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19 EIGHTH JUDICIAL DISTRICT COURT

20 CLARK COUNTY

21 Johnny Earl Baggett.,

22 Petitioner,

23 v.

24 Jeremy Bean, et al.,

25 Respondents.

Case No. A-24-894507-W

Dept. No. 23

Date of Hearing: March 5, 2025

Time of Hearing: 9:30 a.m.

(Not a death penalty case)

26 SUPPLEMENTAL BRIEF IN SUPPORT OF
27 PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)

1 **TABLE OF CONTENTS**

2 I. Johnny Baggett’s sentence is invalid because life-without-parole
3 sentences imposed without any restrictions on individuals who were
4 under 21 when they committed the crime violate Nevada’s constitutional
5 prohibition against cruel or unusual punishments..... 1
6
7 A. In a series of cases, the Supreme Court found that the imposition
8 of the death penalty and LWOP on juveniles as a class violates the
9 Eighth Amendment because juveniles are less culpable and more
10 capable of change than adults. 3
11
12 B. Following *Miller*, the Nevada Legislature enacted statutes
13 regulating the sentences and parole eligibility of adolescents under
14 18, while leaving intact harsh sentences for late adolescents. 7
15
16 C. The Nevada Constitution is highly protective of the right to be free
17 from cruel or unusual punishments, which includes life-without-
18 parole sentences imposed on late adolescents. 8
19
20 1. A prison sentence is cruel or unusual if it is disproportionate
21 to a person’s culpability and the rehabilitative function of
22 criminal punishment, or transgresses contemporary
23 standards. 9
24
25 2. Current scientific research on adolescent brain development
26 demonstrates that an absolute cutoff at age 18 for
27 constitutional scrutiny of life-without-parole sentences
cannot be justified. 13
a. The hallmarks of adolescence—immaturity,
impulsivity, and risk-taking—persist into late
adolescence..... 14
b. Emotional arousal uniquely inhibits adult-like
judgment in late adolescents..... 17
c. Environmental factors impact late-adolescent
behavior, especially in the presence of peers..... 20
d. Brain plasticity in late adolescents allows for a
heightened capacity for change, even in those with
early signs of personality pathology. 23
3. Many Nevada laws today, in a wide range of relevant
domains, draw the line between child and adult at 21..... 28

1
2
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4
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10
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12
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4. The Court should consider developments in other jurisdictions and countries because they reflect evolving standards of decency. 31

5. Nevada state history supports that LWOP sentences are unconstitutional for individuals who committed their offenses when under 21..... 34

D. A categorical bar is necessary because sentencing judges cannot reliably predict which late adolescents are among the rare few who are beyond redemption. 36

E. In the alternative, even if not categorically barred, then LWOP sentences should be limited to cases where the sentencing judge has determined, after considering the mitigating effects of youth, that the defendant is the rare adolescent offender whose crime reflects irreparable corruption. 37

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ARGUMENT

I. Johnny Baggett’s sentence is invalid because life-without-parole sentences imposed without any restrictions on individuals who were under 21 when they committed the crime violate Nevada’s constitutional prohibition against cruel or unusual punishments.

Current scientific research on late-adolescent neurological and psychological development demonstrates that in all the ways that were significant to the *Miller* Court’s constitutional analysis, 18-to-20-year-olds are like younger adolescents. *See infra* Part I.C.2. (summarizing experts’ evidentiary hearing testimony). This evidence was presented by highly qualified experts and not rebutted by the State.

In light of these recent scientific advances, courts across the country have begun to recognize that 18-, 19-, and 20-year-olds cannot be treated the same as older, more fully developed adults when they are subjected to harsh criminal sanctions. In 2021, the Washington Supreme Court held that the state’s aggravated murder statute’s requirement of LWOP for all defendants 18 and older, regardless of individual characteristics, was unconstitutional as applied to defendants who were 18, 19, or 20 at the time of their offenses. *Matter of Monschke*, 482 P.3d 276, 288 (Wash. 2021). The court held that sentencing courts must have the discretion to decide whether, in light of “the mitigating qualities of youth,” an 18-, 19-, or 20-year-old is deserving of LWOP. *Id.*

Then in 2022, the Michigan Supreme Court came to a similar conclusion, holding that mandatory LWOP sentences imposed on defendants who were 18 at the time of their offenses violate the Michigan Constitution because they fail “to take into account the mitigating characteristics of youth, specifically late-adolescent brain development.” *People v. Parks*, 987 N.W.2d 161, 164-65 (Mich. 2022). The Michigan court limited its decision to 18-year-olds because the defendants in that case were 18 at the time of their offenses, and the court thus did not have to

1 “address the Michigan constitutional requirements for sentencing offenders who
2 were over 18 years old at the time of the offense.” *Id.* at 171.

3 The Michigan Supreme Court recently expanded on that holding. It held that
4 the mandatory imposition of life-without-parole on late adolescents violates its state
5 constitution. *People v. Taylor*, Case No. 166428, 2025 WL 1085247, at *9 (Mich. Apr.
6 10, 2025) (Opinion). The court explained that, “as a class, 19- and 20-year-old late
7 adolescents are more similar to juveniles in neurological terms than they are to
8 older adults.” *Id.* at *7. Looking to the class’s legal rights, the court observed, “our
9 society does not recognize these individuals as full adults until age 21.” *Id.* at *8. It
10 then analyzed the relevant factors under Michigan’s state constitutional test, “(1)
11 the severity of the punishment relative to the gravity of the offense, (2)
12 punishments imposed in the same jurisdiction for other offenses, (3) punishments
13 imposed in other jurisdictions for the same offense; and (4) Michigan’s traditional
14 goal of and preference for rehabilitation.” *Id.* at *9. Applying these factors, it held
15 that “mandatorily sentencing 19- and 20-year-old defendants to die in prison is
16 unusually excessive and constitutionally disproportionate.” *Id.* at *9. That means
17 that under Michigan law, the sentencing court may only impose life-without-parole
18 on a late adolescent if the prosecution rebuts a presumption against that sentence
19 by clear and convincing evidence. *Id.* at *5.

20 The Massachusetts Supreme Judicial Court (“SJC”) followed and expanded
21 on this reasoning in its breakthrough *Mattis* decision. In March 2024, the SJC
22 issued its final ruling that LWOP is categorically unconstitutional under the
23 Massachusetts constitution when applied to individuals under 21. *Commonwealth*
24 *v. Mattis*, 224 N.E.3d 410, 427-28 (Mass., as amended Mar. 22, 2024). The SJC
25 affirmed the lower court’s four “core” findings of fact regarding emerging adults,
26 based on the extensive scientific record developed in the case: (1) they lack impulse
27 control similar to 16-and-17-year-olds in emotionally arousing situations; (2) they

1 are more prone to risk-taking in pursuit of rewards than those under 18 and those
2 over 21; (3) they are more susceptible to peer influence than individuals over 21;
3 and (4) they have a greater capacity for change than older individuals due to the
4 plasticity of their brains. *Id.* at 421-24. After considering the updated research on
5 the brains of emerging adults, as well as the treatment of emerging adults in
6 Massachusetts and elsewhere, the court concluded that a sentence of life-without-
7 parole did not comport with “contemporary standards of decency” when imposed on
8 youth under 21, and thus was unconstitutional when imposed on that class of
9 offenders. *Id.* at 428-29.

10 Following these cases, the question presented here is whether the current
11 science on late-adolescent development supports allowing courts to impose life-
12 without-parole sentences on people under 21, without any restrictions. The research
13 and the weight of authority provides only one answer to that question: no.

14 Late adolescents exhibit a cognitive-emotional imbalance that renders them
15 less culpable. As they mature, the vast majority of late adolescents overcome any
16 pathological or behavioral issues they exhibit as young people. Meanwhile, it is
17 impossible to identify which late adolescents will not rehabilitate, due to the
18 developmental state of flux they are in. As a result, life-without-parole constitutes a
19 disproportionate punitive sentence that invariably ensnares adolescents who would
20 have overcome any behavioral issues with the simple remedy of—time.

21 **A. In a series of cases, the Supreme Court found that the**
22 **imposition of the death penalty and LWOP on juveniles as a**
23 **class violates the Eighth Amendment because juveniles are less**
culpable and more capable of change than adults.

24 In a series of decisions, the U.S. Supreme Court determined that the federal
25 constitution forbade the imposition of the harshest penalties—those that doom
26 people to die at the hands of or in the custody of the state—upon juvenile offenders
27 because of their diminished culpability and capacity for change. The Court’s

1 decisions were informed by the fast-growing scientific research and based on the
2 principle that the Eighth Amendment’s protection against cruel and unusual
3 punishment “flows from the basic ‘precept of justice that punishment be graduated
4 and proportioned’ to both the offender and the offense.” *Miller v. Alabama*, 567 U.S.
5 460, 469 (2012). This essential concept of proportionality is assessed “according to
6 the evolving standards of decency that mark the progress of a maturing society.” *Id.*
7 at 469-70; *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958).

8 Starting with *Roper v. Simmons*, the Supreme Court established an absolute
9 bar on imposing the death penalty on adolescents who committed their crimes
10 before age 18. 543 U.S. 551, 574 (2005). The Court rested this holding on its
11 recognition of “[t]hree general differences between juveniles under 18 and adults
12 [that] demonstrate that juvenile offenders cannot with reliability be classified
13 among the worst offenders.” *Id.* at 569.

14 “First, as any parent knows and as the scientific and sociological studies . . .
15 tend to confirm, a lack of maturity and an underdeveloped sense of responsibility
16 are found in youth more often than in adults and . . . often result in impetuous and
17 ill-considered actions and decisions.” *Roper*, 543 U.S. at 569 (cleaned up). Second,
18 “juveniles are more vulnerable or susceptible to negative influences and outside
19 pressures, including peer pressure.” *Id.* Third, “the character of a juvenile is not as
20 well formed as that of an adult.” *Id.* at 570. Ultimately, the Court adopted a
21 categorical bar on the death penalty for juveniles, rather than simply allowing
22 youth to be considered a mitigating factor at sentencing, because “[i]t is difficult
23 even for expert psychologists to differentiate between the juvenile offender whose
24 crime reflects unfortunate yet transient immaturity, and the rare juvenile offender
25 whose crime reflects irreparable corruptions.” *Id.* at 573 (citing Laurence Steinberg
26 & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental*
27

1 *Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am.
2 Psychologist 1009, 1014-1016 (2003)).

3 Five years later, in *Graham v. Florida*, the Supreme Court held that the
4 Eighth Amendment “prohibits the imposition of a life without parole sentence on a
5 juvenile offender who did not commit homicide.” 560 U.S. 48, 82 (2010). In so doing,
6 the Court relied not just on developmental psychology, as it had in *Roper*, but also
7 on neuroscience: “Developments in psychology and brain science continue to show
8 fundamental differences between juvenile and adult minds. For example, parts of
9 the brain involved in behavior control continue to mature through late adolescence.”
10 *Id.* at 68 (citing AMA and APA amicus briefs).

11 Two years later, the Court held in *Miller v. Alabama* that “the Eighth
12 Amendment forbids [any] sentencing scheme that mandates life in prison without
13 possibility of parole for juvenile offenders.” 567 U.S. at 479. Under this rule, a
14 sentencing scheme “requiring that all children convicted of homicide receive lifetime
15 incarceration without possibility of parole, regardless of their age and age-related
16 characteristics and the nature of their crimes,” violates “the Eighth Amendment’s
17 ban on cruel and unusual punishment.” *Id.* at 489. An LWOP sentence is excessive
18 for all but the “rare juvenile offender whose crime reflects irreparable corruption.”
19 *Montgomery v. Louisiana*, 577 U.S. 190, 208 (2016).

20 The Court’s holding in *Miller*, like its earlier holdings in *Roper* and *Graham*,
21 “rested not only on common sense—on what ‘any parent knows’—but also on science
22 and social science as well,” including the “fundamental differences between juvenile
23 and adult minds.” *Miller*, 567 U.S. at 471-72. The Court noted that two important
24 consequences flow from these research findings: first, juveniles are less morally
25 culpable than their adult counterparts; and, second, there is an “enhanced . . .
26 prospect that, as the years go by and neurological development occurs, [a juvenile’s]
27 deficiencies will be reformed.” *Id.* at 472 (cleaned up). In making these observations,

1 the Court relied on amici curiae briefs submitted by the American Psychological
2 Association and a group of prominent psychologists, social scientists, and
3 neuroscientists who have devoted their careers to studying adolescent behavior and
4 development. *Id.* at 472 n.5. Citing dozens of peer-reviewed studies, these briefs
5 provided the Court with a comprehensive description of the then-current scientific
6 understanding of adolescent brain development.

7 To synthesize: this line of cases establishes that young people are more
8 impulsive, reckless, and risk-prone than adults, are more susceptible to outside
9 influences, and are more likely to change as they mature into adulthood. Therefore,
10 because of their social, psychological, and neurobiological immaturity, the
11 imposition of extreme punishments on them offends the Eighth Amendment.

1988	2005	2010	2012	2016
<i>Thompson v. Oklahoma</i>	<i>Roper v. Simmons</i>	<i>Graham v. Florida</i>	<i>Miller v. Alabama</i> <i>Jackson v. Hobbs</i>	<i>Montgomery v. Louisiana</i>
Bans the death penalty for juvenile offenders 15 and younger	Bans the death penalty for juvenile offenders 17 and younger	Prohibits mandatory LWOP sentences for juvenile offenders 17 and younger except for cases of murder	Prohibits mandatory LWOP sentences for juvenile offenders 17 and younger for any crime.	Rules that ban of mandatory LWOP sentences for juvenile offenders 17 and younger applies retroactively

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Figure 1: Exhibit 2 at 3

28 Importantly, the Supreme Court’s cases from *Roper* to *Miller* limited the
29 relief they granted to defendants who were younger than 18 at the time of their
30 offenses. But only one case, *Roper*, even commented on whether this limitation was
31 justified, and it provided no empirical justification. Instead, after acknowledging
32 that the “qualities that distinguish juveniles from adults do not disappear when an
33 individual turns 18,” the Court merely asserted that “a line must be drawn.” *Roper*,
34 543 U.S. at 574. At the same time, the Court recognized that the line is not set in
35 stone. Rather, the Court noted that while it had held 17 years earlier in *Thompson*
36 *v. Oklahoma*, 487 U.S. 815, 837-838 (1988), that the Eighth Amendment prohibits
37 the execution of a person under the age of sixteen at the time of his or her offense,

1 “[t]he logic of *Thompson* extends to those who are under 18.” *Roper*, 543 U.S. at 574.
2 In reaching this conclusion, the *Roper* Court rejected its holding in *Stanford v.*
3 *Kentucky*, 492 U.S. 361 (1989), announced the year after it decided *Thompson*, that
4 “the imposition of capital punishment on any person who murders at 16 or 17 years
5 of age . . . does not offend the [Eighth Amendment].” *Id.* at 380.

6 The Court thus recognized that while it may be that “a line must be drawn”
7 for the kind of categorical rule announced in *Roper*, that line must be rational,
8 based on empirical fact, and subject to change as scientific understandings develop
9 and change. *See Moore v. Texas*, 581 U.S. 1, 20 (2017) (holding that when
10 determining whether an inmate’s execution would violate the Eighth Amendment
11 due to intellectual disability, states must be informed by the “medical community’s
12 current standards” that reflect “improved [scientific] understanding over time”).

13 **B. Following *Miller*, the Nevada Legislature enacted statutes**
14 **regulating the sentences and parole eligibility of adolescents**
15 **under 18, while leaving intact harsh sentences for late**
16 **adolescents.**

17 Following *Miller* in 2012, the Nevada Legislature enacted a slew of laws that
18 regulate the sentences and parole eligibility of adolescents under 18.

19 In 2015, the Legislature determined that the maximum punishment that can
20 be meted out to persons who were under 18 at the time of the crime is life
21 imprisonment *with* the possibility of parole. NRS 176.025.

22 If such a person is convicted, the court “shall consider the differences between
23 juvenile and adult offenders, including . . . the diminished culpability of juveniles as
24 compared to that of adults and the typical characteristics of youth.” NRS 176.017
25 (2015). In 2017 (after *Montgomery*, 577 U.S. 190 (2016)), the Legislature amended
26 the law to give courts the discretion to reduce mandatory minimum sentences for
27 such people, if “warranted given the age of the person and his or her prospects for
rehabilitation.” NRS 176.017(2) (2017). It also amended Nevada’s clemency law to

1 provide that persons who were under 18 when they committed an offense and who
2 were sentenced to LWOP may have their sentence commuted to be parole eligible
3 (unlike persons over 18). NRS 213.085 (2017).

4 In other words, Nevada took the promise of *Miller* seriously. Since 2015, no
5 new life-without-parole sentences have been imposed on people who were under 18
6 at the time of their crime. Courts may even reduce the mandatory minimum
7 sentences of such individuals, and they must consider “the diminished culpability of
8 juveniles.” Looking to the extreme sentences of young people that predate 2015,
9 they are at the very least eligible for executive clemency.

10 On the other hand, the Legislature has not extended these protections to late
11 adolescents. In fact, a late adolescent who committed an offense after July 1, 1995,
12 like Johnny Baggett, cannot even ask the Pardons Board to commute his sentence
13 to one that would allow parole, no matter how extraordinary his rehabilitative
14 efforts. NRS 213.085. This exclusion of late adolescents from all protections against
15 excessive punishment is exactly the sort of situation that the Nevada Constitution
16 must address, where politics have failed to protect a highly vulnerable class.

17 **C. The Nevada Constitution is highly protective of the right to be**
18 **free from cruel or unusual punishments, which includes life-**
19 **without-parole sentences imposed on late adolescents.**

20 Nevada’s Constitution prohibits even more than the Eighth Amendment’s
21 “cruel and unusual punishment.” The Nevada Supreme Court has long recognized
22 its ability to find greater constitutional protections under the state constitution
23 than under the federal constitution. *See, e.g., Mack v. Williams*, 522 P.3d 434, 444
24 (Nev. 2022) (explaining that the Nevada Supreme Court is free to interpret the
25 provisions of the Nevada Constitution as it sees fit, “regardless of any similarities
26 between our state and federal constitutions”); *State v. Kincade*, 317 P.3d 206, 208
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1 (Nev. 2013) (explaining “states are permitted to provide broader protections and
2 rights than provided by the U.S. Constitution”).

3 Here, especially, there is cause to construe the Nevada Constitution’s 1864
4 provision more broadly than its 18th-century federal counterpart. The provision,
5 unlike its federal counterpart, is disjunctive, prohibiting “cruel or unusual”
6 punishments. *Compare* Nev. Const. art. 1, § 6, *with* U.S. Const. am. VIII. By giving
7 meaning to each term, the provision independently prohibits both cruel punishment
8 and unusual punishment. *See Anderson v. State*, 865 P.2d 318, 321 (Nev. 1993).¹

9 As explained next, the Nevada Constitution requires courts to strike down
10 punishments that are disproportionate to the offense and offender, especially with
11 respect to the goals of punishment and evolving standards of decency. Under this
12 analysis, a life-without-parole sentence for a person under 21 is unconstitutional.

13 **1. A prison sentence is cruel or unusual if it is**
14 **disproportionate to a person’s culpability and the**
15 **rehabilitative function of criminal punishment, or**
16 **transgresses contemporary standards.**

17 A life-without-parole sentence allows disproportionate retribution to
18 completely override the rehabilitative function of criminal punishment as applied to
19 young people, contrary to the Nevada Constitution.

20 Nevada’s prohibition on “cruel” sentences at least requires that a sentence be
21 proportionate to the offense and the offender, that is, that the sentence not be
22 unduly harsh in light of the goals of punishment. That concern arises with young

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24 ¹*See also* Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of*
25 *Legal Texts* 116, 119 (2012) (describing Conjunctive/Disjunctive Canon and “The
26 Basic Prohibition”: “With the conjunctive list, the listed things are individually
27 permitted but cumulatively prohibited. With the disjunctive list, none of the listed
things is allowed.”); *id.* at 116 (“Hence in the well-known constitutional phrase *cruel*
and unusual punishments, the *and* signals that cruelty or unusualness alone does
not run afoul of the clause . . .”).

1 defendants. For example, the Nevada Supreme Court recognized that a non-
2 commutable life-without-parole sentence imposed on a “quite young defendant”
3 would mean that the defendant “would die in prison, possibly having served sixty or
4 seventy calendar years behind bars.” *Smith v. State*, 802 P.2d 628, 630 (Nev. 1990).
5 “Assuming, without deciding, that the state constitution may, consistent with the
6 United States Constitution” countenance this, “it appears entirely unfair.” *Id.*; *see*
7 *also Naovarath v. State*, 779 P.2d 944, 944 (Nev. 1989) (“All but the deadliest and
8 *most unsalvageable* of prisoners have the right to appear before the board of
9 parole” (emphasis added)). For that reason, the court held that such defendants
10 could seek commutations to parole-eligible sentences—an outcome the law has since
11 barred. NRS 213.085(1). Now the result that the court said “appears entirely unfair”
12 is a reality, triggering the need for state constitutional scrutiny.

13 There is increasing interest in “neglected state constitutional protections
14 against extreme punishments.” Ben Finholt & Kevin Bendesky, *The Neglected State*
15 *Constitutional Protections Against Extreme Punishments*, State Court Report (July
16 21, 2023).² But these rights have not been neglected everywhere, and even where
17 they have been, the tide is turning. Some state courts aptly analyze whether a
18 particular punishment is unlawful through a state constitutional lens. *See, e.g.*,
19 *People v. Bullock*, 485 N.W.2d 866, 877 (Mich. 1992) (explaining the people of the
20 state “have forbidden the imposition of cruel or unusual punishments, and we are
21 duty-bound to devise a principled test by which to enforce that prohibition”). The
22 state constitutions of Michigan, California, North Carolina, and Minnesota, for
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27 ²Available at <https://statecourtreport.org/our-work/analysis-opinion/neglected-state-constitutional-protections-against-extreme-punishments>.

1 example, all mirror Nevada in prohibiting cruel “or” unusual punishments, and
2 courts in all four states have adopted a separate state constitutional approach.³

3 Notably, Michigan courts have recognized that the “or” makes the state
4 constitutional provision broader than the Eighth Amendment. *See, e.g., People v.*
5 *Benton*, 817 N.W.2d 599, 607 (Mich. Ct. App. 2011). The state constitutional
6 provision incorporates the Eighth Amendment’s gross disproportionality test but
7 adds an inquiry as to whether the punishment satisfies the goal of rehabilitation.
8 *See, e.g., People v. Dipiazza*, 778 N.W.2d 264, 273 (Mich. Ct. App. 2009)
9 (“Determining whether a punishment is cruel or unusual requires consideration of
10 the gravity of the offense, the harshness of the penalty, a comparison of the penalty
11 to penalties for other crimes in this state, a comparison of the penalty to penalties
12 imposed for the same offense in other states, and the goal of rehabilitation.”). In
13 essence, the Michigan approach shadows the Eighth Amendment but incorporates
14 the purposes of punishment, particularly rehabilitation, into its analysis. As such,
15 while Michigan courts reject many state constitutional challenges, the courts have
16 found it possible for non-capital punishments to be cruel or unusual. *See, e.g.,*
17 *Parks*, 987 N.W.2d at 182 (holding “it is particularly antithetical to our
18 Constitution’s professed goal of rehabilitative sentences to uniformly deny this
19 group of defendants the chance to demonstrate their ability to rehabilitate
20 themselves”); *People v. Lorentzen*, 194 N.W.2d 827, 834 (Mich. 1972).

21 Michigan is not alone. North Carolina’s Supreme Court determined that
22 sentencing “a juvenile who can be rehabilitated to life without parole is cruel
23 because it allows retribution to completely override the rehabilitative function of
24

25 ³*See* Cal. Const. art. I, § 17; Mich. Const. art. I, § 16; Minn. Const. art. I, § 5;
26 N.C. Const. art. I, § 27; *State v. Kelliher*, 873 S.E.2d 366, 382 (N.C. 2022); *People v.*
27 *Baker*, 229 Cal. Rptr. 3d 431, 442-43 (Cal. Ct. App. 2018); *State v. Vang*, 847 N.W.2d
248, 263 (Minn. 2014); *People v. Benton*, 817 N.W.2d 599, 607-08 (Mich. Ct. App.
2011).

1 criminal punishment.” *State v. Kelliher*, 873 S.E.2d 366, 386 (N.C. 2022). Under the
2 Alaska Constitution, “the principles of reformation and necessity of protecting the
3 public constitute the touchstones of penal administration.” *State v. Chaney*, 477
4 P.2d 441, 444 (Alaska 1970). In Washington, “we look to whether the penological
5 goals of retribution, deterrence, incapacitation, and rehabilitation are served by this
6 sentence.” *State v. Bassett*, 428 P.3d 343, 353 (Wash. 2018). Illinois courts, too, must
7 balance the goal of rehabilitation with the goal of retribution, making punishments
8 more likely to be seen as disproportionate. *See, e.g., People v. Pace*, 44 N.E.3d 378,
9 404-05 (Ill. App. Ct. 2015) (explaining that the proportionate penalties clause calls
10 for the balancing of the retributive and rehabilitative purposes of punishment; that
11 balancing, in turn, requires that the court engage in an inclusive, holistic
12 consideration of all the factors in aggravation and mitigation).

13 Massachusetts’ state constitution also uses the disjunctive phrasing. Mass.
14 Const. pt. 1, art. XXVI (“No magistrate or court of law, shall demand excessive bail
15 or sureties, impose excessive fines, or inflict cruel or unusual punishments.”).
16 Applying that provision, Massachusetts’ highest court looks “to precedent as well as
17 what contemporary standards of decency, as defined by objective indicia, require”
18 when evaluating “the proportionality of a mandatory life sentence imposed on a
19 category of offenders (here, emerging adults).” *Mattis*, 224 N.E.3d at 418. Applying
20 its state constitutional approach, that court held that sentencing late adolescents to
21 life-without-parole is categorically cruel or unusual.

22 Nevada should extend similar constitutional protections to late adolescents
23 within this state. Under the state constitution, courts should (1) assess whether a
24 sentence proportionately satisfies the goal not only of retribution, but also of
25 deterrence, incapacitation, and rehabilitation, and (2) analyze contemporary
26 standards of decency. That is especially needed when the category of defendants are
27

1 those whom contemporary science shows are overwhelmingly likely to be deterred,
2 incapacitated, and rehabilitated.

3 **2. Current scientific research on adolescent brain**
4 **development demonstrates that an absolute cutoff at**
5 **age 18 for constitutional scrutiny of life-without-**
6 **parole sentences cannot be justified.**

6 Looking at proportionality, a life-without-parole sentence is more severe, and
7 therefore more disproportionate, for late adolescents because the sentence will last
8 a greater portion of their life. They are also less culpable for criminal behavior than
9 adults due to their immature ability to exercise cognitive control. As for their future
10 prospects, due to their ongoing neurological development, late adolescents are in a
11 state of flux and expected to change for the better. And as for the minuscule number
12 of individuals who ultimately will not rehabilitate, contemporary science shows that
13 due to this developmental state of flux, it is impossible for courts to identify who
14 they will be. For all these reasons, a life-without-parole sentence allows
15 disproportionate retribution to completely override the rehabilitative function of
16 criminal punishment as applied to young people, contrary to the Nevada
17 Constitution’s prohibition on cruel or unusual punishments.

18 As discussed next, there is no justification for limiting constitutional
19 protections to those under 18. Neuroscience and developmental psychology show
20 that the hallmarks of adolescence—immaturity, impulsivity, and risk-taking—
21 persist into late adolescence. Emotion and arousal disrupt parts of the brain that
22 regulate behavior. Late adolescents are also particularly responsive to
23 environmental factors, like home life, socio-economic status, substance abuse,
24 trauma, and peers. As shown by their responsiveness to environments, late
25 adolescents have significant brain plasticity and capacity for change. This
26 undermines any justification for life-without-parole sentences for those under 21.

1 **a. The hallmarks of adolescence—immaturity,**
2 **impulsivity, and risk-taking—persist into late**
3 **adolescence.**

4 Insights from the fields of neuroscience and developmental psychology show
5 that late adolescents between ages 18 and 21 are significantly impaired in their
6 ability to exercise cognitive control. Under *Miller*, the “hallmark features” of
7 adolescence include immaturity, impulsivity, and heightened risk-taking. Ex. 3 at
8 14. These characteristics persist in the neural and psychosocial development of late
9 adolescents through at least age 21. *See* Ex. 12 at 3-6; Ex. 3 at 14-20.

10 As can be seen on a neural level, adolescents’ ongoing brain development
11 impacts decision-making and risk-taking in different ways in late adolescence.
12 Three functional brain networks peak in sensitivity during adolescence, including
13 late adolescence, then decline. These include the social brain network, related to
14 orientation toward social stimuli; the affective salience network, related to
15 sensitivity to pleasurable and aversive experiences; and the motivational relevance
16 network, or the reward network. 11/13/2025 Tr. at 21-22.

17 Regarding the latter, for example, “the reward circuitry of the brain and the
18 nucleus accumbens, in particular, is the region of the brain that helps us feel
19 pleasure and makes us feel rewarded. And there is reorganization of this network
20 around the time of puberty that results in this heightened orientation or this
21 increased tendency to seek out exciting, novel experiences. It’s involved in thrill
22 seeking, reward seeking, exploring one’s environment, peer related activities, and
23 reward related activity. . . . [I]t peaks during the adolescent period.” 11/13/2025 Tr.
24 at 25. Not only does it peak, but it is in fact “hyperactivated in adolescents,” in ways
25 that it is not for children or adults. 11/13/2025 Tr. at 21.

26 “[S]imilar to the reward-related circuitry, the threat-related regions of the
27 brain, for example, the amygdala are also showing this curvilinear pattern peaking

1 in the adolescent period. So adolescents are showing this heightened sort of threat
2 and emotion processing in the brain as well, similar to the trajectory of that reward
3 related network.” 11/13/2025 Tr. at 28-29.

4 Contrast this with the cognitive control circuitry, which “helps us make
5 decisions, plan and think about the future, engage in regulation.” 11/13/2025 Tr. at
6 19; *see* Ex. 3 at 16. This circuitry matures far slower than the reward circuitry, with
7 development continuing into emerging adulthood. 11/13/2025 Tr. at 28. “[T]his is
8 one of the most robust findings, that the prefrontal cortex is still developing well
9 into late adolescence. It is the last region of the brain to develop.” *Id.*

10 Synthesized, this means that “what we know of . . . typical development . . . is
11 that there’s an imbalance that happens and continues through late adolescence,
12 which is you have this really intense amount of information and processing in
13 regions of the brain responsible for emotions and motivational processing, so reward
14 and punishment. And you have an underdeveloped aspect of the brain, of the
15 prefrontal cortex, which is responsible for again, kind of controlled, thoughtful,
16 deliberate behavior. And so there’s this imbalance. There’s a lot of information
17 coming from the emotion parts of the brain and less information feeding back that
18 has to do with deliberative decision making. So that’s typical adolescents. Most
19 adolescents are walking around with this imbalance.” 11/14/2025 Tr. at 21.

20 Indeed, neuroimaging has shown that the processes allowing for efficient
21 communication between these networks of the brain are not mature in someone
22 under 21. Ex. 12 at 5. Thus, the prefrontal cortex’s ability to balance the active
23 reward circuitry and prevent impulsive behavior is not fully developed in late
24 adolescents, and it creates a “developmental window of vulnerability” where late
25 adolescents exhibit increased risk-taking and limited cognitive control. Ex. 12 at 5-6
26 & fig.2 (showing the “temporal gap” created between childhood and adulthood in
27 reward-related brain function and cognitive control).

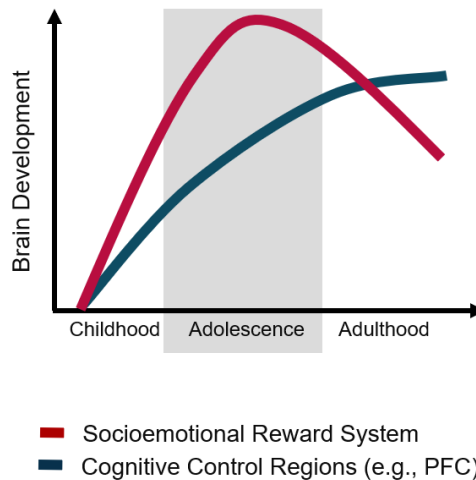


Figure 2: Ex. 20, Slide 15

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11 These profound imbalances don't just have theoretical consequences. Dr.
12 Robert Kinscherff uses the age-crime curve and other studies to show how late
13 adolescents really do engage in more risky behavior and commit more crimes than
14 adults. "The age-crime curve essentially describes a phenomenon in which all kinds
15 of risky behavior begins to increase as people enter puberty. It then peaks between
16 about 16 to 20 or 21, and then in the early 20s begins to drop off substantially,
17 largely through self-desistance as opposed to desistance as a result of punishment,
18 official formal punishment." 11/13/2025 Tr. at 77.

19 This risky decision-making and lack of judgment may be attributed to late
20 adolescents' psychological immaturity. 11/14/2025 Tr. at 15. Psychological maturity
21 encompasses three criteria: "Temperance is basically our idea to control our
22 impulses and to suppress anger. Perspective is a person's capacity to think about
23 other people or represent other people's thoughts and feelings. And responsibility
24 relates to the idea of that you take responsibility for your behavior, but also that
25 you resist peer influence." *Id.* "[T]hose domains of temperance, perspective, and
26 responsibility don't stabilize until about age 25. So during that period of late
27 adolescence, you continue to see less [psychological] maturity than [in adulthood]."

1 11/14/2025 Tr. at 15-16. As a result, much like the temporal gap described by
2 neuroscientists, an “immaturity gap” emerges, which demonstrates how
3 psychosocial development lags behind intellectual ability.

4 All told, because of the heightened activation of different functional brain
5 networks, late adolescents engage in increased sensation-seeking behavior,
6 unchecked by a still developing cognitive-control brain function. This peak in
7 impulsivity exists in mid-to-late adolescence, demonstrating the innately human
8 nature of brain development. Indeed, as a person matures into adulthood, scientists
9 expect to see decreases in risk-taking; impulsivity; sensation-seeking; the influence
10 of threats, rewards, and other emotional information; and the influence of peers and
11 social information. 11/13/2025 Tr. at 52. They expect executive function and
12 cognitive control to become more proficient, along with emotional regulation. *Id.*
13 General personality traits, such those having to do with emotional stability and
14 conscientiousness, are expected to change dramatically. 11/14/2025 Tr. at 29. And
15 these natural changes may be further enhanced by different kinds of interventions,
16 treatments, and environmental changes. 11/13/2025 Tr. at 52.

17 As converging data from neuroscience, public health research, and
18 developmental psychology shows, the hallmarks of adolescence—immaturity,
19 impulsivity, and risk-taking—persist into late adolescence.

20 **b. Emotional arousal uniquely inhibits adult-like**
21 **judgment in late adolescents.**

22 Late adolescents exercise even less control and judgment when in states of
23 psychological arousal—a term defined by heightened emotions, positive or negative.
24 One defining characteristic of late adolescence is an impaired ability to control
25 immaturity and impulsivity in a state of arousal. *See Ex. 3 at 17-18, 33-34.* An
26 emotional state will “uniquely impair[]” a late adolescent in a way that an adult
27 would not be similarly impaired. *See Ex. 12 at 6-7.*

1 Because of the vulnerabilities demonstrated by the temporal and immaturity
2 gaps, emotional situations disrupt the ability to self-regulate and exercise cognitive
3 control. Ex. 12 at 6. This difference is described in the scientific community as “cold
4 cognition” versus “hot cognition,” where cold cognition describes decision-making in
5 calm, non-arousing environments and hot cognition is decision-making in
6 emotionally aroused or stressful conditions. 11/14/2025 Tr. at 17. “[L]ate adolescents
7 show poor hot executive function, meaning that they are showing worse capacity to
8 initiate, plan, or change behavior in emotionally charged situations compared to
9 adults.” 11/14/2025 Tr. at 18. They also show “deficits in cold executive
10 functions . . . when there’s a lot of cognitive demand.” *Id.*

11 Under this framework, studies demonstrate on a neural level that there is no
12 meaningful way to distinguish an under-18-year-old from an 18-21-year-old in
13 periods of hot cognition, even if the brain has continued to develop in other ways
14 past age 18. Describing the 2017 study “At Risk of Being Risky,” Dr. Telzer
15 explained it analyzed “a very large sample, 200 participants. These were individuals
16 aged 10 to 25 years. And rather than just looking at brain networks on average,
17 they looked at it in this emotionally charged situation.

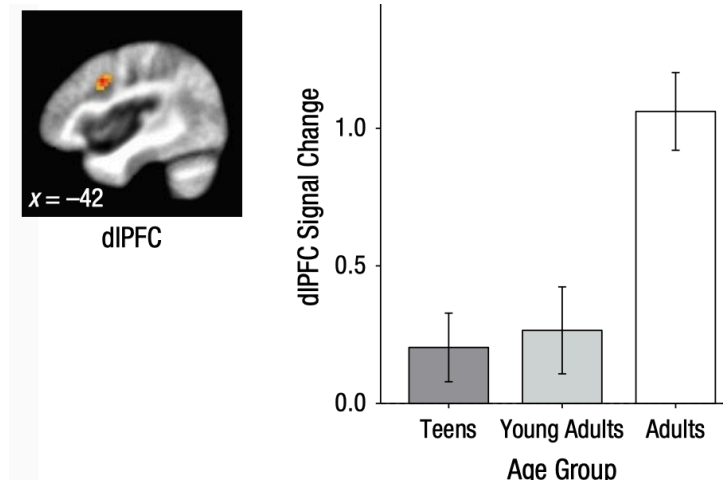
18 “And what they found is that adolescents’ brains, the connectivity in their
19 brains resembled that of younger teens. And this immature connectivity pattern in
20 the adolescents’ brains was associated with a greater likelihood of engaging in risky
21 behaviors that extended into young adulthood. And this was especially pronounced
22 in that late adolescent period, so the 18-to-21-year age range.” 11/13/2025 Tr. at 37.

23 In addition, Dr. Telzer highlighted the 2016 Cohen study, finding that
24 negative emotional arousal impairs cognitive control in those aged 13-21 in a way
25 that it does not in adults. Ex. 12 at 6-7. The study measured participants’ ability to
26 exercise cognitive control in positive, negative, and neutral emotional cues.
27 11/13/2025 Tr. at 38. The study found that “when the context is highly emotional or

1 threatening . . . cognitive control is impaired and resembles that of younger
2 adolescents.” 11/13/2025 Tr. at 38-39.

3 Even more interesting, the participants “did this [cognitive control] task
4 while their brains were being scanned. And what [researchers] found was that
5 similar to their impaired cognitive control, their prefrontal cortex was also showing
6 impaired activation. So both the mid- and late-adolescent group showed less
7 effective recruitment of the prefrontal cortex compared to adults. Adults engaged
8 the prefrontal cortex during that threatening condition, whereas the late adolescent
9 group resembled that of mid adolescent.

10 “[T]his is evidence that their prefrontal circuitry is resembling more of that
11 of . . . mid adolescents. The late adolescent group resembles that of mid adolescents
12 in a threatening context. And this helps us to understand why their cognitive
13 control is impaired. Their prefrontal cortex is not coming online to help them engage
14 in that effective cognitive control.” 11/13/2025 Tr. at 40.



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23 *Figure 3: Ex. 20, Slide 24 (showing less effective recruitment of the prefrontal cortex in adolescents)*

24 The takeaway here is, that while late adolescents may demonstrate some
25 maturity and impulse control in calm, undemanding environments, they are much
26 less equipped to make well-reasoned decisions in emotionally arousing ones.

1 **c. Environmental factors impact late-adolescent**
2 **behavior, especially in the presence of peers.**

3 Adolescents are shaped by and are responsive to their surroundings,
4 including home life, socio-economic status, substance abuse, trauma, and peer
5 influence. Ex. 3 at 21-30. These social environments can positively or adversely
6 impact decision-making. See Ex. 12 at 8-9. Particularly notable is the influence of
7 peers; studies have shown that peer influence, and even peer presence alone, will
8 substantially increase risk-taking behavior in adolescents. See Ex. 3 at 29-30.

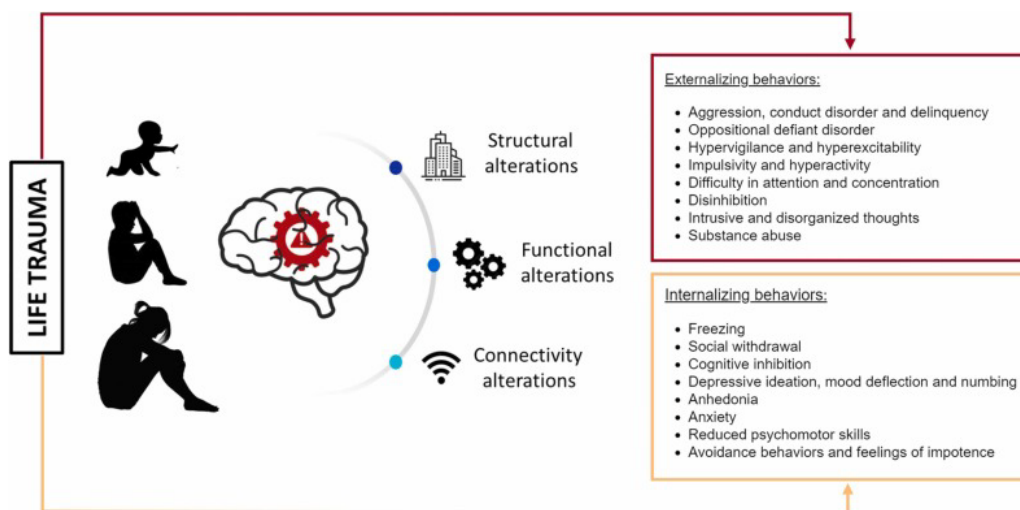
9 First, home life and the conditions that late adolescents grow up in impact
10 brain development. “[F]amily and home life has a huge impact on childhood and
11 adolescence. So one’s environment absolutely would influence someone’s behavior
12 during the late adolescent phase. It’s particular though, that *early* life experiences
13 in a family and home impacts *later* adolescent behavior.” 11/14/2025 Tr. at 16.

14 The experience of different adversities is high on the list of factors that affect
15 or delay brain maturation. “[G]lobally, that would be the kind of broad conclusion
16 that we take a typical adolescent and we see there’s an imbalance. And then you
17 take an adolescent who has experienced early life adversity or been exposed to
18 violence, and there’s an exaggeration in that imbalance, and as a result, a deficit in
19 controlled behavior and sound decision making.” 11/14/2025 Tr. at 23.

20 That reflects that when adolescents experience childhood adversity in their
21 families, studies suggest that neural development is disrupted, which leads to
22 greater risk-taking. Ex. 12 at 8. Some common adverse experiences include
23 instability in the home, limited access to education or healthcare, trauma and
24 violence, poverty, neglect, and discrimination. Ex. 3 at 21-24. These experiences of
25 deprivation and threat may impact brain development, with deprivation (of
26 resources, affection, support, etc.) associated with limiting executive function, and
27 threat (of physical, mental, or emotional harms) with limiting emotional regulation.

1 *Id.* at 23. “[B]ut there’s also evidence that there are some youth who experience
2 both, meaning that they’re experiencing adversity of both threat and deprivation
3 and those used to the ones [sic] who show substantial deficits in executive function
4 as well as emotion regulation difficulties.” 11/14/2025 Tr. at 22. These experiences
5 don’t just impact the child in the moment, but extend to later in life because of the
6 experience’s impact on neural development. *See* Ex. 12 at 8-9; Ex. 3 at 22.

7 Adverse factors in the home and neighborhood include socio-economic status
8 and exposure to violence in the community. Individuals “who grow up in poverty,
9 particularly in concentrated areas of poverty, so it’s not only families that might
10 have low income but the broader neighborhood might reflect physical and social
11 decay, we see an increased deficit in executive function capacity, particularly, again,
12 not executive functions.” 11/14/2025 Tr. at 23-24. “Increasingly, psychologists are
13 [also] beginning to study exposure to community violence and its psychological
14 impact over the past decade or so. And what we tend to see is that exposure can
15 really affect people’s threat processing or ability to not only detect threat, but
16 perhaps even over generalize the threat in their environment. So they think things
17 are threatening even when they’re not.” 11/14/2025 Tr. at 22.



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1 Substance use is another factor that affects adolescent brain development by
2 impairing executive function. “[O]ne very important theme is that we tend to see
3 substance use and misuse increase during adolescence and peak during late
4 adolescence. We also tend to see that this is exaggerated, particularly for young
5 people who started using substances earlier.” 11/14/2025 Tr. at 24-25. “[T]he timing
6 or the initiation of substance use has a substantial impact on brain development
7 later, including during that late adolescent phase.” 11/14/2025 Tr. at 25.

8 Finally, as has been extremely well-documented, a key outside influence on
9 late-adolescent decision-making is peer influence. Many studies show that risk-
10 taking is heightened when adolescents are around peers, a phenomenon not
11 occurring in adults. Ex. 12 at 7; Ex. 3 at 28. “This is one of the most replicated
12 findings across the field that in the presence of peers, adolescents engage in more
13 risk-taking behavior. Children and adults don’t show this high peer influence effect.
14 So many crimes are committed by adolescents. In the end they involve the presence
15 of peers. Peer influence, even just a peer being present is enough to increase an
16 adolescent risk-taking. And again, this is because of the way the brain is developing
17 where they have this heightened social salience. Peers are very, very salient at a
18 time of heightened reward-related activation as well.” 11/13/2025 Tr. at 43.

19 Unsurprisingly, when peers are not only present, but also “endorse or sort of
20 egg on their peers . . . there is an even greater increase in risky behavior.”
21 11/13/2025 Tr. at 44. There is even a phenomenon called “deviancy training”:
22 “across time, when adolescents were around their peers who sort of encouraged or
23 discussed or talked positively about delinquent behaviors, what they referred to as
24 deviancy training, longitudinally, across time, adolescents who had peers who were
25 engaging in that kind of delinquency training showed increases in delinquent and
26 risky behaviors themselves.” 11/13/2025 Tr. at 44-45.

1 As both Dr. Baskin-Sommers and Dr. Telzer explained, environmental factors
2 impact late-adolescent behavior, especially in the presence of peers.

3 **d. Brain plasticity in late adolescents allows for a**
4 **heightened capacity for change, even in those**
5 **with early signs of personality pathology.**

6 Brain plasticity supports two key conclusions about late adolescence: higher
7 neural sensitivity during periods of plasticity “enhances the vulnerabilities for risk-
8 taking, . . . but also creates a window of opportunity for prosocial learning and
9 adaptation.” Ex. 3 at 40. This means that the late-adolescent brain is primed for
10 rehabilitation despite past adversity. Ex. 12 at 9-10; Ex. 3 at 40-45.

11 The late-adolescent brain features significant neural plasticity, which is “the
12 brain’s ability to reorganize in response to experience.” Ex. 12 at 9-10 & fig.3.
13 Neuroplasticity peaks in early infancy and again in adolescence. 11/13/2025 Tr. at
14 50. “[N]europlasticity is this idea that our brains take a very long time to develop
15 and are very changeable and modifiable. Our brains are the slowest—have one of
16 the slowest rates of development of all species. We need literally decades to reach
17 full maturity. And this is meant to be adaptive.” 11/13/2025 Tr. at 48-49. In
18 practice, “this means that despite experiencing some adversities in mid adolescence,
19 the brain continues to be plastic across the adolescent period and has the ability to
20 change. So the effects of adversity on the brain are not permanent. There are
21 changes in brain function that can be reversed. After changes in the social
22 environment.” 11/13/2025 Tr. at 49-50.

23 Dr. Baskin-Sommers explains what this looks like from a developmental
24 psychology perspective. “[T]here continues to be substantial behavioral change
25 throughout adolescence, including late adolescence. For some, that happens through
26 natural change over time. So, for example, some of the behaviors, like aggression
27

1 and impulsivity can begin to peak during late adolescence and then precipitously
2 decline. That's what we would call kind of natural development or desistance.

3 "For certain mental health problems, we tend to see an increase in recovery
4 following the late adolescent period and that's what we would mean by change over
5 time. We also tend to see, again, if targeted treatments are given earlier in
6 someone's life, childhood, including adolescence and late adolescence, then we often
7 see better outcomes." 11/14/2025 Tr. at 28.

8 Even early signs of personality pathology are not deterministic in
9 adolescents. Here, Dr. Baskin-Sommers' full explanation on this critical topic is
10 instructive: "[W]e tend to see general personality traits change quite a bit during
11 adolescence and late adolescence. So general personality traits could have to do with
12 emotional stability or someone's level of conscientiousness, like how much they
13 follow the rules or how thoughtful they are in kind of considering others. So that
14 changes substantially through adolescence and late adolescence. . . .

15 "We tend to see a similar trend in what we would call personality pathology.
16 So traits that are more extreme and problematic in their behavior and outcome.
17 [W]e see that even for the most extreme traits, like psychopathic traits or callous
18 [un]emotional traits, ones that are really associated with violations of social norms,
19 and lying, and deceit, and threat, that the vast majority of young people, including
20 late adolescents, who are higher on those traits, decrease over time even without
21 intervention. And there are some who continue to stay stable over time, but that
22 there are effective interventions for then changing their behavior.

23 "[T]here's actually very little evidence . . . that suggests that personality
24 pathology or general personality traits are unchangeable. And that's been a huge
25 advance in science. We used to think these things were stable, and now it's very
26 clear that they're not." 11/14/2025 Tr. at 29. In other words, many of the traits and
27 behaviors that may seem fixed are actually evolving characteristics in a late

1 adolescent. Ex. 3 at 44. Even “callous-unemotional/psychopathic traits decrease
2 with age in the majority of youth whether justice involved or not.” Ex. 2 at 14.

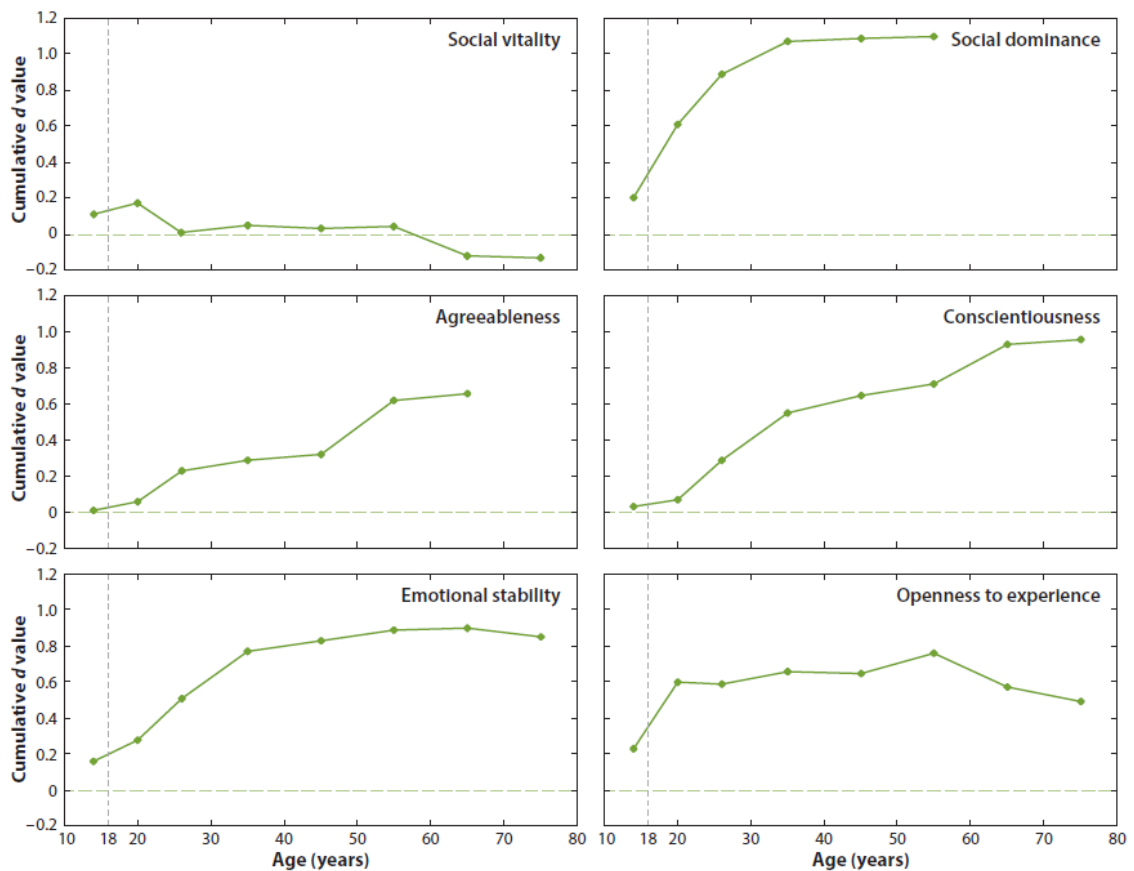
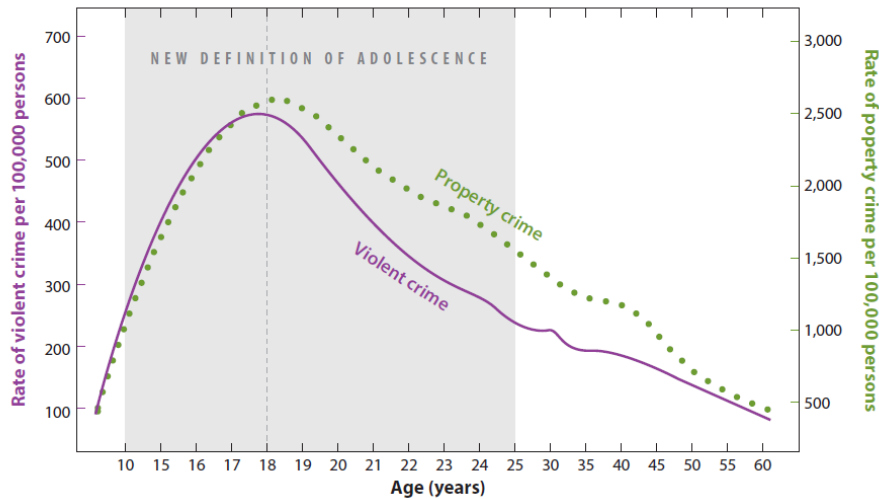


Figure 5: Exhibit 2 at 13

18 Putting all this together, to a much greater extent than adults, late
19 adolescents’ behaviors and personalities are malleable, shaped by continuing life
20 experience. Ex. 3 at 41-42, 44. One implication of this is that poor decisions made by
21 late adolescents are not reflective of their identity. Research shows that late
22 adolescents are more likely to grow out of the risk-taking behaviors that put them
23 in bad situations. *See id.* at 44. Science supports that most late adolescents will
24 mature with increased self-regulation in the brain, and that most misconduct is
25 reflective of the “transient immaturity” of adolescence. *Id.*

26 The other implication is that late adolescents are primed for rehabilitation.
27 Most people who commit violent crimes in late adolescence will not continue to

1 engage in criminal conduct as adults. 11/13/2025 Tr. at 85. In fact, “violent crime
2 desists more rapidly upon entering the 20s than does property and drug possession
3 crimes.” *Id.* at 78. Moreover, the nature of the “crime itself is not a good reliable
4 predictor of ultimate capacities for rehabilitation.” *Id.* at 85. It’s impossible to
5 predict future riskiness “literally as the tide of risk is going out.” *Id.* at 90.



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Figure 6: Exhibit 2 at 12

16 That has been shown concretely in the “Philadelphia Experience,” a study of
17 recidivism published in 2020. In the aftermath of *Miller*, Philadelphia resentenced
18 269 “juvenile lifers”—people previously serving life-without-parole sentences
19 imposed for their adolescent criminal behavior. Ex. 1 at 2. All had been convicted of
20 murder. “Sixty-two percent of the juvenile lifers were convicted of 1st degree
21 murder and 38% were convicted of 2nd degree murder.” *Id.* at 6. “The juvenile lifer
22 was the primary actor in 82% (n = 220) of the cases.” *Id.* at 8.

23 Of this cohort, at the time of the paper’s publication, 174 had been released.
24 The data showed something remarkable: only “[s]ix (3.5%) have been re-arrested.
25 Charges were dropped in four of the cases and two (1%) resulted in new convictions
26 (one for Contempt and the other for Robbery in the Third Degree). In comparison,
27 nationally, an estimated 30% of individuals convicted of homicide offenses are

1 rearrested within two years of release.” *Id.* at 2. In other words, if this cohort had
2 not been resentenced and released, all would have been serving perpetual prison
3 sentences that would not have increased public safety one iota.



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13 *Figure 7: Exhibit 1 at 11*

14 At the same time, it must be remembered that Americans don’t bear the
15 brunt of these extreme sentences equally, likely because Black youth may be
16 perceived as older and more culpable than white youth. Ex. 7 at 4, 8-9. A shocking
17 “two thirds (66%) of people under 26 years old sentenced to LWOP are Black
18 compared with 51% of persons sentenced to LWOP beyond this age.” *Id.* “[B]eing
19 Black *and* young has produced a substantially larger share of LWOP sentences than
20 being Black alone. This fact reinforces the growing understanding that extreme
21 sentences disproportionately impact Black Americans.” *Id.*

22 The scientific evidence converges to show that late adolescents as a group
23 may be readily deterred, incapacitated, and rehabilitated through less extreme
24 measures than perpetual imprisonment. A life-without-parole sentence is more
25 severe, and therefore more disproportionate, for them because the sentence will last
26 a greater portion of their life, and they are less culpable for criminal behavior than
27

1 adults. They are also more capable of change and rehabilitation. This undermines
2 any justification for life-without-parole sentences for people under age 21.

3 **3. Many Nevada laws today, in a wide range of relevant**
4 **domains, draw the line between child and adult at 21.**

5 While the *Roper* Court was correct that age 18 is “where society draws the
6 line for many purposes between childhood and adulthood,” *Roper*, 543 U.S. at 574,
7 18 is not society’s—or Nevada’s—sole age of majority.

8 In fact, it is not even the historic age of majority. As the Washington
9 Supreme Court recognized, “[t]wenty-one had been the ‘near universal’ age of
10 majority in the United States from its founding until 1942 when ‘wartime needs
11 prompted Congress to lower the age of conscription from twenty-one to eighteen, a
12 change that would eventually lead to the lowering of the age of majority generally.’”
13 *Monschke*, 482 P.3d at 281 (citing Vivian E. Hamilton, *Adulthood in Law and*
14 *Culture*, 91 Tulane L. Rev. 55, 57 (2016)); *see also Horsley v. Trame*, 808 F.3d 1126,
15 1130 (7th Cir. 2015) (explaining that “[d]uring the founding era, persons under 21
16 were considered minors;” “[t]he age of majority was 21 until the 1970s”). “[S]etting
17 the age of majority at eighteen was an ill-conceived move set in motion by the
18 wartime need to lower the draft age and facilitated by what was a subsequent
19 historical aberration—the rapid transition to adulthood that occurred during a
20 postwar industrial economy that enabled young people with few skills to earn high
21 wages, thereby enabling them to marry and establish households at young ages.”
22 Hamilton, *supra*, at 60. That contrasts with “young people today,” who “come of age
23 in a cultural and economic milieu that prolongs their attainment of the traditional
24 markers of adulthood.” *Id.* at 55.

25 Thus, in Nevada, even while 18 establishes the presumptive age of majority,
26 21 remains the age cutoff for many privileges and responsibilities of adulthood. In
27 some instances, the age has been raised from 18 to 21 as our scientific and real-

1 world understanding of late adolescence has grown, especially for the kinds of
2 activities that require good judgment under conditions of hot cognition. Below are
3 some specific areas implicating conditions of hot cognition, where Nevada draws the
4 line—or redrew the line—at 21:

- 5 • **Alcohol:** Nevada has a minimum drinking age of 21. NRS 202.020. The
6 National Minimum Drinking Age Act of 1984 reduced the amount of federal
7 highway funding to states that did not have a minimum purchasing age of 21.
8 *See South Dakota v. Dole*, 483 U.S. 203, 205 (1987). This Act was passed on
9 the recommendations of a presidential commission formed to study the
10 causes of alcohol-related highway accidents and fatalities. *Id.* at 209.
11 However, Nevada’s legal drinking age has been 21 long before the Act was
12 passed. Nev. Compiled Laws § 10594.02 (1943); *see also* Nev. Assembly Bill
13 26, 56th Leg., Reg. Sess. (Nev. 1969).
- 14 • **Firearm:** To be issued a permit to carry a concealed handgun, a person must
15 typically be at least 21 years of age. NRS 202.3657. Under the Gun Control
16 Act of 1968, those under 21 cannot purchase handguns. Nineteenth-century
17 Nevada prohibited those under 21 from even “wear[ing] or carry[ing] . . .
18 dangerous or deadly weapons[],” including pistols. 1885 Nev. Stat. 51.
- 19 • **Police officer:** NRS 289.510 and NAC 289.100 require a person to be at
20 least 21 at the time of appointment to become a peace officer.
- 21 • **Tobacco:** Initially, the legal age to purchase tobacco was 18, but Nevada
22 raised the age to 21 to align with federal law. *See Nevada Tobacco 21 Fact*
23 *Sheet*, Nev. Div. of Public and Behavioral Health.⁴ Businesses are prohibited
24 from distributing or even offering to sell tobacco and nicotine products to any
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26
27 ⁴Available at <https://gethealthyclarkcounty.org/wp-content/uploads/2024/04/Tobacco-21-FAQs-Fact-Sheet.2.pdf>.

1 person under the age of 21. NRS 370.521. The statute shifts the burden from
2 the person purchasing the products to the business providing it, absolving
3 those under 21 from any liability under the statute.

- 4 • **Marijuana:** Those over 21 have several liberties when it comes to marijuana
5 in Nevada. They can possess, deliver, produce, as well as help another in the
6 possession, delivery, and production of marijuana. NRS 678D.200. Those
7 under 21, however, are prohibited from doing so.
- 8 • **Gambling:** NRS 463.350 prohibits people under the age of 21 from gambling
9 and loitering where gambling takes place. A limited exception exists for
10 employees.
- 11 • **Holding a government position:** Under NRS 218A.200, a person is not
12 eligible to be elected or appointed to office as a legislator unless they reached
13 age 21 by the time of election or appointment. To run for Governor in Nevada,
14 the minimum age is 25. NRS 223.010.
- 15 • **Foster care:** In Nevada, youth who leave foster care after age 18 but under
16 21 and all youth who exit foster care after age 16 and do not reunify with
17 their parents are eligible for referral to independent living services until age
18 26. *Extension of Foster Care Beyond Age 18—Nevada*, Child Welfare
19 Information Gateway (March 2022).⁵ Those 18 and above may remain under
20 the jurisdiction of the court up to age 21 and remain eligible for financial
21 support and other services to assist them with their transition to self-
22 sufficiency. Additionally, all youth who age out of foster care are covered by
23 Nevada’s Aged-Out Medicaid program. Those who exited care in another
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27 ⁵Available at <https://www.childwelfare.gov/resources/extension-foster-care-beyond-age-18-nevada/>.

1 state prior to coming to Nevada are eligible until age 21, while those who
2 exited care in Nevada are eligible up to age 26.

3 These examples show that Nevada has set the line at 21 for many adult
4 privileges and obligations—especially those that require sound judgment under
5 conditions of hot cognition. The State takes a far more paternalistic approach to
6 regulating the conduct of late adolescents than it does to regulating the conduct of
7 adults, and it grants late adolescents benefits that it does not to adults.

8 **4. The Court should consider developments in other**
9 **jurisdictions and countries because they reflect**
10 **evolving standards of decency.**

11 Other jurisdictions are increasingly providing sentencing protections for late
12 adolescents and young adults, recognizing that key differences in their psychology
13 support a rehabilitation-focused approach. These developments should inform the
14 Court’s analysis of evolving standards of decency.

15 For example, second-look acts, such as the one in Washington, D.C., provide
16 opportunities for incarcerated people who were under 25 when they committed an
17 offense to have their sentence reduced. Ex. 7 at 12; *see also Mattis*, 224 N.E.3d at
18 231 (describing developments in other states, including Illinois, which ended life-
19 without-parole for most people under 21); Conn. Gen. Stat. Ann. § 54-125a(g)
20 (providing that people under 21 who were sentenced to extreme sentences before
21 2005 must be eligible for parole); Becky Feldman, *The Second Look Movement: A*
22 *Review of the Nation’s Sentence Review Laws*, Sentencing Project (May 15, 2024).⁶
23 Jurisdictions in at least three states (Illinois, California, and New York) have
24 created emerging adult specialty courts, and others (Mississippi, Wisconsin, and
25 California) have established emerging adult units in their prison systems. Karen

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27 ⁶Available at <https://www.sentencingproject.org/reports/the-second-look-movement-a-review-of-the-nations-sentence-review-laws/>.

1 Lindell & Katrina Goodjoint, *Rethinking Justice for Emerging Adults: Spotlight on*
2 *the Great Lakes Region*, Juvenile Law Center, at 16-17 (Sept. 2, 2020).⁷ At least
3 thirteen states (Alabama, California, Colorado, Florida, Georgia, Illinois, Indiana,
4 Michigan, New Jersey, New York, South Carolina, Vermont, and Virginia) have
5 created a separate legal category of “youthful offender”—criminal defendants in
6 their late teens or early twenties who, depending on the state, are eligible for more
7 lenient sentencing options, potential expungement of criminal records, and/or
8 developmentally appropriate treatment services. *Id.* at 88-92.

9 A defendant’s age, even after 18, is now widely considered relevant to
10 sentencing. Since 2017, for example, the Massachusetts Sentencing Guidelines have
11 instructed judges to consider the developmental characteristics of “emerging
12 adults,” ages 18 through 21, “when sentencing such individuals[,] even if the
13 individuals are subject to the jurisdiction of adult court.” Massachusetts Sentencing
14 Commission, *Advisory Sentencing Guidelines*, at 4 (Nov. 2017). United States
15 Supreme Court and state supreme court decisions have recognized the relevance of
16 young people’s stage of development, even after they turn 18. *See, e.g., Gall v.*
17 *United States*, 552 U.S. 38, 57-58 (2007) (holding that judge properly gave below-
18 guidelines sentence based in part on fact that defendant was 21 and “[r]ecent
19 studies . . . conclude that human brain development may not become complete until
20 the age of twenty-five”); *State v. O’Dell*, 358 P.3d 359, 368 (Wash. 2017) (en banc)
21 (holding that 18-year-old “defendant’s youthfulness [could] support an exceptional
22 sentence below the standard [sentencing] range applicable to an adult felony
23 defendant,” and that contrary earlier decision had “been thoroughly undermined by
24 subsequent scientific developments”).

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26
27 ⁷Available at <https://jlc.org/sites/default/files/attachments/2020-09/JLC-Emerging-Adults-9-2.pdf>.

1 Looking abroad, in Europe, there is “both a history and widespread practice
2 of providing more developmentally appropriate responses to emerging adults
3 involved in the justice system, with 28 out of 35 European countries having special
4 legal provisions for youth over age 18.” Sibella Matthews et al., *Youth Justice in*
5 *Europe*, *Justice Evaluation Journal* 3 (July 2018).⁸ In some countries, these
6 provisions allow for the mitigation of otherwise applicable adult sentences, while in
7 others, they permit defendants over the age of 18 to be sanctioned in the same
8 manner as juveniles under the age of 18. *Id.*

9 In Victoria, Australia, under the Sentencing Act of 1991, an offender under
10 21 cannot be sentenced to life-without-parole. Sentencing Act 1991, § 18A.
11 Offenders over 15 but under 21 on the day of sentencing may be detained in a youth
12 justice center rather than adult prisons. Children, Youth, and Families Act 2005,
13 Div. 8, § 397. Meanwhile in Canada, no one may be sentenced to LWOP, because it
14 is incompatible with human dignity and therefore unconstitutional. *R. v.*
15 *Bissonnette*, 2022 SCC 23. In the United Kingdom, such a sentence may be imposed
16 on someone under 21 only when the severity of the offense is “exceptionally high
17 even by the standard of offences which would normally result in a whole life order.”
18 Police, Crime, Sentencing and Courts Act 2022, § 126.

19 All these developmentally informed approaches in other jurisdictions
20 underscore the need for courts in Nevada to take a hard look at sentences that have
21 been imposed on young people that provide no potential for their rehabilitation.
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25 ⁸Available at
26 https://justicelab.columbia.edu/sites/default/files/content/Youth%20Justice%20in%20Europe%20Experience%20of%20Germany%20the%20Netherlands%20and%20Croatia%20in%20Providing%20Developmentally%20Appropriate%20Responses%20to%20Emerging%20Adults%20in_0.pdf.
27

1 **5. Nevada state history supports that LWOP sentences**
2 **are unconstitutional for individuals who committed**
3 **their offenses when under 21.**

4 Early state history also supports the Court taking a closer look at harsh
5 sentences for late adolescents. At common law, the phrase “cruel and unusual”
6 encompassed the concept of being contrary to long usage or immemorial usage,
7 which necessarily requires historical analysis. *See Bucklew v. Precythe*, 587 U.S.
8 119, 130 (2019); John F. Stinneford, *The Original Meaning of “Unusual”: The*
9 *Eighth Amendment as a Bar to Cruel Innovation*, 102 Nw. U. L. Rev. 1739, 1745,
10 1814-15 (Fall 2008) (explaining “courts of the first half of the nineteenth century
11 shared the Framers’ understanding that the word ‘unusual’ in the Cruel and
12 Unusual Punishments Clause meant ‘contrary to long usage.’ They generally upheld
13 punishments that were consonant with common law precedent and were willing to
14 strike down those that were not . . .”).

15 True life sentences for young people were unheard of in 19th-century Nevada.
16 Rather, they are a cruel modern innovation. In Nevada as in the broader United
17 States, the true life sentence “stands among the most prominent penal
18 developments of the late twentieth century.” Christopher Seeds, *Life Sentences and*
19 *Perpetual Confinement*, 4 Annual Rev. Criminology 287, 291 (2021).

20 Scholarship on the use of life sentences in the 19th century has revealed it to
21 be a rare occurrence, and when used it was often accompanied by clemency and
22 other actions that offered mercy and undercut a true life-in-prison sentence. *See id.*
23 at 290-91 (“At a pivotal juncture for US punishment around 1870, penal reformers
24 presented data on life sentencing from a half dozen jurisdictions[, showing, for
25 example, that] life sentences often amounted to approximately 6 years in prison,
26 less time than many fixed terms; in addition, release decisions depended on
27 executive clemency . . .”). It was not a perpetual prison sentence. *Id.* at 291.

1 As applied to young people, such a punishment would have been wholly
2 inappropriate, going against the progressive attitudes toward youth that animate
3 the Nevada Constitution. At Nevada’s founding, 21 was the age of majority.
4 Hamilton, *supra*, at 64. “At the time of the Nevada Constitutional Convention, life
5 sentences were a rarity in Nevada, and even more so for youth. . . . [N]o life
6 sentences used on youth under the age of 21 were found in the 19th or early 20th
7 century [Nevada].” P.Ex. 22 at 10 (Rueda Report).

8 Instead, the Nevada Constitution explains that the law may provide “for the
9 establishment and maintenance of a House of Refuge [as opposed to a State Prison]
10 for Juvenile Offenders.” Nev. Const. art. 13, § 2. “A house of refuge was to be the
11 youths’ escape from the corruption of the outside world. As such, refuges were
12 portrayed to be as vital to a delinquent’s education as the public school.” Daniel
13 Macallair, *The San Francisco Industrial School and the Origins of Juvenile Justice*
14 *in California: A Glance at the Great Reformation*, 7 UC Davis J. of Juvenile L. &
15 Pol. 1, 3 (2003). Indeed, the Framers did not even debate the wisdom of establishing
16 a House of Refuge for juvenile offenders—it was a given.

17 When the Elko School for Boys was established in 1915, it housed adolescents
18 who were as old as 18 until they reached age 21. P.Ex. 22 at 9-11. But the very idea
19 of age at this time was different than it is today, because “chronological age was not
20 necessarily simple to establish. Other factors such as size, mental capacity, and
21 alleged evidence of potential for rehabilitation was used by law enforcement to
22 determine if a youth would be treated as a child or an adult. These factors were
23 almost always subjective and relied on local law enforcement’s attitude toward the
24 youth in question.” *Id.* at 9. As a result, “evidence in Nevada demonstrates that
25 youth over the age of 18 were regularly treated by the court as children, rather than
26 adults, with the Elko School being used as a temporary rehabilitative holding space
27 for juvenile offenders until they reached twenty-one years of age.” *Id.*

1 For example, Joseph Bell was an 18-year-old convicted of manslaughter in
2 1919. *Id.* at 9-10 (citing *White Pine News Weekly Mining Review* (Aug. 22, 1920)).
3 His judge and prosecutor “were merciful and allowed him to be sent up to Elko
4 Reform School until he reached his majority.” *Id.* at 10-11 (citing same). Ultimately,
5 scholar Rueda finds that the “history of Nevada’s relationship to the punishment
6 and incarceration of youth offenders is complex and often contradictory, yet it
7 reveals an attitude of hope towards the rehabilitation of youth.” *Id.* at 11.

8 This historical context supports that today’s true life-without-parole sentence
9 imposed on youth under the age of 21 is cruel or unusual. It is contrary to long
10 usage as embodied in the Nevada Constitution because in 19th-century Nevada,
11 youth were not punished this way. Rather, the Nevada Constitution contemplated
12 progressive measures to address adolescent criminality.

13 **D. A categorical bar is necessary because sentencing judges**
14 **cannot reliably predict which late adolescents are among the**
15 **rare few who are beyond redemption.**

16 Because it is not possible to reliably determine which late adolescents are
17 beyond redemption, this Court should hold that any imposition of LWOP on late
18 adolescents under the age of 21 violates the state constitution.

19 It is impossible to determine with integrity or with any reasonable degree of
20 certainty if an offender, at age 18, 19, or 20, is the rare person who must be kept out
21 of society for the remainder of his life. “Violent crime peaks at ages 17-19 and
22 decreases in the early twenties. While counterintuitive, a robust body of research
23 indicates that committing a violent crime before age 20 is not a strong predictor of a
24 persistent criminal trajectory.” Ex. 3 at 42. “Most chronic and repeat offenders in
25 youth do not persist into adulthood.” *Id.* Even “committing a homicide in
26 adolescence is not itself a predictor of either future violent or non-violent
27

1 recidivism.” *Id.* Asked, “Can we predict life-course persistent offenders?” Dr.
2 Kinscherff answered unequivocally: “*No. No.*” 11/13/2025 Tr. at 106.

3 That reflects the brain’s plasticity and amenability to change in late
4 adolescence. Science now shows that, as a result of the imbalances discussed in
5 *supra* Part I.C.2., aggressiveness, impulsivity, and risk-taking peak in late
6 adolescence and then precipitously decline; and even for the most extreme traits,
7 like psychopathic traits, these too will decrease over time in the vast majority of late
8 adolescents. 11/14/2025 Tr. at 28-29. That’s the case even without intervention. *Id.*
9 As a result, sentencing judges should not be saddled with the impossibly speculative
10 task of identifying the negligible number of late adolescents who will never reform.
11 To do so would inevitably result in the imprisonment of people for life who will not
12 ultimately deserve or require permanent incapacitation.

13 Because life-without-parole is barred for all late adolescents, Johnny’s two
14 life-without-parole sentences for crimes he was accused of committing when he was
15 19 are cruel or unusual.

16 **E. In the alternative, even if not categorically barred, then LWOP**
17 **sentences should be limited to cases where the sentencing**
18 **judge has determined, after considering the mitigating effects**
19 **of youth, that the defendant is the rare adolescent offender**
20 **whose crime reflects irreparable corruption.**

21 If the Court disagrees and finds that it is constitutional for life-without-
22 parole to be a sentencing option, then the Court should find that under the Nevada
23 Constitution, there still must be a limit on how and when it is imposed.

24 In *Miller*, the Supreme Court did not prohibit all life-without-parole
25 sentences imposed on juveniles. Instead, the Court held that “mandatory life
26 without parole for those under the age of 18 at the time of their crimes violates the
27 Eighth Amendment’s prohibition on ‘cruel and unusual punishments.’” *Miller*, 567
U.S. at 465. The decision did not “categorically bar a penalty for a class of offenders

1 or type of crime” but, rather, mandated “that a sentencer follow a certain process—
2 considering an offender’s youth and attendant characteristics—before imposing a
3 particular penalty.” *Id.* at 460. The Court specified several youth-related factors
4 (now known as “*Miller* factors”) that a sentencing judge must consider before
5 imposing a life-without-parole sentence on a juvenile. *Id.* at 477-78. These include
6 “immaturity, impetuosity, and failure to appreciate risks and consequences,” “the
7 family and home environment that surrounds him,” “the way . . . peer pressures
8 may have affected him,” and “the possibility of rehabilitation.” *Id.*

9 In *Montgomery*, the Court clarified its holding in *Miller*, explaining that
10 *Miller* did not merely create a procedural requirement that a “sentencer . . .
11 consider a juvenile offender’s youth before imposing life without parole.” 577 U.S. at
12 208. Instead, *Miller* established that, as a matter of substantive law, “the
13 penological justifications for life without parole collapse in light of the distinctive
14 attributes of youth.” *Id.* (cleaned up). The purpose of a *Miller* hearing, the Court
15 explained, is to determine whether the specific defendant before the court is an
16 exception to the rule—“the rare juvenile offender who exhibits such irretrievable
17 depravity that rehabilitation is impossible and life without parole is justified.” *Id.*
18 The Court emphasized that “[e]ven if a court considers a child’s age before
19 sentencing him or her to a lifetime in prison, that sentence still violates the Eighth
20 Amendment for a child whose crime reflects unfortunate yet transient immaturity.”
21 *Id.* (cleaned up). As *Miller* explained, the “appropriate occasions for sentencing
22 juveniles to this harshest possible penalty will be uncommon.” 567 U.S. at 479.

23 Even if this Court declines to adopt a categorical bar to imposing LWOP on
24 late adolescents, it should nonetheless hold that enhanced protections apply to
25 defendants who committed their crimes before age 21. Under these, a court must
26 “affirmatively consider the [offender’s] youth and its attendant characteristics” and
27 “provide an on-the-record sentencing explanation that explicitly or implicitly finds”

1 that he is one of the “rare” late adolescent offenders “whose crime reflects
2 irreparable corruption.” *Fletcher v. State*, 532 P.3d 286, 308 (Alaska Ct. App. 2023).

3 In light of the psychological and neuroscientific findings, courts cannot
4 justifiably treat a defendant’s 18th birthday as an absolute cutoff for constitutional
5 protections at sentencing. By applying the modified *Miller/Montgomery* rule to a
6 broader class of defendants, courts can account for the essential differences between
7 late adolescent defendants and older adults, while also leaving open the possibility
8 that there may be some rare 18-, 19-, or 20-year-olds who, in light of their
9 individual characteristics, can constitutionally be sentenced to life imprisonment
10 without the possibility of parole.

11 Under this approach, life-without-parole is barred for all except the rarest
12 individual who also received the appropriate process under an expanded
13 *Miller/Montgomery* approach. Johnny did not. In his case, the sentencing court
14 observed, “one of the purposes [of criminal sentences] is to make sure that a very
15 dangerous person can’t hurt anybody else and *sometimes that means warehousing*
16 *them*. Now, what I see is that’s the kind of situation we have here” 11/14/2018
17 Tr. at 20 (emphasis added). The judge explained that all she sees is escalating
18 behavior. *Id.* at 21. It was all consistent with his “defiance disorder.” *Id.*

19 By finding that a sentence of perpetual imprisonment or “warehousing” was
20 needed to keep the community safe, the sentencing court failed to consider that late
21 adolescents in general are highly likely to be readily deterred and incapacitated. By
22 observing that all the court sees is “escalating behavior,” the court failed to consider
23 that escalating behavior is normative in late adolescents and failed to consider that
24 late adolescents in general are likely to change for the better as they mature,
25 including those with early signs of personality pathology. The court’s explanation of
26 sentence shows that she failed to “affirmatively consider [Johnny’s] youth and its
27 attendant characteristics” and “provide an on-the-record sentencing explanation

1 that explicitly or implicitly finds” that he is one of the “rare” late adolescent
2 offenders “whose crime reflects irreparable corruption.” *Fletcher*, 532 P.3d at 308.

3 It follows that Johnny is serving a cruel or unusual sentence.

4 **CONCLUSION**

5 For all the above reasons, this Court should grant Johnny Baggett a
6 resentencing hearing, so that he may be considered for a parole-eligible sentence.

7 Dated January 5, 2026.

8 Respectfully submitted,

9
10 Rene L. Valladares
11 Federal Public Defender

12 */s/ Shelly Richter*
13 Shelly Richter
14 Assistant Federal Public Defender
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