

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MONTARIO MARQUISE TAYLOR,

Defendant-Appellant.

Supreme Court No. 166428

Court of Appeals No. 349544

Genesee CC: 16-040564-FC

**AMICUS CURIAE BRIEF OF JUVENILE LAW CENTER, THE AMERICAN CIVIL
LIBERTIES UNION OF MICHIGAN, AND THE SENTENCING PROJECT**

Daniel S. Korobkin (P72842)
Bonsitu Kitaba-Gaviglio (P78822)
AMERICAN CIVIL LIBERTIES UNION
FUND OF MICHIGAN
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6824
dkorobkin@aclumich.org
bkitaba@aclumich.org

Elizabeth Komar, NY Bar #5395181
Becky Feldman, MD Bar #0212180007
THE SENTENCING PROJECT
1150 Connecticut Ave NW, Suite 601
Washington, DC 20036
(202) 628-0871
lkomar@sentencingproject.org
bfeldman@sentencingproject.org

Marsha L. Levick, PA Bar #22535
Riya Saha Shah, PA Bar #200644
Andrew R. Keats, NY Bar #5037528
JUVENILE LAW CENTER
1800 JFK Blvd., Ste. 1900B
Philadelphia, PA 19103
(215) 625-0551
mlevick@jlc.org
rshah@jlc.org
akeats@jlc.org

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITES	iv
INTEREST AND IDENTITY OF AMICI CURIAE.....	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	3
I. CURRENT RESEARCH SUPPORTS AFFORDING 20-YEAR-OLDS THE SAME SENTENCING PROTECTIONS AFFORDED TO 18-YEAR-OLDS UNDER <i>PARKS</i>	3
A. The neuroscientific research relied on by this Court in <i>Parks</i> shows that older adolescents, including 20-year-olds, share essentially the same developmental characteristics as 18-year-olds, and are therefore equally less culpable than older adults.....	3
B. The age-crime curve demonstrates that youth and older adolescents are both more likely to engage in criminal behavior but also desist from criminal behavior as they reach their late 20’s and 30’s.	8
C. Data also confirms that older adolescents who are Black are disproportionately harmed by extreme sentencing practices such as Michigan’s mandatory life- without-parole statute.	10
II. THERE IS CONSENSUS IN MICHIGAN AND ACROSS THE COUNTRY THAT OLDER ADOLESCENTS, INCLUDING 20-YEAR-OLDS SHOULD RECEIVE MANY OF THE SAME PROTECTIONS AS CHILDREN UNDER 18 YEARS OF AGE FOR PURPOSES OF SENTENCING.	11
A. Michigan’s Holmes Youthful Trainee Act provides older adolescents, including those 20 and above, special privileges and protections in the criminal justice system that reflect the key developmental characteristics of youth identified in <i>Miller</i>	12
B. Many other jurisdictions also afford older adolescents additional protections in the criminal justice system through youthful offender statutes, early parole eligibility, and “second look” resentencing.....	14
C. Jurisdictions across the country increasingly set the age of adulthood above 18 in situations implicating immaturity and susceptibility to peer pressure.....	16
D. Many jurisdictions extend additional supports to youth through their mid- twenties in recognition of their developmental immaturity.	20

III. BASED ON THE EVOLVING STANDARDS OF DECENCY REFLECTED IN THE SCIENCE AND NATIONAL CONSENSUS OF LAWS, SENTENCING OLDER ADOLESCENTS TO LIFE-WITHOUT-PAROLE VIOLATES THE MICHIGAN CONSTITUTION’S BAN ON CRUEL OR UNUSUAL PUNISHMENT.	21
A. Michigan’s Constitution forbids excessive imprisonment.	22
B. Mandatory life-without-parole sentences imposed on 20-year-olds are disproportionate, unusual, and undermine the goal of rehabilitation in violation of the Michigan Constitution.	24
IV. THIS COURT SHOULD JOIN OTHER STATE HIGH COURTS THAT HOLD THEIR OWN CONSTITUTIONS GO BEYOND THE FEDERAL EIGHTH AMENDMENT IN LIMITING HARSH SENTENCES FOR OLDER ADOLESCENTS.....	29
CONCLUSION.....	31
WORD COUNT STATEMENT.....	33

TABLE OF AUTHORITES

Cases

<i>Carlton v Dep't of Corrections</i> , 215 Mich App 490; 546 NW2d 671 (1996)	23
<i>Commonwealth v Mattis</i> , 493 Mass 216; 224 NE3d 410 (2024)	27, 30
<i>Diatchenko v Dist Attorney for Suffolk Dist</i> , 466 Mass 655; 1 NE3d 270 (2013)	30
<i>Graham v Florida</i> , 560 US 48; 130 S Ct 2011; 176 L Ed 2d 825 (2010)	passim
<i>Hill v Snyder</i> , 900 F3d 260 (CA 6, 2018)	1
<i>Horsley v Trame</i> , 808 F3d 1126 (CA 7, 2015)	19
<i>In re Monschke</i> , 197 Wash 2d 305; 482 P3d 276 (2021)	30
<i>Miller v Alabama</i> , 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012)	passim
<i>Montgomery v Louisiana</i> , 577 US 190; 136 S Ct 718; 193 L Ed 2d 599 (2016)	3
<i>Nat'l Rifle Ass'n of America, Inc v Bureau of Alcohol, Tobacco, Firearms, & Explosives</i> , 700 F3d 185 (CA 5, 2012)	19
<i>People v Benton</i> , 294 Mich App 191; 817 NW2d 599 (2011)	23
<i>People v Bosca</i> , 310 Mich App 1; 871 NW2d 307 (2015)	23
<i>People v Bullock</i> , 440 Mich 15; 485 NW2d 866 (1992)	22, 23, 24, 29
<i>People v Lorentzen</i> , 387 Mich 167; 194 NW2d 827 (1972)	passim
<i>People v Nunez</i> , 242 Mich App 610; 619 NW2d 550 (2000)	23
<i>People v Parks</i> , 510 Mich 225; 987 NW2d 161 (2022)	passim
<i>People v Perkins</i> , 107 Mich App 440; 309 NW2d 634 (1981)	13
<i>People v Schultz</i> , 453 Mich 517; 460 NW2d 505 (1990)	29
<i>People v Stovall</i> , 510 Mich 301; 987 NW2d 85 (2022)	1, 23
<i>People v Tucker</i> , 312 Mich App 645; 879 NW2d 906 (2015)	23
<i>Roper v Simmons</i> , 543 US 551; 125 S Ct 1183; 161 L Ed 2d 1 (2005)	7, 11, 17

Constitutional Provisions

Const 1850, art 6, § 31	22
Const 1963, art 1, § 16	2, 8, 11, 21
Const 1963, art 4, § 40	17
Wash Const, art 1, § 14	29

Statutes, Bills, and Public Acts

18 USC 922.....	19
1966 PA 301	12
20 USC 1412.....	21
2000 PA 381	19
2015 HB 4069.....	13
2015 HB 4169.....	13
21 USC 387f	18
23 USC 158.....	17
42 USC 675.....	20
730 Ill Comp Stat 5/5-4.5-115	15
Ala Code 15-19-1.....	14
Assemb B 1308 (Cal, 2017).....	14
Cal Penal Code 4801.....	15
Colo Rev Stat Ann 18-1.3-407.....	14
Colo Rev Stat Ann 18-1.3-407.5.....	14
Conn Gen Stat Ann § 54-125a.....	15
Fla Stat Ann 958.011 through Fla Stat Ann 958.15.....	14
Ga Code Ann 42-7-2(7)	14
House Legislative Analysis, HB 4069, HB 4135, and HB 4169 (March 14, 2015).....	13
MCL 256.637	18
MCL 257.658.....	18
MCL 28.425b.....	19
MCL 28.466.....	19
MCL 333.27955.....	18
MCL 388.1606.....	21
MCL 432.209	19
MCL 480.12d.....	18
MCL 762.11	14
NJ Stat Ann 52:17B182	14

NJ Stat Ann 52:17B-183	14
NY Crim Proc Law 720.10	14
NY Crim Proc Law 720.15	14
Omnibus Public Safety and Justice Amendment Act of 2020, DC Law 23-274	15
RI Gen Laws Ann § 13-8-13	15
SC Code Ann 24-19-10	14
Va Code Ann 19.2-311	14
VI Code Ann tit 5, § 3712	14
Vt Stat Ann tit 33, § 5280	14
Vt Stat Ann tit 33, § 5281	14
Vt Stat Ann tit 33, § 5287	14
Wyo Stat Ann 7-13-1002 through Wyo Stat Ann 7-13-1003	15

Rules and Regulations

42 CFR 441.50	21
49 CFR 391.11	18
MCR 7.312	1
MCR 8.128	10

Other Authorities

American Bar Association, Resolution 502 & Report to the House of Delegates (2022)	16
Aragon, <i>Free and Compulsory School Age Requirements</i> (2015)	21
Bessler, <i>Cruel & Unusual: The American Death Penalty and the Founders' Eighth Amendment</i> (Boston: Northeastern University Press, 2012)	22
Bradley & Wildman, <i>Psychosocial Predictors of Emerging Adults' Risk and Reckless Behaviors</i> , 31 J Youth & Adolescence 253, 257, 263 (2002)	5
Campaign for Fair Sentencing of Youth, <i>Four Years Since the U.S. Supreme Court Decision in Montgomery v. Louisiana</i> (2020)	28
Campaign for Fair Sentencing of Youth, <i>Michigan Has the Most Children Serving Life Without Parole in the Country</i> (2023)	26
Campaign for Fair Sentencing of Youth, <i>National Trends in Sentencing Children to Life Without Parole</i> (2022)	28
Campaign for Fair Sentencing of Youth, <i>Sentencing Children to Life Without Parole: National Numbers</i> (2024)	28

Campaign for Tobacco-Free Kids, <i>States and Localities that Have Raised the Minimum Legal Sale Age for Tobacco Products to 21</i>	18
Center for Consumer Information & Insurance Oversight, <i>Young Adults and the Affordable Care Act: Protecting Young Adults and Eliminating Burdens on Families and Businesses</i>	21
Cohen et al., <i>When Does a Juvenile Become an Adult? Implications for Law and Policy</i> , 88 Temple L Rev 769 (2016)	7, 18
Cohen et al., <i>When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts</i> , 27 Psychol Sci 549 (2016).....	6
Enterprise, <i>Can You Rent a Car Under 25 in the US and Canada?</i>	18
Feldman, Sentencing Project, <i>The Second Look Movement: A Review of the Nation's Sentence Review Laws</i> (2024)	16
Gardner & Steinberg, <i>Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study</i> , 41 Developmental Psych 625 (2005).....	6
Giffords Law Center, <i>Minimum Age to Purchase & Possess</i>	19
Kloosterman, <i>Second Chances for Youthful Offenders Key Point of Bill</i> , State Rep Says, Michigan Live (June 16, 2015)	13
Loeber, & Farrington, <i>Age-Crime Curve</i> , <i>Encyclopedia of Criminology and Criminal Justice</i> (New York: Springer, 2014).....	9
Michaels, <i>A Decent Proposal: Exempting Eighteen- to Twenty Year-Olds From the Death Penalty</i> , 40 NYU Rev L & Soc Change 139 (2016).....	4, 5
Michigan Judicial Council, <i>Racial and Social Equity Workgroup Report and Recommendations</i> (adopted November 2023).....	11
Monahan, Steinberg & Piquero, <i>Juvenile Justice Policy and Practice: A Developmental Perspective</i> , 44 Crime & Just 577 (2015)	4, 5, 7, 8
National Academies of Sciences, Engineering & Medicine, <i>The Promise of Adolescence: Realizing Opportunity for All Youth</i> (Washington, DC: The National Academies Press, 2019).....	4, 20
National Academies of Sciences, <i>Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products</i> (Washington, DC: The National Academies Press, 2015).....	17
Neil & Sampson, <i>The Birth Lottery of History: Arrest Over the Life Course of Multiple Cohorts Coming of Age, 1995–2018</i> , 126 Am J Socio 1127 (2021).....	9
Nellis & Monazzam, The Sentencing Project, <i>Left to Die in Prison: Emerging Adults 25 and Younger Sentenced to Life Without Parole</i> (2023)	10, 16

Pearson, Murphy & Doane, <i>Impulsivity-Like Traits and Risky Driving Behaviors Among College Students</i> , 53 <i>Accident Analysis & Prevention</i> 142 (2013)	18
Rudolph et al, <i>At Risk of Being Risky: The Relationship Between “Brain Age” Under Emotional States and Risk Preference</i> , 24 <i>Developmental Cognitive Neuroscience</i> 93 (2017).....	6
Sampson & Laub, <i>Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70</i> , 41 <i>Criminology</i> 301 (2003)	9
Schiraldi & Western, <i>Why 21-Year-Old Offenders Should Be Tried in Family Court</i> , <i>Washington Post</i> (October 2, 2015).....	4
Scott, Bonnie & Steinberg, <i>Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy</i> , 85 <i>Fordham L Rev</i> 641 (2016)	6, 7, 8
Shulman et al., <i>Sex Differences in the Developmental Trajectories of Impulse Control and Sensation-Seeking from Early Adolescence to Early Adulthood</i> , 44 <i>J Youth & Adolescence</i> 1 (2015)	5
State of Michigan, <i>Gov. Snyder Signs Fostering Connections Legislation</i> (November 22, 2011)	20
Steinberg et al., <i>Age Differences in Future Orientation and Delay Discounting</i> , 80 <i>Child Dev</i> 28 (2009)	8
Steinberg, <i>A Social Neuroscience Perspective on Adolescent Risk-Taking</i> , 28 <i>Developmental Rev</i> 78 (2008).....	6
Steinberg, <i>Should the Science of Adolescent Brain Development Inform Public Policy?</i> , 64 <i>Am Psych</i> 739 (2009).....	7
US Dep’t of Health & Human Services, <i>Extension of Foster Care Beyond Age 18</i> (March 2022)	20
Weingard et al., <i>Effects of Anonymous Peer Observation on Adolescents’ Preference for Immediate Rewards</i> , 17 <i>Developmental Sci</i> 71 (2013).....	4, 5
Young Adult Diversion Court.....	14

INTEREST AND IDENTITY OF AMICI CURIAE¹

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 **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 and our state constitutions. The ACLU has long advocated for an end to 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 Stovall*, 510 Mich 301; 987 NW2d 85 (2022); ACLU of Michigan, *Second Chances: Juveniles Serving Life Without Parole in Michigan Prisons* (2004) <<https://bit.ly/45X5mRz>> (accessed October 30, 2024); Second Chances 4 Youth & ACLU of Michigan, *Basic Decency: Protecting the Human Rights of Children* (2012) <<https://bit.ly/3RjreTa>> (accessed October 30, 2024); ACLU of Michigan, *Unlocking Hope:*

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.

Juvenile Life Without Parole Sentences in Michigan (2013) <<https://bit.ly/3soDt7h>> (accessed October 30, 2024).

The Sentencing Project is a nationwide nonprofit established in 1986 to engage in public policy research, education, and advocacy to promote effective and humane responses to crime. The Sentencing Project has produced a broad range of scholarship assessing extreme sentences in jurisdictions throughout the United States and has a specific interest in constitutional sentences for late adolescents.

SUMMARY OF THE ARGUMENT

In *People v Parks*, 510 Mich 225; 987 NW2d 161 (2022), this Court recognized that Michigan’s more expansive constitutional prohibition against “cruel *or* unusual” punishment under Article 1, § 16, of Michigan’s 1963 Constitution, requires, at minimum, that 18-year-olds like Mr. Parks be granted the same protections against disproportionate punishment that the U.S. Supreme Court afforded to those under age 18. By recognizing *Miller*’s individualized sentencing considerations for 18-year-olds in *Parks*, this Court left open the question posed here in Mr. Taylor’s case, namely, whether 20-year-olds should receive the same individualized sentencing consideration afforded to 18-year-olds under Const 1963, art 1, § 16.

The obvious answer is yes. A sentence that is disproportionate for an 18-year-old is also disproportionate for a 20-year-old. Mr. Parks and Mr. Taylor each received mandatory life-without-parole sentences. The same scientific research relied on by this Court in *Parks* to find that 18-year-old adolescents are equally less culpable, and deserving of the same individualized sentencing consideration, as adolescents who are under 18 years old also applies to Mr. Taylor and every other 20-year-old; the same unique developmental attributes that distinguish younger adolescents from adults also distinguish older adolescents up to and beyond age 20 from adults;

and the evolving standards of decency reflected in Michigan’s and other states’ laws that treat many older adolescents differently from adults also apply to 20-year-olds. Accordingly, the proscription against “cruel or unusual punishment” under Article 1, § 16 of Michigan’s 1963 Constitution that requires individualized consideration of youth at sentencing must now be applied to 20-year-olds. To determine otherwise would be arbitrary, cruel, and would violate Article 1, § 16.

ARGUMENT

I. CURRENT RESEARCH SUPPORTS AFFORDING 20-YEAR-OLDS THE SAME SENTENCING PROTECTIONS AFFORDED TO 18-YEAR-OLDS UNDER *PARKS*.

A. The neuroscientific research relied on by this Court in *Parks* shows that older adolescents, including 20-year-olds, share essentially the same developmental characteristics as 18-year-olds, and are therefore equally less culpable than older adults.

In *Parks*, this Court found that there is a “clear [scientific] consensus that late adolescence—which includes the age of 18—is a key stage of development characterized by significant brain, behavioral, and psychological change” that shares the same key developmental characteristics of early adolescence recognized by the U.S. Supreme Court in *Roper*, *Graham*, and *Miller*. *Parks*, 510 Mich at 249. The three key developmental characteristics of youth recognized by the Supreme Court that make youth less culpable than adults, and therefore “less deserving of the most severe punishment,” *Miller v Alabama*, 567 US 460, 471; 132 S Ct 2455; 183 L Ed 2d 407 (2012), quoting *Graham v Florida*, 560 US 48, 68; 130 S Ct 2011; 176 L Ed 2d 825 (2010), are: (1) a lack of maturity, impulsivity, and impetuosity; (2) susceptibility to outside influences; and, most significantly, (3) the capacity for change. See *Montgomery v Louisiana*, 577 US 190, 206-207; 136 S Ct 718; 193 L Ed 2d 599 (2016), quoting *Miller*, 567 US at 471. The research that this Court relied on in *Parks* shows that older adolescents, beyond age 18 and including but not

limited to 20-year-olds like Mr. Taylor, share these same physiological and psychological traits with younger adolescents, making them equally less culpable and thus less deserving of the most serious punishments meted out to adults.

It is now widely accepted that the characteristics cited by the Supreme Court in its youth sentencing cases persist “far later than was previously thought,” and certainly beyond age 18. Schiraldi & Western, *Why 21-Year-Old Offenders Should Be Tried in Family Court*, Washington Post (October 2, 2015). See, e.g., Michaels, *A Decent Proposal: Exempting Eighteen- to Twenty Year-Olds From the Death Penalty*, 40 NYU Rev L & Soc Change 139, 163 (2016); Weingard et al., *Effects of Anonymous Peer Observation on Adolescents’ Preference for Immediate Rewards*, 17 Developmental Sci 71, 71-73 (2013); Monahan, Steinberg & Piquero, *Juvenile Justice Policy and Practice: A Developmental Perspective*, 44 Crime & Just 577, 582 (2015). Incorporating this research, in 2019, the Committee on the Neurobiological and Socio-behavioral Science of Adolescent Development and Its Applications of the National Academies of Sciences, Engineering, and Medicine (“NAS”) published a Consensus Study Report that recognized “the unique period of brain development and heightened brain plasticity . . . continues into the mid-20s,” and that “most 18-25-year-olds experience a prolonged period of transition to independent adulthood, a worldwide trend that blurs the boundary between adolescence and ‘young adulthood,’ developmentally speaking.” National Academies of Sciences, Engineering & Medicine, *The Promise of Adolescence: Realizing Opportunity for All Youth* (Washington, DC: The National Academies Press, 2019), p 22. The NAS report accordingly concluded that it would be “arbitrary in developmental terms to draw a cut-off line at age 18.” *Id.*

Researchers have found specifically that two important parts of the brain develop at different times, leading to a “maturational imbalance” in middle to late adolescence. The area of

the brain responsive to rewards and heightened sensation kicks into high gear around the time of puberty. But the part of the brain that regulates behavior—self-control, thinking ahead, evaluating the rewards and costs of a risky act, and resisting peer pressure—is still developing well into the mid-twenties. See, e.g., *A Decent Proposal*, *supra*, at 163 (citing to research that found antisocial peer pressure was a highly significant predictor of reckless behavior in older adolescents 18 to 25), citing Bradley & Wildman, *Psychosocial Predictors of Emerging Adults' Risk and Reckless Behaviors*, 31 J Youth & Adolescence 253, 257, 263 (2002); *Effects of Anonymous Peer Observation*, *supra*, at 72 (finding that a propensity for risky behaviors, including “smoking cigarettes, binge drinking, driving recklessly, and committing theft,” exists into early adulthood past 18, because of a young adult’s “still maturing cognitive control system”); *Juvenile Justice Policy and Practice*, *supra*, at 582 (finding that the development of the prefrontal cortex, which plays an important role in “planning ahead, weighing risks and rewards, and making complicated decisions,” extends at least into the early twenties); Shulman et al, *Sex Differences in the Developmental Trajectories of Impulse Control and Sensation-Seeking from Early Adolescence to Early Adulthood*, 44 J Youth & Adolescence 1, 15 (2015) (finding that male adolescents have greater levels of sensation-seeking and lower levels of impulse control than female adolescents, and that the development of impulse control in male adolescents is more gradual than in female adolescents).

For older adolescents, these lags in impulse control are particularly pronounced in emotionally charged situations. Psychologists distinguish between “cold cognition,” which refers to thinking and decision making under calm circumstances, and “hot cognition,” which refers to thinking and decision making under emotionally arousing circumstances. Scott, Bonnie & Steinberg, *Young Adulthood as a Transitional Legal Category: Science, Social Change, and*

Justice Policy, 85 Fordham L Rev 641, 652 (2016). Relative to adults, adolescents' deficiencies in judgment and self-control are greater under "hot" circumstances in which emotions are aroused than they are under calmer "cold" circumstances. Cohen et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts*, 27 Psychol Sci 549, 559-560 (2016); Rudolph et al., *At Risk of Being Risky: The Relationship Between "Brain Age" Under Emotional States and Risk Preference*, 24 Developmental Cognitive Neuroscience 93, 93 (2017). In circumstances of "hot cognition," brain function among 18- to 21-year-olds resembles that of a 16- or 17-year-old. *Young Adulthood as a Transitional Legal Category*, at 650, citing *When is an Adolescent an Adult?*, *supra*, at 559-560.

Older adolescents also face increased susceptibility to peer pressure just like younger teens and adolescents. A study of 306 individuals in three age groups— identified as adolescents (13-16), youths (18-22), and adults (24 and older)—found that "although the sample as a whole took more risks and made more risky decisions in groups than when alone, this effect was more pronounced during middle and late adolescence than during adulthood" and that "the presence of peers makes adolescents and youth, but not adults, more likely to take risks and more likely to make risky decisions." Gardner & Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 Developmental Psych 625, 632, 634 (2005). Also, the presence of friends has been shown to double risk-taking among adolescents, increasing it by fifty percent among older adolescents, but having no effect on older adults. Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 Developmental Rev 78, 91 (2008). And, more recently, studies have confirmed that "exposure to peers increases young adults' preference for immediate rewards" and their "willingness to engage

in exploratory behavior.” *Young Adulthood as a Transitional Legal Category*, *supra*, at 649 (citations omitted).

There is now widespread agreement, confirmed by multiple studies, that the development of the prefrontal cortex, which plays a key role in “higher-order cognitive functions” like “planning ahead, weighing risks and rewards, and making complicated decisions,” continues into the early twenties. *Juvenile Justice Policy and Practice*, *supra*, at 582. The existing scientific research also addresses differences in brain development with respect to specific activities, suggesting more delayed development in brain functions related to impulse control, hot cognition, and susceptibility to peer pressure than for activities involving informed decision-making and logical reasoning, such as voting. Thus, the appropriate legal age of “adulthood” may vary depending on the particular context. See, e.g., Cohen et al., *When Does a Juvenile Become an Adult? Implications for Law and Policy*, 88 Temple L Rev 769, 786-787 (2016) (defining “young adulthood” at 21 for purposes of cognitive capacity and the ability for “overriding emotionally triggered actions,” and encouraging evaluation of the “appropriate age cutoff relevant to policy judgments relating to risk-taking, accountability, and punishment”). As Dr. Steinberg explains:

[t]o the extent that we wish to rely on developmental neuroscience to inform where we draw age boundaries between adolescence and adulthood for purposes of social policy, it is important to match the policy question with the right science. . . . For example, although the APA was criticized for apparent inconsistency in its positions on adolescents’ abortion rights and the juvenile death penalty, it is entirely possible for adolescents to be too immature to face the death penalty but mature enough to make autonomous abortion decisions, because the circumstances under which individuals make medical decisions and commit crimes are very different and make different sorts of demands on individuals’ abilities. [Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 64 Am Psych 739, 744 (2009).]

Cf. *Roper v Simmons*, 543 US 551, 620; 125 S Ct 1183; 161 L Ed 2d 1 (2005) (O’Connor, J., dissenting) (questioning why the age for abortion without parental involvement “should be any

different” given that it is a “more complex decision for a young person than whether to kill an innocent person in cold blood”). Overall, older adolescents are more prone to risk-taking and impulsivity—traits that likely influence their criminal conduct—and are not yet mature enough to anticipate the future consequences of their actions. See *Juvenile Justice Policy and Practice*, *supra*, at 582; *Young Adulthood as a Transitional Legal Category*, *supra*, at 644; Steinberg et al, *Age Differences in Future Orientation and Delay Discounting*, 80 Child Dev 28, 35 (2009). Indeed, the instant case aptly illustrates this finding.

As the current research conclusively shows, the age of 18 is not an acceptable proxy for developmental maturity and adult-like culpability. People who commit criminal acts at the age of 20, like Mr. Taylor, are developmentally indistinguishable from their slightly younger peers. Therefore, mandatory imposition of a sentence of life-without-parole on a 20-year-old defendant, without any ability for a sentencing court to consider the “mitigating qualities of youth,” is unconstitutional under Const 1963, art 1, § 16. See Section III.

B. The age-crime curve demonstrates that youth and older adolescents are both more likely to engage in criminal behavior but also desist from criminal behavior as they reach their late 20’s and 30’s.

While the science confirms that younger and older adolescents are less culpable than adults and therefore less deserving of the most extreme punishments, it also suggests that while younger and older adolescents are more likely to commit crime than adults, they are also more likely to desist as they mature into adulthood. Indeed, this is precisely what social science research has confirmed – that there is an “age-crime curve” that shows most crime being committed by individuals in their late teens and early twenties, and desisting as individuals reach their late 20’s and 30’s.

The “age-crime curve” is a well-documented pattern in the propensity to engage in crime over the life course. Numerous studies of arrest data confirm this “curve,” and demonstrate that criminal conduct is most common when individuals are young, peaks in their late teens, and drops dramatically as adulthood is reached, beginning in the early to mid-twenties. See Sampson & Laub, *Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70*, 41 *Criminology* 301, 315 (2003) (“Aging out of crime is thus the norm – even the most serious offenders desist.”); Loeber, & Farrington, *Age-Crime Curve*, *Encyclopedia of Criminology and Criminal Justice* (New York: Springer, 2014), pp 12-18 (“The relationship between age and crime is of an asymmetrical bell shape, showing that the *prevalence* of offending (the percentage of offenders in a population) tends to increase from late childhood, peaks in the teenage years (around ages 15–19), and then declines from the early 20s, often with a long tail.”); Neil & Sampson, *The Birth Lottery of History: Arrest Over the Life Course of Multiple Cohorts Coming of Age, 1995–2018*, 126 *Am J Socio* 1127 (2021) <<https://doi.org/10.1086/714062>> (accessed October 30, 2024) (reviewing the various age-crime life course studies and literature while focusing on sociological factors). Adulthood is marked scientifically by greater maturity and complete brain development, as well as sociological factors that encourage desistance from crime, like family and work responsibilities. The studies show that the combination of these factors result in a natural cessation in criminal conduct by the end of one’s thirties for acts of violence, and typically much sooner. See *id.*

In its profile of emerging adults sentenced to life-without-parole, the Sentencing Project reviewed sentencing data across 20 states between the years 1995 through 2017, and found the most common age of someone sentenced to life-without-parole was between 22 and 23. See Nellis & Monazzam, The Sentencing Project, *Left to Die in Prison: Emerging Adults 25 and Younger*

Sentenced to Life Without Parole (2023), p 4, available at <<https://www.sentencingproject.org/reports/left-to-die-in-prison-emerging-adults-25-and-younger-sentenced-to-life-without-parole>>. The Sentencing Project found a significant decline in individuals sentenced to life-without-parole after their early twenties. *Id.* Indeed, two in five people sentenced to life-without-parole between 1995 and 2017 were younger than 26 when sentenced, amounting to 11,613 people across these 20 states. *Id.*, p 5. In Michigan, included in the report, the researchers found that of all the individuals sentenced to life-without-parole, 49% were young people under 26 years of age at the time of sentencing. *Id.* Only Pennsylvania had sentenced a larger percentage of young people to life-without-parole at 50%. *Id.*

C. Data also confirms that older adolescents who are Black are disproportionately harmed by extreme sentencing practices such as Michigan’s mandatory life-without-parole statute.

Mandatory life-without-parole sentences are disproportionately imposed on Black people, and therefore, disproportionately imposed on Black young people. The Sentencing Project’s analysis of sentencing data confirms this disparate impact. See *Left to Die in Prison*, *supra*. Its analysis shows that 55% of all people sentenced to life-without-parole during the covered period were Black. *Id.* at 6. More surprisingly, when focused just on those who were young adults under 26, that number jumps to 66%, or two thirds of all young adults sentenced to life-without-parole. *Id.*

In her cover letter to the Racial and Social Equity Workgroup of the Michigan Judicial Council’s 2023 Report and Recommendations,² Chair Zenell B. Brown reminded the Council of these critical truths:

² This Court established the Michigan Judicial Council by MCR 8.128 to make recommendations on matters pertinent to the administration of justice and the strategic plan of the Michigan judicial branch.

Similarly situated people are not having the same experience in our court system. Race matters. Social identities and class matter. Racial and social inequities are systemic barriers to justice for all, and the Michigan Judicial Council is committed to actions that result in change. Justice is for all. [Michigan Judicial Council, *Racial and Social Equity Workgroup Report and Recommendations* (adopted November 2023), p 4.]

In closing, Ms. Brown stated:

When our justice system addresses long-standing disparities and takes actions to eliminate disparate treatment and assure equity in fairness for all people, public trust and confidence increase and justice works as designed. Justice for all can be more than an ideal. It can become a reality. [*Id.*]

In Michigan the harms of extreme sentencing fall disproportionately on Black youth and the pain of unconstitutional sentencing is largely theirs to bear. It falls to this Court to lift that burden.

II. THERE IS CONSENSUS IN MICHIGAN AND ACROSS THE COUNTRY THAT OLDER ADOLESCENTS, INCLUDING 20-YEAR-OLDS SHOULD RECEIVE MANY OF THE SAME PROTECTIONS AS CHILDREN UNDER 18 YEARS OF AGE FOR PURPOSES OF SENTENCING.

When the *Roper* Court afforded sentencing protections to children under 18, it relied on society’s “evolving standards of decency.” *Roper*, 543 US at 563. The Court explained that identifying the current standards required “a review of objective indicia of consensus, as expressed in particular by the enactments of legislatures that have addressed the question.” *Id.* at 564; see also *Graham*, 560 US at 62 (“The analysis begins with objective indicia of national consensus.”); *People v Lorentzen*, 387 Mich 167, 170 n 1; 194 NW2d 827 (1972) (invalidating a mandatory minimum prison sentence of 20 years for selling any amount of marijuana). When recognizing broader protection from extreme punishment under Const 1963, art 1, § 16 than under the Eighth Amendment, this Court, like the U.S. Supreme Court repeatedly referred to the “evolving standards of decency that mark the progress of a maturing society.” *Parks*, 510 Mich at

241, quoting *Lorentzen*, 387 Mich at 179. There is now a strong national consensus that older adolescents, including 20-year-olds, deserve the same protections afforded to 18-year-olds.

Existing law in Michigan and around the country already treats older adolescents differently than adults. State laws limit their abilities to engage in risky conduct and afford them various additional protections and supports. Many of these laws have been on the books for decades, while others reflect more recent trends in response to the growing scientific and societal consensus that young people continue to develop and mature into their twenties. The legal landscape in Michigan and throughout the country therefore increasingly reflects this current developmental research, and further validates drawing the line between childhood and adulthood above age 20 in contexts that implicate the three key youth-related characteristics described in *Miller*.

A. Michigan’s Holmes Youthful Trainee Act provides older adolescents, including those 20 and above, special privileges and protections in the criminal justice system that reflect the key developmental characteristics of youth identified in *Miller*.

Michigan is a national leader in providing special treatment to young people through their early twenties, and it has explicitly rooted its “youthful offender” program in the same core characteristics that animated *Miller*.

Indeed, Michigan has one of the most robust laws in the country shielding young people who are no longer eligible for the protections of the juvenile justice system from harsh prison sentences and the stain of a criminal record. In 1966, Michigan passed the Holmes Youthful Trainee Act (“HYTA”), allowing 17- to 20-year-olds who pled guilty to a crime, other than a very serious felony, to have the conviction suspended upon completion of probation in the community or receive no more than three years of supervised probation in a prison with dismissal of the conviction upon successful completion of the supervised probationary period. 1966 PA 301.

HYTA initially set the maximum age for the program at 20 and the maximum prison sentence at three years, but the Act was amended in 2015 to raise the age of eligibility to 23 and reduce the maximum sentence to two years. 2015 HB 4169; 2015 HB 4069. The Court of Appeals explained the justification for HYTA in 1981:

The age classification indicates a legislative belief that individuals in the 17 to 20 age bracket would be more amenable to the training and rehabilitation provided under the act. The statute also evidences a legislative desire that persons in this age group not be stigmatized with criminal records for unreflective and immature acts. [*People v Perkins*, 107 Mich App 440, 444; 309 NW2d 634 (1981).]

The Michigan Legislature was prescient in recognizing that older adolescents' relative immaturity and potential for rehabilitation warrant a less punitive approach in the criminal justice system.

Michigan's 2015 expansion of the HYTA was also based on more recent research showing that the characteristics of youth at the heart of the U.S. Supreme Court's sentencing cases persist through a young person's early twenties. The Michigan House of Representatives' Fiscal Agency explained that "[t]his expansion acknowledges and incorporates recent research as to how the human brain matures." House Legislative Analysis, HB 4069, HB 4135, and HB 4169 (March 14, 2015), p 6. It stressed that the bill "represents a compromise as some, including advocates and judges, believe that 24- and 25-year-olds should be eligible, as well, in keeping with the conclusions of scientists regarding the development of the brain and ability to make good decisions and judgments." *Id.* Echoing this rationale, a sponsor of the bill in the Michigan House of Representatives stated that she "liked it, because it dealt with giving juveniles the opportunity to be in a separate system. . . . Basically, it's to give people a second chance.'" Kloosterman, *Second Chances for Youthful Offenders Key Point of Bill, State Rep Says*, Michigan Live (June 16, 2015).

In 2019, after raising the maximum age for inclusion in the juvenile justice system from age 17 to age 18, the legislature again amended HYTA to include youth up to age 26 within the law’s protections and second chance provisions for youthful trainee status. MCL 762.11.

B. Many other jurisdictions also afford older adolescents additional protections in the criminal justice system through youthful offender statutes, early parole eligibility, and “second look” resentencing.

While Michigan was one of the first states to extend certain protections to older youth, many states have adopted “youthful offender” laws like HYTA that extend special protections to individuals ages 18 to 21, such as criminal record sealing and shorter maximum sentences.³ There are also at least 50 young adult courts, specialty probation programs, correctional facilities, and other specialized justice-system services around the country targeted specifically at older adolescents ages 18 to 21. See Hayek, National Institute of Justice, *Environmental Scan of Developmentally Appropriate Criminal Justice Responses to Justice-Involved Young Adults* (2016), pp 6, 9-10.⁴

Numerous states have also enacted laws to afford opportunities for earlier release and “second look” resentencing for older adolescents and young adults who committed offenses after age 18. In 2017, California passed a statute extending youth offender parole eligibility to individuals who committed offenses before age 25. Assemb B 1308 (Cal, 2017) (amending Cal

³ See, e.g., Ala Code 15-19-1; Colo Rev Stat Ann 18-1.3-407 and Colo Rev Stat Ann 18-1.3-407.5; Fla Stat Ann 958.011 through Fla Stat Ann 958.15; Ga Code Ann 42-7-2(7); NJ Stat Ann 52:17B182 and NJ Stat Ann 52:17B-183; NY Crim Proc Law 720.10 and NY Crim Proc Law 720.15; SC Code Ann 24-19-10; VI Code Ann tit 5, § 3712; Vt Stat Ann tit 33, § 5280, Vt Stat Ann tit 33, § 5281 and Vt Stat Ann tit 33, § 5287; Va Code Ann 19.2-311.

⁴ One such court, the Young Adult Diversion Court (“YADC”), sits in Kalamazoo, Michigan. There, 17- to 20-year-olds who are charged with certain crimes under a diversion statute may have their charges dismissed upon successful completion of YADC’s program, which includes, among other things, access to additional supportive services. *Young Adult Diversion Court* <<https://yadckalamazoo.weebly.com/about-yadc.html>> (accessed October 28, 2024).

Penal Code 3051). The relevant parole statute instructs the parole board to “give great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.” Cal Penal Code 4801(c). Illinois similarly provides for a special parole review for persons under age 21 at the time of the commission of the crime, directing the Prisoner Review Board to consider, *inter alia*, “the diminished culpability of youthful offenders, the hallmark features of youth, and any subsequent growth and maturity of the youthful offender during incarceration.” 730 Ill Comp Stat 5/5-4.5-115(b), (j).⁵ Connecticut provides earlier parole eligibility to people who were under 21 at the time of their offense, Conn Gen Stat Ann § 54-125a. Rhode Island shortened the first parole review date to 20 years (from 25 years) for individuals who committed offenses prior to age 22, RI Gen Laws Ann § 13-8-13(e). Wyoming provides an avenue for offenders under 30 years old to be placed in a youthful transition program and to receive a sentence reduction, Wyo Stat Ann 7-13-1002 through Wyo Stat Ann 7-13-1003. In 2020, Washington, D.C. expanded the reach of its Incarceration Reduction Amendment Act—which originally permitted persons who committed serious crimes under age 18 to petition for resentencing after serving at least 15 years in prison—to include persons who committed crimes under age 25. Omnibus Public Safety and Justice Amendment Act of 2020, DC Law 23-274 (amending DC Code 24-403.03).

“Second look” resentencing legislation like that enacted in Washington, D.C. has received widespread support across the country, with numerous jurisdictions introducing similar proposals. At the federal level, in 2019, Senator Cory Booker and Representative Karen Bass introduced legislation allowing people who have spent over 10 years in federal prison to petition a court for

⁵ Note that the bill excludes those convicted of predatory criminal sexual assault of a child, certain types of first-degree murder, and those sentenced to natural life in prison.

resentencing. *Left to Die in Prison: Emerging Adults 25 and Younger Sentenced to Life Without Parole*, *supra*, p 6. At the state level, legislators in 25 states, including Minnesota, Vermont, West Virginia, and Florida, have introduced second look bills. Feldman, Sentencing Project, *The Second Look Movement: A Review of the Nation's Sentence Review Laws* (2024), p 4 <<https://www.sentencingproject.org/reports/the-second-look-movement-a-review-of-the-nations-sentence-review-laws>> (accessed October 30, 2024).

Moreover, based in part on the growing movement for “second look” legislation, the American Bar Association adopted Resolution 502 in 2022, urging federal, state, local, territorial, and tribal governments to authorize courts to review lengthy sentences after an individual has served at least ten years. American Bar Association, *Resolution 502 & Report to the House of Delegates* (2022) <<https://www.americanbar.org/content/dam/aba/directories/policy/annual-2022/502-annual-2022.pdf>> (accessed October 30, 2024). In advocating for “second look” resentencing hearings, the ABA specifically acknowledged that “[t]hose sentenced while young merit second looks.” *Id.*, p 6. In coming to that conclusion, the ABA turned to the evolving neuroscientific research showing that “certain brain systems and development of the prefrontal cortex that are involved in self-regulation and higher-order cognition, continue to develop into the mid-20s.” *Id.*, p 5.⁶

C. Jurisdictions across the country increasingly set the age of adulthood above 18 in situations implicating immaturity and susceptibility to peer pressure.

⁶ Other national organizations that also support “second look” resentencing include: The American Law Institute (advocating for a second look after 15 years); Fair and Just Prosecution (advocating for a second look after 15 years for middle-age and elderly individuals); National Academies of Sciences (advocating for second look laws to reduce racial disparities); and the Council on Criminal Justice’s Task Force on Long Sentences (advocating for second look resentencing legislation for people serving long sentences). *Id.*, pp 9-10.

Beyond the criminal justice system, many jurisdictions, including Michigan, set the age of adulthood above 18 in contexts involving dangerous, risky, and potentially addictive behaviors. These restrictions take account of the emerging scientific and societal consensus that young people above age 18, like those under 18, also share such *Miller* characteristics as the “lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking;” and that they are “more vulnerable . . . to negative influences and outside pressures.” *Miller*, 567 US at 471, quoting *Roper*, 543 US at 569 (alteration in original).

For example, the minimum age to purchase tobacco, alcohol, and marijuana (where legal) is universally set at 21 across the country. To the extent that some jurisdictions previously set the smoking or drinking age at 18, recent federal action has ended these practices in response to the emerging scientific research about the brain development of older adolescents. More specifically:

- **Alcohol:** Michigan’s drinking age of 21 is enshrined in the state constitution. Const 1963, art 4, § 40. All 50 states and the District of Columbia now set the drinking age at 21 following Congress’s enactment of the National Minimum Drinking Age Act in 1984. 23 USC 158(a).

- **Tobacco:** In 2015, the National Academies of Sciences concluded that raising the minimum age to purchase tobacco from 18 to 21 would be beneficial because “the parts of the brain most responsible for decision making, impulse control, sensation seeking, future perspective taking, and peer susceptibility and conformity continue to develop and change through young adulthood.” National Academies of Sciences, *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products* (Washington, DC: The National Academies Press, 2015), p 3. In 2019, consistent with this scientific recommendation, Congress raised the national age to purchase tobacco from 18 to 21.

Further Consolidated Appropriations Act, 2020, PL 116-94, § 603; 133 Stat 2534, 3123 (amending 21 USC 387f(d)(5)). The federal increase in the smoking age followed similar action by more than a dozen states and hundreds of municipalities, representing more than half of the U.S. population. Campaign for Tobacco-Free Kids, *States and Localities that Have Raised the Minimum Legal Sale Age for Tobacco Products to 21* <https://assets.tobaccofreekids.org/content/what_we_do/state_local_issues/sales_21/state_s_localities_MLSA_21.pdf> (accessed October 29, 2024).

- **Marijuana:** Every state to legalize marijuana has set the legal age at 21. *When Does a Juvenile Become an Adult?* at 778. Michigan is no exception; in 2018, it passed a ballot initiative that set the legal age to possess or purchase marijuana at 21. MCL 333.27955.

In addition to controlled substance use, Michigan and other states around the country set the minimum age to engage in an array of other risky activities above 18. For example:

- **Driving:** Numerous studies show that impulsivity among young drivers through their early twenties leads to increased risk of traffic violations and accidents. See, e.g., Pearson, Murphy & Doane, *Impulsivity-Like Traits and Risky Driving Behaviors Among College Students*, 53 Accident Analysis & Prevention 142, 142 (2013). Michigan, like many other states, sets the minimum age at 21 for several driving-related activities, including riding a motorcycle without a helmet, MCL 257.658(5), transporting hazardous materials, MCL 480.12d(2)(b), and becoming a driver education instructor, MCL 256.637(3)(b). Federal law also prohibits individuals under age 21 from driving most commercial vehicles across state lines. 49 CFR 391.11(b)(1). Though not statutory, most rental car companies limit or bar rentals to individuals under age twenty-five, recognizing the increased risk posed by this age group. See, e.g., Enterprise, *Can You Rent a Car Under 25 in the US and Canada?*

<<https://www.enterprise.com/en/help/faqs/car-rental-under-25.html>> (accessed October 29, 2024).

- **Gambling:** Like most jurisdictions that have legalized some form of casino gambling, Michigan prohibits gambling at a casino for all persons under 21. MCL 432.209(9).

- **Firearms:** Michigan raised the age to obtain a license to carry a concealed pistol from 18 to 21 in 2001. MCL 28.425b(7)(a), as amended by 2000 PA 381. Federal law bars licensed dealers from selling handguns to youth under 21, 18 USC 922(b)(1), and eighteen states, including neighboring states of Illinois and Ohio, set the minimum age to purchase at least some types of guns at 21, Giffords Law Center, *Minimum Age to Purchase & Possess* <<https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/minimum-age/>> (accessed October 29, 2024). Finally, federal appellate courts, rejecting Second Amendment challenges to laws raising the legal age to purchase guns to 21, have highlighted psychological research “support[ing] the commonsense notion that 18-to-20-year-olds tend to be more impulsive than young adults aged 21 and over.” *Nat’l Rifle Ass’n of America, Inc v Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F3d 185, 210 n 21 (CA 5, 2012); see also *Horsley v Trame*, 808 F3d 1126, 1133 (CA 7, 2015) (“The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable.”), quoting Declaration of Ruben C. Gur, Ph.D..

- **Fireworks:** Consistent with most states in the country, Michigan raised the minimum age to obtain a fireworks and pyrotechnic display license from 18 to 21 in 2011. MCL 28.466(4) (adopting National Fire Protection Association Code 1123).

D. Many jurisdictions extend additional supports to youth through their mid-twenties in recognition of their developmental immaturity.

In further recognition of the developmental differences between older adolescents and adults, many jurisdictions, including Michigan, have extended additional supports and benefits to this group.

For example, with support from the federal government, states around the country have recently expanded foster care beyond age 18. In 2008, Congress passed the Fostering Connections to Success and Increasing Adoptions Act, allowing states to use federal funding to extend foster care up to age 21. 42 USC 675(8)(B). Since then, Michigan, along with 45 states and the District of Columbia, has extended foster care eligibility past age 18, typically to age 21. US Dep't of Health & Human Services, *Extension of Foster Care Beyond Age 18* (March 2022), p 2 n 3, available at <[https:// https://www.childwelfare.gov/resources/extension-foster-care-beyond-age-18/](https://www.childwelfare.gov/resources/extension-foster-care-beyond-age-18/)>. The near universal extension of foster care beyond age 18 reflects researchers' conclusions that there is "nothing magical about age 18 or even age 21 as a marker of adulthood, and few children outside the child welfare system are expected to be 'independent' once they reach the age of majority." *The Promise of Adolescence, supra*, at 267. Michigan Governor Rick Snyder, upon signing the state's bill extending care, explained that "[y]oung people in foster care need the same kind of support other 18-year-olds do as they navigate the crucial years leading up to age 21. . . . The Fostering Connections legislation will give those who wish to receive it the extra assistance they need to become successful adults." State of Michigan, *Gov Snyder Signs Fostering Connections Legislation* (November 22, 2011).

Similarly, under the Affordable Care Act, young adults may remain on their parents' health care plans until age 26, in part to combat high rates of uninsurance among young adults. Center for Consumer Information & Insurance Oversight, *Young Adults and the Affordable Care*

Act: Protecting Young Adults and Eliminating Burdens on Families and Businesses <https://www.cms.gov/ccio/resources/files/adult_child_fact_sheet> (accessed October 29, 2024). Children receiving Medicaid may also continue to access all medically necessary services under the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) guarantee until age 21 (whereas coverage for older adults on Medicaid is more limited). 42 CFR 441.50.

Access to education also extends into early adulthood. All fifty states and the District of Columbia provide a right to a free education until at least age 19, and more than half of states provide a right to education until at least age 21. Aragon, *Free and Compulsory School Age Requirements* (2015), pp 3-6. Indeed, Michigan provides a right to free public education up to age 20. MCL 388.1606(4)(l). In addition, the federal Individuals with Disabilities Education Act (IDEA) requires states and school districts to offer special education services to children and youth with disabilities up to age 21 (or until high school graduation). 20 USC 1412(a)(1)(A).

In sum, a panoply of state and federal laws reflective of the national consensus and the evolving standards of decency, recognize that older adolescents share the same unique characteristics of youth as those and 18 and therefore deserve the same protections we afford to youth.

III. BASED ON THE EVOLVING STANDARDS OF DECENCY REFLECTED IN THE SCIENCE AND NATIONAL CONSENSUS OF LAWS, SENTENCING OLDER ADOLESCENTS TO LIFE-WITHOUT-PAROLE VIOLATES THE MICHIGAN CONSTITUTION’S BAN ON CRUEL OR UNUSUAL PUNISHMENT.

Mr. Taylor’s mandatory life-without-parole sentence violates the Michigan Constitution’s prohibition against “cruel or unusual punishment.” Const 1963, art 1, § 16. As this Court already found when it recognized *Miller* protections for 18-year-olds, the state constitutional prohibition is broader and more protective than the Eighth Amendment. Applying the growing scientific evidence demonstrating that adolescents carry with them indistinguishable characteristics of youth

past age 18 and into their 20s, and the national consensus that older adolescents require the same protections as youth under 18, individualized sentencing and consideration of the mitigating qualities of youth are required before imposing the harshest penalty of life in prison without parole. This Court can and should apply the *Miller* factors to older adolescents at least through age 20, and Mr. Taylor’s mandatory sentence should be struck down as unconstitutional under state law.

A. Michigan’s Constitution forbids excessive imprisonment.

Since 1850, Michigan’s Constitution has prohibited the imposition of “cruel or unusual punishment,” affording broader protections than the U.S. Constitution’s ban on “cruel and unusual punishment.” Const 1850, art 6, § 31. The “cruel or unusual” phrase dates to the Northwest Ordinance of 1787, which the Continental Congress passed weeks prior to the ratification of the U.S. Constitution. Bessler, *Cruel & Unusual: The American Death Penalty and the Founders’ Eighth Amendment* (Boston: Northeastern University Press, 2012), pp 118-119. The decision to include the more expansive language in Michigan’s Constitution was not accidental or inadvertent. *People v Bullock*, 440 Mich 15, 30 n 11; 485 NW2d 866 (1992).

This Court has long recognized the textual and historical differences between the Eighth Amendment and Article 1, § 16 of Michigan’s Constitution and interprets the latter provision to provide more extensive protection than the former. *Bullock*, 440 Mich at 27-36 (declining to follow the U.S. Supreme Court’s Eighth Amendment interpretation); *Parks*, 510 Mich at 241 (“We have held that unusually excessive imprisonment is forbidden by Article 1, § 16 of the Michigan Constitution.”), citing *Lorentzen*, 387 Mich at 170 n 1, 172 (invalidating a mandatory minimum prison sentence of 20 years for selling any amount of marijuana). This standard recognizes the “evolving standards of decency that mark the progress of a maturing society.” *Parks*, 510 Mich at

241, quoting *Lorentzen*, 387 Mich at 179. And that standard continues to evolve as courts and public opinion “become[] enlightened by a humane justice.” *Parks*, 510 Mich at 241.

A punishment need not be both cruel and unusual to violate the Michigan Constitution. *Bullock*, 440 Mich at 31. “The prohibition of punishment that is unusual but not necessarily cruel carries an implication that unusually excessive imprisonment is included in that prohibition.” *Lorentzen*, 387 Mich at 172. The Michigan Constitution also notably requires that sentencing decisions be proportional. *Bullock*, 440 Mich at 30; *Parks*, 510 Mich at 241-242. The seminal case on proportionality is *People v Bullock* in which this Court, guided by the analysis of the U.S. Supreme Court, interpreted Michigan’s cruel-or-unusual prohibition more broadly than the Eighth Amendment and granted relief from a life-without-parole sentence under the Michigan Constitution. *Bullock* affirmed three compelling reasons why the state Constitution’s ban on cruel or unusual punishment offers more protections than its federal corollary: the textual differences between the state and federal Constitutions; the view that the framers of the 1963 Michigan Constitution had intended to prohibit grossly disproportionate sentences; and long-standing precedent to support this broader view of Michigan’s Constitution. *Bullock*, 440 Mich at 30-33; *Parks*, 510 Mich at 242.

Since then, Michigan courts have affirmed the extensive protections of Article 1, § 16 in Michigan’s 1963 Constitution. See, e.g., *Carlton v Dep’t of Corrections*, 215 Mich App 490, 505; 546 NW2d 671 (1996); *People v Benton*, 294 Mich App 191, 204; 817 NW2d 599 (2011); *People v Bosca*, 310 Mich App 1, 71-72 n 24; 871 NW2d 307 (2015); *People v Tucker*, 312 Mich App 645, 654 n 5; 879 NW2d 906 (2015); *People v Nunez*, 242 Mich App 610, 618 n 2; 619 NW2d 550 (2000); *People v Stovall*, 510 Mich 301; 987 NW2d 85 (2022). Most recently, in *Parks*, this

Court held that mandatory sentences of life-without-parole are unconstitutional for 18-year-olds. *Parks*, 510 Mich at 265-266.

B. Mandatory life-without-parole sentences imposed on 20-year-olds are disproportionate, unusual, and undermine the goal of rehabilitation in violation of the Michigan Constitution.

Pursuant to this more expansive reading, Michigan courts consider four factors in evaluating the proportionality of sentences under the “cruel or unusual punishment” clause of the Michigan Constitution: (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.” *Bullock*, 440 Mich at 33-34, citing *Lorentzen*, 387 Mich at 176-181. Applying these heightened protective factors demonstrate that Mr. Taylor’s mandatory life-without-parole sentence violates Article 1, § 16, of Michigan’s 1963 Constitution.

First, the imposition of a mandatory life-without-parole sentence for older adolescents, including 20-year-olds, without consideration of the attributes of youth that they and younger teens share, is disproportionately severe in light of the gravity of the offense. It is now widely recognized that the severity and irrevocability of a life-without-parole sentence for those under 18 years old is “akin to the death penalty.” *Miller*, 567 US at 475; see also *Graham*, 560 US at 69; *Parks*, 510 Mich at 257. Mandatory life-without-parole “is the *most* severe sentence available in Michigan.” *Parks*, 510 Mich at 257. As this Court recognized, “[t]his fate is particularly acute for young persons . . . because they will inevitably serve more time and spend a greater percentage of their lives behind prison walls than similarly situated older adult offenders.” *Id.* The gravity of the offense must include the background and culpability of the offender, *Bullock*, 440 Mich at 37-38, and is a factor in the constitutional analysis, *Lorentzen*, 387 Mich at 176, 181 (finding 20-year

sentence unconstitutional as applied to first-offender high school student convicted of selling marijuana). Until very recently, youth was never a consideration for first-degree murder offenses for individuals over 18 years old because they are viewed as adults under this sentencing scheme in Michigan. The sentence was mandatorily imposed and condemned anyone above the age of 18 to die in prison. But in 2022, this Court recognized that the extreme severity of a life-without-parole sentence carries special significance for “late adolescence,” and weighs in favor of the sentence being found unconstitutional. See *Parks*, 510 Mich at 257-259.

In *Graham* and *Miller*, the United States Supreme Court concluded that because young people as a class have diminished culpability, they should not be subjected to a mandatory life sentence without the mitigating consideration of their youth. *Graham*, 560 US at 68; *Miller*, 567 US at 465. This Court has already recognized that the period of late adolescence “is a pivotal developmental stage that shares key hallmarks of adolescence” and that “late-adolescent brains are far more similar to juvenile brains . . . than to the brains of fully matured adults.” *Parks*, 510 Mich at 249, 252 (citation omitted). In light of the current research demonstrating that older adolescents share the same developmental characteristics as teenagers, and certainly 18-year-olds, as discussed in Section I.A earlier, a mandatory life-without-parole sentence for a 20-year-old is just as grossly disproportionate.

Second, mandatory life-without-parole sentences for older adolescents are disproportionate within the jurisdiction. Since the U.S. Supreme Court’s decision in *Miller*, lower courts in Michigan and around the country have had the opportunity to consider the effect of the mitigating qualities of youth on individual sentences in hundreds of cases. In the overwhelming majority of these cases—including cases involving older adolescents—courts have concluded that age and its attendant characteristics counsel against imposing the harshest available penalties. Life-

without-parole sentences are becoming increasingly rare in Michigan for adolescents and are seldom imposed. *Parks*, 510 Mich at 260. According to data provided to the American Civil Liberties Union of Michigan, of the original 363 youth who are entitled to resentencing based on *Miller* and *Montgomery*, 202 youth or 56% of them were 17 at the time of their offense. As of July 2024, 184 or 91% out of those 202 youth have now been resentenced. The majority of those who have been resentenced so far have received term-of-years sentences; only eleven have been resentenced to life without the possibility of parole.⁷ After this Court decided in *Parks* that 18-year-olds cannot be sentenced to mandatory life-without-parole, 273 people serving this sentence became eligible for resentencing. Campaign for Fair Sentencing of Youth, *Michigan Has the Most Children Serving Life-without-parole in the Country* (2023), p 2 <<https://cfsy.org/wp-content/uploads/Justice-Delayed-in-Michigan-Factsheet.pdf>>. While the results are not yet in, the neuroscientific and social science research indicates that 18-year-olds will be resentenced similarly to 17-year-olds.

An 18- or 20-year-old who was mandatorily subjected to the harshest and severest penalty available in Michigan is likely to spend more time behind bars than any older adult under the same sentence. Despite having potentially less culpability because of their youthful characteristics, these older adolescents would likely serve a grossly disproportionate sentence as compared to other adult offenders for the same offense in this state. See *Parks*, 510 Mich at 260. And because *Miller* and *Montgomery* have now foreclosed mandatory life-without-parole sentences for juveniles, and this Court has extended that same protection for 18-year-olds, Mr. Taylor being just two years older at the time of his offense will spend far more time in prison than other equally culpable youth. “It is cruel punishment to mandatorily impose a life-without-parole sentence on an 18-year-old who is

⁷ Data on file with the American Civil Liberties Union of Michigan (available upon request).

one day older and has the same immaturity, impetuosity, and failure to appreciate risks and consequences,” *Parks*, 510 Mich at 262, quoting *Miller*, 567 U.S. at 477 (quotation marks omitted), and similarly cruel to impose the same sentence on an older adolescent with the exact same characteristics.

Third, Mr. Taylor’s sentence is also unusual and disproportionate compared to other states’ practices. Today serving a mandatory life-without-parole sentence is becoming increasingly rare. As the Massachusetts Supreme Court recognized in *Commonwealth v Mattis*, in twenty-two states and the District of Columbia, mandatory life-without-parole is completely barred. *Commonwealth v Mattis*, 493 Mass 216, 233; 224 NE3d 410 (2024) (citing state statutes). Of the remaining twenty-eight states, only twelve have mandatory life-without-parole, though at least two of those states’ laws still provide an opportunity to avoid serving the full life sentence. *Id.*⁸

Additionally, as discussed in Section II.B earlier, jurisdictions across the country are increasingly expanding protections for older adolescents through earlier parole eligibility or “second look” resentencing. And, as discussed in Section IV below, two other state supreme courts, in Washington and Massachusetts, have found that their own state constitutions’ punishment clauses are also broader than the Eighth Amendment and mandate that *Miller*’s sentencing protections be afforded to older adolescents, including 19- and 20-year-olds.

As for *Miller*’s impact on life-without-parole sentences for youth under 18, the Campaign for Fair Sentencing of Youth (CFSY) has collected data on *Miller* resentencings nationwide. At the time of *Montgomery* in 2016, approximately 2,800 individuals were serving life-without-parole sentences for offenses that occurred when they were children. CFSY, *National Trends in*

⁸ An additional twelve states have mandatory life-without-parole as an alternative to a discretionary death sentence, and five states only mandate life-without-parole if aggravating circumstances exist. *Id.* at 234.

Sentencing Children to Life-without-parole (2022), p 2 <<https://cfsy.org/wp-content/uploads/Fact-sheet-June-2022.pdf>>. As of October 2024, approximately 1,124 people sentenced to life-without-parole as children have been released. CFSY, *Sentencing Children to Life-without-parole: National Numbers* (2024) <<https://cfsy.org/sentencing-children-to-life-without-parole-national-numbers/>>. Over 50% of the 2,800 people serving life-without-parole sentences have had their sentences reduced through judicial resentencing or legislative reform. CFSY, *National Trends*, p 2. Based on data from 2020, the median for those modified sentences was 25 years' incarceration before parole or release eligibility. CFSY, *Four Years Since the U.S. Supreme Court Decision in Montgomery v. Louisiana* (2020), p 3 <<http://cfsy.org/wp-content/uploads/Montgomery-Anniversary-1.24.pdf>>. Notably, this median is the same when the data is isolated to include only those who committed offenses at age 17.⁹

Importantly, in resentencing hearings, judges are rarely imposing life-without-parole on young people when they have the ability to take youth into account. Nationwide, fewer than 100 youth under 18 have been resentenced to life-without-parole following *Miller*. CFSY, *Sentencing Children to Life Without Parole: National Numbers*. Slightly more than half of the resentencing hearings completed as of 2021 (approximately 1086 of the 2041 total resolved cases) involve individuals who committed offenses at age 17, and life-without-parole has been re-imposed in fewer than 50 of these cases.¹⁰ Judges have clearly concluded that life-without-parole is excessive for youth who are 17-years-old and younger.

⁹ Data collected by Campaign for Fair Sentencing of Youth (available upon request).

¹⁰ CFSY data (available upon request).

Lastly, the goal of rehabilitation is not served by Mr. Taylor’s mandatory sentence. A sentence of life in prison without the possibility of parole completely undermines the goal of rehabilitation as “[t]he penalty forswears altogether the rehabilitative idea.” *Graham*, 560 US at 74. This Court has noted that “only the rarest of individual is wholly bereft of the capacity for redemption.” *Bullock*, 440 Mich at 39 n 23, quoting *People v Schultz*, 453 Mich 517, 533-534; 460 NW2d 505 (1990) (BOYLE, J., concurring). Rehabilitation is an especially important factor in the imposition of a sentence on an older adolescent. As evidenced by the scientific studies cited in Section I.A earlier, older adolescents have a greater chance of rehabilitation and must be given the opportunity to demonstrate their diminished culpability and capacity for change before being sentenced to die in prison. Yet, Mr. Taylor’s mandatory sentence precludes consideration of even the *possibility* of his transformation, much less his current capacity to contribute to the world outside prison walls. Accordingly, each of the four *Lorentzen* factors counsels against the mandatory imposition of life imprisonment without the possibility of parole on older adolescents, especially individuals like Mr. Taylor who was only 20-years-old at the time of his offense.

IV. THIS COURT SHOULD JOIN OTHER STATE HIGH COURTS THAT HOLD THEIR OWN CONSTITUTIONS GO BEYOND THE FEDERAL EIGHTH AMENDMENT IN LIMITING HARSH SENTENCES FOR OLDER ADOLESCENTS.

This Court has not been the only state Supreme Court to hold that its own Constitution is broader than the U.S. Constitution with respect to prohibited punishments. In fact, both Washington and Massachusetts courts have gone further than this Court.

The Washington Supreme Court, in 2021, held that a mandatory life-without-parole sentence for older adolescents who were 18 through 20-years-old at the time of their offense

violates its state constitution.¹¹ *In re Monschke*, 197 Wash 2d 305, 325-326; 482 P3d 276 (2021) . In doing so, the Court found that “no meaningful neurological bright line exists between . . . age 17 on the one hand, and ages 19 and 20 on the other hand.” *Id.* at 326. Therefore, the Court explained that sentencing courts must have discretion to consider the mitigating qualities of youth identified in *Miller* prior to imposing punishment on youth older than 18, just as the Court had previously required for youth under 18. *Id.* at 326-328.

The Massachusetts Supreme Court has gone even farther. Earlier this year, the Court held not only that *mandatory* life-without-parole was unconstitutional, but *any* sentence of life-without-parole was unconstitutional under the Massachusetts Declaration of Rights for “emerging adults” who were 18-20 years old at the time of their offense. *Mattis*, 493 Mass at 235.¹² Based on its review of a similar “combination of statutes passed here and elsewhere, as well as recent decisions in Washington and Michigan,” the Court found “that our contemporary standards of decency do not support imposing life-without-parole sentences on emerging adults.” *Id.* at 230. The Court also relied on the neuroscience research to reach its conclusion, finding that “[a]dvancements in scientific research have confirmed what many know well through experience: the brains of emerging adults are not fully mature. Specifically, the scientific record strongly supports the contention that emerging adults have the same core neurological characteristics as juveniles have.” *Id.* at 225. The Massachusetts Declaration of Rights, like art. 1, § 16 of the Michigan Constitution of 1963, also prohibits “cruel or unusual” punishments.

¹¹ Article 1, § 14 of the Washington Constitution prohibits “cruel punishment.”

¹² Notably, the Court had already established under the Massachusetts Declaration of Rights, “that because it is not possible to demonstrate that a juvenile offender is ‘irretrievably depraved,’ ” that any life-without-parole sentence was “cruel or unusual” when imposed on a juvenile in any circumstance. *Mattis*, 493 Mass at 224, citing *Diatchenko v Dist Attorney for Suffolk Dist*, 466 Mass 655, 670-671; 1 NE3d 270 (2013). The Court in *Mattis* merely extended its ruling in *Diatchenko* to 18-20-year-olds.

Just as Washington and Massachusetts have recognized that their state constitutions guarantee the right to *Miller* protections for 18-, 19-, and 20-year-olds, this Court too should recognize broader sentencing protections to older adolescents at least through age 20.

CONCLUSION

For the foregoing reasons, amici respectfully request that this Court hold Mr. Taylor's mandatory life-without-parole sentence unconstitutional pursuant to Article 1, § 16, and reverse and remand for resentencing.

Respectfully submitted,

/s/ Daniel S. Korobkin

Daniel S. Korobkin (P72842)
Bonsitu Kitaba-Gaviglio (P78822)
AMERICAN CIVIL LIBERTIES UNION
FUND OF MICHIGAN
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6824
dkorobkin@aclumich.org
bkitaba@aclumich.org

/s/ Marsha L. Levick

Marsha L. Levick, PA Bar #22535
Riya Saha Shah, PA Bar #200644
Andrew R. Keats, NY Bar #5037528
JUVENILE LAW CENTER
1800 JFK Blvd., Ste. 1900B
Philadelphia, PA 19103
(215) 625-0551
mlevick@jlc.org
rshah@jlc.org
akeats@jlc.org

/s/ Elizabeth Komar

Elizabeth Komar, NY Bar #5395181
Becky Feldman, MD Bar #0212180007
THE SENTENCING PROJECT
1150 Connecticut Ave NW, Suite 601,
Washington, DC 20036
(202) 628-0871

lkomar@sentencingproject.org
bfeldman@sentencingproject.org

Counsel for Amici Curiae

Dated: December 19, 2024

RECEIVED by MSC 12/19/2024 10:33:35 AM

WORD COUNT STATEMENT

Pursuant to MCR 7.212(B)(3), I hereby certify that this document contains 9,298 countable words, based upon the word count of the word processing system used to prepare the brief.

Respectfully submitted,

/s/ Daniel S. Korobkin

Daniel S. Korobkin (P72842)

Dated: December 19, 2024