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IN THE
INDIANA SUPREME COURT

Case No. 22A-CR-00457

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| NICKALAS JAMES KEDROWITZ,<br><br>Appellant-Defendant,<br><br>v.<br><br>STATE OF INDIANA<br><br>Appellee-Plaintiff | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Ripley Circuit Court<br><br>Trial Court Case No. 69C01-1909-MR-1<br><br>The Honorable Ryan J. King, Judge |

**BRIEF OF LAW PROFESSORS AND STATE CONSTITUTIONAL LAW SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF APPELLANT**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... 3

INTERESTS OF *AMICI CURIAE* ..... 7

INTRODUCTION AND SUMMARY OF ARGUMENT ..... 7

ARGUMENT ..... 9

I. ARTICLE I, SECTION 16 OUTLAWS EXCESSIVE SENTENCES, INCLUDING JLWOP SENTENCES ..... 9

A. The Indiana Constitution Provides Robust and Independent Protection Against Excessive Punishments ..... 9

B. An Evolving Standards of Decency Approach Calls for the Court to Declare that JLWOP Sentences Are Unconstitutional ..... 11

1. Developments in Other States Reveal a Societal Consensus that JLWOP Sentences Are Excessive and Violate Basic Standards of Decency ..... 11

2. JLWOP Sentences Serve No Legitimate Penological Purpose ..... 13

II. ARTICLE I, SECTION 18 INDEPENDENTLY OUTLAWS JLWOP SENTENCES ..... 15

A. The 1850 Indiana Constitutional Convention Adopted Section 18 out of Concern for the Reformation of Juveniles ..... 16

B. The Court of Appeals' Conclusion that a Defendant Cannot Challenge an Individual Sentence Under Section 18 Renders the Provision Nearly Meaningless ..... 17

C. JLWOP Sentences Are Categorically Unconstitutional Under Section 18 as the Legislature Cannot Authorize Sentences that Run Counter to Section 18's Reformative Ideal ..... 19

CONCLUSION ..... 20

CERTIFICATE OF WORD COUNT ..... 21

CERTIFICATE OF SERVICE ..... 22

APPENDIX ..... A-1

## TABLE OF AUTHORITIES

### Cases

*Abercrombie v. State*,
417 N.E.2d 316 (Ind. 1981) ..... 17

*Brown v. State*,
10 N.E.3d 1 (Ind. 2014) ..... 14, 17, 19

*Conley v. State*,
972 N.E.2d 864 (Ind. 2012) ..... 14, 15, 19

*Diatchenko v. Dist. Att'y for Suffolk Dist.*,
1 N.E.3d 270 (Mass. 2013) ..... 11, 12

*Dillon v. State*,
454 N.E.2d 845 (Ind. 1983) ..... 18

*Driskill v. State*,
7 Ind. 338 (1855) ..... 18

*Fointno v. State*,
487 N.E.2d 140 (Ind. 1986) ..... 10

*Gambill v. State*,
675 N.E.2d 668 (Ind.1996) ..... 14

*Garrett v. State*,
714 N.E.2d 618 (Ind. 1999) ..... 18

*Graham v. Florida*,
560 U.S. 48 (2010) ..... *passim*

*Henson v. State*,
707 N.E.2d 792 (Ind. 1999) ..... 18

*Kedrowitz v. State*,
199 N.E.3d 386 (Ind. Ct. App. 2022) ..... 17

*Kennedy v. Louisiana*,
554 U.S. 407 (2008) ..... 11

*Knapp v. State*,
9 N.E.3d 1274 (Ind. 2014) ..... 9, 10, 15

*Lowery v. State*,
478 N.E.2d 1214 (Ind. 1985) ..... 18

*Miller v. Alabama*,
567 U.S. 460 (2012) ..... 13

*Newkirk v. State*,
898 N.E.2d 473 (Ind. Ct. App. 2008) ..... 18

*People v. Parks*,
No. 162086, 2022 WL 3008548 (Mich. July 28, 2022) ..... 12

*People v. Stovall*,
No. 162425, 2022 WL 3007491 (Mich. July 28, 2022) ..... 12

*Quigg v. Slaughter*,
154 P.3d 1217 (Mont. 2007) ..... 10

*Ratliff v. Cohn*,
693 N.E.2d 530 (Ind. 1998) ..... 17, 18

*State v. Bassett*,
428 P.3d 343 (Wash. 2018) ..... 12

*State v. Comer*,
266 A.3d 374 (N.J. 2022) ..... 12

*State v. Conner*,
873 S.E.2d 339 (N.C. 2022) ..... 12

*State v. Haag*,
495 P.3d 241 (Wash. 2021) ..... 12

*State v. Kelliher*,
873 S.E.2d 366 (N.C. 2022) ..... 8, 12

*State v. Null*,
836 N.W.2d 41 (Iowa 2013) ..... 12

*State v. Stidham*,
157 N.E.3d 1185 (Ind. 2020) ..... 13, 14

*State v. Sweet*,
879 N.W.2d 811 (Iowa 2016) ..... 11, 15

*State v. Zuber*,
152 A.3d 197 (N.J. 2017) ..... 12

*Taylor v. State*,
86 N.E.3d 157 (Ind. 2017) ..... *passim*

*Trowbridge v. State*,
717 N.E.2d 138 (Ind. 1999) ..... 14

*Wadle v. State*,
151 N.E.3d 227 (Ind. 2020) ..... 18

*Williams v. State*,
426 N.E.2d 662 (Ind. 1981) ..... 18

*Wilson v. State*,
157 N.E.3d 1163 (Ind. 2020) ..... 11, 14

**Statutes**

730 Ill. Comp. Stat. Ann. 5/5-4.5-155 (West 2023) ..... 12

Ind. Rev. Stat. 1852, vol. I ..... 16

Ky. Rev. Stat. Ann. § 640.040 (West 2023) ..... 12

Ohio Rev. Code Ann. § 2929.07 (West 2022) ..... 12

S.B. 119, 102d Leg., Reg. Sess. (Mich. 2023),
http://legislature.mi.gov/doc.aspx?2023-SB-0119 ..... 12

**Other Authorities**

Barry C. Feld,
*The Youth Discount: Old Enough to Do the Crime, Too Young to Do the Time*, 11 Ohio St. J. Crim. L. 107 (2013) ..... 13

David J. Bodenhamer,
*Criminal Punishment in Antebellum Indiana: The Limits of Reform*,
82 Ind. Mag. of Hist. (Dec. 1986) ..... 16

Jeffrey S. Sutton,
*51 Imperfect Solutions: States and the Making of American Constitutional Law* (2018) ..... 9

Loretta H. Rush & Marie Forney Miller,
*Cultivating State Constitutional Law to Form a More Perfect Union—Indiana's Story*, 33 Notre Dame J.L. Ethics & Pub. Pol'y 377 (2019) ..... 9, 18

*More than Half of All US States Have Abolished Life Without Parole for Children*, The Campaign for the Fair Sentencing of Youth
(Feb. 10, 2023), https://cfsy.org/map2023 ..... 12

*Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana* (1850) ..... 16

Robert F. Williams,
*Enhanced State Constitutional Rights: Interpreting Two or More Provisions Together*, 2021 Wis. L. Rev. 1001 (2021) ..... 10

Robert J. Smith, Zoe Robinson & Emily Hughes,
*State Constitutionalism and the Crisis of Excessive Punishment*,
108 Iowa L. Rev. 537 (2023) ..... 10, 11

William W. Berry,
*Cruel State Punishments*, 98 N.C. L. Rev. 1201 (2020) ..... 11

**Constitutional Provisions**

Ind. Const. art. I, § 16 ..... *passim*
Ind. Const. art. I, § 18 ..... *passim*
Ind. Const. art. IX, § 2 ..... 10

## INTERESTS OF *AMICI CURIAE*

*Amici curiae* are twenty-two legal scholars who focus on state constitutional law, the Eighth Amendment, and juvenile justice. *See* Appendix (listing *amici curiae*). They appear in their personal capacities and provide their affiliation for identification purposes only. *Amici curiae* believe that their depth of expertise on issues relating to the constitutionality of punishment, as well as their familiarity with relevant scholarship and with the practice of courts in Indiana and nationwide, may be helpful to this Court. They share an interest in seeing that individuals, particularly juveniles, are not subject to excessive punishment.[1]

## INTRODUCTION AND SUMMARY OF ARGUMENT

Children are capable of change. Even children who commit serious crimes deserve an opportunity for redemption.

These principles are enshrined in the Indiana Constitution. Yet, Nickalas Kedrowitz faces life imprisonment without any opportunity for release, rehabilitation, or reformation for offenses he committed as a child. That result is antithetical to the text, history, and purpose of Article I, Sections 16 and 18 of the Indiana Constitution and should be invalidated by this Court.

The Indiana Constitution plays a vital role in protecting individual rights and liberties in the American constitutional structure. It provides robust protections against excessive punishment beyond the federal Eighth Amendment and demands this Court's independent interpretation. Article I, Section 16 prohibits "[c]ruel and unusual punishments" and requires that "[a]ll penalties … be proportioned to the nature of the offense." Section 18 makes "reformation"—for which children have unique capacity—the guiding principle of Indiana's criminal law. Read together, these provisions establish guarantees against excessive punishment that can only be realized through

[1] The *amici* wish to thank University of Minnesota Law School students Philip de Sa e Silva and Earl Lin for their helpful contributions to this brief.

holistic review of the manner and purpose of punishment. The Court should clarify that the text of Section 16, enhanced by the Indiana Constitution's reformative ideal, prohibits criminal punishments that are repugnant to society's evolving standards of decency.

Under an evolving standards of decency approach, juvenile life without parole (JLWOP) sentences violate Section 16's mandate.[2] This approach considers (1) societal consensus regarding the challenged punishment, and (2) whether the challenged practice meaningfully serves a legitimate punishment purpose, particularly reformation. Consensus surrounding JLWOP sentences rapidly evolved over the past decade, and a majority of states now outlaw them entirely. JLWOP sentences also do not meaningfully serve a legitimate penological purpose because juveniles are less culpable than adult defendants and have greater potential to reform.

Article I, Section 18 not only enhances the guarantees in Section 16, but it also independently bars JLWOP sentences. Section 18 requires that "[t]he penal code … be founded on the principles of reformation, and not of vindictive justice." The history of Section 18 reveals that it was adopted with particular concern against lengthy imprisonment of juveniles. Contrary to the court of appeals holding, this Court has recognized, and should reaffirm, that individuals like Kedrowitz can raise individual or categorical challenges to JLWOP sentences. Under either analysis, Kedrowitz's JLWOP sentence is unconstitutional because it "forswears *altogether* [Section 18's] rehabilitative ideal." *Taylor v. State*, 86 N.E.3d 157, 166 (Ind. 2017) (citation omitted).

The Court should hold that JLWOP sentences violate the Indiana Constitution's most fundamental guarantees, and vacate the decision below.

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[2] This brief uses "JLWOP" to include all death-in-prison sentences for youth, whether *de jure* or *de facto*, and those that foreclose any "meaningful opportunity" for release. *Graham v. Florida*, 560 U.S. 48, 75 (2010). Kedrowitz's 100-year sentence is indistinguishable from a *de jure* JLWOP sentence and beyond any "boundary between a lengthy but constitutionally permissible sentence and an unconstitutional *de facto* life without parole sentence." *State v. Kelliher*, 873 S.E.2d 366, 393 (N.C. 2022).

## ARGUMENT

### I. ARTICLE I, SECTION 16 OUTLAWS EXCESSIVE SENTENCES, INCLUDING JLWOP SENTENCES.

#### A. The Indiana Constitution Provides Robust and Independent Protection Against Excessive Punishments.

State constitutions play a critical role in protecting individual rights and liberties in the American constitutional structure. Loretta H. Rush & Marie Forney Miller, *Cultivating State Constitutional Law to Form a More Perfect Union—Indiana's Story*, 33 Notre Dame J.L. Ethics & Pub. Pol'y 377, 381 (2019) [hereinafter Rush, *Cultivating State Constitutional Law*]. As the Honorable Jeffrey Sutton of the U.S. Court of Appeals for the Sixth Circuit has articulated, the "chronic underappreciation of state constitutional law has been hurtful to state and federal law and the proper balance between state and federal courts in protecting individual liberty." Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* 174 (2018) (emphasis omitted). The U.S. Supreme Court "is more constrained than a state supreme court" given that it must set nationwide rules. *Id.* at 16. A state supreme court, by contrast, can "allow[] local conditions and traditions to affect their interpretation of a constitutional guarantee." *Id.* at 17. As this Court is aware, "Indiana's Constitution is alive and strong" and offers "robust state constitutional independence." Rush, *Cultivating State Constitutional Law* at 382.

These principles resonate in Article I, Section 16 of the Indiana Constitution, which states: "Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishments shall not be inflicted. All penalties shall be proportioned to the nature of the offense." This Court already has "held that [Section 16] 'goes beyond' Eighth Amendment protections." *Knapp v. State*, 9 N.E.3d 1274, 1289 (Ind. 2014) (citation omitted). In addition to the "cruel and unusual" clause that resembles language in the Eighth Amendment to the U.S. Constitution, Section 16 requires that sentences be proportionate to the offense. These guarantees sit within a broader

constitutional framework that demands sentences be grounded in "reformation" and "not vindictive justice." Ind. Const. art. I, § 18; *see also id.* art. IX, § 2 (mandating special "institutions for the correction and reformation of juvenile offenders"). Like other state courts interpreting their own constitutions, *see*, *e.g.*, *Quigg v. Slaughter*, 154 P.3d 1217, 1223 (Mont. 2007), this Court has and should continue to interpret its constitutional "provisions as enhancing each other," Robert F. Williams, *Enhanced State Constitutional Rights: Interpreting Two or More Provisions Together*, 2021 Wis. L. Rev. 1001, 1003–04 (2021). In *Fointno v. State*, for example, this Court noted that "read together [Sections 16 and 18] reveal an underlying concern in our State Bill of Rights that, notwithstanding society's valid concerns with protecting itself and providing retribution for serious crimes, the State criminal justice system must afford an opportunity for rehabilitation where reasonably possible." 487 N.E.2d 140, 143–44 (Ind. 1986).

The court of appeals in this case misapplied these principles and considered only the discrete question whether the sentence was proportionate to the offense, without regard to Section 16's "cruel and unusual" clause, the broader context of Section 18's mandate that sentences be based on "reformation," or the characteristics of either Kedrowitz or the larger category of youth defendants. Even though Section 16 is broader than the Eighth Amendment, *Knapp*, 9 N.E.3d at 1289, the court of appeals' approach was *narrower* than review under the U.S. Constitution, which requires that courts consider whether punishment is consistent with "evolving standards of decency that mark the progress of a maturing society." *Graham v. Florida*, 560 U.S. 48, 58 (2010) (citations omitted). This Court should clarify that Section 16 similarly demands an evolving standards of decency approach that requires more than a rote assessment of proportionality between the sentence and statutory offense. *See* Robert J. Smith, Zoe Robinson & Emily Hughes, *State Constitutionalism and the Crisis*

*of Excessive Punishment*, 108 Iowa L. Rev. 537, 566–68, 577–80 (2023) [hereinafter Smith, *State Constitutionalism*].

### B. An Evolving Standards of Decency Approach Calls for the Court to Declare that JLWOP Sentences Are Unconstitutional.

This Court has recognized that the evolving standards of decency approach in Eighth Amendment jurisprudence is rooted in the understanding that "'the standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment,'" and "[w]hat constitutes cruel and unusual punishment changes 'as the basic mores of society change,'" *Wilson v. State*, 157 N.E.3d 1163, 1170 (Ind. 2020) (first quoting *Graham*, 560 U.S. at 58; and then quoting *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008)). The approach requires courts to look at more than the underlying criminal act, and instead (1) consider "whether there is a societal consensus in favor of or against the challenged punishment practice," and (2) "evaluate whether the challenged punishment practice meaningfully serves a legitimate purpose of punishment (e.g., deterrence, retribution, etc.), or if a less severe punishment would suffice." Smith, *State Constitutionalism* at 578–79. Consideration of these factors render JLWOP sentences untenable under the evolving standards of decency approach.

#### 1. Developments in Other States Reveal a Societal Consensus that JLWOP Sentences Are Excessive and Violate Basic Standards of Decency.

Considering the consensus prong, which includes an examination of "the predominant practice of the states with respect to the punishment at issue," William W. Berry, *Cruel State Punishments*, 98 N.C. L. Rev. 1201, 1209 (2020), there is growing agreement among the states that JLWOP sentences constitute excessive punishment.

The highest courts in four states—Iowa, Massachusetts, New Jersey, and Washington—have relied on their respective Eighth Amendment analogs to ban JLWOP. *State v. Sweet*, 879 N.W.2d 811, 837, 839 (Iowa 2016); *Diatchenko v. Dist. Att'y for Suffolk Dist*., 1 N.E.3d 270, 276 (Mass.

2013); *State v. Comer*, 266 A.3d 374, 399 (N.J. 2022); *State v. Bassett*, 428 P.3d 343, 355 (Wash. 2018). Three of those courts also explicitly banned *de facto* JLWOP. *State v. Null*, 836 N.W.2d 41, 70–72 (Iowa 2013); *State v. Zuber*, 152 A.3d 197, 211–13 (N.J. 2017); *State v. Haag*, 495 P.3d 241, 250–51 (Wash. 2021). The New Jersey Supreme Court went further, holding that juveniles must be eligible for release after twenty years. *Comer*, 266 A.3d at 399. The Michigan Supreme Court has banned mandatory JLWOP for 18-year-olds. *People v. Parks*, No. 162086, 2022 WL 3008548 (Mich. July 28, 2022); *see also People v. Stovall*, No. 162425, 2022 WL 3007491 (Mich. July 28, 2022) (holding a sentence of life with the possibility of parole for juveniles convicted of second-degree murder violates the state constitution). And the North Carolina Supreme Court outlawed both *de facto* and *de jure* JLWOP in most circumstances, concluding that children must have a chance at release within forty years unless the court makes specific findings about incorrigibility. *See State v. Kelliher*, 873 S.E.2d 366, 393–94 (N.C. 2022); *State v. Conner*, 873 S.E.2d 339, 341 (N.C. 2022).

State legislative responses to excessive sentences of juveniles also have evolved rapidly in the past decade. As of February 10, 2023, a majority of states and the District of Columbia ban JLWOP. *See More than Half of All US States Have Abolished Life Without Parole for Children*, The Campaign for the Fair Sentencing of Youth (Feb. 10, 2023), https://cfsy.org/map2023 (listing states). Another seven states have no one serving a JLWOP sentence. *Id.* Indeed, all but one of Indiana's immediate neighbors legislatively outlaw JLWOP sentences. *See* 730 Ill. Comp. Stat. Ann. 5/5-4.5-155 (West 2023); Ohio Rev. Code Ann. § 2929.07 (West 2022); Ky. Rev. Stat. Ann. § 640.040 (West 2023). The Michigan legislature is currently considering similar legislation. *See* S.B. 119, 102d Leg., Reg. Sess. (Mich. 2023), http://legislature.mi.gov/doc.aspx?2023-SB-0119 (last visited Mar. 5, 2023).

### 2. JLWOP Sentences Serve No Legitimate Penological Purpose.

The second prong of an evolving standards of decency framework—determining whether a sentence serves a legitimate purpose—requires consideration of juvenile status. Contrary to the court of appeals' test that assessed the offense with no consideration of Kedrowitz's age, meaningful review of a juvenile sentence includes an examination of empirical evidence regarding children's lowered culpability and the possibility of reform. *See* Barry C. Feld, *The Youth Discount: Old Enough to Do the Crime, Too Young to Do the Time*, 11 Ohio St. J. Crim. L. 107, 112–13 (2013) (explaining that "harm and culpability … determine" a defendant's punishment, so if the harm is held constant, reduced youth culpability must reduce punishment). Applying this approach to Section 16 is already consistent with this Court's practice.

Indeed, the Court has "incorporated the U.S. Supreme Court's reasoning in *Roper*, *Graham*, and *Miller* into [its] own sentencing cases." *State v. Stidham*, 157 N.E.3d 1185, 1194 (Ind. 2020). The Court recognizes the "fundamental differences between adults and juveniles" and that "developments in the fields of psychology, brain science, and social science, along with common sense," reveal "juveniles 'have a lack of maturity and an underdeveloped sense of responsibility,' an increased vulnerability 'to negative influences and outside pressures,' and a still evolving character." *Id.* at 1193 (quoting *Graham*, 560 U.S. at 68). Juveniles therefore "'have diminished culpability and greater prospects for reform' and … 'the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.'" *Id.* at 1194 (quoting *Miller v. Alabama*, 567 U.S. 460, 471–72 (2012)).

In practice, the Court typically implements these evolving-standards ideals when reducing excessive juvenile sentences under Appellate Rule 7(B). In *Stidham*, for example, the juvenile defendant challenged a 138-year term-of-years sentence under Section 16, and the Court then

reduced the sentence under Rule 7(B). *Id.* at 1194–95; *see id.* at 1198 (Slaughter, J., dissenting); *see also, e.g.*, *Trowbridge v. State*, 717 N.E.2d 138, 149–51 (Ind. 1999) (internal quotation marks omitted) ("Indiana decisional law recognizes that a defendant's youth, although not identified as a statutory mitigating circumstance, is a significant mitigating circumstance in some circumstances including the commission of a heinous crime by a juvenile"); *Brown v. State*, 10 N.E.3d 1, 6–7 (Ind. 2014) ("[B]oth at initial sentencing and on appellate review it is necessary to consider an offender's youth and its attendant characteristics"); *Taylor*, 86 N.E.3d at 166 (quoting *Brown*, 10 N.E.3d at 6–7) ("As this Court … ha[s] recognized, 'children are different'" and "[j]uveniles are less culpable than adults and therefore are less deserving of the most severe punishments" ); *cf. Gambill v. State*, 675 N.E.2d 668, 678 (Ind.1996) (reducing sentence because "[t]he Indiana Constitution requires that a sentence be proportional to both the nature of the offense and the character of the offender"). But Rule 7(B) is not sufficient to protect people from excessive punishment. Its application is purely discretionary and it can neither replace nor diminish core constitutional protections. The Court should embrace the evolving-standards approach as a constitutional framework.

This Court's previous cases do not preclude this approach. In *Wilson*, the Court held the Eighth Amendment to the U.S. Constitution does not categorically prohibit *de facto* JLWOP. 157 N.E.3d at 1176. But that decision construed only the federal constitutional mandate. *Id.* at 1170. As discussed, *supra* Part I.A, the Court does not face similar constraints when interpreting the state Constitution and, to the contrary, should interpret the Constitution in a manner consistent with its reformative mandate.

The Court's decision in *Conley v. State* also does not bar the Court from holding that JLWOP sentences violate the Indiana Constitution. 972 N.E.22dd 864 (Ind. 2012). The Court stated that JLWOP was not an "unconstitutional sentence under the Indiana constitution" on the facts of that

particular case, but relied heavily on now-dated observations that "the overwhelming majority" of states provide for the possibility of JLWOP and that the "imposition of life without parole to a convicted murderer under the age of eighteen in Indiana is *in line with the rest of the nation* in holding such a sentence is constitutional." *Id.* at 877–78, 880 (emphasis added). In the decade since, the national consensus flipped. *See supra* Part I.B.1. Other cases narrowly articulating the scope of Section 16 rely solely on the proportionality clause without considering the provision as a whole. *See, e.g.*, *Knapp*, 9 N.E.3d at 1289–91.

Taken together, this Court's cases reflect a concern recognized by the Iowa Supreme Court that "sentencing courts should not be required to make speculative up-front decisions on juvenile offenders' prospects for rehabilitation because they lack adequate predictive information supporting such a decision." *Sweet*, 879 N.W.2d at 839. The Court should likewise conclude that, together with the shift in national consensus, the "prospects for rehabilitation … lead[] inexorably to the categorical elimination of life-without-the-possibility-of-parole sentences for juvenile offenders." *Id.*

## II. ARTICLE I, SECTION 18 INDEPENDENTLY OUTLAWS JLWOP SENTENCES.

Beyond informing the scope of Section 16, *see supra* Part I.A, Section 18 independently bars JLWOP sentences. Section 18 provides: "The penal code shall be founded on the principles of reformation, and not of vindictive justice." Consistent with the provision's history—which shows it was adopted out of particular concern for juvenile reformation—the Court has recognized two mechanisms for raising a violation of Section 18: a challenge to an individual sentence that undermines the provision's foundational principles, or a categorical challenge to a sentence that the legislature was not authorized to sanction in the first place. The court of appeals' decision fell short in both respects.

### A. The 1850 Indiana Constitutional Convention Adopted Section 18 out of Concern for the Reformation of Juveniles.

The records of the Indiana Constitutional Convention show that Section 18 was enshrined in the Bill of Rights out of a particular concern for juvenile reformation and the counter-reformative impact of imprisoning children.

During the Convention, the State prison warden made a detailed report of the State's prison population to the delegates. The report revealed "the whole number of convicts committed [from September 1822 to November 1850] to be 1131, of which 157 (more than one-eighth of the whole number) were minors within the age of twenty-one years, and some of these as young as eleven years of age." *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana* 1903 (1850). Delegate Bryant characterized these statistics as an "outrage upon civilization and humanity" and "a deep disgrace to the character of Indiana." *Id.* Bryant believed such practices were contrary to the purposes of punishment, stating:

> Sir, what is the object of all punishment? It is two-fold: the prevention of crime and the reformation of the offender. How do you propose to diminish crime, or to reform offenders, by *this system of sending the children of the State*, perhaps the victims of dissolute parents and neglected education, to this school of vice and infamy, where they cannot fail by means of the associations into which you thrust them, *to be irretrievably ruined*? With such facts before us, it is the imperative duty of the Convention to arrest this evil, to prevent this iniquitous system from being any longer tolerated … . There is in this Convention, I am sure, but one feeling in regard to this matter, and that is, that this outrage upon all propriety and humanity shall no longer be.

*Id.* (emphasis added). Based on Bryant's speech, the language that now appears in Section 18 was changed from amending another provision to constituting a distinct section in the Bill of Rights. *Id.* at 1903–04. Shortly thereafter, the legislature decided that youth defendants must "be treated with humanity and in a manner calculated to promote their reformation." David J. Bodenhamer, *Criminal Punishment in Antebellum Indiana: The Limits of Reform*, 82 Ind. Mag. of Hist., 360 (Dec. 1986) (quoting Ind. Rev. Stat. 1852, vol. I, at 347).

The Framers of Indiana's Constitution thus clearly contemplated the impacts of imprisonment on juveniles when mandating that Indiana's "penal code shall be founded on the principles of reformation." Ind. Const. art. I, § 18. A JLWOP sentence directly contradicts the Framers' intent.

### B. The Court of Appeals' Conclusion that a Defendant Cannot Challenge an Individual Sentence Under Section 18 Renders the Provision Nearly Meaningless.

The court of appeals rejected Kedrowitz's Section 18 challenge, concluding that "a claim that a particular defendant's sentence violates Section 18 is not a cognizable claim on which relief can be granted." *Kedrowitz v. State*, 199 N.E.3d 386, 409 (Ind. Ct. App. 2022) (citing *Ratliff v. Cohn*, 693 N.E.2d 530, 542 (Ind. 1998)). That rule defies both common sense and this Court's practice.

The Court has held "the appellate courts are authorized to review sentences" specifically "in order to further implement the constitutional mandate" of Section 18. *Abercrombie v. State*, 417 N.E.2d 316, 318 (Ind. 1981); *see also, e.g.*, *Taylor*, 86 N.E.3d at 166 (relying in part on Section 18 when reducing Taylor's sentence from JLWOP to eighty years); *Brown*, 10 N.E.3d at 8 (relying in part on the "rehabilitative ideal" in reducing a *de facto* life sentence of 150 years to eighty years). Forbidding claims that a particular sentence violates Section 18 would leave the appellate courts unable to "implement [Section 18's] constitutional mandate," *Abercrombie*, 417 N.E.2d at 318, effectively rendering it a right without a remedy. That is especially so because the mechanism the Court typically uses to reduce sentences, Appellate Rule 7(B), is purely discretionary.

Furthermore, the cases relied upon by the State and the court of appeals misapprehend the history of the purported prohibition against individual Section 18 challenges. This supposed rule is derived from this Court's death penalty jurisprudence. In *Driskill v. State*, this Court's first decision considering Section 18, the Court noted death sentences "do[] not contemplate reform," but held the

death penalty is "the *only* instance in the law in which the purpose of reformation is not prominent." 7 Ind. 338, 343 (1855) (emphasis added). The Court thus held the death penalty was not unconstitutional under Section 18 because the penal code in its entirety was "founded on the principles of reformation." *Id.* The State's cases are either death penalty cases falling within this narrow exception, *see, e.g.*, *id.* at 342–43 (finding Indiana's *death penalty* does not violate Section 18); *Dillon v. State*, 454 N.E.2d 845, 852 (Ind. 1983) (same); *Lowery v. State*, 478 N.E.2d 1214, 1219–20 (Ind. 1985) (same), or the decisions, respectfully, extrapolate too much from the death penalty jurisprudence and limit the application of Section 18 contrary to original intent, *see, e.g.*, *Ratliff*, 693 N.E.2d at 542 (relying on *Lowery* to affirm a juvenile's placement in a women's prison); *Henson v. State*, 707 N.E.2d 792, 796 (Ind. 1999) (relying solely on *Lowery* in dismissing defendant's Section 18 challenge); *Garrett v. State*, 714 N.E.2d 618, 623 n.2 (Ind. 1999) (relying on *Ratliff* and *Lowery* in affirming a repeat offender's sixty-five-year sentence); *Newkirk v. State*, 898 N.E.2d 473, 478 (Ind. Ct. App. 2008) (relying solely on *Ratliff* in its Section 18 analysis).[3] To rely on this Court's death penalty jurisprudence to reject *any* individual claim undermines Section 18's reformative principles by allowing the exception to swallow the rule.

This Court should read Section 18 consistent with its original meaning and purpose, and within the broader Indiana constitutional framework that offers "a wellspring of civil-liberty guarantees," including "a host of protections [like Section 18] independent of the United States Constitution." Rush, *Cultivating State Constitutional Law* at 378. That interpretation would breathe life into this important independent constitutional guarantee.

[3] The State's other Section 18 cases are unpersuasive for reasons besides reliance on the Court's death penalty jurisprudence. *See Williams v. State*, 426 N.E.2d 662, 670–71 (Ind. 1981) (cursory Section 18 analysis); *Wadle v. State*, 151 N.E.3d 227, 250–53 (Ind. 2020) (missing Section 18 discussion entirely).

### C. JLWOP Sentences Are Categorically Unconstitutional Under Section 18 as the Legislature Cannot Authorize Sentences that Run Counter to Section 18's Reformative Ideal.

Regarding Section 18's reformative mandate, this Court has held a JLWOP sentence "'forswears *altogether* the rehabilitative ideal'" and denies youthful defendants—who have more reformative capacity than adults—the opportunity to "becom[e] a productive member of society." *Taylor*, 86 N.E.3d at 166 (quoting *Brown*, 10 N.E.3d at 8). It "'means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of the juvenile convict, he will remain in prison for the rest of his days.'" *Brown*, 10 N.E.3d at 8 (quoting *Graham*, 560 U.S. at 70). These principles apply across the board to any sentence of JLWOP and, combined with research showing children's inherent ability to reform, support a categorical prohibition.

Because a JLWOP sentence "forswears *altogether* the rehabilitative ideal," *Taylor*, 86 N.E.3d at 166 (citation omitted), it cannot "be founded on the principles of reformation." Ind. Const. art. I, § 18. That is enough to establish that JLWOP categorically violates Section 18. A court need not separately find the legislature intended the sentence to be vindictive, as implied by the cursory Section 18 analysis in *Conley.* 972 N.E.2d at 880 (noting that "[i]f retribution was the goal … [*de jure* juvenile] life without parole would be far more frequently used in Indiana"). Especially considering the capacity of youth to change, a sentence that forecloses *any* opportunity for rehabilitation serves only vindictive purposes.

Ultimately, JLWOP sentences violate the core ideals enshrined in Section 18, and this Court should use its authority to interpret the Indiana Constitution to state definitively that it is therefore beyond the legislature's power to authorize any such sentence.

## CONCLUSION

For the foregoing reasons, the Court should grant the Petition to Transfer and vacate the sentence of the district court.

Dated: March 13, 2023

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## CERTIFICATE OF WORD COUNT

This *amici curiae* brief contains no more than 4,200 words as allowed by the Indiana Rules of Appellate Procedure, and as calculated by Microsoft Word.

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