STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,	
Plaintiff-Appellee,	Supreme Court No. 166654
v.	Court of Appeals No. 348732
ANDREW MICHAEL CZARNECKI,	Circuit Court No. 16-0010813-FC
Defendant-Appellant.	

MOTION OF FAIR AND JUST PROSECUTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANT-APPELLANT ANDREW MICHAEL CZARNECKI

Pursuant to MCR 7.312(H) and MSC IOP 7.305(A)(10), Fair and Just Prosecution (FJP), a project of the nonprofit Tides Center, seeks leave to file an *amicus curiae* brief in support of Andrew Michaeal Czarnecki's appeal in the above-captioned case. Concurrently, FJP seeks leave to file an *amicus curiae* brief in *State v. Montario Taylor,* Michigan Supreme Court No. 166428. In support of their motions, FJP states as follows:

FJP has a strong interest in the outcome of Mr. Taylor's and Mr. Czarnecki's appeals. FJP brings together elected prosecutors from around the nation as part of a network of leaders committed to a justice system grounded in fairness, equity, compassion, and fiscal responsibility. FJP is committed to ensuring the fairness and legitimacy of the criminal justice system and promotes evidence-based sentencing policies that serve justice and public safety. Our experience and a growing body of empirical evidence show that public safety is best served by sentences that, in addition to being proportionate to the gravity of the criminal offense, also encourage and

facilitate rehabilitation, avoid needlessly incarcerating people who can safely return to their communities and families, and treat people equally and fairly, accounting for their individual conduct, character, and circumstances. Mandatory sentences of life without the possibility of parole ("LWOP") imposed on young adults fail to serve those goals. We believe that Michigan's LWOP sentencing scheme is ineffective, discriminatory, and wasteful and threatens the goal of reducing violence and making communities safer.

FJP submits this *amicus* brief to urge this Court to vacate Mr. Taylor and Mr. Czarnecki's sentences and also hold that Article 1, § 16 of the Michigan 1963 Constitution prohibits mandatory life without parole sentences for young adults.

As FJP argues in its brief, mandatory life without parole for young adults is cruel because it fails to rehabilitation or any other legitimate purpose of punishment. A basic premise of life without parole is that some people will always be a danger to the public, regardless of how much time has passed since their offense and what they have gone through to change. Overwhelming evidence refutes that premise, as also recognized by this court, stating that "only the rarest individual is wholly bereft of the capacity for redemption." *People v. Bullock*, 440 Mich. 15, 39 n.23 (1992) (internal quotation omitted). Yet today Michigan imprisons about 3,600 people serving formal life without parole, nearly a quarter of whom were under age 21 at the time of their offense. Michigan's mandatory LWOP scheme captures people who are likely to change or have already done so; who will almost certainly age out of criminal behavior; and who, when considered as individuals, present virtually no safety risk and could be productive members of society. And it does so while consuming massive public resources and producing wide racial disparities that betray a sentencing scheme based not on culpability or dangerousness or deterrence, but on systemic discrimination.

This crisis of over-incarcerating young adults capable of returning to society is ripe for judicial review. Similar considerations prompted this Court's decision in *People v. Parks*, 510 Mich. 225 (2022), which banned mandatory life without parole sentences for people who are 18 years old, and the same rationale compels extending that rule to 19- and 20-year-old people, such as Mr. Andrew Czarnecki and Mr. Montario Taylor. As a matter of legal reasoning, public safety, and the efficacy of criminal punishment, there is no material distinction between those categories of people.

FJP has experience and a long history researching and advocating against extreme sentences for young people. For example, FJP has filed several amicus briefs concerning mandatory life-without-parole sentences for young people. See, e.g., Amicus Curiae Brief of The Sentencing Project et al., *Commonwealth v. Lee*, No. 3 WAP 2024 (Mi. Apr. 26, 2024), https://statecourtreport.org/sites/default/files/2024-07/sentencing-project-fair-and-just-prosecution-et-al-amicus-curiae.pdf; Brief of Amici Curiae The Antiracism and Community Lawyering Practicum et al., *Baxter v. Florida Department of Corrections* (11th Cir., Aug. 8, 2024), https://www.macarthurjustice.org/wp-content/uploads/2023/12/Baxter_Amicus-Brief_8.8.2024.pdf. FJP has also published Issue Briefs related to young adults and emerging adults in the criminal legal system. See, e.g., Fair and Just Prosecution, *Young Adults In The Justice System* (2019), at https://www.fairandjustprosecution.org/staging/wp-content/uploads/2019/01/FJP_Brief_YoungAdults.pdf; Fair and Just Prosecution, *Lessons Learned From Germany: Promoting Developmentally Appropriate and Rehabilitative Youth and Young Adult Justice* (2022), at https://fairandjustprosecution.org/wp-content/uploads/2022/06/FJP-Germany-Youth-Justice-Brief.pdf. FJP believes that its perspective and expertise will be of considerable assistance to the Court in these cases.

For the reasons set above, FJP requests that this Court grant leave to file the accompanying

amicus curiae brief. (Exhibit A)

Date: December 23, 2024

Respectfully submitted,

/s/ Deborah LaBelle

Deborah LaBelle, P31595
Attorney for FJP
Law Offices of Deborah LaBelle
221 N Main St., Ste 300
Ann Arbor, MI 48104
734-996-5620
deblabelle@aol.com

EXHIBIT A

STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

ANDREW MICHAEL CZARNECKI,

Defendant-Appellant.

Supreme Court No. 166654

Court of Appeals No. 348732

Circuit Court No. 16-0010813-FC

BRIEF OF AMICI CURIAE FAIR AND JUST PROSECUTION IN SUPPORT OF DEFENDANT-APPELLANT ANDREW MICHAEL CZARNECKI

Deborah LaBelle, P31595
Attorney for Amicus Curiae FJP
Law Offices of Deborah LaBelle
221 N Main St., Ste 300
Ann Arbor, MI 48104 734-996-5620
deblabelle@aol.com

DATE: December 23, 2024

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

SUMMARY OF ARGUMENT

Fair and Just Prosecution (FJP), a project of the nonprofit Tides Center, brings together elected prosecutors from around the nation as part of a network of leaders committed to a justice system grounded in fairness, equity, compassion, and fiscal responsibility.[1] FJP is committed to ensuring the fairness and legitimacy of the criminal justice system and promotes evidence-based sentencing policies that serve two primary interests the prosecutors in our network are obligated to pursue: justice and public safety. Our experience and a growing body of empirical evidence show that public safety is best served by sentences that, in addition to being proportionate to the gravity of the criminal offense, also encourage and facilitate rehabilitation, avoid needlessly incarcerating people who can safely return to their communities and families, and treat people equally and fairly, accounting for their individual conduct, character, and circumstances. Mandatory sentences of life without the possibility of parole ("LWOP") imposed on young adults fail in each respect. Michigan's LWOP sentencing scheme is an especially clear example of ineffective, discriminatory, and wasteful sentencing policy that only threatens the goal of reducing violence and making communities safer.

Fair and effective sentencing must account for the decades of sociological and neuroscience research showing that young adults are developmentally more like teenagers than fully-grown adults. With still-developing brains, they take greater risks, are more susceptible to peer pressure, and make impulsive, emotion-based decisions. This lack of neurological development is often compounded by delays in adopting the routines of typical adult life, creating a challenging social and neurobiological reality for young adults.

[1] No party or their counsel authored this amicus brief in whole or in part, and no party or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

But research has also clearly shown that young adults, like children and teenagers, retain a greater capacity to grow and change. Even young adults who commit extremely serious crimes are likely to age out of criminal behavior as they mature. Indeed, one of the crucial neuroscientific findings is that there is no basis to conclude, based on a criminal offense alone, that a young adult is "irredeemable" or incapable of rehabilitation.

These facts are relevant to prosecutorial discretion in charging decisions and sentencing recommendations, and to the internal office policies that guide those decisions.[2] They also have constitutional significance. Criminal punishments are unconstitutionally excessive under Michigan's "cruel or unusual" punishment clause if they violate contemporary standards of decency, a standard in part defined by modern scientific consensus about the efficacy of punishments. This is particularly true because Michigan has an explicit, deeply "rooted" constitutional commitment to the penological goal of rehabilitation.

Applying that standard here, we argue that mandatory life without parole for young and emerging adults is cruel because it fails to serve rehabilitation or any other legitimate purpose of punishment. A basic premise of life without parole is that some people will always be a danger to the public, regardless of how much time has passed since their offense and what they have gone through to change. Overwhelming evidence refutes that premise, as also recognized by this court, stating that "only the rarest individual is wholly bereft of the capacity for redemption." *People v. Bullock*, 440 Mich. 15, 39 n.23 (1992) (internal quotation omitted). Yet today Michigan imprisons

[2] FJP supports an array of age-appropriate policies and interventions to improve outcomes for young adults and their communities, ranging from diversion programs and "young adults courts" that limit exposure to the criminal legal system on the front end, to "second look" sentencing policies that encourage prosecutors to consider whether existing lengthy prison sentences from their jurisdictions remain necessary. Fair and Just Prosecution, *Young Adults In The Justice System* (2019), at https://www.fairandjustprosecution.org/staging/wp-content/uploads/2019/01/FJP_Brief_YoungAdults.pdf.

about 3,600 people serving formal life without parole, nearly a quarter of whom were under age 21 at the time of their offense.[3] Michigan's mandatory LWOP scheme captures people who are likely to change or have already done so; who will almost certainly age out of criminal behavior; and who, when considered as individuals, present virtually no safety risk and could be productive members of society. And it does so while consuming massive public resources and producing wide racial disparities that betray a sentencing scheme based not on culpability or dangerousness or deterrence, but on systemic discrimination.

This crisis of over-incarcerating young adults capable of returning to society is ripe for judicial review. Similar considerations prompted this Court's decision in *People v. Parks*, 510 Mich. 225 (2022), which banned mandatory life without parole sentences for people who are 18 years old, and the same rationale compels extending that rule to 19- and 20-year-old people, such as Mr. Andrew Czarnecki and Mr. Montario Taylor. As a matter of legal reasoning, public safety, and the efficacy of criminal punishment, there is no material distinction between those categories of people.

But even setting *Parks* aside, an independent state constitutional analysis leads to the same result: a mandatory sentence to die in prison for people as young as 19 and 20 years old is cruel or unusual punishment. Mandatory LWOP for young adults is discriminatory and unjust. It fails to accomplish legitimate penological goals, particularly rehabilitation, which has a unique significance in Michigan's jurisprudence. Instead of advancing public safety, mandatory LWOP for young adults makes communities less safe by eroding people's trust in the criminal legal

[3] Michigan Department of Corrections, Offender Tracking Information System (OTIS), at https://mdocweb.state.mi.us/OTIS2/otis2.aspx (sheet with data compiled from OTIS on file with FJP and can be provided upon request).

system. We urge the court to find that mandatory life without parole sentences imposed on young adults ages 19 and 20 are unconstitutional.

ARGUMENT

I. This Court's Holding That Michigan's Constitution Bars Mandatory Life Without Parole Sentences for Young Adults Controls This Case.

Fundamentally, this case requires only the straightforward application of controlling precedent to indistinguishable facts. In 2012, the U.S. Supreme Court held in *Miller v. Alabama* that the Eighth Amendment prohibits mandatory life without parole sentences for children under age 18. Before imposing the law's most severe sentence, the Court said, sentencing courts must consider the "mitigating qualities of youth" and reserve life in prison for only "the rare juvenile offender whose crime reflects irreparable corruption." *Miller v. Alabama*, 567 U.S. 460, 479 (2012). In 2022, this Court in *People v. Parks* invoked Article 1, Section 16 of Michigan's Constitution[4] ("Section 16") to extend that holding to young adults who were age 18 at the time of their offense, noting that "no meaningful neurological bright line exists between age 17 and age 18" and therefore "to treat those two classes of defendants differently in our sentencing scheme is disproportionate to the point of being cruel[.]" *Parks*, 510 Mich. at 266 (internal quotation marks omitted). The same reasoning applies here. See *Parks*, 510 Mich. at 245 (expressly leaving open the question of whether its holding also applies to "offenders who were over 18 years old at the time of the offense").

[4] Section 16, with its disjunctive prohibition on "cruel *or* unusual" punishment, "is broader than the federal Eighth Amendment" ban on "cruel *and* unusual" punishment. *People v. Parks*, 510 Mich. 225, 241 (2022). As this Court has repeatedly explained, Section 16's more expansive meaning is compelled by its distinct text and constitutional history, and by Michigan's longstanding commitment to the penological goal of rehabilitation. *Id*. at 242 (citing *People v Lorentzen*, 387 Mich. 167 (1972)).

Miller is one in a series of U.S. Supreme Court cases—beginning with *Roper v. Simmons*, 543 U.S. 551 (2005)—embracing scientific evidence that younger people are fundamentally different from adults in ways that are profoundly important to criminal sentencing. In sum, the Court has explained that young people with still-developing brains have (1) a "lack of maturity and an underdeveloped sense of responsibility," which leads to "recklessness, impulsivity, and heedless risk-taking"; (2) "are more vulnerable … to negative influences and outside pressures," including from their family and peers; and (3) retain a greater capacity to grow and change, and thus their actions are less likely to be "evidence of irretrievabl[e] deprav[ity]." *Miller*, 567 U.S. at 471 (internal citations and quotation marks omitted); see also *Roper*, 543 U.S. 551, 569-70 (2005). The upshot is that people who commit crimes—even very serious crimes—before their brains have fully developed are both less culpable and remain promising candidates for rehabilitation, two facts that are central to the "excessive" sentencing analysis.

These federal Eighth Amendment cases involve children and youth under the age of 18, and so far the U.S. Supreme Court has not extended them further. But in *Parks* this Court correctly explained that there is no basis to draw a constitutional line between "youth" and "adult" at one's eighteenth birthday. To the contrary, the science shows that "young adults have yet to reach full social and emotional maturity, given that the prefrontal cortex—the last region of the brain to develop, and the region responsible for risk-weighing and understanding consequences—is *not fully developed until age 25*." *Parks*, 510 Mich. at 251 (citing *The Promise of Adolescence: Realizing Opportunity for All Youth*, 51; Arain et al, *Maturation of the Adolescent Brain*, 9 Neuropsychiatric Disease & Treatment 449, 449-50, 453-54 (2013) (emphasis added)). Based largely on this evidence, *Parks* held that it "is cruel punishment to mandatorily impose a life-without-parole sentence on an 18-year-old who is one day older and has the same immaturity,

impetuosity, and failure to appreciate risks and consequences as a 17-plus-364-day-old when that 17-year-old is likely to receive a less-severe sentence." *Id*. at 262. Permitting such "arbitrary line-drawing for punishment of defendants with equal moral culpability neurologically," this Court said, "does not pass [constitutional] scrutiny." *Id*.

Again, the constitutional commitment to rehabilitation was paramount. "Without hope of release, 18-year-old defendants, who are otherwise at a stage of their cognitive development where rehabilitative potential is quite probable, are denied the opportunity to reform while imprisoned," this Court said. And "because an 18-year-old defendant has a 'child's capacity for change,' … it is particularly antithetical to our Constitution's professed goal of rehabilitative sentences to uniformly deny this group of defendants the chance to demonstrate their ability to rehabilitate themselves." *Parks*, 510 Mich. at 265 (quoting *Miller*, 567 US at 473).

But as *Parks* itself acknowledges, there is likewise "no meaningful neurological bright line" between people who are 18 and people who are 19 and 20. To the contrary, the same body of neurological evidence supporting the holdings in *Miller* and *Parks* applies with equal force to other young adults. See *Parks*, 510 Mich. at 244.

Recently faced with the same issue under their respective state constitutions, the highest courts in both Washington and Massachusetts agreed. In 2021, the Washington Supreme Court applied the state's constitutional ban on "cruel" punishments and extended *Miller*'s guarantee of individualized sentencing, including the requirement to consider the distinct characteristics of youth as mitigating factors, to everyone under age 21. *In re Pers. Restraint of Monschke*, 482 P.3d 276 (2021); see also *State v. Bassett*, 418 P.3d 343 (2018) (holding that all life without parole sentences for youth under age 18 constitute unlawful "cruel" punishment). In applying *Miller*'s rationale to young adults, the court explained "that no meaningful neurological bright line exists

between age 17 and age 18 or, as relevant here, between age 17 on the one hand, and ages 19 and 20 on the other hand." *Monschke*, 482 P.3d at 287. "Thus, sentencing courts must have discretion to take the mitigating qualities of youth—those qualities emphasized in *Miller*[]—into account for defendants younger and older than 18." *Id*. As here, the question was not "whether new constitutional protections apply," but whether "existing constitutional protections" apply "to an enlarged class of youthful offenders." *Monschke*, 482 P.2d at 280. The answer that they do, the court said, "flows straightforwardly from our precedents." *Id*. at 288 (internal quotation marks omitted).

Earlier this year, the Supreme Judicial Court of Massachusetts went further. As in Michigan, the Massachusetts state constitution prohibits "cruel or unusual" punishments. Mass. Const. Sec. I, art. 26. Under that clause, the Supreme Judicial Court had previously found that all life without parole sentences for youth are unconstitutionally excessive, imposing a categorical bar where *Miller* required individualized sentencing. *Diatchenko v. Dist. Att'y for Suffolk District*, 1 N.E.3d 270 (Mass. 2013). This year, in *Commonwealth v. Mattis*, the court extended that existing rule to young adults ages 19 and 20. The court's holding turned on both the scientific consensus and Massachusetts' contemporary standards of decency. "Advancements in scientific research have confirmed what many know well through experience: the brains of emerging adults are not fully mature," the court said. "Specifically, the scientific record strongly supports the contention that emerging adults have the same core neurological characteristics as juveniles have." *Mattis*, 224 N.E.3d 410, 420-21 (Mass. 2024); see also *id*. at 430-31 (Kafker, J., concurring) ("Due to this convergence of science and law, I conclude that art. 26 precludes both mandatory and discretionary life sentences without the possibility of parole for those who are older than eighteen but younger than twenty-one at the time they committed murder in the first degree.").

This Court should follow suit. The "convergence of science and law" compels, at a minimum, applying *Parks* to young adults at the ages of 19 and 20. To do so is not to recognize a new constitutional right, but to merely apply existing law to new but materially indistinguishable facts. Barring mandatory life without parole for young adults over 18 "flows straightforwardly" from this Court's precedent.

II. Mandatory Life Without Parole For Young Adults Is Cruel Because It Abandons The Goal Of Rehabilitation, Fails To Serve Any Other Penological Goal, And Threatens Public Safety.

While *Parks* controls here, an independent excessive punishment analysis yields the same result. Criminal punishments are unconstitutionally cruel if they do not serve a legitimate penological purpose "more effectively than a less severe punishment," *Furman v. Georgia*, 403 U.S. 238, 280 (1972) (Brennan, J., concurring), and certainly if they fail to further a proper purpose at all. See *Gregg v. Georgia*, 428 U.S. 153, 183 (1976) (plurality opinion).[5] In Michigan, the goal of rehabilitation holds heightened constitutional significance. It is the only penological goal "specifically rooted in Michigan's legal traditions," and whether and to what extent criminal sanctions promote rehabilitation is a factor in every excessive punishment analysis. *Parks*, 510 Mich. at 242 (internal quotation marks and citations omitted).[6]

[5] See also *Furman*, 403 U.S. at 279 (Brennan, J., concurring) ("If there is a significantly less severe punishment adequate to achieve the purposes for which the punishment is inflicted, the punishment inflicted is unnecessary and therefore excessive.") (internal citations omitted); William Berry, *Cruel State Punishments*, 98 N.C. L. Rev. 1201, 1210 (2020) ("This inquiry … focuses on whether the punishment at issue is cruel in the sense that it is excessive and otherwise unjustified by some legitimate purpose.").

[6] See generally David Shapiro & Molly Bernstein, *The Meaning of Life, In Michigan: Mercy from Life Sentences Under the State Constitution*, working paper (Oct. 19, 2024) (explaining that Michigan's commitment to rehabilitation originated at the 1850 constitutional convention), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4993230.

Under the Michigan's "cruel or unusual" standard,[7] this Court has marked its independence from Eighth Amendment precedent by, among other things, imposing limits on life without parole and other extreme prison sentences. This includes holding that Section 16 prohibits mandatory life without parole sentences for possessing 650 grams of cocaine (a ruling that came one year after the U.S. Supreme Court reached the opposite result under the Eighth Amendment), *People v. Bullock*, 440 Mich. 15 (1992); see also *Harmelin v. Michigan*, 501 U.S. 957 (1991), and—most relevant here—for all young adults who are age 18 at the time of their offense. *People v. Parks*, 510 Mich. 225 (2022). This Court also struck down a minimum term-of-years sentence for marijuana distribution in *People v. Lorentzen*, 387 Mich. 167 (1972), and barred all parolable life sentences for youth convicted of second degree murder in *People v. Stovall*, 987 N.W.2d 85 (Mich. 2022). In each case, the mandate to pursue rehabilitation was crucial. See, e.g., *Lorentzen*, 387 Mich. at 181 ("If we apply the goal rehabilitation, it seems dubious, to say the least, that [a] now 26-year old … will be a better member of society after serving a prison sentence of at least 10 years, 7 months, and 6 days.").

Michigan's constitutional mandate to pursue rehabilitation and help people return safely to society whenever possible is also the foundation of sound, evidence-based public safety policy. As an organization bringing together a network of elected prosecutors who are sworn to protect the public, FJP is committed to evidence-based prosecutorial policies that actually promote public safety, including those that support and rehabilitate offenders and protect communities from the

[7] This Court has distilled this general standard into a four-factor doctrinal test where no one factor controls: "Michigan courts, in evaluating the proportionality of sentences under the 'cruel or unusual punishment' clause, are required to consider: (1) the severity of the sentence relative to the gravity of the offense; (2) sentences imposed in the same jurisdiction for other offenses; (3) sentences imposed in other jurisdictions for the same offense; and (4) the goal of rehabilitation, which is a criterion specifically 'rooted in Michigan's legal traditions[.]'" *Parks*, 510 Mich. at 242; citing *People v Bullock*, 440 Mich. 15, 33-34 (1992).

destabilizing criminogenic effects of over-incarceration. While serious offenses will warrant a term of incarceration, public safety is not served by mandatory sentences consigning young people to die in prison without even the possibility of release.

A. Mandatory Life Without Parole Unlawfully Abandons Rehabilitation.

Both state and federal courts have recognized the "long-established principle" that "the goal of rehabilitation is not accomplished by mandatorily sentencing an individual to life behind prison walls without any hope of release." *Parks*, 510 Mich. at 264-65. Instead, life without parole "forswears altogether the rehabilitative ideal" by "denying [someone] the right to reenter the community" and making "an irrevocable judgment about the person's value and place in society." *Graham v. Florida*, 560 U.S. 48, 74 (2010). In this way, life without parole sentences are "strikingly similar" to death sentences. *Diatchenko*, 1 N.E.3d at 284.

This court recognized that "[o]nly the rarest individual is wholly bereft of the capacity for redemption," *Bullock*, 440 Mich. at 39 n.23 (internal quotation omitted), yet Michigan's mandatory life without parole sentencing scheme captures thousands of people with the potential to grow and change, sending them to die in prison without considering individual mitigating factors—including the attributes of youth. See *Parks*, 510 Mich. at 260 ("automatically harsh punishment without consideration of mitigating factors is unconstitutionally excessive and cruel."). Today, over 800 people are serving life without parole in Michigan for a crime committed before the age of 21, with close to 900 more people sentenced to LWOP for a crime committed before the age of 25.[8] Together, that's nearly 50 percent of the state's entire life without parole population, sentenced to

[8] *Supra* note 3.

die in prison when a massive body of scientific evidence, along with the state and federal case law relying on it, teaches that they have a heightened capacity for rehabilitation.

In addition, people sentenced to life terms have often shown an extraordinary capacity for reform inside prison walls. While incarcerated, "lifers" tend to be a positive and constructive influence on the prison community, serving as mentors to younger prisoners and contributing to the overall prison morale. See Christopher Seeds, *Death By Prison: The Emergence of Life without Parole and Perpetual Confinement* 162, n. 16–19 (2022). Faced with bleak life prospects and minimal chance of release, many lifers still "doggedly seek purpose in their lives" through the cultivation of an "optimistic sense of personal efficacy" aimed at improving their own lives, often becoming a "stabilizing force" for community management. Marie Gottschalk, No Way Out? Life Sentences and the Politics of Prison Reform, *in* Life Without Parole 234 (Charles J. Ogletree, Jr. & Austin Sarat, eds. 2012).

In short, even young adults who inflict grievous harm are capable of change, and there is no justification for mandatorily automatically extinguishing any chance at meaningful rehabilitation and reentry into society. For this reason alone, Michigan's mandatory life without parole sentencing scheme is cruel punishment as applied to people under age 21.

B. Mandatory Life Without Parole Fails To Serve Other Purposes of Punishment.

Under Michigan law, rehabilitation takes priority as a penological objective. But even other purposes of punishment recognized in federal law cannot justify mandatory life without parole—particularly as applied to young adults. First, the thousands of people warehoused on mandatory life sentences include many who pose virtually no safety risk and therefore present no need for incapacitation. In our advocacy for "second look" initiatives that encourage prosecutors to reexamine the necessity of existing sentences, we have explained how people age out of criminal

behavior. "[R]esearch shows it is often unnecessary to incarcerate individuals who commit harm in their youth into and past middle age. Data confirms that the majority of individuals, including those who commit serious crimes, do so only within a five to ten year window of the original offense, and even those with the highest rates of reoffending have recidivism rates approaching zero by the time they reach the age of 40."[9] In Michigan, though, the average age of people serving life without parole is over 52, and nearly one third of the state's LWOP population is over age 60.[10]

Research also discounts any deterrent effect. Michigan's current crisis of excessive sentencing originated from an era when policymakers—both in Michigan and around the country—relied on the use of severe sanctions for crime control.[11] Yet "[s]tudy after study [] has shown that people do not order their unlawful behavior around the harshness of sentences they may face, but around their perceived likelihood of being caught and facing any sentence."[12] In

[9] Fair & Just Prosecution, *Joint Statement On Sentencing Second Chances & Addressing Past Extreme Sentences* (Apr. 2021), at https://fairandjustprosecution.org/wp-content/uploads/2021/04/FJP-Extreme-Sentences-and-Second-Chances-Joint-Statement.pdf; *see also* The Sentencing Project, *No End in Sight: America's Enduring Reliance on Life Imprisonment* (2021) (even accounting for violent offenses, studies consistently show that "the peak age for murder is 20, a rate that is more than halved by one's 30s and is less than one quarter of its peak by one's 40s."); Social Variation, Social Explanations, *in* The Nurture Versus Biosocial Debate in Criminology: On the Origins of Criminal Behavior and Criminality 393–94 (Kevin M. Beaver et al. eds., 2014) ("Age is a consistent predictor of crime . . . . The most common finding across countries, groups, and historical periods shows that crime ... tends to be a young persons' activity.").

[10] *Supra* note 3.

[11] See Anne Yantus, *Sentence Creep: Increasing Penalties in Michigan and the Need for Sentencing Reform*, 47 U. Mich. J. L. Reform 645, 647 (2014).

[12] Marta Nelson, Sam Feineh & Maris Mapolski, *A New Paradigm for Sentencing in the United States*, Vera Institute of Justice (2023), https://vera-institute.files.svdcdn.com/production/downloads/publications/Vera-Sentencing-Report-2023.pdf; see also, David Roodman, *The Impacts of Incarceration on Crime*, The Open Philanthropy Project, 48 (2017) https://www.openphilanthropy.org/files/Focus_Areas/Criminal_Justice_Reform/The_impacts_of_incarceration_on_crime_10.pdf.

other words, it is the certainty of punishment, not its severity, that deters. That general rule is even more true here, given that younger people with developing brains are less likely to weigh the long-term consequences of their actions.[13]

Finally, any claim to retribution fails because young adults inherently have reduced culpability. See *State v. Bassett*, 428 P.3d 343, 353 (Wash. 2013) ("the case for retribution is weakened for children because '[t]he heart of the retribution rationale relates to an offender's blameworthiness' and children have diminished culpability.") (quoting *Miller*, 567 U.S. at 472). Further, mandatory life without parole in Michigan is not properly retributive—that is, dispensed according to "just deserts"—because it produces massive racial disparities. Black people comprise just about 12 percent of Michigan's overall population, but 68 percent of those serving life without parole. The numbers are worse for young adults. Of those serving life without parole for crimes committed before age 25, 75 percent are Black. For those who were age 19 or 20 at the time of their offense—that is, the category of offenders at issue here—76 percent are Black.[14] This data suggests deep systemic racism and a sentencing scheme that is fundamentally based on discrimination, not culpability. As the Connecticut Supreme Court explained, a punishment "must be equally available for similarly culpable offenders" if it "is to fulfill a valid retributive purpose." If instead the "punishment is imposed … on the basis of impermissible considerations such as …

[13] *See* Jeffrey Fagan & Alex R. Piquero, *Rational Choice and Developmental Influences on Recidivism Among Adolescent Felony Offenders*, 4 J. Empirical Legal Stud. 715–748 (2007) (showing "that both mental health and developmental maturity moderate the effects of perceived crime risks and costs on criminal offending").

[14] *Supra* note 3.

race," then it "does not restore but, rather, tarnishes the moral order." *State v. Santiago*, 318 Conn. 1, 66 (2015).[15]

C. Mandatory Life Without Parole Threatens Public Safety.

Taken together, the traditional purposes of criminal punishment can be understood as different means of achieving one overarching goal: protecting public safety. That is especially true of rehabilitation, deterrence, and incapacitation, the so-called "utilitarian" or "instrumental" purposes that aim to separate truly dangerous people and reduce criminal conduct among the broader population. In failing to achieve or make any measurable contribution to these discrete goals, mandatory life without parole does the opposite. Banishing people to die in prison without the hope of release is not simply an ineffective path toward public safety, it is an affirmative threat to it.

Beyond the reasons set forth above, there are two ways in which mandatory life without parole undermines public safety. First, these draconian sentences siphon enormous resources that are needed to fund more effective ways of preventing violence. In 2023, the Michigan Department of Corrections reported spending over $1.6 billion to imprison people in more than two dozen facilities.[16] That amounts to $48,000 per prisoner per year, and roughly $173 million spent to confine people serving life without parole. Of course, it costs substantially more to incarcerate older adults. They are more likely to suffer from chronic health problems, mobility issues, and

[15] *See also* William Berry, *Unlocking State Punishment Clauses*, Rutgers L. Rev. (forthcoming 2025), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5017494 ("a systemic application of punishments leading to distinctions based on improper factors is cruel").

[16] Michigan Department of Corrections Report to the Legislature (2023), at https://www.michigan.gov/corrections/-/media/Project/Websites/corrections/Files/Legislative-Reports/2024/Prisoner-Costs.pdf?rev=9b7a597fd61e4b5a80efb52ab2f2d427&hash=172453C414C9ABCB09633D9D81ED44DB.

other various ailments that require expensive medical intervention, including hearing and vision loss.[17]

Moreover, there is no public safety benefit to incarcerating young people for their entire natural lives given their immense capacity for change during their incarceration and following their release. For example, former lifers have among the lowest recidivism rates of any offender category, and are especially unlikely to commit violence. In Michigan, 648 people serving life without parole had their sentences commuted and were released between 1900 and 2003. Of them, only 2.3 percent had their parole revoked, and just one person (or 0.2 percent) received a new criminal conviction.[18] By comparison, Michigan's overall recidivism rate was 22.7% in the most recent year that data is available, which was its second lowest recidivism rate in history.[19] Studies focused on younger people in particular have shown similar results. For example, a report published in 2020 looked at people released from youth life without parole sentences in Philadelphia, and found that just 1 percent received a new conviction.[20] The Sentencing Project reports that, combined, studies of released lifers in Michigan, Pennsylvania, Maryland, New York, and California "find recidivism rates less than 5% among people who previously committed violence and were sentenced to life," and that "people released from prison who were originally

[17] Matt McKillop and Alex Boucher, *Aging Prison Populations Drive Up Costs*, The Pew Charitable Trusts (2018), https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/20/aging-prison-populations-drive-up-costs.

[18] Citizens Alliance on Prisons & Public Spending, *When "Life" Did Not Mean Life: A Historical Analysis of Life Sentencing Imposed in Michigan Since 1990*, at 6 (2006), at https://static.prisonpolicy.org/scans/cappsmi/When%20life%20did%20not%20mean%20life%20for%20web.pdf.

[19] *Michigan's Success Rate*, Michigan Department of Corrections, https://www.michigan.gov/corrections/success-rate (last visited Dec. 18, 2024).

[20] New Study Finds 1% Recidivism Rate Among Released Philly Juvenile Lifers, Montclair State University Press Room (Apr. 30, 2020), at https://www.montclair.edu/newscenter/2020/04/30/new-study-finds-1-recidivism-rate-among-released-philly-juvenile-lifers.

convicted of homicide are less likely than other released prisoners to be arrested for a violent crime."[21] And as mentioned already, Michigan's LWOP population is an aging one, with an average time-served of 25 years and about 1,100 people who are over age 60.

Spending such massive sums on prisons and punishment means substantially less money for evidence-based crime-prevention strategies that "tackle the social determinants of safety."[22] These policies range from targeted interventions for high-risk people, to community violence intervention programs and non-law enforcement crisis responders, to investments that expand access to healthcare, housing, employment, good public schools, and parks and other community spaces.[23] These "upstream" interventions "strengthen[] communities from the bottom up,"[24] and they inevitably suffer when punitive policies take financial precedence.

Second, the unequal and discriminatory application of life without parole erodes trust in the legal system, which in turn undermines whatever public safety benefits that system might provide. Our network of prosecutors depend on public trust to realize their mission of upholding justice and promoting public safety for all members of the community. The U.S. Supreme Court recognized this in the relationship between the public and the courts, writing that "justice must

[21] The Sentencing Project, *No End In Sight*:, *America's Enduring Reliance On Life Imprisonment* (2021), https://www.sentencingproject.org/app/uploads/2022/08/No-End-in-Sight-Americas-Enduring-Reliance-on-Life-Imprisonment.pdf; see also J.J. Prescott, Benjamin Pyle, & Sonja B. Starr, *Understanding Violent-Crime Recidivism*, 95 Notre Dame L. Rev. 1643 (2020).

[22] Thea Sebastian et al., *A New Community Safety Blueprint*, The Brookings Institute (Sept. 21, 2022) (internal quotation marks omitted), at https://www.brookings.edu/articles/a-new-community-safety-blueprint-how-the-federal-government-can-address-violence-and-harm-through-a-public-health-approach/.

[23] See *id*.; Holly S. Schindler & Hirokazu Yoshikawa, *Preventing Crime Through Intervention in The Preschool Years*, The Oxford Handbook of Crime Prevention, 70-88 (Brandon C. Welsh & David P. Farrington, eds.) (2012); Julian Spector, *Another Reason to Love Urban Green Space: It Fights Crime*, CityLab, (Apr. 13, 2016), https://www.citylab.com/solutions/2016/04/vacant-lots-green-space-crime-research-statistics/476040.

[24] Thea Sebastian et. al., *supra* note 22.

satisfy the appearance of justice." *Offut v. United States*, 348 U.S. 11, 14 (1954). Our legal system "depends in large measure on the public's willingness to respect and follow its decisions." *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 445-46 (2015). Research and experience shows that when people have confidence in legal authorities and view the police, the courts, and the law as legitimate, they are more likely to report crimes, cooperate as witnesses, and accept police and judicial system authority.[25] But racial discrimination is a chief threat to that confidence and perception of fairness. See, e.g., *People v. Johnson*, 549 P.3d 985, 1003 (2024) (Marquez, J., concurring) (explaining that excluding people from jury service "on the basis of race harms defendants, as well as the excluded jurors, and erodes public trust in the integrity of the criminal justice system.").

By any measure, then, mandatory life without parole for young adults is a failure of constitutional proportions. Instead of promoting the proper purposes of criminal punishment—especially the goal of rehabilitation—it undermines them, and it jeopardizes public safety as a result.

[25] See Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 Ohio St. J. Crim. L. 231, 263 (2008) ("[Findings] demonstrate that people are more willing to cooperate with the police when they view the police as legitimate social authorities. If people view the police as more legitimate, they are more likely to report crimes in their neighborhood. In addition, minority group members are more likely to work with neighborhood groups."); Tom R. Tyler & Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation and Engagement*, 20 Psych., Pub. Pol'y & L. 78, 78-79 (2014) ("The most important finding of this study is that legitimacy plays a significant role in motivating law related behavior. The prior role of legitimacy in shaping compliance is replicated, as is the role of legitimacy in encouraging cooperation, including ceding power to the state and helping to address problems of crime and social order. In addition, legitimacy is shown to have a role in motivating empowerment, e.g. in building social capital and facilitating social, political and economic development.").

CONCLUSION

As an organization bringing together elected prosecutors, we develop, advocate for, and help to implement various policy reforms designed to advance public safety and justice, and to that end, reduce needlessly long prison terms. Mandating that young people aged 19 and 20 must eventually die in prison regardless of their individual circumstances is antithetical to Michigan's constitutional commitment to rehabilitation, and to the broader goal of protecting public safety. It is therefore cruel or unusual punishment, and violates Michigan's state constitution.

Date: December 23, 2024

Respectfully submitted,

/s/ Deborah LaBelle

Deborah LaBelle, P31595
Attorney for Amicus Curiae FJP
Law Offices of Deborah LaBelle
221 N Main St., Ste 300
Ann Arbor, MI 48104
734-996-5620
deblabelle@aol.com