>> (accessed October 13, 2021).

<sup>59</sup> *Id.*

<sup>60</sup> Campaign for the Fair Sentencing of Youth, *Montgomery v Louisiana Anniversary*, January 25, 2020, p 3, available at <<https://cfsy.org/wp-content/uploads/Montgomery-Anniversary-1.24.pdf>> (accessed October 13, 2021).

remaining 23.2% are still awaiting resentencing.<sup>61</sup> Where only 3.2% of those under 18 have been resentenced to LWOP, it is disproportionate to sentence 100% of young adults 18 and older to LWOP.

Judicial and legislative action across the country demonstrates an emerging consensus that mandatory LWOP is disproportionate for young adults since they are developmentally youthful and exhibit the same mitigating characteristics as youth under 18 years old.

For instance, the Washington Supreme Court recently held that mandatory LWOP is unconstitutional for people who were under 21 years old at the time of their offenses.<sup>62</sup> The defendants before the Washington Supreme Court were 19 and 20 years old at the time of their crimes; therefore, the Court did not address whether the same constitutional rule applies to those age 21 or older. The Washington Supreme Court ordered the trial courts to conduct resentencing hearings at which the court must consider the mitigating qualities of youth and determine whether LWOP is a proportionate sentence. *Id.*

In *State v Norris*, the Appellate Division of the Superior Court of New Jersey remanded for resentencing where the defendant, who was 21 at the time of the crime, was sentenced to 80 years in prison.<sup>63</sup> The court, citing *Miller*, instructed the trial court to “consider at sentencing a youthful offender’s failure to appreciate risks and consequences as well as other factors often peculiar to young offenders.” *Id.* at \*5.

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<sup>61</sup> Campaign for the Fair Sentencing of Youth, *National Trends*, *supra* n 58.

<sup>62</sup> *Matter of Monschke/Matter of Bartholomew*, 197 Wash2d 305, 329 (2021).

<sup>63</sup> *State v Norris*, unpublished opinion of the Superior Court of New Jersey Appellate Division, issued May 15, 2017 (2017 WL 2062145).

In *Sharp v State*, the Indiana Court of Appeals deemed an 18-year-old a youthful offender and applied the reasoning of *Graham* and *Miller* to vacate his 55-year sentence for felony-murder.<sup>64</sup>

California expanded its youth offender parole hearings to include those who were under the age of 26 at the time of their offense.<sup>65</sup> At a youth offender hearing, the hearing panel is “required to give great weight to the diminished culpability of juveniles, the hallmark features of youth,” and to the individual’s “subsequent growth and increased maturity.”<sup>66</sup> “The idea of a youth offender parole hearing is based on scientific evidence showing that parts of the brain involved in behavior control continue to mature through late adolescence and that adolescent brains are not yet fully mature until a person is in their mid-to-late 20s. Specifically, the area of the brain responsible for impulse control, understanding consequences, and other executive functions is not fully developed until that time.”<sup>67</sup>

Illinois has a similar youthful offender parole system.<sup>68</sup> A person who was under 21 years of age at the time of commission of first-degree

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<sup>64</sup> *Sharp v State*, 16 NE3d 470 (Ind App, 2014), opinion vacated on other grounds, 42 NE2d 512 (Ind, 2015).

<sup>65</sup> California Department of Corrections and Rehabilitation, *Youth Offender Parole Hearings*, available at <<https://www.cdcr.ca.gov/bph/youth-offender-hearings-overview/>> (accessed October 6, 2021).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Youthful Parole Bill, Illinois Public Act 100-1182, available at <<https://www.ilga.gov/legislation/publicacts/100/100-1182.htm>> (accessed October 12, 2021).

murder is eligible for parole review after serving 20 or more years of their sentence, except in certain cases of aggravated murder.<sup>69</sup>

Other developed nations protect young adults from the harshest punishments. In Sweden, young adults can be tried in juvenile court until age 25 and courts cannot impose mandatory minimum sentences on those under 21.<sup>70</sup> In Switzerland, young adults up to 25 can be treated as juveniles.<sup>71</sup> The Netherlands extends juvenile alternatives to young adults until they turn 23.<sup>72</sup> Japan treats those under age 20 as children.<sup>73</sup> In Germany, all young adults from age 18 to 21 are tried in a specialized youth court and judges have discretion to impose either a juvenile or adult sentence, depending on an individual's circumstances.<sup>74</sup> The vast majority of young adults convicted of homicide, rape, and other serious bodily injury crimes in Germany are sentenced as juveniles—over 90% in 2012.<sup>75</sup>

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<sup>69</sup> In April 2021, the Illinois House passed HB 1064, which would prohibit LWOP sentences for young adults under the age of 21 who are convicted of non-aggravated first-degree murder. Illinois General Assembly, *Bill Status of HB 1064*, available at <<https://www.ilga.gov/legislation/BillStatus.asp?DocNum=1064&GAID=16&DocTypeID=HB&SessionID=110&GA=102>> (accessed October 13, 2021); Ill House Bill 1064, available at <<https://www.ilga.gov/legislation/102/HB/PDF/10200HB1064lv.pdf>> (accessed October 13, 2021).

<sup>70</sup> Ishida, *Young Adults in Conflict with the Law* at 3.

<sup>71</sup> Transition to Adulthood Alliance, *Young Adults and Criminal Justice* at 3.

<sup>72</sup> Matthews, Schiraldi, and Chester, 1 Justice Evaluation J 59.

<sup>73</sup> Ishida, *Young Adults in Conflict with the Law* at 4.

<sup>74</sup> Matthews, Schiraldi, and Chester, 1 Justice Evaluation J 59.

<sup>75</sup> *Id.*



Michigan’s mandatory LWOP sentence for young adults is more severe than the penalties in 32 states. Many other jurisdictions protect young adults from harsh criminal penalties. The third *Bullock* factor supports a finding that mandatory LWOP is a disproportionate punishment for young adults.

**4. *Mandatory LWOP does not advance the penological goal of rehabilitation.***

The fourth and final *Bullock* factor requires the Court to consider the relationship between mandatory LWOP and rehabilitation. 440 Mich at 34. “Michigan has long recognized rehabilitative considerations in criminal punishment.” *Lorentzen*, 387 Mich at 179.

Mandatory LWOP does not seek to rehabilitate troubled young adults. On the contrary, it “ ‘forswears altogether the rehabilitative ideal.’ ” *Miller*, 567 US at 473, quoting *Graham*, 560 US at 74. See also *People v Carp*, 496 Mich 440, 520-21 (2016), judgment vacated on other grounds by *Carp v Michigan*, 577 US 1186 (2016) (recognizing that LWOP “does not serve the penological goal of rehabilitation”).

Any person older than 17 who is convicted of first-degree murder in this state is automatically condemned to die in prison. This disregards that young adults have a unique capacity for change—a fact supported not only by common sense, but by scientific evidence. As young adults’ brains fully develop, they have great potential for rehabilitation. See Sections II(a)(1)(i), *supra*.

In passing the Raise the Age legislation discussed in Section II(a)(2), *supra*, the Michigan Legislature considered that “[m]ost juvenile offenders are victims of trauma such as abuse and/or neglect, been in foster care, and/or have mental health issues or developmental disabilities. All of these are known to increase the risk of being involved

in the criminal justice system, but timely and appropriate age-related services and support can turn lives around.”<sup>76</sup>

A mandatory LWOP sentence is an “irrevocable judgment” about a young person’s “value and place in society”. *Miller*, 567 US at 473, quoting *Graham*, 560 US at 74. It makes youth and rehabilitative potential irrelevant to the imposition of the harshest prison sentence. But a young adult’s youthful characteristics must be considered to satisfy our state’s proportionality rule. A sentence must be “proportionate to the seriousness of the circumstances surrounding the offense and the offender.” *Steanhouse*, 500 Mich at 459, citing *Milbourn*, 435 Mich at 636. The circumstances of a young adult offender include a heightened capacity for change. Mandatory LWOP for young adults is at odds with Michigan’s emphasis on rehabilitation.

Each of the four *Bullock* factors counsels against mandatory LWOP for young adults. Mandatory LWOP (1) poses too great a risk of disproportionate punishment because neither the individual’s level of culpability nor the circumstances of the offense are considered; (2) is disproportionate when automatically imposed on young adults who the law protects from harsh penalties in other criminal contexts; (3) is imposed by a minority of states; and (4) does not advance the goals of rehabilitation.

**b. The Michigan Constitution offers broader protection than the Eighth Amendment and prohibits mandatory LWOP for young adults.**

This Court has held that the Michigan Constitution’s prohibition of cruel or unusual punishments should be interpreted more expansively than the United States Supreme Court interprets the Eighth Amendment. *Bullock*, 440 Mich at 30. The *Bullock* Court emphasized the textual variance between the Michigan Constitution (“cruel *or* unusual”) and the Eighth Amendment (“cruel *and* unusual”). *Id.*; Const

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<sup>76</sup> House Fiscal Agency, *Legislative Analysis: Raise the Age* at p 17, *supra* n 54.

1963, art 1, § 16; US Const, Am VIII. The Court concluded that “this difference in phraseology. . . might well lead to different results with regard to allegedly disproportionate prison terms.” *Id.* at 31, citing *Lorentzen*, 387 Mich at 171-172. Indeed, in *Bullock*, this Court struck down a mandatory LWOP sentence on state constitutional grounds, though that same sentence had survived an Eighth Amendment challenge in the United States Supreme Court. 440 Mich at 27, 37.

The *Bullock* Court examined the history of the ban on excessive punishments in Michigan. 440 Mich at 32-35. At the time the Michigan Constitution was ratified in 1963, both the United States Supreme Court and the Michigan Supreme Court had held that grossly disproportionate sentences were constitutionally forbidden. *Id.*, citing *Weems*, 217 US at 366-367; *Harmelin v Michigan*, 501 US 957, 1009-1010 (1991) (White, J., dissenting); *People v Mire*, 173 Mich 357, 361-362 (1912). The *Bullock* Court cited this as one reason for adopting a “broader view of state constitutional protection”. 440 Mich at 32-33. The Court found that the framers of Michigan’s Constitution understood the protection against cruel or unusual punishments to prohibit grossly disproportionate sentences, and therefore Const art 1, § 16 does just that, independent of federal courts’ interpretation of Eighth Amendment. *Id.* at 32.

The Michigan Constitution prohibits cruel punishment, even if it is not unusual. See also *Harmelin*, 501 US at 995 (“Severe, mandatory penalties may be cruel, but they are not unusual in the constitutional sense, having been employed in various forms throughout our Nation’s history.”). Likewise, Const art 1, § 16 prohibits an unusual punishment even if it is not cruel. “The prohibition of punishment that is unusual but not necessarily cruel carries an implication that unusually excessive imprisonment is included in that prohibition.” *Bullock*, 440 Mich at 31, quoting *Lorentzen*, 387 Mich at 172. A punishment that is either cruel or unusual may pass federal constitutional muster, but it must fall under the Michigan Constitution.

It is cruel to sentence someone like Mr. Poole to die in prison without considering that his brain was not yet fully developed at the time of the crime. Section II(a)(1)(i), *supra*. It is also cruel to sentence a young adult to mandatory LWOP where he exhibits both the hallmark features of

youth and great capacity for rehabilitation. Many areas of law recognize that young adults are not as responsible for their actions as older adults. See Section II(a)(1)(ii), *supra*.

Mandatory LWOP is also unusual. Michigan is one of only 18 states that impose mandatory LWOP on young adults who commit premeditated murder regardless of the facts and circumstances. See Section II(a)(3), *supra*. In *Graham* and *Miller*, the United States Supreme Court struck down LWOP sentences where 39 and 29 states, respectively, permitted them. 560 US at 62; 567 US at 482.

Finally, our state constitution requires criminal sentences to comport with the evolving standards of decency. *Lorentzen*, 387 Mich at 178-179. See also *People v Coles*, 417 Mich 523, 530 (1990), overruled on other grounds by *People v Milbourn*, 435 Mich 630 (1990) and by *People v Lockridge*, 498 Mich 358 (2015); *Bullock*, 440 Mich at 34 (“*Lorentzen*’s analysis, although relying in the alternative on the Eighth Amendment, was firmly and sufficiently rooted in Const 1963, art 1, § 16.”). Because mandatory LWOP for young adults is an uncommon punishment in other states and because it is excessive in many cases, it does not pass *Lorentzen*’s “decency test.” 387 Mich at 179.

States are free to afford protections to young adults beyond what federal law requires. *Jones*, 141 S Ct at 1323. The Michigan Constitution demands that a sentencing court account for youth and its mitigating properties when sentencing a young adult. This Court should find that mandatory LWOP for young adults age 18 to 25 is cruel, unusual, or both, and is therefore prohibited by Const 1963, art 1, § 16.

**c. A mandatory LWOP sentence is unconstitutional as applied to Mr. Poole under Const 1963, art 1, § 16.**

Mr. Poole’s sentence is disproportionate to him and therefore unconstitutional as applied. Const 1963, art 1, § 16. Eighteen-year-old Mr. Poole’s immaturity, the lack of guidance and resources available to him, his vulnerability to influence by others, and the extremely difficult family and home environment from which he could not extricate himself provide important context for his offense and demonstrate that he is not deserving of the harshest punishment available under the law. See

*Miller*, 567 US at 477-478; *People v Dipiazza*, 286 Mich App 137, 153-157 (2009) (holding that sex offender registration was cruel and unusual punishment as applied to an 18-year-old defendant).

Mr. Poole's mother was addicted to crack cocaine throughout his childhood.<sup>77</sup> She was absent frequently, sometimes for days at a time. Mr. Poole and his siblings lived in an abandoned house infested with rodents and cockroaches. Their access to food, electricity, and running water was sporadic.

Mr. Poole's father was never part of his life. *PSIR* at 15. His mother was unavailable to parent him. Growing up, Mr. Poole had no support or guidance. He left school before or during ninth grade. *PSIR* at 1, 7. He did not know how to read or write; he learned in prison.

While Mr. Poole's offense was grave, his youth and his difficult life circumstances reduce his culpability. At age 18, his brain was not fully developed and therefore his ability to assess risks and consequences was limited. On top of his typical youthful immaturity, the trauma and neglect Mr. Poole experienced as a child hindered the development of his brain and inhibited his ability to regulate his emotions and his behavior.<sup>78</sup>

Further, Mr. Poole was influenced by two much-older adults to commit this offense. His uncle—who was a role model for Mr. Poole—set up the crime. His uncle instructed him on what to do, promised him money, and gave him a firearm. His uncle also arranged for another adult to transport Mr. Poole to the scene. Mr. Poole's uncle followed closely behind and circled the block while Mr. Poole did his bidding. Research shows that important nonparental adults—most commonly a sibling, aunt, or uncle—can exert significant negative influence over young adults.<sup>79</sup> That is exactly what happened here. Mr. Poole's youth,

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<sup>77</sup> These facts would be established at Mr. Poole's resentencing hearing.

<sup>78</sup> Tottenham & Galvan, 70 *Neurosci Biobehav Rev* 217, 220-222.

<sup>79</sup> Greenberger, Chen, & Beam, 27 *J Youth and Adolesc* 321.

his circumstances, and the influence of older adults mitigates his culpability and makes mandatory LWOP disproportionate.

In addition, Mr. Poole's proven ability to rehabilitate renders his LWOP sentence excessive. At a resentencing hearing, Mr. Poole would demonstrate his many educational achievements, his stellar employment record, his personal growth, and his long history of good conduct while incarcerated. For example, Mr. Poole served as an aide to elderly prisoners, helping them bathe and dress; is an American Sign Language interpreter and served the Michigan Department of Corrections in that capacity; and he currently works as a Special Activities Clerk, facilitating cultural events and arts programming at Richard Handlon Correctional Facility.

Mr. Poole is an enthusiastic student at Calvin College. He anticipates receiving his Associate's Degree in Faith & Community Development in March 2022, then pursuing his Bachelor's Degree in the same field, with a minor in Social Work. He has engaged in Community Service while incarcerated. He has not received a single prison misconduct—major or minor—in over ten years.

Mr. Poole's sentence does not allow for review of his rehabilitation. No matter how great his progress, no matter how much he grows and matures, and no matter how much he accomplishes, he will die in prison unless this Court intervenes.

The law's harshest penalty is unconstitutional as applied to Mr. Poole. See *Bullock*, 440 Mich at 32-33; *Lorentzen*, 387 Mich at 176. See also *Steanhouse*, 500 Mich at 459, citing *Milbourn*, 435 Mich at 636. His sentence is disproportionate and violates our state constitution's ban on cruel or unusual punishment. Const 1963, art 1, § 16.

**d. Mandatory LWOP for young adults is disproportionate and violates the Eighth Amendment.**

Michigan's current sentencing scheme makes youth irrelevant to the imposition of the harshest possible penalty on young adults. This poses "too great a risk of disproportionate punishment" and is thus cruel and unusual. *Miller*, 567 US at 211; US Const, Ams VIII and XIV.

The concept of Eighth Amendment proportionality is viewed “less through a historical prism than according to the evolving standards of decency that mark the progress of a maturing society.” *Miller*, 567 US at 469-70, quoting *Estelle v Gamble*, 429 US 97, 102 (1976). “Time works changes” upon the Eighth Amendment, bringing into existence “new conditions and purposes.” *Weems*, 217 US at 373. The protections of the Eighth Amendment are not static; rather, “evolving standards of decency. . . mark the progress of a maturing society[.]” *Miller*, 567 US at 469-70 (quotation marks and citations omitted).

In *Miller*, the United States Supreme Court recognized that brain development research, which evolves over time, informs the constitutionality of punishment. Evolving standards of decency require the law to keep pace with the evolving science of brain development. See *Roper*, 543 US at 563, 569; *Atkins*, 536 US at 311. As discussed above, current scientific research demonstrates the “distinctive attributes of youth” that formed the basis for the Court’s decision in *Miller* exist until one’s mid-twenties. 567 US at 472.

The United States Supreme Court has made clear that a person’s chronological age is not the only factor that can render unconstitutional the imposition of the harshest penalty. Limited ability to control one’s impulses, engage in logical reasoning, and weigh the potential consequences of one’s actions reduce culpability independent of chronological age. *Atkins*, 536 US at 316. And youth itself “is more than a chronological fact.” *Eddings v Oklahoma*, 455 US 104, 115 (1982). Where research shows young adults have underdeveloped brain systems like their 17-year-old counterparts, imposition of the harshest penalty on them without consideration of youth and its mitigating properties is unconstitutional.

## Conclusion

Our state constitution prohibits punishment that is cruel, unusual, or both. This Court should rule that, under Const 1963, art 1, § 16, mandatory LWOP is unconstitutional for young adults between the ages of 18 and 25. Because their brains are less developed than older adults', they are less blameworthy and more capable of rehabilitation. Given what science and society know about young adults, mandatory LWOP is disproportionate for them just as it is for 17-year-olds.

Mandatory LWOP is unconstitutional for young adults as a category and as applied to Mr. Poole. When sentencing a young adult like Mr. Poole, a court must account for mitigating characteristics and have discretion to determine whether the harshest possible penalty is warranted. Mr. Poole's difficult life and family circumstances, destitute living environment, lack of guidance, and vulnerability to negative influence mitigate his culpability. His evolution into a service-oriented, studious, misconduct-free adult demonstrates his capacity for rehabilitation.

Mr. Poole meets the procedural requirements for a filing successive motion for relief from judgment and establishes entitlement to relief. The United States Supreme Court issued its opinion in *Montgomery* in 2016. Mr. Poole filed the instant motion in 2019 based on the retroactive change in law announced in *Montgomery*, and it is the only motion for relief from judgment Mr. Poole has filed since *Montgomery* was issued. 11a-12a; 8a. He therefore has established good cause for failing to raise this claim on direct appeal or in any prior motion. MCR 6.508(D)(3)(a).

Mr. Poole is suffering actual prejudice because his sentence is disproportionate, unconstitutional, and therefore "invalid." MCR 6.508(D)(3)(b)(iv); *Miles*, 454 Mich at 96, citing *Whalen*, 412 Mich at 169-170. The Michigan Constitution, read together with *Miller*, requires the sentencing court to consider Mr. Poole's youth and attendant characteristics before deciding whether to impose LWOP or a term of years. Because no such consideration occurred here, Mr. Poole's LWOP sentence is invalid.



## **Relief Requested**

For the reasons set forth above, John Antonio Poole respectfully requests this Court:

- a. Hold that Mr. Poole was permitted to file the instant successive motion for relief from judgment and appeal its denial;
- b. Remand for resentencing on Mr. Poole's first-degree murder conviction, where the sentencing court shall consider Mr. Poole's youth and attendant characteristics and shall have discretion to impose a term-of-years sentence or LWOP.
- c. Hold that, when a person was 18 years to 25 years old at the time of their crime, the sentencing court must consider their youth and attendant characteristics before deciding whether to impose a term-of-years sentence or LWOP.

If this Court feels it cannot grant the relief described above, Mr. Poole alternatively requests this Court remand for an evidentiary hearing where the circuit court shall determine whether Mr. Poole's youth and attendant characteristics are mitigating and, if they are, shall resentence Mr. Poole with the discretion to impose a term-of-years sentence or LWOP.

Respectfully submitted,

**State Appellate Defender Office**

*/s/ Maya Menlo* \_\_\_\_\_

Maya Menlo (P82778)

Adrienne Young (P77803)

State Appellate Defender Office

3031 West Grand Blvd, Suite 450

Detroit, Michigan 48202

(313) 256-9833

mменlo@sado.org

Date: November 15, 2021

## CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the formatting rules in Administrative Order No. 2019-6. I certify that this document contains 11,558 countable words. The document is set in Century Schoolbook, and the text is in 12-point type with 17-point line spacing and 12 points of spacing between paragraphs.

/s/ Maya Menlo

Maya Menlo (P82778)

State Appellate Defender Office  
3031 West Grand Blvd, Suite 450  
Detroit, Michigan 48202  
(313) 256-9833  
mmenlo@sado.org