SUPREME COURT, STATE OF COLORADO Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, CO 80203 Certiorari to the Colorado Court of Appeals Case Number 2022CA9	
Petitioner MARQUIS DANTRE HAZARD v. Respondent THE PEOPLE OF THE STATE OF COLORADO	
Attorneys for Amici Curiae **Colorado Criminal Defense Bar** **Office of Alternate Defense Counsel** Eric A. Samler, #32349 Hollis A. Whitson, #32911 *Samler and Whitson, P.C.* 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-670-0575 (phone) Email: eric@samlerandwhitson.com	Case Number: 2025SC169
BRIEF OF AMICUS CURAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 29 (c) and C.A.R. 53(g), including all formatting requirements set forth in these rules.

Specifically, the undersigned certifies that this brief complies with the applicable word limit and formatting requirements set forth in the above rules. It contains 3,068 words.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 53.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES i

IDENTITY OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 1

ARGUMENT 3

I. IMPOSING A MANDATORY LIFE WITHOUT PAROLE SENTENCE ON THOSE EIGHTEEN, NINETEEN AND TWENTY CONSTITUTES CRUEL AND UNUSUAL PUNIUSHMENT UNDER ARTICLE II SECTION 20 OF THE COLORADO CONSTITUTION. 3

CONCLUSION 14

TABLE OF AUTHORITIES

CASES

Charnes v. DiGiacomo, 200 Colo. 94; 612 P.2d 1117 (1980).....4

Colorado Anti-Discrimination Comm'n v. Case, 380 P.2d 34 (1962) 5

Commonwealth v. Mattis, 224 N.E.3d 410 (Mass. 2024).....2, 13

Doe v. Wilmington Hous. Auth., 88 A.3d 662(Del.2014)..... 6,7

Fletcher v. Aslaka, 532 P.3d 286 (Ak.Ct. App. 2023).....2

Graham v. Florida 560 U.S. 48 (2010).....12

Ingraham v. Wright, 430 U.S. 651 (1977).....2

Jones v. Mississippi, 593 U.S. 98 (2021).....2

Leland v. Oregon, 343 U.S. 790 (1952).....4

Massachusetts v. Upton, 466 U.S. 727 (1984).....6

Matter of Monschke, 482 P.3d 281..... 2, 10, 13

Miller v. Alabama, 567 U.S. 460 (2012).....8

Palmer v. A.H. Robbins, 684 P.2d 187 (Colo. 1984) *2*

People ex rel. Juhan v. Dist. Court for Jefferson Cnty.,
439 P.2d 741 (Colo. 1968) 4

People In Interest of T.B., 2021 CO 59 (2021) 12

People v. Briscoe, 325 Cal. Rptr. 3d 901 (Cal. Ct. App. 2024) 13

People v. Mason, 989 P.2d 757 (Colo. 1999).....4

People v. McKnight, 2019 CO 36 (2019).....4, 6

People v. Oates, 698 P.2d 811 (Colo. 1985) 4

People v. Paulsen, 601 P.2d 634 (Colo. 1979).....4

People v. Sporleder, 666 P.2d 135 (Colo. 1983).....4, 6

People v. Stewart, 55 P.3d 107 (Colo. 2002) 4

People v. Taylor, No. 166428, 2025 WL 1085247 (Mich. Apr. 10, 2025) 2, 13

People v. Wakefield, 2018 COA 37 (2018) 5

People v. Young, 814 P.2d 834 (Colo. 1991)..... 1, 3, 4, 7

Rocky Mountain Gun Owners v. Polis, 2020 CO 66 (2020).....5, 6, 11

Roper v. Simmons, 543 U.S. 551(2005) 8, 12

Smith v. Maryland,442 U.S. 735 (1979) 4

Stanford v. Kentucky, 492 U.S. 361 (1989).....10

State v. Gunwall, 106 Wash. 2d 54; 720 P.2d 808 (1986).....7

State v. Hunt, 450 A.2d 952 (N.J. 1982) 6

State v. Tiedemann, 162 P.3d 1106 (Utah 2007) 6

Thompson v. Oklahoma, 487 U.S. 815 (1988).....10

Traylor v. State, 596 So. 2d 957 (Fla. 1992).....5

United States v. Karo, 468 U.S. 705 (1984).....4

United States v. Miller, 425 U.S. 435 (1976).....4

United States v. Scott, 437 U.S. 82 (1978).....4

Wells-Yates v. People, 2019 CO 90 2

CONSTITUTIONAL PROVISIONS

Colo. Const. Art. II§ 3 .....4, 5

Colo. Const. Art II § 20 .....2, 5, 8, 11, 12

U.S. Const. Amend VIII 2,5,8,10,12

U.S. Const Amend XXVI 9

Wash. Const. Art. I, § 14 2

STATUTES

California

Cal. Penal Code § 3051(b) (2014) 12

Colorado

C.R.S. § 17-34-101 10

C.R.S. § 17-34-102 10

C.R.S. § 17-34-101 10

C.R.S. § 18-1.3-401(4)(b)(I) 3, 8

C.R.S. § 18-1.3-401(4)(b)(II) 3, 8

C.R.S. § 18-1.3-401(1)(a)(V)(F) 13

C.R.S. § 18-1.3-401(4)(a)(I)-(II)) 13

C.R.S. § 18-1.3-407.5(2)(b)(i) 10

C.R.S. § 18-1.3-401(I) 3, 8

C.R.S. § 18-1.3-407 9

C.R.S. § 18-1.3-407.5 (2013).....9

C.R.S. § 18-1.3-407(1)(a).....9

C.R.S. § 18-1.3-407(2)(a).....9

C.R.S. § 18-1.3-407(II).....9

C.R.S. § 19-2.5-801(4).....8

C.R.S. § 19-2.5-802.....8

C.R.S. § 19-2.5-802(a).....8

C.R.S. § 21-2-103.....1

C.R.S. § 18-1.3-401(F).....11

2021 Colo. Legis. Serv. Ch. 448 (H.B. 21-1209, Section ___, (a.5).....10, 11

Delaware

11 Del. Code Ann. § 42-09.....13

District of Columbia

D.C. Code 24.403.03(a) (2017).....12

Hawaii

Haw. Rev. Stat. 706.656.....13

Illinois

Ill. Comp. Stat. 730.54 (2019).....12

Iowa

Iowa Code 902.....13

Massachusetts

Mass. G.L. 265.2(a) 13

Michigan

Mich. Comp. Laws 750.316.....13

Minnesota

Minn. Stat. § 609.106.....13

New Hampshire

N.H. Rev. Stat. Ann. 630.1-a.....13

Pennsylvania

18 Pa. Cons. Stat. § 1102. 13

United States

Pub. L No,. 77-772, 56 Stat. 108, 1019 (1942).....9

Virginia

Va. Code Ann. 18.2.10a.....13

Washington

Wash. Rev. Code §10.95.030. 13

West Virginia

W. Va. Code § 61-22 13

STATE RULES

Colorado Appellate Rule 53 (g) 1

OTHER AUTHORITY

Vivian E. Hamilton, Adulthood in Law and Culture, 91 TULANE L. REV. 55, (2016) 9

The Colorado Criminal Defense Bar (CCDB) and the Office of Alternate Defense Counsel (OADC) respectfully submit this brief of amici curiae under C.A.R 53(g) in support of Petitioner's request that this Court issue its writ of certiorari.

I. IDENTITY AND INTEREST OF AMICI CURIAE

CCDB is a non-profit organization providing training and support to the criminal defense community to promote zealous advocacy for those accused of crimes. OADC provides legal services to indigent defendants in juvenile and district court proceedings when OPD has a conflict of interest. *See* § 21-2-103, C.R.S. Both entities have a significant interest in this Court's jurisprudence regarding sentencing of youthful offenders convicted of first-degree felonies.

SMMARY OF ARGUMENT

Colorado Courts "have a responsibility to engage in [] independent" state constitutional analysis, as often "the Colorado Constitution provides more protection for [its] citizens than do similarly or identically worded" federal rights. *People v. Young*, 814 P.2d 834, 842 (Colo. 1991). Considering Article II, § 20's protection against "cruel and unusual punishments," this Court emphasized that "the Colorado Constitution, written to address the concerns of our own citizens and tailored to our unique regional location, is a source of protection for individual rights that is independent of and supplemental to the protections provided by the United States Constitution." *Id*. at 843.

State constitutionalism plays a vital role in the protection of individual liberties. State courts should independently analyze the rights protected by state constitutional provisions even if the federal analog is similarly worded.[1] This Court has recognized that as well. See *Wells-Yates v. People*, 2019 CO 90M, ¶ 10 (while the language of Colo. Const. art. II, § 20 is identical the Eight Amendment, the Court's "analysis does not mirror the Supreme Court's.")

This Court has long held that Colo. Const... Art. II § 20 imposes substantive limits on criminal laws and proscribes punishment grossly disproportionate to the severity of the crime. *Palmer v. A.H. Robins Co.*, 684 P.2d 187, 217 (Colo. 1984) (quoting *Ingraham v. Wright*, 430 U.S. 651, 667 (1977)). The Colorado legislature has a long history of barring excessive punishments for juvenile offenders well before such practices were prohibited under the U.S. Constitution, including banning capital punishment for those under 18[2] and providing parole for juveniles

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[1] See *Fletcher v. Alaska,* 532 P.3d 286, 308 (Alaska App. 2023) invoking Alaska's "cruel and unusual punishments" clause to reject the ruling in *Jones v. Mississippi*, 593 U.S. 98, 109 (2021) that children may be sentenced to die in prison; *State v. Lyle*, 854 N.W.2d 378 (Iowa 2014) and *State v. Sweet*, 879 N.W.2d 811 (Iowa 2016)(Iowa's "cruel and unusual" punishment clause prohibits all mandatory minimum and LWOP sentences (LWOP) for youth under age 18); *Commonwealth v. Mattis,* 224 N.E.3d 410 (Mass. 2024)(under state constitution no LWOP for those under 21); *People v. Taylor,* 166428, 2025 WL 1085247 (Mich. Apr. 10, 2025)): *Matter of Monschke,* 482 P.3d 276 (Wash. 2021)(Mandatory LWOP for those under twenty-one violates Wash. Const. art. I, § 14 ("Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.")).

[2] See Addendum A.

convicted of first-degree murder.[3] This Court should grant certiorari and perform a state-specific analysis of whether imposing a mandatory LWOP sentence on those under twenty-one violates the cruel and unusual punishment clause of Colorado's Constitution.

ARGUMENT

I. IMPOSING A MANDATORY LIFE WITHOUT PAROLE SENTENCE ON EIGHTEEN, NINETEEN AND TWENTY-YEAR OLDS CONSTITUTES CRUEL AND UNUSUAL PUNIUSHMENT UNDER ARTICLE II SECTION 20 OF THE COLORADO CONSTITUTION.

The question whether a mandatory life imprisonment sentence for a youth under the age of 21 violates the Colorado State Constitution is one of first impression that this Court has not squarely addressed. Its pronouncement is long overdue.

The Colorado Constitution "is a source of protection for individual rights independent of and supplemental to the protections provided by the United States Constitution." *Young*, 814 P.2d at 842-843. This Court has a "responsibility to engage in an independent analysis of state constitutional principles in resolving a state constitutional question." *Ibid.*[4]

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[3] § 18-1.3-401(4)(b)(I),(II), C.R.S.

[4] In *Sellers v. People* 2024 CO 64 this Court imprecisely stated that "[t]o date … we have not interpreted article II, section 20 of our constitution to provide greater protection than the Eighth Amendment." *Id*. ¶36. This is in direct conflict with this

This Court has repeatedly recognized the Colorado Constitution provides greater protections than the U.S. Constitution for individuals in the criminal justice system. *E.g., People v. Sporleder,* 666 P.2d 135 (Colo.1983) (declining to follow *Smith v. Maryland,* 442 U.S. 735 (1979)); *Charnes v. DiGiacomo,* 200 Colo. 94, 612 P.2d 1117 (1980)(declining to follow *U.S. v. Miller,* 425 U.S. 435 (1976)); *People v. Paulsen,* 601 P.2d 634 (Colo. 1979) (rejecting analysis in *U.S. v. Scott,* 437 U.S. 82 (1978) to preclude retrial where trial court erroneously entered post-jeopardy judgment of acquittal on grounds unrelated to factual guilt or innocence)); *People ex rel. Juhan v. Dist. Court for Jefferson Cnty*., 439 P.2d 741 (Colo. 1968) (declining to follow *Leland v. Oregon,* 343 U.S. 790 (1952)); *Young*, *supra* 842-43; *People v. Mason*, 989 P.2d 757, 750 (Colo. 1999); *People v. Oates,* 698 P.2d 811 (Colo.1985) (declining to follow *U.S. v. Karo,* 468 U.S. 705 (1984)); *People v. McKnight*, 2019 CO 36; *People v. Stewart*, 55 P.3d 107, 114 (Colo. 2002) (providing for a stricter view of the equal protection clause vis-a-vis criminal statutes).

Colorado places such a high value on personal liberty that, in addition to the protections in the due process clauses of the U.S. and Colorado Constitutions, the Colorado Constitution enumerates Coloradoan's inalienable rights. Colo. Const.

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pronouncement that state courts have a "responsibility to engage in" independent Section 20 analysis. *Young*, 814 P.2d at 842.

Art. 2, § 3 (All citizens have "certain natural, essential, and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing, and protecting property; and of seeking and obtaining their safety and happiness."). See *Colorado Anti-Discrimination Comm'n v. Case,* 380 P.2d 34, 40 (1962)("inherent human right[s] will be upheld by this court against action by any person or department of government which would destroy such a right"); *People v. Wakefield*, 2018 COA 37, ¶24 (trial court violated defendant's constitutional right under Article II, section 3 to assert self-defense). A defendant facing a mandatory LWOP is at risk of losing his liberty, his property, his happiness, and even his safety, and requires significant procedural protections.

When called upon to construe the Colorado Constitution, this Court "should focus primarily on factors that inhere in their own unique state experience." *Traylor v. State*, 596 So. 2d 957, 962 (Fla. 1992). These can include "the express language of the constitutional provision, its formative history, both preexisting and developing state law, evolving customs, traditions and attitudes within the state, the state's own general history, and finally any external influences that may have shaped state law." *Ibid*.

That Article II Section 20 and the Eighth Amendment contain identical language does not answer the question. "[E]ven parallel text does not mandate parallel interpretation." *Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶37;

"Federal and state bills of rights … serve distinct but complementary purposes." *Ibid*. That is because:

> The federal Bill of Rights facilitates political and philosophical homogeneity among the basically heterogeneous states by securing, as a uniform minimum, the highest common denominator of freedom that can prudently be administered throughout all fifty states. The state bills of rights, on the other hand, express the ultimate breadth of the common yearnings for freedom of each insular state population within our nation.

Ibid. See *State v. Tiedemann*, 162 P.3d 1106, 1113 (Utah 2007)(In interpreting state constitutional guarantees, state courts "owe federal law no more deference in that regard than [it does] sister state interpretation of identical state language.").

When constitutional language is "highly generalized"—such as when it broadly prohibits "cruel and unusual punishments"— there is "no reason to reflexively assume that there must be 'just one meaning over a range of differently situated sovereigns.'" *McKnight*, 446 P.3d at 407 (quoting Jeffrey Sutton, 51 Imperfect Solutions: States and The Making of American Constitutional Law 16, p. 174 (2018). *See Massachusetts v. Upton*, 466 U.S. 727, 739 (1984) (Stevens, J., concurring) ("The States ... remain the primary guardian of the liberty of the people.") cited in *McKnight*, ¶38.

Delaware (*Doe v. Wilmington Hous. Auth.,* 88 A.3d 654, 662–63 (Del. 2014)("*Doe*")); New Jersey (*State v. Hunt,* 450 A.2d 952 (N.J. 1982)[5] (Handler, J,

[5] Cited in *Sporleder,* 666 P.2d at 142.

concurring)) and Washington (*State v. Gunwall,* 720 P.2d 808 (Wash. 1986)) devised factors to consider in determining whether their respective state constitutions provide greater protection than the federal counterparts including

- state constitutional and common law history,
- preexisting state law,
- matters of particular state interest or local concern.
- State traditions and public attitudes.

As the Delaware Court noted:

> Previously established bodies of state law may also suggest distinctive state constitutional rights. State law is often responsive to concerns long before they are addressed by constitutional claims. Such preexisting law can help to define the scope of the constitutional right later established.

Doe, 88 A.3d at 662.

Pre-existing state law, state traditions and public attitudes all show that Colorado has a long history of prohibiting extreme sentences on youthful offenders. Over a century before the U.S. Supreme Court in *Roper v. Simmons*, 543 U.S. 551 (2005) held that imposing a death sentence on a person under eighteen violated the Eighth Amendment, Colorado had banned that punishment for juvenile

offenders.[6] Six years before the U.S. Supreme Court in *Miller v. Alabama*, 567 U.S. 460 (2012) held mandatory LWOP for those under eighteen violated the Eighth Amendment, Colorado banned LWOP for those under eighteen. §18-1.3-401(4)(b)(I),(II), C.R.S. After *Miller,* Colorado revamped portions of the juvenile code providing extra protections for juveniles charged as adults by allowing for a reverse transfer hearing. §19-2.5-801(4), C.R.S. Juveniles whose cases are transferred to district court under §19-2.5-802, C.R.S. are not subject to mandatory crime of violence sentencing except for class 1 felonies and certain sex crimes. §19-2.5-802(1)(d)(1)(a), C.R.S.

The Colorado legislature's protection of juveniles from extreme sentences long before the federal court's willingness to do so shows that Article II §20 of the Colorado Constitution provides greater protection to youthful offenders than does the Eighth Amendment.

Before 1942 the age of majority in the United States was twenty-one.[7] The line was redrawn not because eighteen, nineteen, or twenty-year-olds were increasingly mature, but to increase the numbers available for conscription.[8] This

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[6] See Addendum A, Sessions Laws of 1901, providing "no person shall suffer the death penalty who, at the time of conviction, was under the age of eighteen (18) years."

[7] Vivian Hamilton, Adulthood in Law and Culture, 91 TULANE L. REV. 55, 57 (2016).

[8] Pub. L. No. 77-772, 56 Stat. 108, 1019 (1942) (lowering the selective service registration age to 18) cited in Hamilton*, supra.*

resulted in lowering of the age of majority generally and in granting political participation to those eighteen and over.[9]

Colorado has not defined eighteen as a fixed line between juveniles and adults. The legislature has taken a more nuanced approach to eighteen, nineteen- and twenty-year-olds. Colorado youths under the age of 21 remain a protected class for a wide range of purposes, under laws that recognize the diminished capacity of this age group.[10] Colorado already provides for differential treatment of offenders under 21 through its youthful offender programs.[11] Although 18-20 year olds are not statutorily eligible for placement in the youthful offender system for a class 1 or class 2 felony, *id*., §18-1.3-407.5 (2)(b)(i), yet, that the classification exists at all is a testament to the fact that offenders this age are distinguished from older offenders.

"While the United States Supreme Court has drawn bright lines between various ages and types of defendants, those bright lines have shifted over time."

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[9] U.S. Constitution amend. XXVI.

[10] See Addendum B, "Partial List of Colorado Constitution and Laws Placing Teenagers in a Protected Classification and Recognizing Their Diminished Capacity."

[11] See §18-1.3-407.5 C.R.S. (2013) (defining a "young adult offender" as "a person who is at least eighteen years of age but under twenty years of age at the time the crime is committed and under twenty-one years of age at the time of sentencing pursuant to this section."). See also §18-1.3-407 C.R.S. (2013)(establishing youthful offender system).

Monschke, *supra,* 482 P.3d at 281. *See Thompson v. Oklahoma*, 487 U.S. 815 (1988)(Eighth Amendment prohibits capital punishment for those under sixteen); *Stanford v. Kentucky,* 492 U.S. 361 (1989) (Eighth amendment does not prohibit capital punishment for those sixteen or seventeen); *Roper, supra* (Eighth Amendment prohibits capital punishment for those under eighteen).

In 2021 the legislature expanded the specialized program for juveniles convicted as adults[12] enacted in 2016 in response to *Miller.* The legislature attributed its decision to expand the program to include those under twenty-one to:

> More recent research about brain development demonstrates that the brain functioning that guides and aids rational decision-making does not fully develop until a person is in his or her mid- to late twenties, which indicates that a young adult does not often possess the developmental maturity and decision-making skills of a mature adult[.]

2021 Colo. Legis. Serv. Ch. 448 (H.B. 21-1209, Section 1 (a.5)). The legislature adds:

> Colorado is committed to research-based best practices in the development and implementation of correctional policies and practices. Best practices support the release of offenders who no longer present a threat to the safety of other persons or the community and who have demonstrated that through observable and verified positive behavior. Reconsidering offenders' sentences after lengthy incarceration creates hope for and helps develop maturity and responsibility in offenders who were juveniles or young adults when their crimes were committed.

[12] §§17-34-101 through -102, C.R.S.

Id. Section (1)(d).

As this Court has stated, "when interpreting our own constitution, we do not stand on the federal floor; we are in our own house." *Rocky Mountain Gun Owners, supra*, ¶36. In *Wells-Yates*, the court noted that "cruel and unusual" is defined in part by "evolving standards of decency" and it is the "standards of decency *in Colorado*" that the Court must assess. *Id.* ¶¶46,47 (emphasis added) Legislative pronouncements are the best barometer of this. *Id*.

The legislature has recognized those under twenty-one should be treated differently than those twenty-one and over. This case provides this Court an opportunity to determine whether Article II §20 ("… nor cruel and unusual punishments inflicted") provides greater protection than that already granted by the legislature.

In deciding whether lifetime sex offender for juveniles, even those with multiple adjudications, constituted cruel and usual punishment this Court held that it should "first look to 'objective indicia of society's standards, as expressed in legislative enactments and state practice's to determine whether there is a national consensus against the sentencing practice.'" *People In Interest of T.B.,* 2021 CO 59, ¶59 (quoting *Graham v. Florida*, 560 U.S. 48, 61 (2010), which quoted *Roper, supra,* at 563). This Court should do the same in determining whether a sentencing practice is cruel and unusual under Article II §20.

Colorado is not alone in "reconsidering [youthful] offender's sentences after lengthy incarceration." H.B. 21-1209, Section 1(d) Other jurisdictions also require review of sentences imposed on youthful offenders: D.C. Code § 24-403.03(a) (2017) (judicial review of sentences after 15 years for offenses committed before age 18; amended to before age 25 in 2021); 730 Ill. Comp. Stat. § 5/5-4.5-115 (2019) (for offenses committed before age 21, individuals convicted of first-degree murder are eligible for parole after 20 years unless originally sentenced to natural life (then parole eligibility is 40 years)); Cal. Penal Code §3051(b) (2014) (parole eligibility after 15, 20, or 25 years, depending on the length of the original sentence, for offenses committed by juveniles or individuals age 25 or younger.)[13]

Most jurisdictions in the United States do not have mandatory LWOP sentencing schemes. Of the twenty-eight states that allow for a sentence of LWOP, only twelve make that sentence mandatory.[14] Of those twelve states, two have held their state constitutions prohibit imposing a mandatory LWOP sentence on eighteen, nineteen, and twenty-year-olds (*Monschke*, *supra*; *Taylor; supra*) while

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[13] The California Statute generally excludes those serving a LWOP sentence except for those youthful offenders convicted of felony murder/special circumstances murder who did not kill or have the intent to kill. *See People v. Briscoe,* 325 Cal. Rptr. 3d 901, 907 (Cal. Ct. App. 2024).

[14] Mass. G.L. C. 265, § 2 (a); Colo. Rev. Stat. §18-1.3-401(1)(a)(V)(F), (4)(a)(I)-(II)); Del. Code Ann. tit. 11, §4209; Haw. Rev. Stat. § 706-656; Iowa Code §902.1; Mich. Comp. Laws §750.316; Minn. Stat. § 609.106; N.H. Rev. Stat. Ann. §630:1-a(III);18 Pa. Cons. Stat. §1102); Va. Code Ann. §18.2-10(a); Wash. Rev. Code § 10.95.030; W. Va. Code §61-2-2.

one (*Mattis, supra*) went further to ban LWOP for those under twenty-one. Two others provide a process for review and commutation of LWOP sentences: Iowa Code Ann. §902 (Allowing an application every ten years to the governor to commute the sentence to a term of years and requiring the governor to send a copy of the request to the Iowa board of parole for investigation and recommendations); Haw. Rev. Stat. §706-656 (obligating the parole board to submit an application to its Governor to commute the sentence to one permitting parole after twenty years.) Only seven states (including Colorado) allow for the imposition of a mandatory LWOP sentence on an eighteen, nineteen or twenty-year old without a statutory provision providing a later review of that sentence. In *T.B.* this Court found lifetime sex offender registration for juveniles "truly unusual" because "fewer than a third" of all states (10 including Colorado) allowed for the practice. T.B. ¶¶60-63. The practice of imposing mandatory LWOP on those under twenty-one is even more unusual indicating a "national consensus against the sentencing practice." *T.B., supra* ¶59.

This Court has repeatedly held that Colorado's Constitution provides greater protection to Colorado citizens than the federal constitution. As one of only seven states that allow for the imposition of a mandatory LWOP without the opportunity for reconsideration, this Court should take a hard look at whether such a practice

should be considered cruel and unusual under Colo. Const. Art. II §20. Issuing its writ of certiorari would permit this Court to do so.

CONCLUSION

This Court should grant its writ of certiorari to determine whether imposing a mandatory LWOP sentence on those under twenty-one violates Colo. Const. Art. II §20.

Respectfully submitted this 4h day of June, 2025.

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CERTIFICATE OF SERVICE

I certify that, on June 4, 2025, a copy of this Brief of Amici Curiae, Colorado Criminal Defense Bar, and Office of Alternate Defense Counsel was electronically served through Colorado Courts E-Filing on all parties of record.

/s/ Eric A. Samler
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