

08-25-00259-CR

No. 08-25-00259-CR

In the Eighth Court of Appeals for the State of Texas

MICHAEL ANTHONY HOWARD,

Appellant

v.

THE STATE OF TEXAS,

Appellee.

Transferred from the Third Court of Appeals,

On Direct Appeal from the 426th Judicial District Court of Bell County, Trial
Court No. 22DCR85949, the Honorable Steven J. Duskie, presiding.

**BRIEF OF JUVENILE LAW CENTER AS AMICUS CURIAE
IN SUPPORT OF APPELLANT MICHAEL HOWARD**

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IDENTITY OF PARTIES, COUNSEL, AND JUDGES

In accord with Rule 38.1 of the Texas Rules of Appellate Procedure, Amici provide this Court with this supplemental list of interested parties.

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TO THE HONORABLE JUDGES OF THE COURT OF APPEALS:

NOW COMES Juvenile Law Center as *amicus curae* to submit this brief in support of the Appellant in the above-captioned case:

INTEREST AND IDENTITY OF AMICUS CURIAE¹

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

¹ Pursuant to Rule 11(c), TEX. R. APP. PROC., no person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

Adolescents' brains do not fully mature until they are in their twenties. *See, e.g.,* Arthur MacNeill Horton Jr & Cecil R. Reynolds, *Trajectory of the Development of Executive Functioning: Implications for Death as a Penalty as Applied to the Late Adolescent Class*, 7 J. Ped. Neuropsych. 66, 72 (2021). During this period of development, they are prone to impulsive, risky, and reward-seeking behavior, particularly in stressful and emotionally charged situations, and particularly in the presence of peers. *See* Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psych. 1009, 1014-15 (2003). For these reasons, the United States Supreme Court and the Texas Court of Criminal Appeals have repeatedly concluded that children are less culpable and require unique protections under the law. *See, e.g., Miller v. Alabama*, 567 U.S. 460 (2012); *Ex parte Maxwell*, 424 S.W.3d 66, 75 (Tex. Crim. App. 2014).

Michael Anthony Howard's sentence is fundamentally incompatible with the reduced culpability of youth.² After convicting Mr. Howard of murder for an offense that took place when he was only 15 years old, the court imposed a 70-year sentence. Under Texas Government Code Section 508.145(d)(1)-(2), Mr. Howard must serve 30 years before becoming eligible for parole. This sentence violates the broad protection of Article 1, Section 13 of the Texas Constitution.

ARGUMENT

I. Children Are Less Culpable and Therefore Less Deserving of The State's Harshest Penalties.

Over the last quarter of a century, substantial research has confirmed scientifically what all parents know—teenagers are not simply miniature adults. They lack maturity and have an underdeveloped sense of responsibility that makes them more vulnerable to negative influences, more capable of change, and ultimately less culpable for their poor decisions. This research has helped to spearhead a sea change in the way our criminal legal system treats young people, recognizing that they are categorically less culpable and more capable of rehabilitation than adults.

² Mr. Howard's counsel raises a sufficiency of the evidence argument in the principal brief; we write here to address the narrower issue of whether the sentence comports with Texas law on the sentencing of adolescents.

Although reasoning ability improves throughout adolescence, adolescent decision-making is still limited by psychosocial immaturity. *See* Steinberg & Scott, *Less Guilty by Reason of Adolescence*, *supra*, at 1011-13. There is “[c]onsiderable evidence . . . that children and adolescents are less capable decision makers than adults in ways that are relevant to their criminal choices.” Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 *Future of Children* 15, 20 (2008). *See also* Amicus Br. for Am. Psych. Ass’n et al., at 20, *Miller v. Alabama*, 567 U.S. 460 (2012) (Nos. 10-9646 & 10-9647) (citing, among others, Alan Waterman, *Identity Development from Adolescence to Adulthood*, 18 *Developmental Psych.* 341, 355 (1982); Brent Roberts et al., *Patterns of Mean-Level Change in Personality Traits Across the Life Course*, 132 *Psych. Bull.* 1, 14-15 (2006). Neuroscience reinforces that adolescents possess a transient immaturity that distinguishes them from adults. *See* Steinberg & Scott, *Less Guilty by Reason of Adolescence*, at 1014-16.³

³ In fact, the parts of the brain associated with impulse control, propensity for risky behavior, vulnerability, and susceptibility to peer pressure are still developing well into late adolescence and into the twenties. Elizabeth S. Scott, Richard J. Bonnie & Laurence Steinberg, *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 *Fordham L. Rev.* 641, 642 (2016) (citing Laurence Steinberg, *Age of Opportunity: Lessons from the New Science of Adolescence* 5 (2014)) (“Over the past decade, developmental psychologists and neuroscientists have found that biological and psychological development continues into

During this developmental period, teens may experiment with risky or illegal conduct. Steinberg & Scott, *Less Guilty by Reason of Adolescence*, *supra*, at 1014-15. These behaviors increase around puberty, peak in late adolescence, and decrease in adulthood. The National Academies of Sciences, Engineering, and Medicine, *Promoting Positive Adolescent Health Behaviors and Outcomes: Thriving in the 21st Century* 54 (Robert Graham and Nicole F. Kahn, eds., 2019).

The developmental differences between adolescents and adults emerge most prominently in high-pressure situations. While by mid-adolescence young people’s ability to reason logically, understand risks and benefits, and process information in calm, structured settings are comparable to those of adults,⁴ the opposite is true in emotionally-charged contexts. In these “hot cognition” contexts, adolescents “are likely less capable than adults are in using these capacities” because of their relative

the early twenties, well beyond the age of majority.”). In recent years, several state supreme courts have applied this research to their own state constitution’s punishment clauses to proscribe mandatory life without parole for offenders up to age 21. *See, e.g., In re Monschke*, 482 P.3d 276, 284-88 (Wash. 2021); *Commonwealth v. Mattis*, 224 N.E.3d 410, 415 (Mass. 2024); *People v. Taylor*, Nos. 166428 & 166654, 2025 WL 1085247, at *1 (Mich. April 10, 2025).

⁴ *See* Grace Icenogle et al., *Adolescents’ Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a “Maturity Gap” in a Multinational, Cross-Sectional Sample*, 43 L & Hum. Behav. 69, 71-72 (2019); Scott & Steinberg, *supra*, at 20 (2008); Alexandra O. Cohen et al., *When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 Psych. Sci. 549, 559 (2016).

inexperience and less efficient information processing. *See* Scott & Steinberg, *supra*, at 20-21; Eveline A. Crone & Ronald E. Dahl, *Understanding Adolescence as a Period of Social-Affective Engagement and Goal Flexibility*, 13 Nat. Rev. Neurosci. 636, 645 (2012). In high-arousal circumstances, adolescents do not fully anticipate long-term consequences or assign them controlling weight, particularly when short-term rewards are salient. Crone & Dahl, *Understanding Adolescence*, *supra*, at 640-641; Laurence Steinberg & Grace Icenogle, *Using Developmental Science to Distinguish Between Adolescents and Adults Under the Law*, 1 Ann. Rev. Dev. Psychol. 21, 29 (2019). Scientists understand this as evidence of a “maturity gap” in which neural systems supporting cognitive capacity mature earlier than those governing emotional regulation and impulse control. *See* Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 Dev. R. 78, 97-98 (2008); Icenogle et al., *supra*, at 84.

Mr. Howard was only 15 at the time of his offense, in a developmental phase characterized by steep hormonal changes, limited executive functioning, and often heightened anxiety and depression. *See* Nat’l Academies of Sciences, Eng’r, and Med., *The Promise of Adolescence: Realizing Opportunity for All Youth* 39 (2019) [hereinafter *The Promise of Adolescence*]; Arthur MacNeil & Cecil R. Reynolds, *Trajectory of the Development of Executive Functioning: Implications for Death as*

a Penalty as Applied to the Late Adolescent Class, 7 J. Ped. Neuropsych. 66, 67-68 (2021); Newport Academy Editorial Team, *Middle Adolescence (Ages 15-17): Teenage Developmental Milestones*, Oct. 5, 2022, <https://www.newportacademy.com/resources/well-being/middle-adolescence/>.

Children 11 to 15 years of age “are impaired at significantly higher rates than older adolescents (16-17) on measures of understanding and appreciation of Miranda rights and on other measures of adjudicative competence.” Icenogle et al., *Adolescents’ Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity*, *supra*, at 73.

While adolescents like Mr. Howard are more prone to risky and impulsive behavior, they are also likely to discontinue such behavior in their mid to late twenties as impulse control and emotional regulation catch up with cognitive capacity. Neuroplasticity is a hallmark of adolescence, meaning adolescents’ brains are adaptive and amenable to change. *See The Promise of Adolescence*, *supra*, at 58; *see generally* Jill L. Kays et al., *The Dynamic Brain: Neuroplasticity and Mental Health*, 24 J. Clinical Neuropsychiatry & Clinical Neurosci. 118 (2012); Michael S.C. Thomas & Mark H. Johnson, *New Advances in Understanding Sensitive Periods in Brain Development*, 17 Current Directions in Psych. Sci. 1 (2008).

This pattern is confirmed by the “age-crime curve”—a century of arrest data clearly demonstrating that “[t]he prevalence of offending . . . tends to increase from late childhood, peaks in the teenage years (around ages 15-19), and then declines in the early 20s.” See Loeber, Farrington, & Petechuk, *Bulletin 1: From Juvenile Delinquency to Young Adult Offending* 3 (2013), available at <<https://www.ojp.gov/pdffiles1/nij/grants/242931.pdf>>; Lila Kazemian, *Pathways to Desistance from Crime Among Juveniles and Adults: Applications to Criminal Justice Policy and Practice* 3 (2021), available at <<https://www.ojp.gov/pdffiles1/nij/301503.pdf>>. Because adolescents’ character undergoes significant development during this stage of life, it is nearly impossible to distinguish “at this early age between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Ex parte Maxwell*, 424 S.W.3d 66, 75 (Tex. Crim. App. 2014) (citing *Miller v. Alabama*, 567 U.S. 460, 479 (2012)). It is therefore cruel to subject children to the harshest penalties.

II. Article 1, Section 13 Supports Broad Constitutional Protections for Children

While “[t]he federal constitution sets the floor for individual rights; state constitutions establish the ceiling.” *LeCroy v. Hanlon*, 713 S.W.2d 335, 338 (Tex.

1986) (orig. proceeding). Accordingly, “states are free to reject federal [constitutional] holdings as long as state action does not fall below the minimum standards provided by federal constitutional protections.” *Heitman v. State*, 815 S.W.2d 681, 681 (Tex. Crim. App. 1991). Indeed, as the Court of Criminal Appeals has recognized, “state Bill of Rights guarantees, on their face, are generally more expansive and solicitous of people's liberties than the federal Bill of Rights; thus, the state may interpret its protections more broadly than federal protections.” *Id.* at 688-89.

The Texas Supreme Court has cautioned that while it may be wise to “borrow from well-reasoned and persuasive federal procedural and substantive precedent when this is deemed helpful,” Texas courts “should never feel compelled to parrot the federal judiciary.” *Davenport v. Garcia*, 834 S.W.2d 4, 20 (Tex. 1992) (orig proceeding). Similarly, the Court of Criminal Appeals has stated that the Texas Constitution requires independent interpretation, regardless of similarities in language to their federal counterparts:

[The Texas] state constitution is a doctrine independent of the federal constitution and its guarantees are not dependent upon those in the federal constitution. The wording of our constitution is not identical to that of the federal constitution, although the rights and provisions are similar, and to interpret our state constitutional provisions in accordance with federal court interpretations of comparable rights ignores our own constitutional history.

Heitman, 815 S.W. at 688.

To determine whether a state constitutional provision should be read independently of the U.S. constitution, courts should consider: “(A) a textual examination of the constitutional provision; (B) the Framer's intent; (C) history and application of the constitutional provision; (D) comparable jurisprudence from other states; and, (E) the practical policy considerations behind the constitutional provision.” *Autran v. State*, 887 S.W.2d 31, 37 (Tex. Crim. App. 1994) (Baird, J., plurality);⁵ *see also Hulit v. State*, 982 S.W.2d 431, 435 (Tex. Crim. App. 1998) (“We shall examine the text of the Constitution, refer to our prior decisions, consider the history of the common law, and consider [comparable federal] jurisprudence.”) These factors weigh in favor of interpreting Article 1, Section 13 as more protective of youth than the Eighth Amendment.

⁵ *see also Randig v. State*, No. 03-19-00176-CR, 2021 WL 386427 (Tex. App.—Austin 2021, no pet.) (not designated for publication) (citing to *Holder v. State*, 595 S.W.3d 691, 697 n.15 (Tex. Crim. App. 2020) and stating the Court of Criminal Appeals has since declined to follow *Autran*, bringing Texas “caselaw back into line with the Supreme Court's interpretations of the Fourth Amendment” but not disavowing the factors).

A. A plain reading of Article 1, Section 13 demonstrates that the prohibition on “cruel or unusual” punishment is broader than the Eighth Amendment’s prohibition on “cruel and unusual” punishment.

For constitutional interpretation, courts should "rely heavily on [the provision’s] literal text and must give effect to its plain language.” *Doody v. Ameriquest Mortgage Co.*, 49 S.W.3d 342, 344 (Tex. 2001); *see also City of Beaumont v. Bouillion*, 896 S.W.2d 143, 148 (Tex. 1995) (“We presume the language of the Constitution was carefully selected, and we interpret words as they are generally understood.”). *See also Doody*, 49 S.W.3d at 344 (courts should “strive to avoid a construction that renders any provision meaningless or inoperative.”); *Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 580 (Tex. 2000) (same). This textual analysis provides the most reliable guideline for interpreting the Constitution as it applies to current issues: “because of the difficulties inherent in determining the intent of voters over a century ago, we rely heavily on the literal text. We seek its meaning with the understanding that the Constitution was ratified to function as an organic document to govern society and institutions as they evolve through time.” *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 394 (Tex.1989).

The language of Article 1, Section 13 of the Texas Constitution bars the State from inflicting “cruel *or* unusual punishment” (emphasis added), while the Eighth Amendment to the United States Constitution bars punishments that are “cruel *and*

unusual” (emphasis added). The selection of the disjunctive “or” rather than the conjunctive “and” by the framers of the Texas Constitution is textually significant, unambiguous, and therefore must be given its plain meaning. Under settled rules of interpretation, “or” is disjunctive, creating alternatives rather than cumulative requirements. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 116 (2012) (“Under the conjunctive/disjunctive canon, and combines items while or creates alternatives.”).

Unlike the Eighth Amendment, which has been interpreted to require a showing that a punishment is both cruel and unusual, Article 1, § 13 reaches both punishments that are cruel but not unusual, and punishments that are unusual but not independently cruel. This distinction is not trivial, as Federal Eighth Amendment claims are frequently dismissed where a punishment is not deemed *both* cruel *and* unusual. *See, e.g., Harmelin v. Michigan*, 501 U.S. 957, 994 (1991) (upholding severe mandatory penalties under the Eighth Amendment that, although cruel, were not deemed unusual).⁶

⁶ The U.S. Supreme Court has described cruel punishments as “those punishments that are ‘barbaric’” in nature, while unusual punishments are “those that are ‘excessive’ in relation to the crime committed.” *Id.* at 992.

This reading of Article 1, § 13 aligns with Texas courts' consistent reading of the term "or" in its ordinary disjunctive sense, confirming that only one of the listed alternatives must be satisfied. *See, e.g., In re Brookshire Grocery Co.*, 250 S.W.3d 66, 69 (Tex. 2008) (orig. proceeding) ("Ordinarily the words 'and' and 'or,' are in no sense interchangeable terms, but, on the contrary, are used in the structure of language for purposes entirely variant, the former being strictly of a conjunctive, the latter, of a disjunctive, nature."); *Bayou Pipeline Corp. v. R.R. Comm'n*, 568 S.W.2d 122, 125 (Tex. 1978) ("ordinarily the words 'and' and 'or' are not interchangeable.").

This is not just a modern approach to language. As the Texas Supreme Court stated almost 80 years ago in response to an argument that the word "and" in a state statute meant "or:"

This construction ... is never resorted to except for strong reasons and the words should never be so construed unless the context favors the conversion; as where it must be done in order to effectuate the manifest intention of the user; and where not to do so would render the meaning ambiguous, or result in an absurdity; or would be tantamount to a refusal to correct a mistake.

Bd. of Ins. Comm'rs v. Guardian Life Ins. Co. of Tex., 142 Tex. 630, 180 S.W.2d 906, 908 (1944). There is no absurdity or mistake, however, in giving "or" its ordinary meaning when the Texas framers departed from the Eighth Amendment

and adopted the language already used by many of its sister states. To reject the framers' intentional choice of language in the state's foundational document advances a deference to federal constitutional law that was an anathema to Texas' founding fathers.

B. The original framers supported broad protections under the Texas Bill of Rights.

The Court of Criminal Appeals has emphasized that the Texas Constitution provides greater protection than the federal Constitution. As the Court explained:

[T]here is direct evidence which indicates the framers of the 1845 constitution did not intend for our state constitution to be interpreted in lock-step with the federal constitution. A Washington County constitutional delegate proposed that the 1845 document be construed in pari materia with the Bill of Rights to the United States Constitution. This proposal was not adopted, thus indicating the framers did not intend to limit the rights of citizens of this State to that which protects them under the federal constitution. Ponton, Arvel (Rod), III, *Sources of Liberty in the Texas Bill of Rights*, 20 St. Mary's L.J. 93, 109 (1988). Clearly our own state constitution was not intended by our own founding fathers to mirror that of the federal government.

Heitman v. State, 815 S.W.2d 681, 690 (Tex. Crim. App. 1991). Moreover, the Texas Bill of Rights in particular plays a unique role in limiting state power over individual citizens.

[O]ur Bill of Rights is the first article in our state constitution and . . . it held this position in each of Texas's five state constitutions. Such placement indicates the degree of importance of these provisions to the drafters of the constitution and the citizens of this state, as opposed to

the federal Bill of Rights which was amended to the end of the federal counterpart.

Id. As Judge Schenk recently noted, Texas’ “Bill of Rights was drafted in the wake of frustration over the power of central authority . . . and with the biding intention of reducing the power of centralized government.” *Ex parte Wood*, No. WR-45,746-04, 2025 WL 2148862, at *4 (Tex. Crim. App., 2025) (Schenk J. *concurring in part*). Accordingly, “the idea that [the state’s] highest specialized criminal court would defer to its federal counterpart” for purposes of state constitutional interpretation would have been “farcical” to the state constitution’s founders. *Id.* In drafting Article 1, Section 13, the founders of the Texas Constitution had multiple models to consider. *See Autran v. State*, 887 S.W.2d 31, 39 (Tex. Crim App. 1994). More specifically, the Framers of the Texas Constitution likely reviewed the Virginia and Tennessee constitutions, prohibiting cruel *and* unusual punishments, North Carolina’s Constitution, prohibiting cruel *or* unusual punishments, and Pennsylvania and Kentucky’s constitutions, prohibiting cruel punishments. *Id.*; Va. Const. art. I, § 9; Tenn. Const. art. I, § 16; N.C. Const. art. I, § 27; Pa. Const. art. I, § 13; Ky. Const. § 17. Their decision to choose cruel *or* unusual was therefore intentional.

Despite ample historical support for both independent and broader interpretation of the Texas Constitution, the Court of Criminal Appeals has yet to adopt an independent interpretation of Article 1, Section 13. The Court first

considered whether the state constitution provided broader protections than the Eighth Amendment in a death penalty challenge 30 years ago. *See Anderson v. State*, 932 S.W.2d 502 (Tex. Crim. App. 1996). In upholding the death penalty, the Court expressly “d[id] not decide whether the state constitutional provision is broader than its counterpart.” *Id.* at 509. Instead, it concluded: “[a]ssuming that the word ‘or’ requires a disjunctive reading of the words ‘cruel’ and ‘unusual,’ we find that the death penalty is neither.” *Id.* Less than a year later, however, the Court of Criminal Appeals incorrectly relied on *Anderson* to reject the renewed argument that Article 1, Section 13 was more protective than the Eighth Amendment. *See Cantu v. State*, 939 S.W.2d 627, 639 (Tex. Crim. App. 1997) (noting that “we have previously rejected this argument” in *Anderson*). This in turn led to subsequent Court of Appeals decisions that relied on *Cantu*’s misreading without ever revisiting *Anderson*. *See Duran v. State*, 363 S.W.3d 719, 723 (Tex. App.–Houston [1st Dist.] 2011, pet. ref’d), citing *Cantu*, 363 S.W.3d at 645; *Reyes v. State*, 557 S.W.3d 624, 631 (Tex. App.–El Paso 2017 pet. ref’d), citing *Cantu*, 363 S.W.3d at 645.

Since Texas’ history shows a clear commitment to a broad reading of its Bill of Rights and *Anderson* did not actually settle the question of whether Article 1, Section 13 provides greater protection to the citizens of Texas than the federal constitution, the question is ripe for this court to analyze here. *See Ex parte*

Roberson, 726 S.W.3d 290, 305-306 (Tex. Crim. App., 2025) (Schenck, J., concurring in part and dissenting in part) (“Why are we not applying our own Constitution and resolving close and difficult cases involving the heightened interest it states in life pursuant to its provisions?”)

C. Comparable jurisprudence from sister states supports interpreting Article 1, Section 13 as more protective than the Eighth Amendment.

Texas courts interpreting the state constitution also look to “helpful precedent from sister states.” *Davenport*, 834 S.W.2d at 20; *Ex parte Tucci*, 859 S.W.2d 1, 18 (Tex. 1993) (Phillips, C.J., concurring) (“Finally, I consider also the experience of other jurisdictions, many of whom share similar . . . guarantees.”). Many sister state courts have upheld broader protections for their citizens under their state constitutional punishment clauses than the U.S. Supreme Court has recognized under the federal Eighth Amendment.

Indeed, many state courts have grounded their findings in the same “and” versus “or” textual analysis presented here. As the Supreme Court of Michigan explained in its decision expanding *Miller*’s protections to youth 18 and older: “a bar on punishments that are either cruel or unusual is necessarily broader than a bar on punishments that are both cruel *and* unusual.” *People v. Parks*, 987 N.W.2d 161, 170 (Mich. 2022) (emphasis in original); *People v. Taylor*, Nos. 166428 & 166654,

2025 WL 1085247, at *4 (Mich. Apr. 10, 2025) (noting that “Michigan’s broader constitutional prohibition against ‘cruel or unusual punishment’” meant the state did not have “‘to draw the same line [of constitutional protection] as the federal courts’”); *see also State v. Perry*, 610 So.2d 746, 762 (La. 1992) (noting that Louisiana’s prohibition on cruel or unusual punishment “affords no less, and in some respects more, protection than that available to individuals under the Cruel and Unusual Punishments Clause of the Eighth Amendment”).

Some sister courts have emphasized that, with a “cruel or unusual” provision, a punishment may be unconstitutional because it is cruel only or unusual only.⁷ When the Michigan Supreme Court held that mandatory life without parole is an unconstitutional sentence for 19 and 20 year-olds under its “cruel *or* unusual” clause, it focused on the cruelty of the punishment, not whether it was unusual. *People v. Taylor*, Nos. 166428 & 166654, 2025 WL 1085247, at *16 (Mich. Apr. 10, 2025) (“We hold that the application of a mandatory sentence of LWOP . . . to [the appellants] constitutes unconstitutionally harsh and disproportionate punishment and thus ‘cruel’ punishment in violation of Const 1963, art 1, § 16.”). Similarly,

⁷ This, of course, includes states, such as Washington, whose constitutions simply forbid “cruel punishment,” without any mention of “unusual.” *See State v. Bassett*, 428 P.3d 343, 349 (Wash. 2018) (finding the Washington constitution offers broader protection “because it prohibits conduct that is merely cruel; it does not require that the conduct be both cruel and unusual”).

Minnesota courts “separately examine whether the sentence is cruel and whether it is unusual,” with the former inquiry focusing on “the proportionality of the crime to the punishment” and the latter on “whether the punishment comports with the evolving standards of decency that mark the progress of a maturing society.” *State v. Hassan*, 977 N.W.2d 633, 645 n.2. (Minn. 2022) (Chutich, J., concurring); *see also State v. Vang*, 847 N.W.2d 248, 263 (Minn. 2014) (“This difference in wording is not trivial because the United States Supreme Court has upheld punishments that, although they may be cruel, are not unusual.”) (internal citation and quotations omitted); *see also Dist. Attorney for Suffolk Dist. v. Watson*, 411 N.E.2d 1274, 1281 (Mass. 1980) (“While the word ‘unusual’ may suggest the need for an ongoing comparison of punishments meted out for comparable crimes in similar cultures, we focus instead on the constitutional prohibition of ‘cruel’ punishments.”).

Moreover, some state courts that previously held their cruel punishment clauses to be coextensive with the Eighth Amendment are now recognizing a distinction. *See Commonwealth v. Lee*, No. 3 WAP 2024, 2026 WL 855614, at *1 (Pa. Mar. 26, 2026) (concluding that Pennsylvania’s constitutional prohibition on “cruel punishments” was broader than the Eighth Amendment and striking mandatory life without parole for felony murder as unconstitutional and overturning earlier case law to the contrary). Even some states with constitutional provisions

barring “cruel *and* unusual punishment” have interpreted them to be more protective than the Eighth Amendment. *See, e.g., State v. Comer*, 266 A.3d 374, 388 (N.J., 2022).

Several state supreme courts have specifically held that lengthy term-of-years sentences are unconstitutional pursuant to state constitutional protections. *See, e.g., State v. Pearson*, 836 N.W.2d 88, 89, 97 (Iowa 2013) (holding 35-year minimum sentence for non-homicide offenses is unconstitutional under the state constitution); *State v. Haag*, 495 P.3d 241, 243, 250-251 (Wash. 2021) (holding a 46-year minimum sentence unconstitutional *de facto* life under both state and federal constitutions); *State v. Zuber*, 152 A.3d 197, 201-202 (N.J. 2017) (holding a minimum of 55 years' imprisonment is the equivalent of life without parole under both state and federal constitutions). They have also prohibited certain juvenile life without parole sentences even before the U.S. Supreme Court reached the issue. *See State v. Sweet*, 879 N.W.2d 811, 839 (Iowa 2016) (holding life without parole is categorically unconstitutional for juveniles under Iowa Const. art. I, § 17 of the Iowa Constitution ban on cruel and unusual punishment); *Fletcher v. State*, 532 P.3d 286, 290 (Alaska Ct. App. 2023) (holding Article 1, Section 12 of the Alaska Constitution provides more protection than the Eighth Amendment and thus a trial court may not sentence a juvenile to life without parole without

affirmatively considering their youth and providing an on-the-record explanation that finds the juvenile is one of the rare offenders whose crime reflects irreparable corruption); *State v. Bassett*, 428 P.3d 343, 354 (Wash. 2018) (holding juvenile life without parole unconstitutional as an impermissibly cruel punishment under Wash. Const. art. I, § 14).

Still others have held lengthy term-of-years sentences unconstitutional under the Eighth Amendment. *See, e.g., Casiano v. Comm'r of Correction*, 115 A.3d 1031, 1047-1048 (Conn. 2015) (holding a 50-year sentence for a youth is an unconstitutional *de facto* life without parole sentence and holding *Miller* retroactive before the U.S. Supreme Court reached the issue); *People v. Buffer*, 137 N.E. 3d 763, 774 (Ill., 2019) (holding a sentence greater than 40 years constitutes *de facto* life without parole under the Eighth Amendment and remanding for a *Miller* hearing); *Carter v. State*, 192 A.3d 695, 736 (Md. 2018) (holding 50 years before parole eligibility with max 100-year term for a juvenile defendant is an unconstitutional life without parole sentence under the Eighth Amendment); *State ex rel Carr v. Wallace*, 527 S.W.3d 55, 56-57 (Mo. 2017) (holding that a 50-year minimum for capital murder imposed without the jury having any opportunity to consider the mitigating and attendant circumstances of 16-year-old defendant's youth, violates the Eighth Amendment); *Bear Cloud v. State*, 334 P.3d 132, 136,

141-142; (Wyo. 2014) (holding petitioner’s aggregate sentence requiring just over 45 years to be served prior to parole eligibility “result[s] in the functional equivalent of life without parole” and violates the Eighth Amendment. The Court noted that it need not “blindly follow” U.S. Supreme Court case law, but the state law issues had not been properly presented to the Court; *White v. Premo*, 365 Or 1, 3, 15; 443 P.3d 597 (2019) (holding a 54-year sentence is unconstitutional life without parole under the Eighth Amendment for 15-year-old double-homicide offender where sentencing court did not find defendant was a rare irreparably corrupt youth). *Sam v. State*, 401 P.3d 834, 842, 862 (Wyo. 2017) (holding consecutive sentences requiring a minimum of 52 years’ incarceration, with parole eligibility at 70 years old is a *de facto* life sentence in violation of the Eighth Amendment); *People v. Contreras*, 411 P.3d 445, 446 (Cal. 2018) (holding a 50-year minimum sentence for a 16-year-old convicted of nonhomicide kidnapping/sex offenses is the functional equivalent of life without parole and violates *Graham*).

Similarly, many state legislatures have enacted laws aimed at reducing or abolishing lengthy sentences for young people like Mr. Howard. *See, e.g.*, Ala. Code 15-22-28(e)(2) (all persons convicted of murder or other enumerated Class A felonies are eligible for parole after completing 85 percent of sentence or 15 years, whichever is less); Ark. Code Ann. § 16-93-621 (youth are eligible for parole after

serving 20 years for nonhomicide crimes, 25 years for first degree murder, and 30 years for capital murder); Cal. Penal Code 3051(b) (youth who committed an offense before age 26 are eligible for parole after serving 15, 20, or 25 years); 730 Il. Comp. Stat. 5/5-4.5-115(b) (with limited exceptions, youth under 21 at the time of committing an offense other than first-degree murder are eligible for parole after serving 10 years, and youth under 21 at the time of committing first-degree murder are eligible for parole after serving 20 years); Md. Code Ann. Crim. Pro. 8-110 (youth convicted of a crime while under 25, with limited exceptions, are eligible to apply for a sentence reduction after serving 20 years); Nev. Rev. Stat. 213.12135 (youth are eligible for parole after serving 15 years if the offense did not result in the death of another person and 20 years if the offense resulted in the death of one person); N.M. Stat. Ann. 31-21-10.2(A) (youthful offenders are eligible for parole after serving 15 to 25 years, depending on the offense); N.D. Cent. Code Ann. 12.1-32-13.1(1)(a) (youth are eligible for sentence reduction after serving 20 years); Or. Rev. Stat. 144.397 (youth are eligible for parole after serving 15 years); R.I. Gen. Laws 13-8-13(e) (youth who committed an offense before age 22 are eligible for parole after serving 20 years, unless they are serving life without parole); Va. Code Ann. 53.1-165.1(E) (youth sentenced to life imprisonment are eligible for parole after serving 20 years); Wash. Rev. Code 9.94A.730(1) (youth are eligible for parole

after serving 20 years, with few exceptions); W. Va. Code 61-11-23(b) (youth are eligible for parole after serving 15 years, with few exceptions); Wyo. Stat. Ann. 6-10-301(c) (youth sentenced to life imprisonment are eligible for parole after commutation to a term-of-years sentence or after serving 25 years); D.C. Code Ann. 24-403.03(a) (the court shall reduce the sentence of a youth who committed a crime before age 25 after serving 15 years and if the court finds they are not a danger to the community). “Helpful precedent” and legislative trends in other states therefore support a more protective interpretation of Article 1, Section 13.

D. Practical policy considerations support providing heightened protections to youth under Article 1, Section 13.

Barring extreme sentences and instituting earlier parole eligibility for youth aligns with the state’s longstanding policy commitment, as demonstrated by over a century of reform efforts, to treat youth differently from adults and protect them from the state’s most severe penalties. In 1889, a little more than a decade after adopting the 1876 Constitution, Texas opened the first youth detention facility in the southern United States. *See* James W. Markham and William T. Field, *History of Gatesville State School for Boys: Texas Juvenile Rehabilitation*, Texas State Historical Association, Nov. 6, 2019, <https://www.tshaonline.org/handbook/entries/gatesville-state-school-for-boys>. The Gatesville State School for Boys

housed boys who were previously incarcerated with adults to protect them from the harsh conditions of adult prison. *Id.* The institution was used “only as a last resort” when the judge and probation officer could not find an adequate alternative to commitment. Samuel Maurice Johnson, *The Texas Reformatory System with Emphasis on the Gatesville School for Boys* 9 (Jan. 1949) (MS thesis, North Texas State Teachers College) (UNT Digital Library), 1002604286-Johnson.pdf.

Texas established separate juvenile courts in 1907, and in 1913, passed a Juvenile Delinquency Court Act of 1913 that again placed the focus on rehabilitation. William S. Bush, *Protecting Texas’ Most Precious Resource: A History of Juvenile Justice Policy in Texas* 2 (2008). (Explaining that the court imposed indeterminate sentences on young people because “progress toward rehabilitation should form the key determinant for parole or release back into the community.”) In 1947, the Texas Legislature established the Texas State Training School Code Commission in response to public scrutiny over poor conditions and corporal punishment at Gatesville and other reform schools. *Id.* at 51, 64. The Commission identified necessary changes to achieve “the difficult task of rehabilitation,” which included “an open minded attitude by the public in giving jobs and otherwise accepting juveniles who come out of the schools to afford them a

chance to make a sound place for themselves in society.” *Id.* at 67 (citing Houston Chronicle, Sec. 2, p. 3 (Dec. 14, 1947)).

Despite these early reforms, by the 1970s and through the early 2000s, youth detention facilities in Texas made headlines for poor conditions and abuse. *See* Sara A. Gordon, *Juvenile Justice Reform in Texas: The Context, Content & Consequences of Senate Bill 1630*, 42 J. Leg. 232, 235 (2016). The tough on crime era “resulted in frequent pushes for a more intense approach to punishment” and Texas “saw the outbreak of many scandals and hidden injustices throughout the various secure state institutions.” *Id.* at 236; *See, e.g., Morales v. Turman*, 383 F.Supp. 53, 121 (E.D.Tex. 1974) (ordering the Texas Youth Commission to close two facilities, the Gatesville State School for Boys and Mountain View State School for Boys, finding “no relief short of complete abandonment of those institutions can insure that the mistreatment of juveniles is halted”).

Beginning in 2007 and following further reports of abuse and harsh conditions for youth placed outside the home, Texas dramatically reformed its juvenile justice system, passing new legislation to keep more youth out of secure facilities and invest in community-based alternatives to incarceration, returning once more to its rehabilitative focus. Council of State Governments Justice Center, *Closer to Home: An Analysis of the State and Local Impact of the Texas Juvenile Justice Reforms* 1

(2015). The legislation also banned secure detention for youth who commit misdemeanors, reduced the maximum age of commitment from 21 to 19, and created a parole release panel to better prepare youth for reentry. S.B. 103, 80th Leg., Reg. Sess. (Tex. 2007); The Pew Charitable Trust, *Bending the Curve: Juvenile Corrections Reform in Texas 2* (2013). These reforms were meant to help the Texas Juvenile Justice Department “focus on its core mission of rehabilitating youths.” House Research Organization, *Bill Analysis for H.B. 2807*, at 11 (2007), <https://hro.house.texas.gov/pdf/ba80r/sb0103.pdf>. Between 2007 and 2012, the state closed eight correctional facilities, reduced funding for secure state facilities by more than \$150 million, and increased funding for local juvenile probation by 38 percent. Council of State Governments Justice Center, *supra*, at 16. In 2009, the legislature allocated \$50 million to establish the Community Corrections Diversion program—a grant program that incentivized county governments to use community-based alternatives to incarceration.⁸ *Id.*

During this period of reform, and years before The U.S. Supreme Court decided *Miller*, Texas abolished life without parole sentences for youth under 17.

⁸ An extensive 2015 study showed these reforms were beneficial for youth and did not compromise community safety. *Id.* Admissions to state-run facilities declined by two-thirds, and the youth who were diverted from secure facilities and placed under county probation “fared substantially better.” *Id.* at 59.

S.B. 839, 81st Leg. Sess. (Tex. 2009) (enacting Tex. Gov’t Code Ann. § 508.145(b). Supporters of the bill found “the possibility of parole would give these youthful offenders more incentive to behave in prison and would recognize the fact that juvenile offenders show the most potential for rehabilitation.” House Research Organization, *Bill Analysis for S.B. 839*, at 2 (May 19, 2009), <https://hro.house.texas.gov/pdf/ba81r/sb0839.pdf>.

After *Miller*, Texas again led the way in recognizing that the distinct attributes of youth require more protective treatment under the law. Other states were slow to bring their laws into compliance with the Supreme Court’s ruling, and by 2014, most states had still not passed legislation. See The Sentencing Project, *Slow to Act: State Responses to 2012 Supreme Court Mandate on Life without Parole* (2014) <https://www.sentencingproject.org/app/uploads/2022/10/Slow-to-Act-State-Responses-to-Miller.pdf>. Texas, however, successfully abolished all juvenile life without parole sentences just one year after the *Miller* decision. S.B. 2, 83rd Leg. Special Sess. (Texas 2013) (enacting Tex. Penal Code Ann. § 12.31, Tex. Code Crim. Proc. Ann. art. 37.071). The Court of Criminal Appeals of Texas also held *Miller* applied retroactively, *Ex parte Maxwell*, 424 S.W.3d 66, 75 (Tex. Crim. App. 2014), two years prior to the U.S. Supreme Court reaching the same conclusion. *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016). The Court of Criminal

Appeals of Texas found “*Miller* is driven, first and foremost, by the conclusion that children are constitutionally different from adults for purposes of sentencing.” *Ex Parte Maxwell*, 424 S.W.3d at 75 (internal quotation omitted). While no legislation yet reforms the lengthy sentence at issue here, both the legislature and the Governor have reaffirmed their commitment to the core values of protecting youth in this context.⁹

Texas’ leadership in setting forth protective policies for youth further support applying these heightened protections under Article 1, Section 13 of the Texas Constitution.

⁹ In 2021, an overwhelmingly bipartisan legislature passed a bill that made youth under 18 eligible for parole after 20 years. H.B. 686, 87th Leg. (Tex. 2021). The bill also instructed parole panels to consider (1) the diminished culpability of youth, (2) the hallmark features of youth, and (3) the greater capacity of youth for change. H.B. 686, 87th Leg. (Tex. 2021). Although Governor Abbott vetoed the bill, finding it needed revisions to avoid confusion, he approved of the bill’s goal of reforming parole practices for youth, noting that it “admirably recognizes the potential for change and encourages rehabilitation and productiveness in the young offender population.” Office of the Texas Governor, *Governor Abbott Vetoes UB 686 (87R)*, (June 21, 2021), <https://gov.texas.gov/news/post/governor-abbott-vetoes>. Moreover, courts must address constitutional questions when the legislature has been unable – as is the case here – or unwilling to do so. *See, e.g., State v. Comer*, 266 A.3d 374, 399-400(N.J., 2022) (striking a lengthy sentence as unconstitutional under the New Jersey Constitution and noting that while the Court “would have preferred to wait for the Legislature to act,” it could not “elide a question because the Legislature may act in the future.” *Id.* at 400-401.

This Court has the authority, and the obligation, to independently assess the constitutionality of Mr. Howard's sentence under the Texas Constitution. The balance of factors presented here supports a finding that Texas's Article 1, Section 13's prohibition on cruel or unusual punishment is broader than the Eighth Amendment of the U.S. Constitution.

PRAYER

For the foregoing reasons, *Amici* respectfully request that this Court find Mr. Howard's sentence unconstitutional pursuant to Article 1, Section 13 of the Texas state constitution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2026, a true and correct copy of this brief was e-served on counsel for all parties, per Rule 9.5 of the Texas Rules of Appellate Procedure as follows:

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Rules 9.4 and 11 of the Texas Rules of Appellate Procedure. It was prepared on a computer using 14-point Times New Roman type. It contains 6,674 words. This certification is based on the word count of the program used to prepare the document.

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