STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff- Appellee,

v.

EFRÉN PAREDES, JR.,

Defendant-Appellant.

Supreme Court No. 166129

Court of Appeals No. 359130

Berrien County Circuit Court

No. 1989-001127-FC

BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER AND MICHIGAN CENTER FOR YOUTH JUSTICE IN SUPPORT OF DEFENDANT-APPELLANT EFREN PAREDES, JR.'S APPLICATION FOR LEAVE TO APPEAL

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TABLE OF CONTENTS

TABLE OF AUTHORITES ii

INTEREST AND IDENTITY OF *AMICI CURIAE* 1

ARGUMENT 2

I. THIS COURT SHOULD GRANT LEAVE TO CLARIFY THAT NEUROSCIENTIFIC AND DEVELOPMENTAL RESEARCH MANDATE A CATEGORICAL BAR ON LIFE WITHOUT PAROLE SENTENCES FOR YOUTH 2

II. THIS COURT HAS AFFIRMED THE IMPORTANCE OF ADOLESCENT DEVELOPMENT RESEARCH TO UNDERSTANDING THE LEGALITY OF IMPOSING EXTREME SENTENCES ON YOUNG MICHIGANDERS 6

III. TO DATE, LOWER COURTS HAVE IMPOSED LWOP WITHOUT ADEQUATE CONSIDERATION OF YOUTH AND ITS ATTENDANT CIRCUMSTANCES 10

A. Trial Courts Have Failed To Give Mitigation To Age Or Have Used Age As An Aggravating Factor 11

B. Other Hallmarks Of Adolescence Have Been Ignored Or Used As Aggravation By Trial Courts 13

C. Trial Courts Have Inappropriately Focused On The Severity Of The Offense Alone 15

D. Trial Courts Are Ignoring Evidence Of Potential And Proven Rehabilitation 16

E. Instead Of Giving Mitigating Effect To The Characteristics Of Adolescent Development And Youth, Courts Are Looking To Unscientific And Unreliable Information, Which Contradicts *Miller* And This Court's Caselaw And Violates Due Process 17

CONCLUSION 21

TABLE OF AUTHORITES

Page(s)

Cases

Graham v Florida,
560 US 48; 130 S Ct 2011; 176 L Ed 2d 825 (2010).....2

J.D.B. v North Carolina,
564 US 261; 131 S Ct 2394; 180 L Ed 2d 310 (2011).....4

Jones v Mississippi,
593 US ___; 141 S Ct 1307; 209 L Ed 2d 390 (2021).....6

Miller v Alabama,
567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012).....2, 5, 13

Montgomery v Louisiana,
577 US 190; 136 S Ct 718; 193 L Ed 2d 599 (2016).....2, 10

People v Bennett,
335 Mich App 409; 966 NW2d 768 (2021).....16

People v Bullock,
440 Mich 15; 485 NW2d 866 (1992).....7

People v Carp,
496 Mich 440; 852 NW2d 801 (2014).....7

People v Carpentier,
446 Mich 19; 521 NW2d 195 (1994).....20

People v Clemons,
unpublished per curiam opinion of the Court of Appeals, issued December 17, 2020 (Docket No. 347225), 2020 WL 7414654 15

People v Eason,
435 Mich 228; 458 NW2d 17 (1990).....20

People v Francisco,
474 Mich 82; 711 NW2d 44 (2006).....19

People v Granger,
unpublished per curiam opinion of the Court of Appeals, issued August 4, 2022 (Docket No. 355477), 2022 WL 3133787 .....12, 13

People v Hernandez,
unpublished per curiam opinion of the Court of Appeals, issued December 22, 2020 (Docket No. 350565), 2020 WL 7635454 17

People v Hildabridle,
45 Mich App 93; 206 NW2d 216 (1973)....20

People v Hyatt,
316 Mich App 368, 420; 891 NW2d 549 (2016)....15

People v Hyatt,
982 NW2d 385 (Mich, 2022)....14

People v Hyatt,
unpublished per curiam of the Court of Appeals, issued December 4, 2018 (Docket No. 325741), 2018 WL 6331314 13

People v Jackson,
487 Mich 783; 790 NW2d 340 (2010)....19

People v Lauzon,
84 Mich App 201; 269 NW2d 524 (1978)....20

People v Leak,
unpublished per curiam opinion of the Court of Appeals, issued November 8, 2023 (Docket No. 327336), 2016 WL 6638211 ....11, 13, 19

People v Lorentzen,
387 Mich 167; 194 NW2d 827 (1972)....7

People v Malkowski,
385 Mich 244; 188 NW2d 559 (1971)....19

People v Masalmani,
505 Mich 1090; 943 NW2d 359 (2020)....12, 17

People v Masalmani,
unpublished per curiam opinion of the Macomb County Circuit Court, issued January 6, 2015 (Docket No. 2009-5244-FC) 12, 17

People v McDade,
unpublished per curiam opinion of the Court of Appeals, issued January 22, 2019 (Docket No. 323614), 2019 WL 286681 12

People v Miles,
454 Mich 90; 559 NW2d 299 (1997)....19

People v Moore,
unpublished per curiam opinion of the Court of Appeals, issued December 15, 2022 (Docket No. 349584), 2022 WL 17727869 .....15, 19

People v Musselman,
unpublished per curiam opinion of the Court of Appeals, issued May 20, 2021 (Docket No. 351700), 2021 WL 2025150 18

People v Nunez,
unpublished per curiam opinion of the Court of Appeals, issued October 22, 2020 (Docket No. 349035), 2020 WL 6231209 18

People v Osborne,
982 NW2d 388 (Mich, 2022).....16

People v Paredes,
unpublished per curiam opinion of the Court of Appeals, issued July 27, 2023 (Docket No. 359130), 2023 WL 4831317 11

People v Parks,
510 Mich 225; 987 NW2d 161 (2022).....7, 8

People v Skinner,
502 Mich 89; 917 NW2d 292 (2018).....6, 8, 21

People v Stovall,
510 Mich 301; 987 NW2d 85 (2022).....9, 10

People v Taylor,
510 Mich 112; 987 NW2d 132 (2022).....8, 9, 21

People v Taylor,
unpublished per curiam opinion of the Court of Appeals, issued September 22, 2016 (Docket No. 325834), 2016 WL 5328632 14

People v Wheeler,
unpublished per curiam opinion of the Court of Appeals, issued February 24, 2022 (Docket No. 354746), 2022 WL 569365 .....11, 12, 16

Roper v Simmons,
543 US 551; 125 S Ct 1183; 161 L Ed 2d 1 (2005).....2, 6, 10, 11

Torres v United States,
140 F3d 392 (CA 2, 1998) 20

Townsend v Burke,
334 US 736; 68 S Ct 1252; 92 L Ed 1690 (1948).....20

United States v Tucker,
404 US 443; 92 S Ct 589; 30 L Ed 2d 592 (1972).....20

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Antisocial Personality Disorder Diagnostic Criteria, in *Diagnostic and Statistical Manual of Mental Disorders* (Washington, DC: American Psychiatric Association Publishing, 2022) 18

Brief for the American Psychological Association et al. as *Amici Curiae* Supporting Petitioners, *Graham v Florida*, 560 US 48; 130 S Ct 2011; 176 L Ed 2d 825 (2010) (Nos. 08-7412, 08-7621) 5

Mich Const 1963, art 1, § 16.....10

Flynn, *Dismantling the Felony-Murder Rule: Juvenile Deterrence and Retribution Post-Roper v. Simmons*, 156 U Pa L Rev 1049 (2008).....3

Kent Co. Judge Upholds Life Sentence for Killer, Then 17, Wood TV (November 8, 2018) 15

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 (2006).....2

Kuhn, *Do Cognitive Changes Accompany Developments in the Adolescent Brain?*, 1 Persp on Psychol Sci 59 (2006) 3

Maroney, *The Once and Future Juvenile Brain*, in Zimring & Tanenhaus, eds, *Choosing the Future for American Juvenile Justice* (New York: NYU Press, 2014) 3, 4

May & Jennerjahn, *Juvenile Offender Keeps Life Sentence in 5-Year-Old Girl's Murder*, UpNorthLive (June 23, 2023).....17

Nat'l Inst of Mental Health, *The Teen Brain: Still Under Construction* (2011) 4

Peraino & Fitz-Gerald, *Psychological Considerations in Direct Filing*, 40 Colo Law 41 (2011).....4

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Scott & Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 Future Child 15 (2008).....5, 6

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Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am Psychologist 1009 (2003) 2, 4

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Supplemental Brief of Appellant Robert Taylor, *People v Taylor*, 510 Mich 112; 987 NW2d 132 (2022) (No. 154994).....12

Szczepanski & Knight, *Insights into Human Behavior from Lesions to the Prefrontal Cortex*, 83 Neuron 1002 (2014) 3

US Const, Am VIII 10

Zuckerman, *Behavioral Expressions and Biosocial Bases of Sensation Seeking* (Cambridge: Cambridge University Press, 1994).....5

INTEREST AND IDENTITY OF *AMICI CURIAE*[1]

Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center's legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential *amicus* briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children's unique developmental characteristics and human dignity.

The Michigan Center for Youth Justice (MCYJ) is a non-partisan, non-profit organization dedicated to juvenile and criminal justice reform in Michigan. With a focus on youth justice advocacy, MCYJ employs research, community organizing, and training to promote alternatives to detention and incarceration. Grounded in restorative justice, racial equity, and community integration, the organization advocates for policies and practices that support trauma-informed, racially equitable, and culturally responsive community-based solutions. MCYJ aims to foster a fair and effective justice system for all of Michigan's children, youth, and young adults.

[1] Pursuant to MCR 7.312(H)(5), *amici curiae* state 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.

ARGUMENT

I. THIS COURT SHOULD GRANT LEAVE TO CLARIFY THAT NEUROSCIENTIFIC AND DEVELOPMENTAL RESEARCH MANDATE 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—which informed the United States Supreme Court's decisions—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, *The Once and Future Juvenile Brain*, *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 <https://permanent.fdlp.gov/gpo34391/teen-brain.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 youth'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.*

Youths' 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). Indeed, "[c]onsiderable evidence supports the conclusion that children and adolescents are less capable decision makers than adults in ways that are relevant to their criminal choices." Scott & Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 Future Child 15, 20 (2008). Although youth 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." *Id*. at 20.

As youth 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 young people to engage in risky behaviors, and as they have difficulty suppressing action toward emotional stimulus, they often display a lack of self-control. *Adolescent Development and the Regulation of Youth Crime*, *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.

Young people 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; 130 S Ct 2011; 176 L Ed 2d 825 (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. *Adolescent Development and the Regulation of Youth Crime*, *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. Imposing life without parole sentences on youth therefore contravenes this established research by suggesting that certain children are incapable of change and rehabilitation.

II. THIS COURT HAS AFFIRMED THE IMPORTANCE OF ADOLESCENT DEVELOPMENT RESEARCH TO UNDERSTANDING THE LEGALITY OF IMPOSING EXTREME SENTENCES ON YOUNG MICHIGANDERS

This Court has repeatedly relied on neuroscience and adolescent development research to inform its constitutional analysis in the context of youth sentencing. The Court recognized youths' "heightened capacity for change" and required courts to "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison" at *Miller* resentencing. *People v Skinner*, 502 Mich 89, 105-06; 917 NW2d 292 (2018), quoting *Miller*, 567 US at 479-80. The United States Supreme Court expressly reserved states' rights to adopt additional procedural protections in its interpretation of *Miller*. *Jones v Mississippi*, 593 US ___, ___; 141 S Ct 1307, 1323; 209 L Ed 2d 390 (2021). In keeping with its recognition that youth are different, 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*, 593 US at ___; 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.

Michigan's constitutional protection against "cruel or unusual" punishment hinges on sentence proportionality. *People v Bullock*, 440 Mich 15, 32-33; 485 NW2d 866 (1992); *People v Lorentzen*, 387 Mich 167, 176; 194 NW2d 827 (1972). Disproportionate sentences are unconstitutional. See *id.* The test for constitutional proportionality examines:

> (1) the severity of the sentence relative to the gravity of the offense; (2) sentences imposed in the same jurisdiction for other offenses; (3) sentences imposed in other jurisdictions for the same offense; and (4) the goal of rehabilitation, which is a criterion specifically "rooted in Michigan's legal traditions . . ."

People v Parks, 510 Mich 225, 242; 987 NW2d 161 (2022), quoting *Bullock*, 440 Mich at 33-34. See also *Lorentzen*, 387 Mich at 172-81.

Following implementation of *Miller* and prohibiting mandatory life without parole sentences for children under age eighteen, this Court examined the proportionality of such sentences imposed on eighteen-year-olds and found that a mandatory life without parole sentence for youth who were eighteen violated the Michigan Constitution's ban on "cruel or unusual" punishment because it "it fail[ed] to take into account the mitigating characteristics of youth, specifically late-adolescent brain development." *Parks*, 510 Mich at 232. In doing so, *Parks* engaged in a lengthy analysis of the "dynamic neurological changes that late adolescents undergo as their brains develop over time." *Id*. at 258. This Court grounded its decision on the "objective, undisputed scientific evidence" that adolescent brains "essentially rewire themselves" over time. *Id.* at 249-50, 258. See also *People v Carp*, 496 Mich 440, 531 n 16; 852 NW2d 801 (2014) (Kelly, J., dissenting) (highlighting the "significant differences between juveniles and adults" now apparent given "research developments in science and social science that show 'fundamental differences between juvenile and adult minds—for example, in parts of the brain involved in behavior control'"), quoting *Miller*, 567 US at 471-72, vacated on other grounds 577 US 1186 (2016). In reviewing the significant scientific evidence on the subject, this Court carefully

considered the "hallmarks of the developing brain," specifically noting that late adolescents "continue to formulate their identities, become more assertive and decisive, show increases in self-control and the ability to resist outside influence, become more reflective and deliberate, and demonstrate a decrease in aggressiveness and alienation" as they age. *Parks*, 510 Mich at 251-52. Finally, *Parks* stressed how significant it is that this Court evaluate scientific evidence when making future determinations as to the constitutionality of punishment for youthful offenders:

> Such judicial determinations and considerations are *not an exercise of an inappropriate policy-making function but a requirement under our Constitution*. Appellate courts, including our Court, often use science to determine evidentiary issues in criminal cases. And, most importantly, in the punishment context, science has always informed what constitutes "cruel" or "unusual" punishment in regards to certain classes of defendants.

Id. at 248-49 (emphasis added).

Last year, this Court found "that there is a rebuttable presumption against the imposition of juvenile LWOP [life without parole] sentences in Michigan and that it is the prosecution's burden to overcome this presumption by clear and convincing evidence at a *Miller* hearing." *People v Taylor*, 510 Mich 112, 129; 987 NW2d 132 (2022). This Court clarified that as a "procedural mechanism . . . it makes sense for sentencing courts to start from the premise that the juvenile defendant before them, like most juveniles, has engaged in criminality because of transient immaturity, not irreparable corruption." *Id.* at 135. In so holding, this Court reaffirmed the unique nature of *Miller* hearings as compared to ordinary sentencing hearings and the mitigating nature of the *Miller* factors. *Id*. at 138-39. See also *Skinner*, 502 Mich at 115 ("It is undisputed that all of these factors are mitigating factors."). *Taylor* relied upon the developmental differences of youth in determining that the "status quo" for a juvenile defendant should be a term of years sentence. More plainly, the Court's understanding of juvenile development and its application of Supreme

Court precedent "could not be clearer—persons under 18, *as a group*, are less culpable than adults, more prone to outside influence, and more likely to be rehabilitated." *Taylor*, 510 Mich at 135. "In other words, it is likely that the juvenile offender standing before the court possesses those attributes of youth that diminish the penological justifications for imposing the harshest sentences available under Michigan law." *Id*.

In resentencing young people under *Miller*, this Court also recently clarified that judges must consider youth and its distinctive attributes in mitigation even when conducting a sentencing on a term of years sentence. *People v Boykin*, 510 Mich 171, 178; 987 NW2d 58 (2022), reh den 979 NW2d 322 (Mich, 2022). This Court held that without considering factors of youth as mitigating, a sentence cannot adequately address the sentencing factors set forth in *People v Snow,* 386 Mich 586; 194 NW2d 314 (1972): reformation of the offender, protection of society, disciplining the wrongdoer, and deterring others from committing similar offenses. *Boykin*, 510 Mich at 67, quoting *Snow*, 386 Mich at 592. As the *Boykin* Court succinctly stated: "Youth affects these considerations." *Boykin*, 510 Mich at 188. Specifically, the Court highlighted the greater possibility that a minor's character deficiencies be reformed, their heightened capacity for change compared to adults, and the lowered deterrent effect of harsh punishment. *Id*. at 189. Therefore, in holding a term of years resentencing under MCL 769.25a, this court must consider youth as mitigation. *Id*.

Also relevant, this Court recently applied Michigan's state constitutional prohibition against cruel or unusual punishment in *People v Stovall*, 510 Mich 301; 987 NW2d 85 (2022). In *Stovall*, this Court banned life with parole for youth who were seventeen and under at the time of their offense, holding that a sentence of life in prison with the possibility of parole for a defendant who committed second-degree murder while a juvenile constitutes cruel or unusual punishment and

specifically noting the severity of the punishment "when imposed on a juvenile, given the important mitigating ways that children are different from adults." *Stovall*, 510 Mich at 315, 322.

As demonstrated by this Court's recent decisions, scientific and adolescent development research are integral considerations in determining appropriate punishments for children. 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.

III. TO DATE, LOWER COURTS HAVE IMPOSED LWOP WITHOUT ADEQUATE CONSIDERATION OF YOUTH AND ITS ATTENDANT CIRCUMSTANCES

Miller "did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'" *Montgomery*, 577 US at 207, quoting *Miller*, 567 US at 472. As demonstrated in Section II, *supra*, this Court has required that youth be given a mitigating effect. See also US Const, Am VIII; Const 1963, art 1, § 16. The fact that an individual is under eighteen at the time of the offense diminishes the youth's moral culpability and militates in favor of a term of years sentence. "*Miller* requires that before sentencing a juvenile to life without parole, the sentencing judge take into account 'how children are different, and how those differences counsel *against* irrevocably sentencing them to a lifetime in prison.'" *Montgomery*, 577 US at 208, quoting *Miller*, 567 US at 480 (emphasis added). Yet, lower courts have not, and continue to fail to act with fidelity to this Court's decisions, the United States Supreme Court's decisions, and neuroscience and adolescent development literature; instead often focusing myopically on the offense of conviction.

Despite the clear mandate of *Miller* and this Court's decisions under our state constitution, trial courts have struggled with their analysis. The *Roper* Court anticipated the unconstitutional trap that our trial courts have fallen into. *Roper*, 543 US at 572-73. The Court recognized the

"unacceptable likelihood . . . that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death." *Id.* at 573. *Roper* anticipated that "[i]n some cases a defendant's youth may even be counted against him" despite the constitutional requirement otherwise. *Id.* Our Michigan courts, presented with one case and only one individual to be sentenced have, in some instances set forth below, ignored the mitigation of youth and, in other instances, like that of Mr. Paredes, failed to properly consider youth as a mitigating factor and instead focused on the severity of the offense. *People v Paredes*, unpublished per curiam opinion of the Court of Appeals, issued July 27, 2023 (Docket No. 359130), 2023 WL 4831317, pp *2-3.

A. Trial Courts Have Failed To Give Mitigating Effect To Age Or Have Used Age As An Aggravating Factor

In earlier cases affirmed by the Court of Appeals and where youth are still serving LWOP sentences, the trial courts used age as an aggravating factor. For example, in *Leak*, the Court of Appeals affirmed an LWOP sentence and approved of the trial court's reasoning on this point, where: "[w]ith respect to defendant's age, the trial court stated that this factor also weighed against defendant because he was 17½ years old at the time of his offenses and not as young as the defendant in *Miller*." *People v Leak*, unpublished per curiam opinion of the Court of Appeals, issued November 8, 2023 (Docket No. 327336), 2016 WL 6638211, p *3.

Similarly, in *Wheeler*, the trial court noted that defendant was four months shy of his eighteenth birthday at the time the crime occurred. This, according to the court, "gave defendant the benefit of additional years of maturation compared to other juvenile offenders, which 'somewhat lessens the mitigating impact of his age, but does not eliminate it.'" *People v Wheeler*, unpublished per curiam opinion of the Court of Appeals, issued February 24, 2022 (Docket No.

354746), 2022 WL 569365, p *5, rev'd in part, vacated in part 981 NW2d 721 (Michigan Supreme Court remand for resentencing based on *People v Taylor* framework). The *Wheeler* trial court also ignored its own conclusion that Wheeler was an impetuous and immature adolescent. The trial court concluded that "although defendant was impetuous and immature at the time of the crime, and substance abuse impaired his decision-making," per expert testimony, "these characteristics did not play an appreciable role in the crime, which clearly displayed evidence of foresight and planning." *Id*. Just like in *Wheeler*, the fact that Dallas McDade was close to his eighteenth birthday was aggravating. *People v McDade*, unpublished per curiam opinion of the Court of Appeals, issued January 22, 2019 (Docket No. 323614), 2019 WL 286681, p *5. McDade's LWOP sentence was affirmed where the Court of Appeals described the trial court's denial of mitigation for age: "[w]ith respect to age, the trial court noted that defendant was only four months shy of being 18 when he committed the offense." *Id*.

In *People v Masalmani*, the trial court contrasted Masalmani's age with that of the defendant in *Miller*, which "dealt with juvenile defendants who were a mere 14-years old at the time of their offenses—a far cry from this case." Supplemental Brief of Appellant Robert Taylor, *People v Taylor*, 510 Mich 112; 987 NW2d 132 (2022) (No. 154994), pp 22-23 (Taylor, in his Supplemental Brief to this Court, cited extensively from the trial court opinion resentencing Mr. Masalmani, his co-defendant, to LWOP); *People v Masalmani*, unpublished per curiam opinion of the Macomb County Circuit Court, issued January 6, 2015 (Docket No. 2009-5244-FC), p 4 (application for leave to appeal later denied by this Court); *People v Masalmani*, 505 Mich 1090; 943 NW2d 359 (Mem) (2020). See also *People v Granger*, unpublished per curiam opinion of the Court of Appeals, issued August 4, 2022 (Docket No. 355477), 2022 WL 3133787, pp *4-5 (resentencing court erred when it found that a defendant's age had no mitigating effect, given that

he was seventeen years and eight months old at the time of the offense and because "testimony of law enforcement officials involved in the murder case [demonstrated that the defendant] was 'mature for his age' and 'appreciated the risks and consequences of his action[s].'") (second alteration in original).

B. Other Hallmarks Of Adolescence Have Been Ignored Or Used As Aggravation By Trial Courts

In addition to biological age, the trial courts have ignored or deemed as aggravating the hallmark characteristics of adolescent development and neuroscience.

In cases considered by the Court of Appeals and where youth are still serving LWOP sentences, trial courts have failed to give mitigating effect to a youth's "family and home environment." *Miller*, 567 US at 477. For example, in *Granger,* a resentencing court found that, "[d]espite substantial evidence that [a defendant] experienced a chaotic and turbulent childhood, one which contributed to violent, impulsive, and immature behavior," the first two *Miller* factors had no mitigating effect as to his resentencing. *Granger*, unpub op at *4. The Court of Appeals reversed this decision as clear error and based on a fundamental misunderstanding and misapplication of *Miller* and an impermissible response to "thorough[]" evidence of the defendant's violent childhood—"[i]ncredibly, [the resentencing court] found that this factor did not have a mitigating effect because there was no evidence presented that [such a] childhood was 'extremely abnormal for the area.'" *Id.* at *4, 6.

In *Leak*, the appellate court rationalized that Leak's exposure to "horrific crime and illegal activity in his family and home environment," even though mitigating on one factor, supported aggravation on another factor because *"*based on defendant's upbringing around guns and violence, he was fully aware at the time of the crime that a gun was a dangerous weapon." *Leak*, unpub op at *4. See also *People v Hyatt*, unpublished per curiam of the Court of Appeals, issued

December 4, 2018 (Docket No. 325741), 2018 WL 6331314, p *3 (trial court issued an LWOP sentence where older co-defendants planned the robbery, reasoning that "while defendant had an unstable family background, he was over seventeen when the crime was committed"); *People v Hyatt*, 982 NW2d 385 (Mem) (Mich, 2022) (vacating judgment of the Court of Appeals and remanding for resentencing).

Trial courts have also used a history of trauma and mental health as justification for imposing a life without parole sentence, instead of in mitigation. In *Taylor*, the trial court weighed the significant trauma in the defendant's upbringing against him, a history that should have gone exclusively to mitigation, as it indicated that he faced significant challenges in improving himself. *People v Taylor*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2016 (Docket No. 325834), 2016 WL 5328632, p *5, rev'd and remanded 510 Mich 112; 987 NW2d 132 (2022). In its analysis, the court relied on the testimony of a psychologist who stated "[n]egative experiences and behaviors during a person's developmental period increase the probability that the person will not succeed in rising above difficulties. Some people do not change; the worse the circumstances, the more likely that the person will not overcome their circumstances." *Id*.

In *Clemons*, a trial court chose not to apply the first *Miller* factor even after a psychologist, upon evaluating the defendant, testified to "sexual, emotional, and physical abuse [present] during [the defendant's] adolescent development" and the "limited intellectual functioning" affecting the adolescent's ability to understand potential consequences of his behavior at the time of the homicide. Instead, contrary to the entire body of caselaw, the resentencing court characterized the youth's frame of mind at the time of the offense as demonstrative of a generalized "childhood trauma, limited intellectual functioning, and personality traits of fear, hypervigilance, and

paranoia" and *not* related to the "attributes of his youth" for the purposes of a *Miller* resentencing. *People v Clemons*, unpublished per curiam opinion of the Court of Appeals, issued December 17, 2020 (Docket No. 347225), 2020 WL 7414654, p *3, rev'd in part, lv den in part 981 NW2d 724 (Mem) (2022).

C. Trial Courts Have Inappropriately Focused On The Severity Of The Offense Alone

Like the *Roper* Court cautioned, trial courts have myopically focused on the offense of conviction. Our appellate courts have recognized since *Montgomery* that "nearly every situation in which a sentencing court is asked to weigh in on the appropriateness of a life-without-parole sentence will involve heinous and oftentimes abhorrent details," yet trial courts all too often center their *Miller* analysis around the specifics of the offense itself. *People v Hyatt*, 316 Mich App 368, 420; 891 NW2d 549 (2016), aff'd in part, rev'd in part sub nom *People v Skinner*, 502 Mich 89; 917 NW2d 292 (2018).

In *Moore*, the trial court "opin[ed] that it was the worst murder it had ever seen or read about." *People v Moore*, unpublished per curiam opinion of the Court of Appeals, issued December 15, 2022 (Docket No. 349584), 2022 WL 17727869, at *4 (reversing LWOP sentence). In imposing LWOP, as the trial courts did above, the sentencer inappropriately used Moore's proximity to eighteen years old in aggravation and found that Moore "was not from an extremely abusive home environment at all" by discrediting testimony of abuse and ignoring other evidence of abuse. *Id*.

In *People v Osborne*, currently held under abeyance in this Court, the trial court was reported to "note[] how well Osborne had done in prison, saying he had the least amount of misconducts he'd ever seen on a record he had to review. However, the judge called the case 'deeply disturbing' and upheld Osborne's original sentence." *Kent Co. Judge Upholds Life*

Sentence for Killer, Then 17, Wood TV (November 8, 2018), available at <https://www.woodtv.com/news/grand-rapids/kent-co-judge-upholds-life-sentence-for-killer-then-17/>; *People v Osborne*, 982 NW2d 388 (Mem) (Mich, 2022) (order holding under abeyance).

D. Trial Courts Are Ignoring Evidence Of Potential And Proven Rehabilitation

Trial courts have routinely improperly evaluated a defendant's ongoing possibility for rehabilitation when imposing LWOP sentences. For example, in *Bennett*, the Court of Appeals found the resentencing court fundamentally mischaracterized a defendant's demonstrated rehabilitation efforts and capacity for change in light of the defendant's underlying mental illness which he suffered as a result of profound childhood abuse. *People v Bennett*, 335 Mich App 409, 428-29; 966 NW2d 768 (2021). In spite of a psychological risk assessment placing Mr. Bennett "in the lowest risk category for general recidivism" and clear indication that his risk for antisocial behavior had been well managed for several decades the resentencing court nevertheless remarked that it was "deeply concerned" about Mr. Bennett's initial mental illness diagnosis. *Id.* at 428, 432. Clarifying, the *Bennett* court noted that "although untreated mental illness may predispose a person to violent behavior, successfully treated mental illness does not," and nothing in the record warranted the resentencing court's speculation at the *Miller* hearing. *Id.* at 430, 434.

In *Wheeler*, the trial court reimposed LWOP despite the defendant's demonstrated rehabilitation. It noted that Mr. Wheeler had 40 years of an exemplary disciplinary record and that he facility at which he was housed considered the defendant "very low risk and an excellent candidate for parole." *People v Wheeler*, unpub op at *9. While the trial court deemed his prison record "quite impressive," it ultimately determined that the defendant was "not rehabilitated" based only on misconducts within the previous 10 years for possession of contraband. *Id* at *8-9.

In one case, the trial court pointed to the defendant's trauma and mental health problems as foreclosing the possibility of rehabilitation because it assumed the Michigan Department of Corrections would not be able to provide him with the intensive psychological services that he needed. *Masalmani*, unpub op at 8; *Masalmani*, 505 Mich 1090; 943 NW2d at 363 (McCormack, C.J., dissenting from denial of application for leave to appeal) (describing trial court's rationale in this case and stating that the treatment of rehabilitation was "most troublesome"). See also *People v Hernandez*, unpublished per curiam opinion of the Court of Appeals, issued December 22, 2020 (Docket No. 350565), 2020 WL 7635454, p *26 (Shapiro, J., dissenting) (flagging that a trial court, despite recognizing a defendant's "high degree of rehabilitation during her decades in prison," nevertheless did not appropriately consider a psychological evaluation describing her as "a vastly different person from the adolescent who entered the prison system" with a low recidivism risk).

Additionally, a trial court's recent resentencing considered argument from the prosecutor that it is simply impossible to prove rehabilitation given the nature of the offense. See May & Jennerjahn, *Juvenile Offender Keeps Life Sentence in 5-Year-Old Girl's Murder,* UpNorthLive (June 23, 2023), available at <https://upnorthlive.com/news/nation-world/jason-symonds-murder-nicole-vannoty-resentence-battle-creek-judge-decision-juvenile-life-convicted-killer>.

E. Instead Of Giving Mitigating Effect To The Characteristics Of Adolescent Development And Youth, Courts Are Looking To Unscientific And Unreliable Information, Which Contradicts *Miller* And This Court's Caselaw And Violates Due Process

In reaching these decisions, sentencing courts are also relying on outdated, unsupported, unreliable information that, at best, undermines *Miller*'s and *Taylor*'s constitutional promise of a hearing that considers youth and its mitigating circumstances, and at worst, violates state and federal Due Process protections.

For example, in *People v Musselman*, the sentencing court gave persuasive value to a 1980 psychologist report giving an opinion of sociopathy of the fifteen-year-old defendant, even though modern psychiatry, including the DSM, rejects the diagnosis of sociopathy or antisocial personality disorder before eighteen years old. *People v Musselman*, unpublished per curiam opinion of the Court of Appeals, issued May 20, 2021 (Docket No. 351700), 2021 WL 2025150, pp *5-6, vacated by order of the Supreme Court, entered November 22, 2023 (Docket No. 163290), 2023 WL 8116088 (Michigan Supreme Court remand for resentencing based on *People v Taylor* framework); *Antisocial Personality Disorder Diagnostic Criteria*, in *Diagnostic and Statistical Manual of Mental Disorders* (Washington, DC: American Psychiatric Association Publishing, 2022) (limiting diagnoses of anti-social personality disorder to individuals over the age of 18). See also PsychDB, *Antisocial Personality Disorder,* available at <https://www.psychdb.com/personality/antisocial> (accessed November 21, 2023) (an open-access psychiatric resource summarizing diagnostic critieria for ASPD).[2]

Other trial courts have also used what appears to be, at best, inaccurate information in their decision to sentence to life without parole. In a case reversed by the Court of Appeals for abuse of discretion and application of the *Taylor* framework, "during the resentencing hearing, the court relied on the fact that defendant had been labeled a 'homosexual predator' [by the Michigan Department of Corrections] despite the fact that the designation had been removed and, . . .

[2] While the appellate opinion is not entirely clear, in *People v Nunez*, which this Court has remanded for resentencing under *People v Taylor*, the appellate court affirmed the imposition of a life without parole sentence by the trial court where, among other evidence, the trial court appears to have considered a diagnosis in the late 1990s of antisocial personality disorder when Nunez was 16 years old. *People v Nunez*, unpublished per curiam opinion of the Court of Appeals, issued October 22, 2020 (Docket No. 349035), 2020 WL 6231209, pp *3-6, vacated in part, lv den in part 982 NW2d 440 (Mem) (Mich, 2022) (Michigan Supreme Court remand for resentencing based on *People v Taylor* framework). Nunez is the only juvenile lifer from Ottawa County.

following an investigation, the underlying incident was found likely not to have occurred and the other prisoner who was implicated had been exonerated." *Moore*, unpub op at *7. Additionally, an expert on the Michigan Department of Corrections had testified that the defendant's four misconduct tickets for fighting "were *not* predictive evidence of predatory or violent behavior because the nature of the fights 'fit the pattern of just very typical acting out overcrowded young males locked up together.'" *Id.* (emphasis added). In *Leak*, the trial court rejected the only psychologist report, stating that it did not have "any confidence" in the report, based apparently on the judge's own observations of Leak's actions and communication. *Leak*, unpub op at *4.

This Court has long stated how "vitally important to the defendant and to the ends of justice" that a criminal sentence be based upon accurate information. *People v Malkowski*, 385 Mich 244, 249; 188 NW2d 559 (1971). This Court has also consistently held that the accuracy of evidence presented must be assessed in reviewing the validity of a trial court's sentence. See, e.g., *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997) ("This Court has also repeatedly held that a sentence is invalid if it is based on inaccurate information."); *People v Francisco*, 474 Mich 82, 89-90; 711 NW2d 44 (2006) ("It would be in derogation of the law, and fundamentally unfair, to deny a defendant . . . the opportunity to be resentenced on the basis of accurate information. A defendant is entitled to be sentenced in accord with the law, and is entitled to be sentenced by a judge who is acting in conformity with such law."); *People v Jackson*, 487 Mich 783, 801-02; 790 NW2d 340 (2010) (holding that, where a less serious conviction was vacated on appeal for insufficient evidence, a defendant is entitled to resentencing on the greater conviction). As this Court has stated, "it is difficult to imagine something 'more inconsistent with substantial justice' than requiring a defendant to serve a sentence that is based upon inaccurate information." *Francisco*, 474 Mich at 89 n 6, quoting MCL 2.613.

Even in typical sentencing hearings, defendants' state and federal due process rights at sentencing include "the right to be sentenced on the basis of accurate information." *People v Eason*, 435 Mich 228, 239; 458 NW2d 17 (1990). See also *People v Lauzon*, 84 Mich App 201, 208-09; 269 NW2d 524 (1978), citing *People v Malkowski*, 385 Mich 244, 249; 188 NW2d 559 (1971). In *Townsend v Burke* and *United States v Tucker*, the United States Supreme Court held that a sentencing court violates a defendant's due process rights when it materially relies upon false information, or a material misapprehension of fact in imposing its sentence. *Townsend v Burke*, 334 US 736, 740-41; 68 S Ct 1252; 92 L Ed 1690 (1948); *United States v Tucker*, 404 US 443, 447; 92 S Ct 589; 30 L Ed 2d 592 (1972). See also *Torres v United States*, 140 F3d 392, 404 (CA 2, 1998). In applying *Townsend* and *Tucker*, this Court held that a conviction obtained in violation of the right to counsel could not be used to enhance punishment for another offense, as the initial offense would be "founded at least in part upon misinformation of constitutional magnitude" and "materially untrue." *People v Carpentier*, 446 Mich 19, 50-51; 521 NW2d 195 (1994) (Riley, J., concurring), quoting *Tucker*, 404 US at 447.

When lower courts have appeared to rely in part upon inaccurate factual bases at sentencing, appellate courts have not hesitated to declare such sentences impermissible and violative of a defendant's due process rights. See, e.g., *Lauzon*, 84 Mich App at 208 (holding that a trial court violated a defendant's due process rights in sentencing because it mistakenly believed the defendant had committed a burglary while out on bond); *People v Hildabridle*, 45 Mich App 93, 95-96; 206 NW2d 216 (1973) (holding that a trial court violated a defendant's due process rights in sentencing because it was given inaccurate information regarding the value of the stolen property and additional pending criminal charges against the defendant).

The language this Court has used to characterize *Miller* hearings suggests that the need for accurate information at such hearings may be even *more* significant than the average criminal sentencing. Given the heightened stakes of a *Miller* hearing (that is, a court's potential to impose Michigan's most severe criminal punishment in LWOP on a young person), this Court has regularly recognized the unique nature of such hearings, and the unique need for accurate information therein. See, e.g., *Skinner*, 502 Mich at 150-51 (McCormack, J., dissenting) ("[I]n the absence of the sentencing court reaching a conclusion, supported by competent evidence, that the defendant will forever be incorrigible, without any hope for rehabilitation, a life-without-parole sentence imposed on a juvenile is illegal, as it is beyond the court's power to impose.") (citation omitted); *People v Taylor*, 510 Mich 112, 133-34; 987 NW2d 132 (2022). A *Miller* hearing has unique constitutional implications beyond those present at other sentencing hearings. *Id.* at 138-39.

In effect, sentencing courts routinely are not, consistent with this Court's and the United States Supreme Court's precedent, starting "from the premise that the juvenile defendant before them, like most juveniles, has engaged in criminality because of transient immaturity, not irreparable corruption." *Id.* at 135. Lower courts have, instead, been largely focused on the offense of conviction, often in isolation, and in some cases have compounded this error by looking to unreliable information as a basis for its sentence.

CONCLUSION AND RELIEF REQUESTED

This lack of fidelity to the command to give mitigating effect to youth and adolescent development research, the *Miller* decision, and our state constitutional protections under Article I, Section 16, requires this Court to examine the continued imposition of a life without parole sentence on any child in Michigan.

Wherefore, *amici curiae* respectfully requests that for the foregoing reasons this Honorable Court grant Efrén Paredes' application for leave to appeal and urges this Court to examine the constitutionality of life without parole sentences on Michigan's children.

Respectfully submitted,

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Dated: November 27, 2023

CERTIFICATE OF COMPLIANCE

Pursuant to MCR 7.212(B)(3), I hereby certify that this document contains 6,703 countable words, based upon the word count of the word processing system used to prepare the brief.

Respectfully submitted,

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Dated: November 27, 2023