STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff- Appellee,

v.

ROBERT TAYLOR,

Defendant-Appellant.

Supreme Court No. 154994

Court of Appeals No. 325834

Macomb County Circuit Court

No. 2009-005243-FC

Hon. Diane M. Druzinski

BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER, AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN, AND JUVENILE SENTENCING PROJECT IN SUPPORT OF DEFENDANT-APPELLANT ROBERT TAYLOR

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INTEREST AND IDENTITY OF *AMICI CURIAE*[1]

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of *amicus* briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values.

The Juvenile Sentencing Project is a project of the Legal Clinic at Quinnipiac University School of Law. The Juvenile Sentencing Project focuses on issues relating to long prison sentences imposed on children. In particular, it researches and analyzes responses by courts and legislatures nationwide to the U.S. Supreme Court's decisions related to long sentences for juveniles and produces reports and memoranda for use by policymakers, courts, scholars, and advocates. The Juvenile Sentencing Project focuses its research in particular on the "meaningful opportunity to obtain release" standard applicable to individuals who commit crimes as children. Because of its dedication to pursuing research in this area of the law, the Juvenile Sentencing Project has an interest in assisting courts to develop an accurate understanding of the legal issues surrounding the standard.

The American Civil Liberties Union of Michigan ("ACLU") is the Michigan affiliate of a nationwide, nonpartisan organization with over a million members dedicated to protecting the rights guaranteed by the United States Constitution. The ACLU has long advocated for an end to

[1] Pursuant to MCR 7.312(H)(4), *amici curiae* states that no counsel for a party authored this brief in whole or in part, nor did anyone, other than *amici* and their counsel, make a monetary contribution intended to fund the preparation or submission of the brief.

the practice of sentencing children in Michigan to life in prison, including through litigation, as *amicus curiae*, and through public education. See, e.g., *Hill v Snyder*, 900 F3d 260 (CA 6, 2018); *People v Carp*, 496 Mich 440; 852 NW2d 801 (2014), vacated by *Carp v Michigan,* 577 US 1186 (2016); ACLU of Michigan, Second Chances: Juveniles Serving Life Without Parole in Michigan Prisons (2004).

SUMMARY OF THE ARGUMENT

The United States Supreme Court has consistently recognized that children are fundamentally different from adults and categorically less deserving of the harshest forms of punishments. *Roper v Simmons*, 543 US 551, 569; 125 S Ct 1183; 161 L Ed 2d 1 (2005); *Graham v Florida*, 560 US 48, 68; 130 S Ct 2011; 176 L Ed 2d 825 (2010); *Miller v Alabama*, 567 US 460, 471; 132 S Ct 2455; 183 L Ed 2d 407 (2012); *Montgomery v Louisiana*, 577 US 190, 208; 136 S Ct 718; 193 L Ed 2d 599 (2016). As explained in *Miller*, because youth "have diminished culpability and greater prospects for reform . . . 'they are [categorically] less deserving of the most severe punishments.'" 567 US at 471, quoting *Graham*, 560 US at 68.

A substantial body of neuroscientific research supports *Miller*'s reasoning by showing that brain maturation continues through late adolescence, particularly with respect to behavior control and the ability to gauge future consequences. *Id.* at 471-72, first citing *Roper*, 543 US at 570, then citing *Graham*, 569 US at 68. This research demonstrates that the vast majority of adolescent crime reflects "unfortunate yet transient immaturity." *Roper*, 543 US at 573. Imposing life without parole sentences on youth therefore contravenes this established research by suggesting that certain children are incapable of change and rehabilitation. Michigan should adopt a categorical bar on life without parole sentences for youth in order to bring the state's sentencing laws in line with prevailing neuroscientific research.

Until then, Michigan should adopt procedural protections to ensure these sentences are rarely imposed on youth. In *Miller v Alabama*, the United States Supreme Court prohibited mandatory life without parole sentences for youth and further stated that imposing life without parole sentences would be "uncommon." 567 US at 479. In *Montgomery v Louisiana*, the Court ruled *Miller* retroactive and explained that *Miller* "did bar life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." 577 US at 209.

Condemning a youth to die in prison should be a rare punishment and requires individualized forward-looking determination. This harsh penalty cannot be justified for every adolescent for whom the prosecutor seeks a life without parole sentence. A presumption against this practice ensures fidelity to the constitutional mandates of *Miller* and *Montgomery* and sets forth the framework under which these sentences may be imposed. Moreover, to ensure these sentences are reserved for the rare youth whose crimes do not reflect transient immaturity, the prosecution should also bear the burden of demonstrating that a life without parole sentence is justified.

ARGUMENT

I. NEUROSCIENTIFIC AND DEVELOPMENTAL RESEARCH MANDATES A CATEGORICAL BAR ON LIFE WITHOUT PAROLE SENTENCES FOR YOUTH

"[C]hildren are constitutionally different from adults for purposes of sentencing." *Miller v Alabama*, 567 US 460, 471; 132 S Ct 2455; 183 L Ed 2d 407 (2012). Their demonstrated "lack of maturity" and "underdeveloped sense of responsibility" can lead to recklessness, impulsivity, and vulnerability to negative influences and outside pressures over which they have limited control. *Roper v Simmons*, 543 US 551, 569; 125 S Ct 1183; 161 L Ed 2d 1 (2005). This is the "starting premise" of the United States Supreme Court's juvenile sentencing jurisprudence, supporting its fundamental assertion that children have "diminished culpability and greater prospects for

reform." *Montgomery v Louisiana*, 577 US 190, 206-07; 136 S Ct 718; 193 L Ed 2d 599 (2016), quoting *Miller*, 567 US at 471. In reaching these conclusions, the United States Supreme Court relied on an increasingly settled body of research finding that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." *Graham v Florida*, 560 US 48, 68; 130 S Ct 2011; 176 L Ed 2d 825 (2010). These scientific studies have helped to "explain salient features of adolescent development, and point[] to the conclusion that children do not think and reason like adults because they cannot." King, *Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children From Unknowing, Unintelligent, and Involuntary Waivers of Miranda Rights*, 2006 Wis L Rev 431, 434-35 (2006). See also Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am Psychologist 1009, 1011-12 (2003).

The most significant difference between youth and adult brains is in the prefrontal cortex, the brain region implicated in complex cognitive behavior, personality expression, decision-making and moderating social behavior, which undergoes crucial changes during adolescence. See Szczepanski & Knight, *Insights into Human Behavior from Lesions to the Prefrontal Cortex*, 83 Neuron 1002, 1002 (2014) (stating that the frontal lobes "play an essential role in the organization and control of goal-directed thought and behavior," and that these functions are collectively referred to as cognitive or executive control). See also Flynn, *Dismantling the Felony-Murder Rule: Juvenile Deterrence and Retribution Post-Roper v. Simmons*, 156 U Pa L Rev 1049, 1070 (2008). As a result of myelination, the process through which nerve fibers become sheathed in myelin (a white fatty substance that facilitates faster, more efficient communication between brain systems), adolescents experience an increase of "white matter" in the prefrontal cortex as they age. Steinberg, *The Science of Adolescent Brain Development and Its Implication for Adolescent Rights*

and Responsibilities, in Bhabha, ed, *Human Rights and Adolescence* (Philadelphia: University of Pennsylvania Press, 2014), ch 3, p 64. See also Maroney, *The Once and Future Juvenile Brain*, in Zimring & Tanenhaus, eds, *Choosing the Future for American Juvenile Justice* (New York: NYU Press, 2014), ch 9, p 193-94. The creation of more efficient neural connections within the prefrontal cortex is critical for the development of "higher-order cognitive functions [that are] regulated by multiple prefrontal areas working in concert—functions such as planning ahead, weighing risks and rewards, and making complicated decisions." *The Science of Adolescent Brain Development, supra*, at 64. Compared to the brain of a young teenager, the brain of an adult displays "a much more extensive network of myelinated cables connecting brain regions," *id*., and evidence shows that adolescents become better at completing tasks that require self-regulation and management of processing as they age. Kuhn, *Do Cognitive Changes Accompany Developments in the Adolescent Brain?*, 1 Persp on Psychol Sci 59, 60-61 (2006) (stating that inhibition comprises two components: "resistance to interfering stimuli and inhibitory control of one's own responses.").

Neuroscientists have also observed that different parts of the cortex mature at different rates. Myelination and pruning start at the back of the brain and spread toward the front, Maroney, *supra,* at 193, which means that areas involved in more basic functions, such as those involved in processing information from the senses and in controlling movement, develop first, while the parts of the brain responsible for more "top-down" control, such as controlling impulses and planning ahead, are among the last to mature. Nat'l Inst of Mental Health, *The Teen Brain: Still Under Construction* (2011), p 3, available at <http://www.ncdsv.org/images/NIMH_TeenBrain StillUnderConstruction_2011.pdf>. See also Peraino & Fitz-Gerald, *Psychological Considerations in Direct Filing*, 40 Colo Law 41, 43 (2011). Developmental psychology has

shown that though reasoning improves throughout adolescence and into adulthood, it is always tied to and limited by the adolescent's psychosocial immaturity. See *Less Guilty by Reason of Adolescence*, *supra*, at 1011-13. Even if an adolescent has an "adult-like" capacity to make decisions, the adolescent's sense of time, lack of future orientation, pliable emotions, calculus of risk and gain, and vulnerability to pressure will often drive the teen to make very different decisions than an adult would make in a comparable situation. *Id.*

Adolescents' risk assessment, decision-making capacities, and future orientation differ from those of adults in ways that are particularly relevant to criminal conduct. See Keller, *Constitutional Sentences for Juveniles Convicted of Felony Murder in the Wake of Roper, Graham & J.D.B.*, 11 Conn Pub Int LJ 297, 312-14 (2012). As the United States Supreme Court has observed, adolescents "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." *J.D.B. v North Carolina*, 564 US 261, 272; 131 S Ct 2394; 180 L Ed 2d 310 (2011), quoting *Bellotti v Baird*, 443 US 622, 635; 99 S Ct 3035; 61 L Ed 2d 797 (1979). See also Scott & Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 Future Child 15, 20 (2008) ("Considerable evidence supports the conclusion that children and adolescents are less capable decision makers than adults in ways that are relevant to their criminal choices."). Although adolescents may possess the capacity to reason logically, they "are likely less capable than adults are in *using* these capacities in making real-world choices, partly because of lack of experience and partly because teens are less efficient than adults in processing information." Scott & Steinberg, *supra*, at 20.

As adolescents attach different values to rewards than adults do, they often exhibit sensation-seeking characteristics that reflect their need to seek "varied, novel, [and] complex . . . experiences [as well as a] willingness to take physical, social, *legal* and *financial* risks for the sake of such

experience." Zuckerman, *Behavioral Expressions and Biosocial Bases of Sensation Seeking* (Cambridge: Cambridge University Press, 1994), p 27. The need for this type of stimulation often leads adolescents to engage in risky behaviors, and as they have difficulty suppressing action toward emotional stimulus, they often display a lack of self-control. Scott & Steinberg, *supra*, at 20. The United States Supreme Court has recognized this, stating that adolescents "have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking." *Miller*, 567 US at 471, quoting *Roper*, 543 US at 569. As a result, "adolescents are overrepresented statistically in virtually every category of reckless behavior." *Roper*, 543 US at 569, quoting Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 Developmental Rev 339 (1992).

Adolescents also have difficulty thinking realistically about what may occur in the future. See Brief for the American Psychological Association et al. as *Amici Curiae* Supporting Petitioners, *Graham v Florida*, 560 US 48 (2010) (Nos. 08-7412, 08-7621), pp 11-12. This lack of future orientation means that adolescents are both less likely to think about potential long-term consequences, and more likely to assign less weight to those that they *have* identified, especially when faced with the prospect of short-term rewards. Scott & Steinberg, *supra*, at 20.

These scientific trends are reflected in the United States Supreme Court's assertion that the majority of crime committed during childhood reflects "unfortunate yet transient immaturity." *Roper*, 543 US at 573. Sentencing a young person to life without the possibility of parole therefore ignores children's unique capacity to grow and change.

II. AT A MINIMUM, MICHIGAN SHOULD ESTABLISH PROCEDURAL PROTECTIONS TO ENSURE YOUTH RARELY RECEIVE LIFE WITHOUT PAROLE SENTENCES

In *Miller*, the United States Supreme Court recognized children's "heightened capacity for change," and stated this characteristic makes it "uncommon" to find circumstances that justify imposing a life without parole sentence on youth. 567 US at 479. As such, the Court prohibited mandatory life without parole sentences for youth and required consideration of how children's unique characteristics "counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 480. The Supreme Court reiterated its assertion in *Montgomery*, stating that *Miller* "did bar life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." 577 US at 209.

In the absence of a categorical prohibition on life without parole sentences for youth, this Court should adopt procedural protections to ensure the mandates of *Miller* and *Montgomery* are followed across all courts in the state. Establishing a presumption against imposing life without parole sentences on youth and placing the burden on the prosecution to prove that this sentence is justified will help reserve this sentence for only the rarest of young offenders, as *Miller* envisioned.

While this Court previously declined to recognize a presumption against imposing life without parole sentences on youth, see *People v Skinner*, 502 Mich 89, 131; 917 NW2d 292 (2018), scientific research not fully considered by the *Skinner* court demands such a presumption. Moreover, in *Jones v Mississippi*, the United States Supreme Court's most recent youth sentencing opinion, the Court expressly reserved states' rights to adopt additional procedural protections in its interpretation of *Miller*. 141 S Ct 1307, 1323; 209 L Ed 2d 390 (2021). Michigan should accept *Jones*' invitation to ensure that children are not sentenced to die in prison for crimes that reflect "transient immaturity." *Roper*, 543 US at 573; *Jones*, 141 S Ct at 1315 n 2 ("That *Miller* did not

impose a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole."), quoting *Montgomery*, 577 US at 211.

A. *Miller* And *Montgomery* Mandate That Life Without Parole Sentences Are Inappropriate For All But The Rare And Uncommon Juvenile Offender

A defendant's youth "diminish[es] the penological justifications for imposing [a mandatory life without parole sentence]," making it unfairly disproportionate to the crime committed and unconstitutional under the Eighth Amendment's ban on cruel and unusual punishment. *Miller*, 567 US at 472-73. *Miller* and its follow-up case, *Montgomery*, together barred all mandatory sentences of life without parole for children and required resentencing or release on parole for the thousands of individuals who received this sentence as children before the landmark rulings. *Montgomery*, 577 US 190 at 212. All youth sentenced within the criminal legal system must now be given a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation," *Miller*, 567 US at 479, quoting *Graham*, 560 US at 75. The sentencer in a proceeding where the state's harshest penalties are possible must always weigh the "distinctive attributes of youth," and impose only a discretionary sentence of life without parole. *Id*. at 472; *Montgomery*, 577 US at 210. The *Miller* Court enumerated the following factors for consideration by the sentencer, whether judge or jury: (1) The defendant's "chronological age [at the time of the crime] and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences," (2) "the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional," (3) "the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him," (4) "that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his

incapacity to assist his own attorneys," and (5) "the possibility of rehabilitation." *Miller*, 567 US at 477-78. As further underscored in Jones, these distinctive attributes of youth are always mitigating. *Jones*, 141 S Ct at 1314, citing *Miller*, 567 US at 476.

The Court reasoned that, "given all we have said in *Roper*, *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty [life without parole] will be uncommon." *Miller*, 567 US at 479. See also *id*. at 471 (a child's actions are "less likely to be 'evidence of irretrievabl[e] deprav[ity]'"), quoting *Roper*, 543 US at 570 (alterations in original); *id*. at 472-73 ("Deciding that a 'juvenile offender forever will be a danger to society' would require 'mak[ing] a judgement that [he] is incorrigible'—but 'incorrigibility is inconsistent with youth.'"), quoting *Graham*, 560 US at 72-73 (alterations in original).

In *Montgomery*, the Court reiterated its assertion that life without parole sentences for youth would be rare. Although this Court has not required an explicit finding that the child be the "rare" juvenile offender for whom a sentence of life without parole is appropriate, *Skinner*, 502 Mich at 131, *Montgomery* explained that the Court's decision in *Miller* "did bar life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Montgomery*, 577 US at 209. The Court held "that *Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption," noting that a life without parole sentence "could be a proportionate sentence for the latter kind of juvenile offender." *Id*. See also *Jones*, 141 S Ct at 1315 n 2 ("That Miller did not impose a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole."), quoting *Montgomery*, 577 US at 211.

The Supreme Court's holding in *Graham*, which informed both *Miller* and *Montgomery*, rested largely on the incongruity of imposing a final and irrevocable penalty that afforded no opportunity for release on an adolescent who had capacity to change and grow. See *Graham*, 560 US at 68. The Court further explained that:

> Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of "irretrievably depraved character" than are the actions of adults. It remains true that "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

Id., quoting *Roper*, 543 US at 570 (alteration in original). *Graham* also acknowledged that the salient characteristics of youth—the lack of maturity, evolving character, vulnerability and susceptibility to negative influences and external pressure—would make it "difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Graham*, 560 US at 68, quoting *Roper*, 543 US at 573. Accordingly, the Court recognized that "juvenile offenders cannot with reliability be classified among the worst offenders," and that although "[a] juvenile is not absolved of responsibility for his actions, . . . his transgression 'is not as morally reprehensible as that of an adult.'" *Id.* at 68, first quoting *Roper*, 543 US at 569, then quoting *Thompson v Oklahoma*, 487 US 815, 835; 108 S Ct 2687; 101 L Ed 2d 702 (1988) (plurality opinion).

The American Psychological Association underscored this in its *amicus* brief to the *Miller* Court:

> [T]here is no reliable way to determine that a juvenile's offenses are the result of an irredeemably corrupt character; and there is thus no reliable way to conclude that a juvenile—even one convicted of an extremely serious offense—should be sentenced to life in prison, without any opportunity to demonstrate change or reform.

Brief for the American Psychological Association et al. as *Amici Curiae* in Support of Petitioners, *Miller v Alabama*, 567 US 460 (2012) (Nos. 10-9646, 10-9647), p 25. Notably, the difficulty in making this assessment was the basis for at least three state supreme courts to ban juvenile life without parole entirely. See *State v Bassett*, 192 Wash 2d 67, 89-90; 428 P3d 343 (2018) (rejecting the penalty under the state constitution, citing, in part, the "unacceptable risk that children undeserving of a life without parole sentence will receive one"). *Diatchenko v Dist. Attorney for Suffolk Dist.*, 466 Mass 655, 669-70; 1 NE3d 270 (2013) (finding that due to research on adolescent brain development "a conclusive showing of traits such as an 'irretrievably depraved character,' can never be made, with integrity, by the Commonwealth"), quoting *Roper*, 543 US at 570; *State v Sweet*, 879 NW2d 811, 836-37, 839 (Iowa, 2016) (concluding that identifying which young people are "irretrievable" is "simply too speculative and likely impossible" given our understanding of brain development).

B. *Jones* Permits This Court To Implement A Presumption Against Life Without Parole Sentences And Require The State To Prove A Youth's Eligibility For LWOP

The United States Supreme Court recently affirmed the central holdings of both *Miller* and *Montgomery.* See *Jones*, 141 S Ct at 1321. While the Court held the Eight Amendment does not require a finding that a child is "permanent[ly] incorrigib[le]" before sentencing them to life without parole, it explicitly upheld the tenets of both prior cases – including that life without parole sentences should only be imposed "in cases where that sentence is appropriate in light of the defendant's age." *Id.* at 1318. See also *id.* at 1321 ("The Court's decision today carefully follows both *Miller* and *Montgomery*.")

The Court also made it clear that states can set additional sentencing procedures in response to *Miller*.

> [O]ur holding today does not preclude the States from imposing additional sentencing limits in cases involving defendants under 18 convicted of murder. States may categorically prohibit life without parole for all offenders under 18. Or States may require sentencers to make extra factual findings before sentencing an offender under 18 to life without parole. Or States may direct sentencers to formally explain on the record why a life-without-parole sentence is appropriate notwithstanding the defendant's youth. States may also establish rigorous proportionality or other substantive appellate review of life-without-parole sentences. All of those options, and others, remain available to the States.

Id. at 1323. The Court further reasoned that "[w]hen a new substantive rule of constitutional law is established, this Court is careful to limit the scope of any attendant procedural requirement to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems." *Id.* at 1315 n 2, quoting *Montgomery*, 577 US at 211. Prior to *Jones*, this Court did not read *Miller* to require either a finding of a child's "incorrigibility," *Skinner*, 502 Mich at 122, or that a particular young person is "rare," before sentencing them to life without the possibility of parole. *Id.* at 130-31. The Court also declined to find that either *Miller* or *Montgomery* requires a presumption against imposing life without parole on youth. *Id.* at 131.

While *Jones* stands for the narrow proposition that a finding of incorrigibility is not necessary under the Eighth Amendment to effectuate *Miller* and *Montgomery*, it did not address whether courts should establish a presumption against imposing a life without parole sentence or place the burden on the prosecution to show this sentence is appropriate. Indeed, it specifically acknowledged that courts *may* establish such presumptions. *Jones*, 141 S Ct at 1323.

Moreover, the core holdings from *Miller* and *Montgomery,* which prohibit sentencing youth to life without parole for crimes that reflect only "transient immaturity" remain intact under *Jones*. Thus, the *Skinner* Court's statement that "all *Miller* requires sentencing courts to do is to consider how children are different before imposing life without parole on a juvenile" inaccurately

simplifies the Supreme Court's rulings on youth sentencing. *Skinner*, 502 Mich at 130. A fair reading of *Miller* and *Montgomery*, as affirmed in *Jones*, requires that the vast majority of youth do not receive a sentence of life without the possibility of parole. The best way to faithfully implement this principle is by adopting a presumption against imposing this sentence on youth. Indeed, in a dissenting opinion in *Skinner*, Chief Justice McCormack argued that "a faithful application of the holding in *Miller*, as clarified in *Montgomery*, requires the creation of a presumption against sentencing a juvenile offender to life in prison without the possibility of parole." *Id*. at 150 (McCormack, C.J., dissenting), quoting *Commonwealth v Batts,* 640 Pa 401, 472; 163 A3d 410 (2017) (see, infra, footnote 2).

Further, the holdings in *Miller* and *Montgomery* make it clear that when the State files a motion seeking a life without parole sentence under MCL 769.25(3) and MCL 769.25a(4)(b), it is alleging that this individual is one of the rare juveniles "who exhibits such irretrievable depravity that rehabilitation is impossible." *Montgomery*, 577 US at 208. In furtherance of its motion to seek the lifelong imprisonment of the defendant, the prosecution should bear the burden of demonstrating that "rehabilitation is impossible and life without parole is justified." See *id*. To place the burden of proof on the juvenile defendant to establish youthfulness as a mitigating circumstance contravenes this constitutional principle and treats children in adult court "simply as miniature adults," a practice the Supreme Court has explicitly rejected. See *Miller*, 567 US at 481, quoting *J.D.B.*, 564 US at 274.

C. States Have Interpreted *Miller* And *Montgomery* To Require Protections Against Sentencing Youth Whose Crimes Reflect Transient Immaturity To Life Without Parole

Several states have embraced procedural protections following *Miller* and *Montgomery*, including requiring presumptions against imposing life without parole sentences on youth and placing the burden on the prosecution to justify these sentences. These protections are consistent

with *Jones'* invitation for states to adopt sentencing procedures in response to *Miller* and *Montgomery*.

The Connecticut Supreme Court, citing language in *Miller,* stated that "the mitigating factors of youth establish, in effect, a presumption against imposing a life sentence without parole on a juvenile offender that must be overcome by evidence of unusual circumstances." *State v Riley*, 315 Conn 637, 655; 110 A3d 1205 (2015) (citation omitted). The Iowa Supreme Court also found that *Miller* established a presumption against juvenile life without parole:

> [T]he court must start with the Supreme Court's pronouncement that sentencing a juvenile to life in prison without the possibility of parole should be rare and uncommon. Thus, the presumption for any sentencing judge is that the judge should sentence juveniles to life in prison with the possibility of parole for murder unless the other factors require a different sentence.

State v Seats, 865 NW2d 545, 555 (Iowa, 2015) (citations omitted). Notably, since its decision in *Seats*, the Iowa Supreme Court held that juvenile life without parole sentences are always unconstitutional pursuant to their state constitution. It found:

> [T]he enterprise of identifying which juvenile offenders are irretrievable at the time of trial is simply too speculative and likely impossible given what we now know about the timeline of brain development and related prospects for self-regulation and rehabilitation. . . . But a district court at the time of trial cannot apply the *Miller* factors in any principled way to identify with assurance those very few adolescent offenders that might later be proven to be irretrievably depraved. In short, we are asking the sentencer to do the impossible, namely, to determine whether the offender is "irretrievably corrupt" at a time when even trained professionals with years of clinical experience would not attempt to make such a determination.
>
> No structural or procedural approach, including a provision of a death-penalty-type legal defense, will cure this fundamental problem.

Sweet, 879 NW2d at 836-37.

In *Commonwealth v Batts*[2], the Pennsylvania Supreme Court reasoned "that as a matter of law, juveniles are categorically less culpable than adults." 640 Pa at 471. The court further explained that this "central premise" is based on the well-established conclusion that "the vast majority of adolescents change as they age and, despite their involvement in illegal activity, do not develop entrenched patterns of problem behavior." *Id.*, quoting *Miller*, 567 US at 471 (original quotation marks omitted). The *Batts* court further reasoned that the fact that an offender is young is necessarily connected to the fact that the offender is "capable of rehabilitation." *Id.* at 471-72. Accordingly, the court adopted a presumption against the imposition of a life without parole sentence on a juvenile offender. *Id.* at 472.

In *Batts*, the Pennsylvania Supreme Court also rejected the argument that a "juvenile offender bears the burden of proving that he or she is not eligible for a life-without-parole sentence." 640 Pa at 470. The court reasoned that "any suggestion of placing the burden on the juvenile offender is belied by the central premise of *Roper*, *Graham*, *Miller* and *Montgomery*—that as a matter of law, juveniles are categorically less culpable than adults." *Id.* at 471.

Other state supreme courts have reached similar conclusions in the life without parole context, endorsing a presumption against the imposition of that sentence that the State has the burden to overcome. In *Davis v State*, the Wyoming Supreme Court, in analyzing a case of *de facto* life without parole, adopted the reasoning of *Batts* in its entirety, agreeing that "the State bears the burden of overcoming" the presumption underpinning the "central premise" in *Miller*: that "juveniles are categorically less culpable than adults," and permitting the State to overcome that

[2] In *Jones*, the United States Supreme Court cited *Commonwealth v Batts* to show the disagreement in how state and federal courts have interpreted *Miller* and *Montgomery*. 141 S Ct at 1313. However, as articulated in the previous section, embracing procedures in response to *Miller,* is consistent with *Jones's* holding.

presumption only with evidence establishing beyond a reasonable doubt that the juvenile offender is irreparably corrupt. 415 P3d 666, 681-82; 2018 WY 40 (2018), quoting *Batts*, 640 Pa at 471). See also *State v Hart*, 404 SW3d 232, 241 (Mo, 2013) (en banc) ("[A] juvenile offender cannot be sentenced to life without parole for first-degree murder unless the state persuades the sentencer beyond a reasonable doubt that this sentence is just and appropriate under all the circumstances.").

At least one state, Massachusetts, has gone farther, by banning life without parole sentences for young people all together and placing the burden on the State to disprove the mitigating effects of age in contexts other than life without parole sentences. Relying on United States Supreme Court precedent, the Massachusetts Supreme Judicial Court held that even the discretionary imposition of juvenile life without parole sentences violates the state constitution. *Diatchenko*, 466 Mass at 668-71. The Court held:

> Given current scientific research on adolescent brain development, and the myriad significant ways that this development impacts a juvenile's personality and behavior, a conclusive showing of traits such as an "irretrievably depraved character," can never be made, with integrity, by the Commonwealth at an individualized hearing to determine whether a sentence of life without parole should be imposed on a juvenile homicide offender. Simply put, because the brain of a juvenile is not fully developed, either structurally or functionally, by the age of eighteen, a judge cannot find with confidence that a particular offender, at that point in time, is irretrievably depraved. Therefore, it follows that the judge cannot ascertain, with any reasonable degree of certainty, whether imposition of this most severe punishment is warranted.

Id. at 669-70 (footnote and citations omitted).

Finally, in *Commonwealth v Perez*, the court placed the burden on the State in a non-homicide case to "prove that the juvenile's personal characteristics make it necessary" to impose the requested sentence, which exceeded the sentence available under the state statute for juveniles convicted of homicide. 480 Mass 562, 571; 106 NE3d 620 (2018).

D. Placing The Burden On The Juvenile Defendant Creates An Unacceptable Risk That An Unconstitutional Sentence Will Be Imposed

Placing the burden on a young defendant to prove they are not one of the rare offenders for whom rehabilitation is impossible "creates an unacceptable risk" that an unconstitutional sentence will be imposed. *Hall v Florida*, 572 US 701, 704; 134 S Ct 1986; 188 L Ed 2d 1007 (2014) (evaluating the constitutionality of death penalty on individual who was borderline intellectually disabled).

The plain language of MCL 769.25(6) provides no guidance on how a sentencing court should assess the effects of age and its attendant characteristics when sentencing a juvenile defendant. In fact, a defendant's youthfulness is not specified as a possible mitigating circumstance. Despite *Miller's* mandate that sentencing courts consider a juvenile defendant's "age and its 'hallmark features,'" *Miller*, 567 US at 477, Michigan's statute places the onus on the child both to allege that these factors are present and counsel against a judgment that the individual is beyond rehabilitation.

The combination of this lack of statutory guidance with the placement of the burden of proof on the child creates the risk that a judge might weigh the *Miller* factors incorrectly and impose an unconstitutional sentence. Without guidance on how age and its attendant characteristics should be assessed, placing the burden of proof on the juvenile defendant to proffer evidence of youthfulness and immaturity creates an unacceptable risk that a court may impose a sentence contrary to the precepts in *Miller.* Placing the burden of demonstrating irreparable corruption on the State, however, does not carry the same grave risk of error. If the State alleges the individual is among the rare juveniles for whom rehabilitation is impossible, it alone should carry the burden of demonstrating this assertion. Furthermore, this unacceptable risk can lead to an increased

infringement on the juvenile defendant's liberty and therefore the State must carry the burden of demonstrating the juvenile's permanent incorrigibility.

This risk is further heightened due to the racial discrimination that Black and Brown defendants face in Michigan and throughout the country. Both overt and implicit racial discrimination have a profound impact on children in the justice system. For example, according to one study, Black boys were "more likely to be seen as older and more responsible for their actions relative to [w]hite boys." Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J Personality & Soc Psychol 526, 539 (2014). The study concluded that Black boys are viewed as more culpable for their actions than their peers of other races. *Id.* at 540. One state supreme court has rejected a sentence finding its disproportionate impact on Black boys was premised on the false "superpredator" theory. See *State v Belcher*, opinion of the Supreme Court of Connecticut, issued January 21, 2022 (Docket No. SC 20531), 2022 WL 200040, *8 ("[t]he superpredator myth triggered and amplified the fears inspired by . . . dehumanizing racial stereotypes, thus perpetuating the systemic racial inequities that historically have pervaded our criminal justice system").

There are also significant disparities in the sentencing of Black youth, especially those receiving life sentences. Nationally, Black offenders are incarcerated at rates five times that of white offenders. Nellis, *The Sentencing Project, Still Life: America's Increasing Use of Life and Long-Term Sentences* (May 3, 2017), p 14, available at <sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/> (accessed February 11, 2022). In 2016, data revealed that people of color comprise 67.5 percent of those serving life sentences nationally and almost half (48.3 percent) are Black. *Id.* In Michigan, more than two thirds (68.4 percent) of the population serving life without parole sentences are Black. *Id.*

These sentencing disparities are exacerbated for youth in the adult criminal legal system. One out of every 17 persons sentenced to life were youth at the time of their offense— nationally, children comprise 5.7 percent of those serving life sentences. *Id.* at 16. Life and virtual life sentences are overwhelmingly imposed on youth of color (80.4 percent) with the majority of such sentences being imposed on Black youth (55.1 percent). *Id.*

This evidence of the impact of racial bias demonstrates the high risk that a sentencing judge may inaccurately assess maturity and culpability and confirms the importance of the presumption that age is a mitigating factor for all juvenile defendants.

CONCLUSION

For the foregoing reasons, *Amici Curiae*, Juvenile Law Center, The Juvenile Sentencing Project, and American Civil Liberties Union of Michigan respectfully request that this Honorable Court reverse the appellate court's ruling upholding Mr. Taylor's life without parole sentence and hold that 1) juvenile life without parole sentences are categorically impermissible; or 2) require, at a minimum, that there exists a presumption against life without parole sentences for youth and the State has the burden to demonstrate that a life without parole sentence is justified for youth.

Respectfully submitted,

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