

STATE OF MICHIGAN
MICHIGAN SUPREME COURT
APPEAL FROM THE MICHIGAN COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff- Appellee,

v.

Supreme Court No. 161529

Court of Appeals No. 352569

Wayne CC: 02-000893-02-FC

JOHN ANTONIO POOLE,

Defendant-Appellant.

**BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER, AMERICAN CIVIL
LIBERTIES UNION OF MICHIGAN, JUVENILE SENTENCING PROJECT AT
QUINNIPIAC UNIVERSITY SCHOOL OF LAW, AND DEBORAH LABELLE IN
SUPPORT OF DEFENDANT-APPELLANT JOHN ANTONIO POOLE**

Bonsitu Kitaba-Gaviglio (P78822)
Daniel S. Korobkin (P72842)
American Civil Liberties Union
Fund of Michigan
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6800
bkitaba@aclumich.org
dkorobkin@aclumich.org

Deborah A. Labelle (P31595)
221 N. Main St., Ste. 300
Ann Arbor, MI 48104
(734) 996-5620
deblabelle@aol.com

Marsha Levick, PA Bar # 22535
Riya Saha Shah, PA Bar #200644
Juvenile Law Center
1800 JFK Blvd., Ste. 1900B
Philadelphia, PA 19103
(215) 625-0551
mlevick@jlc.org
rshah@jlc.org

Tessa B. Bialek (P78080)
Sarah F. Russel, CT Bar # 428094
Juvenile Sentencing Project
Legal Clinic, Quinnipiac University
School of Law
275 Mount Carmel Ave.
Hamden, CT 06518
(203) 582-3238
tessa.bialek@quinnipiac.edu

Counsel for Amici Curiae

RECEIVED by MSC 1/11/2022 1:35:46 PM

TABLE OF CONTENTS

TABLE OF AUTHORITES iii

INTEREST AND IDENTITY OF *AMICI CURIAE*..... 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT..... 3

I. MANDATORY IMPOSITION OF LIFE WITHOUT PAROLE ON AN 18-YEAR-OLD VIOLATES THE FEDERAL AND STATE CONSTITUTIONS FOR THE SAME REASONS THE *MILLER* COURT BARRED SUCH SENTENCES FOR YOUTH UNDER 18..... 3

A. Research Now Shows Neurodevelopmental Growth Continues For Older Adolescents Beyond Age 18..... 4

B. Given Their Shared Developmental Characteristics, Youth and Older Adolescents Are Less Culpable Than Older Adults..... 7

C. Because 18-year-olds Possess The Same Developmental Characteristics As Their Younger Peers, They Cannot Be Subject To Mandatory Life Without Parole Sentences Under *Miller* and the Eighth Amendment 10

D. Sentencing Older Adolescents To Life Without Parole Also Violates The Michigan Constitution’s Ban On Cruel Or Unusual Punishment..... 13

1. Mr. Poole’s sentence is unconstitutional because the Michigan Constitution’s “cruel or unusual punishment” clause is broader than the Eighth Amendment’s “cruel and unusual punishments” clause 14

2. Mr. Poole’s life without parole sentence is disproportionate, unusual, and undermines the goal of rehabilitation in violation of the Michigan Constitution..... 15

II. THERE IS NOW A CLEAR CONSENSUS IN MICHIGAN AND ACROSS THE COUNTRY THAT THE LINE BETWEEN CHILDHOOD AND ADULTHOOD SHOULD BE SET ABOVE AGE 18 20

A. Michigan’s Criminal Legal System Provides Youth Above Age 18 Special Privileges And Protections That Reflect The Three Key Developmental Characteristics Identified In *Miller* 20

B. Youth Above Age 18 Are Afforded Special Protections In Sentencing 23

C. Jurisdictions Across The Country Increasingly Set The Age Of Adulthood Above
18 In Situations Implicating Immaturity And Susceptibility To Peer Pressure..... 25

D. Many Jurisdictions Extend Additional Supports To Youth Through Their Mid-
Twenties In Recognition Of Their Developmental Immaturity..... 29

CONCLUSION..... 31

STATE LAW RESTRICTIONS ON YOUNG ADULTS UNDER AGE 21 33

TABLE OF AUTHORITES

	Page(s)
Cases	
<i>Carlton v Dep't of Corrections</i> , 215 Mich App 490; 546 NW2d 671 (1996).....	15
<i>Cruz v United States</i> , 826 F Appx 49 (CA 2, 2020)	6
<i>Cruz v United States</i> , unpublished opinion of the United States District for the District of Connecticut, issued March 29, 2018 (Docket No. No. 3:11-cv-00787), 2018 WL 1541898	5
<i>Graham v Florida</i> , 560 US 48; 130 S Ct 2011; 176 L Ed 2d 825 (2010).....	3, 4, 16, 19
<i>Hall v Florida</i> , 572 US 701; 134 S Ct 1986; 188 L Ed 2d 1007 (2014).....	12
<i>Harmelin v Michigan</i> , 501 US 957; 111 S Ct 2680; 115 L Ed 2d 836 (1991).....	15
<i>Horsley v Trame</i> , 808 F3d 1126 (CA 7, 2015)	28
<i>Miller v Alabama</i> , 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012).....	<i>passim</i>
<i>Matter of Monschke</i> , 197 Wash 2d 305; 482 P3d 276 (2021)	24
<i>Montgomery v Louisiana</i> , 577 US 190; 136 S Ct 718; 193 L Ed 2d 599 (2016).....	3
<i>Nat'l Rifle Ass'n of America, Inc v Bureau of Alcohol, Tobacco, Firearms, & Explosives</i> , 700 F3d 185 (CA 5, 2012)	28
<i>People v Benton</i> , 294 Mich App 191; 817 NW2d 599 (2011).....	15
<i>People v Bosca</i> , 310 Mich App 1; 871 NW2d 307 (2015).....	15

People v Bullock,
440 Mich 15; 485 NW2d 866 (1992).....14, 15, 16, 19

People v. DiPiazza,
286 Mich App 137; 778 NW2d 264 (2009).....17

People v Lorentzen,
387 Mich 167; 194 NW2d 827 (1972).....14, 16, 17

People v Nunez,
242 Mich App 610; 619 NW2d 550 (2000)15

People v Perkins,
107 Mich App 440; 309 NW2d 634 (1981).....21

People v Tucker,
312 Mich App 645; 879 NW2d 906 (2015).....15

Roper v Simmons,
543 US 551; 125 S Ct 1183; 161 L Ed 2d 1 (2005)..... *passim*

State v O'Dell,
183 Wash 2d 680; 358 P3d 359(2015)24

Thompson v Oklahoma,
487 US 815; 108 S Ct 2687; 101 L Ed 2d 702 (1988).....11

United States v Cruz,
unpublished order of the United States District for the District of Connecticut,
issued April 9, 2021 (Docket No. 3:94-CR-112 (JCH)), 2021 WL 13268516

United States v. Johnson,
unpublished order of the United States District Court for the Northern District
of California, issued October 30, 2021 (Docket No. 05-CR-00167), 2021 WL
5037679.....24

United States v. Ramsay,
538 F Supp 3d 407 (SDNY, 2021)24

United States v. Sims,
unpublished memorandum opinion of the United States District Court for the
Eastern District of Virginia, issued April 23, 2021 (Docket No 3:98-CR-45),
2021 WL 160395924

United States v Walters,
253 F Supp 3d 1033 (ED Wis, 2017).....24

Constitutions

Const 1835, art 1, § 1814
 Const 1850, art 6, § 3114
 Const 1908, art 2, § 1514
 Const 1963, art 1, § 1613, 14
 Const 1963, art 4, § 4026

Statutes and Regulations

42 CFR 441.5030
 49 CFR 391.1127
 18 USC 92228
 20 USC 141230
 23 USC 15826
 42 USC 67529
 VI Code Ann tit 5, § 371222
 730 Ill Comp Stat 5/5-4.5-11525
 Ala Code 15-19-122
 Cal Penal Code 4801(c)25
 Colo Rev Stat Ann 18-1.3-40722
 Colo Rev Stat Ann 18-1.3-407.522
 Fla Stat Ann 958.01122
 Fla Stat Ann 958.1522
 Ga Code Ann 42-7-222
 MCL 28.425b28
 MCL 28.46628
 MCL 256.63727

MCL 257.658.....	27
MCL 333.27955.....	27
MCL 388.1606.....	30
MCL 432.209.....	27
MCL 480.12d.....	27
MCL 762.11.....	22
NJ Stat Ann 52:17B-182.....	22
NJ Stat Ann 52:17B-183.....	22
NY Crim Proc Law 720.10.....	22
NY Crim Proc Law 720.15.....	22
SC Code Ann 24-19-10.....	22
Va Code Ann 19.2-311.....	22
Vt Stat Ann tit 33, § 5280.....	22
Vt Stat Ann tit 33, § 5281.....	22
Vt Stat Ann tit 33, § 5287.....	22
Bills and Acts	
1966 PA 301.....	21
2015 HB 4069.....	21
2015 HB 4169.....	21
Assemb B 1308 (Cal 2017).....	24
Further Consolidated Appropriations Act, 2020, PL 116-94, § 603; 133 Stat 2534, 3123.....	26
Governor’s B 5040, 2018 Gen Assemb, February Sess (Conn 2018).....	23
HB 4581, 100th Gen Assemb (Ill 2017).....	23
Omnibus Public Safety and Justice Amendment Act of 2020, DC Law 23-274.....	25
S 234, § 12 (Vt 2018).....	23

Other Authorities

Aragon, <i>Free and Compulsory School Age Requirements</i> (2015).....	30
Becker, <i>Why Vermont Raised its Juvenile Court Age Above 18—and Why Mass Might, Too</i> , WBUR News (October 3, 2019).....	23
Bessler, <i>Cruel & Unusual: The American Death Penalty and the Founders’ Eighth Amendment</i> (Boston: Northeastern University Press, 2012).....	14
Campaign for Tobacco-Free Kids, <i>States and Localities that Have Raised the Minimum Legal Sale Age for Tobacco Products to 21</i> (accessed January 5, 2022).....	26
Center for Consumer Information & Insurance Oversight, <i>Young Adults and the Affordable Care Act: Protecting Young Adults and Eliminating Burdens on Families and Businesses</i> (accessed January 5, 2022).....	30
CFSY, <i>Montgomery v. Louisiana Anniversary: Four Years Since the U.S. Supreme Court Decision in Montgomery v. Louisiana</i> (2020).....	18
Cohen et al, <i>When Does a Juvenile Become an Adult? Implications for Law and Policy</i> , 88 Temple L Rev 769 (2016).....	9, 27
Cohen et al, <i>When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts</i> , 27 Psychol Sci 549 (2016).....	8
Enterprise, <i>Can You Rent a Car Under 25 in the US and Canada?</i> (accessed January 5, 2022).....	27
Gardner & Steinberg, <i>Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study</i> , 41 Dev Psychol 625 (2005).....	9
Giffords Law Center, <i>Minimum Age to Purchase & Possess</i> (accessed January 5, 2022).....	28
Hayek, National Institute of Justice, <i>Environmental Scan of Developmentally Appropriate Criminal Justice Responses to Justice-Involved Young Adults</i> (2016).....	22
House Legislative Analysis, HB 4069, HB 4135, and HB 4169 (March 14, 2015).....	21, 22
Icenogle et al, <i>Adolescents’ Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a “Maturity Gap” in a Multinational, Cross-Sectional Sample</i> , 43 L & Hum Behav 69 (2019).....	8

Kloosterman, <i>Second Chances for Youthful Offenders Key Point of Bill, State Rep Says</i> , Michigan Live (June 16, 2015).....	22
Lebel & Beaulieu, <i>Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood</i> , 31 J Neuroscience 10937 (2011)	4
Michaels, <i>A Decent Proposal: Exempting Eighteen- to Twenty-Year-Olds From the Death Penalty</i> , 40 NYU Rev L & Soc Change 139 (2016)	6, 7
Monahan, Steinberg & Piquero, <i>Juvenile Justice Policy and Practice: A Developmental Perspective</i> , 44 Crime & Just 577 (2015).....	6, 7, 9, 10
Nat'l Academies of Sciences, Engineering & Medicine, <i>The Promise of Adolescence: Realizing Opportunity for All Youth</i> (Washington, DC: The National Academies Press, 2019)	6, 29
Nat'l Academies of Sciences, <i>Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products</i> (Washington, DC: The National Academies Press, 2015).....	26
Pearson, Murphy & Doane, <i>Impulsivity-Like Traits and Risky Driving Behaviors Among College Students</i> , 53 Accident Analysis & Prevention 142 (2013)	27
Pfefferbaum et al, <i>Variation in Longitudinal Trajectories of Regional Brain Volumes of Healthy Men and Women (Ages 0 to 85 Years) Measured with Atlas-Based Parcellation of MRI</i> , 65 NeuroImage 176 (2013)	4
Rudolph et al, <i>At Risk of Being Risky: The Relationship Between “Brain Age” Under Emotional States and Risk Preference</i> , 24 Dev Cognitive Neuroscience 93 (2017).....	8
Schiraldi & Western, <i>Why 21 Year-Old Offenders Should Be Tried in Family Court</i> , Washington Post (October 2, 2015)	6
Scott, Bonnie & Steinberg, <i>Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy</i> , 85 Fordham L Rev 641 (2016).....	<i>passim</i>
Shulman et al, <i>Sex Differences in the Developmental Trajectories of Impulse Control and Sensation-Seeking from Early Adolescence to Early Adulthood</i> , 44 J Youth & Adolescence 1 (2015).....	7
State of Michigan, Gov. Snyder Signs Fostering Connections Legislation (November 22, 2011)	30
Steinberg & Scott, <i>Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty</i> , 58 Am Psychologist 1009 (2003)	5

Steinberg, <i>A 16-year-old Is as Good as an 18-year-old—or a 40-year-old—at Voting</i> , Los Angeles Times (November 3, 2014)	31
Steinberg, <i>A Social Neuroscience Perspective on Adolescent Risk-Taking</i> , 28 Dev Rev 78 (2008)	9
Steinberg, <i>Does Recent Research on Adolescent Brain Development Inform the Mature Minor Doctrine?</i> , 38 J Med & Phil 256 (2013)	5
Steinberg et al, <i>Age Differences in Future Orientation and Delay Discounting</i> , 80 Child Dev 28 (2009)	10
Steinberg, <i>Should the Science of Adolescent Brain Development Inform Public Policy?</i> , 64 Am Psychologist 739 (2009)	10
Transcript of September 13, 2017 Hearing at 14:20–25, 71:6, <i>Cruz v United States</i> , unpublished opinion of the United States District for the District of Connecticut, issued March 29, 2018 (Docket No. 3:11-cv-00787), 2018 WL 1541898.....	5
U.S. Dep’t of Health & Human Services, <i>Extension of Foster Care Beyond Age 18</i> (February 2017)	29
Weingard et al, <i>Effects of Anonymous Peer Observation on Adolescents’ Preference for Immediate Rewards</i> , 17 Developmental Sci 71 (2013)	6
<i>Young Adult Diversion Court</i> (accessed January 5, 2022)	23

INTEREST AND IDENTITY OF *AMICI CURIAE*¹

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the justice and child welfare systems through litigation and appellate advocacy, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity, are rooted in developmental research, and reflective of international human rights values.

The **American Civil Liberties Union of Michigan (“ACLU”)** is the Michigan affiliate of a nationwide, nonpartisan organization with over a million members dedicated to protecting the rights guaranteed by the United States Constitution. The ACLU has long advocated for an end to the practice of sentencing children in Michigan to life in prison, including through litigation, as *amicus curiae*, and through public education. See, e.g., *Hill v Snyder*, 900 F.3d 260 (CA 6, 2018); *People v Carp*, 496 Mich 440; 852 NW2d 801 (2014), vacated by *Carp v Michigan* 136 S Ct 1355 (2016); ACLU of Michigan, *Second Chances: Juveniles Serving Life Without Parole in Michigan Prisons* (2004).

The **Juvenile Sentencing Project at Quinnipiac University School of Law** focuses on issues relating to long prison sentences imposed on children. In particular, it researches and analyzes responses by courts and legislatures nationwide to the U.S. Supreme Court’s decisions related to long sentences for juveniles and produces reports and memoranda for use by policymakers, courts, scholars, and advocates.

¹ Pursuant to MCR 7.312(H)(4), *amici curiae* state that no counsel for a party authored this brief in whole or in part, nor did anyone, other than *amici* and their counsel, make a monetary contribution intended to fund the preparation or submission of the brief.

Deborah LaBelle is a founder and board member of the national Campaign for Fair Sentencing of Youth, Director of the Juvenile Life Without Parole Initiative and civil rights attorney who has been and is lead counsel on multiple class actions challenging the treatment and punishment of youth in the criminal legal system in Michigan. She has contributed to multiple books and articles addressing human rights and youth justice and represented clients in the United States Supreme Court and the Inter American Court of Justice. Her recognition includes numerous awards for outstanding legal advocacy on behalf of defendants, youth, and communities.

SUMMARY OF THE ARGUMENT

In *Miller v Alabama*, the United States Supreme Court ruled that mandatory life without parole sentences are unconstitutional for individuals who were under age 18 at the time of their offenses under the Eighth Amendment's prohibition on cruel and unusual punishment. 567 US 460, 465; 132 S Ct 2455; 183 L Ed 2d 407 (2012). The Court, relying on the same underlying scientific research used to bar the death penalty for juveniles, held that children are less culpable than their adult counterparts because of their immaturity, impetuosity, susceptibility to peer influence, and greater capacity for change. *Id.* at 471-72. Further research now confirms that young people retain these characteristics beyond age 18. Because older adolescents retain the same cognitive characteristics that courts have determined render youth less culpable than adults, mandatory life without parole sentences for this population are also disproportionate under both the Eighth Amendment and Article 1, § 16, of Michigan's 1963 Constitution. Indeed, in recognition of the current developmental research, jurisdictions around the country are increasingly raising the age of adulthood above age 18 in situations that implicate the developmental characteristics relied upon in *Miller*, reinforcing how current sentencing practices wrongly turn on the arbitrary boundary of age 18. Further, as courts around the country have

considered age and its attendant characteristics in sentencing even older adolescents, they have consistently found them less deserving of the harshest available penalties. *Amici* urge this Court to find that 18-year-olds, like John Antonio Poole, are developmentally indistinguishable from defendants under age 18 and therefore cannot constitutionally be sentenced to mandatory life without parole because such a sentence would be cruel or unusual under Article 1, § 16 of Michigan's Constitution and would defy the rule set forth in *Miller*.

ARGUMENT

I. MANDATORY IMPOSITION OF LIFE WITHOUT PAROLE ON AN 18-YEAR-OLD VIOLATES THE FEDERAL AND STATE CONSTITUTIONS FOR THE SAME REASONS THE *MILLER* COURT BARRED SUCH SENTENCES FOR YOUTH UNDER 18

It is settled constitutional law that children are developmentally different from adults and that, under the Eighth Amendment, these differences require individualized consideration of their youthful characteristics prior to imposition of the law's harshest adult punishments. See, e.g., *Roper v Simmons*, 543 US 551, 578; 125 S Ct 1183; 161 L Ed 2d 1 (2005) (banning the death penalty for individuals convicted of murder under the age of eighteen); *Graham v Florida*, 560 US 48, 82; 130 S Ct 2011; 176 L Ed 2d 825 (2010) (banning life without parole sentences on juveniles convicted of non-homicide offenses); *Miller v Alabama*, 567 US 460, 465; 132 S Ct 2455; 183 L Ed 2d 407 (2012) (banning mandatory life without parole sentences for juveniles convicted of homicide).

The Supreme Court relied on three key developmental characteristics of youth in reaching its conclusions: (1) youth's lack of maturity, impulsivity and impetuosity; (2) youth's susceptibility to outside influences; and (3) youth's capacity for change. See *Montgomery v Louisiana*, 577 US 190, 206-07; 136 S Ct 718; 193 L Ed 2d 599 (2016), quoting *Miller*, 567 US at 471. Because of these developmental differences, youth are less culpable; their "conduct is not as morally

reprehensible as that of an adult,” *Roper*, 543 US at 570, quoting *Thompson v Oklahoma*, 487 US 815, 835; 108 S Ct 2687; 101 L Ed 2d 702 (1988) (plurality opinion), making them “less deserving of the most severe punishment,” *Miller*, 567 US at 471, quoting *Graham*, 560 US at 68. Current research now shows that older adolescents, especially 18-year-olds, share these same physiological and psychological traits, making them less culpable and thus less deserving of the most serious punishments meted out for adults.

A. Research Now Shows Neurodevelopmental Growth Continues For Older Adolescents Beyond Age 18

Prior to 2010, brain maturation research that was used by courts to determine culpability focused predominantly on individuals under 18 years of age. This research proved critical in *Graham* and *Miller*, each of which involved defendants under the age of 18.² More recently, researchers have established that the regions of the brain associated with the characteristics relied on in *Graham* and *Miller* continue to develop beyond age 18. See Lebel & Beaulieu, *Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood*, 31 J Neuroscience 10937, 10937 (2011); Pfefferbaum et al, *Variation in Longitudinal Trajectories of Regional Brain Volumes of Healthy Men and Women (Ages 0 to 85 Years) Measured with Atlas-Based Parcellation of MRI*, 65 NeuroImage 176, 189 (2013).

The *Roper* and *Miller* Courts both relied on social science research showing developmental

² In *Roper*, the U.S. Supreme Court relied on three scientific and sociological studies—from 1968, 1992, and 2003—to reach its conclusion that children under age 18 are categorically different from adults. See 543 US at 569-72, citing Erikson, *Identity: Youth and Crisis* (New York: W.W. Norton, 1968), Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 Developmental Rev 339 (1992), and Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am Psychologist 1009, 1014 (2003). The Court looked to the same research in *Graham* and *Miller*, noting that it had continued to grow stronger. See *Miller*, 567 US at 471-72, 472 n 5; *Graham*, 560 US at 68. In each of these cases, the defendant was under the age of 18, and so there was no need for the Court to consider whether the scientific evidence also applied to older adolescents.

immaturity of youth. They cite a 2003 article by Laurence Steinberg and Elizabeth Scott to confirm their understanding that adolescent development is tethered to the age of 18. See Steinberg & Scott, *supra* note 2, at 1014, 1017. In the seventeen years since that study, Dr. Steinberg has published numerous papers concluding that research now shows that the parts of the brain active in most crime situations, including those associated with characteristics of impulse control, propensity for risky behavior, vulnerability, and susceptibility to peer pressure, are still developing well into late adolescence and for individuals above age 20. Scott, Bonnie & Steinberg, *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L Rev 641, 642 (2016) (“Over the past decade, developmental psychologists and neuroscientists have found that biological and psychological development continues into the early twenties, well beyond the age of majority.”), citing Steinberg, *Age of Opportunity: Lessons from the New Science of Adolescence* (Boston: Houghton Mifflin Harcourt, 2014), p 5. See also Steinberg, *Does Recent Research on Adolescent Brain Development Inform the Mature Minor Doctrine?*, 38 J Med & Phil 256, 263 (2013). In recent testimony before the United States District Court for the District of Connecticut in *Cruz v United States*, Dr. Steinberg explained that “we didn’t know a great deal about brain development during late adolescence” until recently, but now he is “[a]bsolutely certain” that the developmental characteristics underpinning *Roper*, *Miller*, and *Graham* also apply to 18-year-olds. Transcript of September 13, 2017 Hearing at 14:20–25, 71:6, *Cruz v United States*, unpublished opinion of the United States District for the District of Connecticut, issued March 29, 2018 (Docket No. 3:11-cv-00787), 2018 WL 1541898.³

³ Based on this testimony, the court extended *Miller* to life without parole sentences for 18-year-old offenders and re-sentenced Cruz. *Cruz v United States*, unpublished opinion of the United States District for the District of Connecticut, issued March 29, 2018 (Docket No. No. 3:11-cv-00787), 2018 WL 1541898, at *25. That decision was vacated by the Second Circuit on appeal,

Indeed, it is now widely accepted that the characteristics cited by the Supreme Court in the youth sentencing cases persist “far later than was previously thought,” and certainly beyond age 18. Schiraldi & Western, *Why 21 Year-Old Offenders Should Be Tried in Family Court*, Washington Post (October 2, 2015) <https://www.washingtonpost.com/opinions/time-to-raise-the-juvenile-age-limit/2015/10/02/948e317c-6862-11e5-9ef3-fde182507eac_story.html?utm_term=.82fc4353830d>. See, e.g., Michaels, *A Decent Proposal: Exempting Eighteen- to Twenty-Year-Olds From the Death Penalty*, 40 NYU Rev L & Soc Change 139, 163 (2016); Weingard et al, *Effects of Anonymous Peer Observation on Adolescents’ Preference for Immediate Rewards*, 17 Developmental Sci 71, 71-73 (2013); Monahan, Steinberg & Piquero, *Juvenile Justice Policy and Practice: A Developmental Perspective*, 44 Crime & Just 577, 582 (2015). A comprehensive 2019 report from the National Academies of Sciences explains this shift in the understanding of adolescence, noting that “the unique period of brain development and heightened brain plasticity . . . continues into the mid-20s,” and that “most 18-25 year-olds experience a prolonged period of transition to *independent* adulthood, a worldwide trend that blurs the boundary between adolescence and ‘young adulthood,’ developmentally speaking.” Nat’l Academies of Sciences, Engineering & Medicine, *The Promise of Adolescence: Realizing Opportunity for All Youth* (Washington, DC: The National Academies Press, 2019), p 22. The report concludes it would be “arbitrary in developmental terms to draw a cut-off line at age 18.” *Id.*

citing intervening Circuit precedent. See *Cruz v United States*, 826 F Appx 49, 51-52 (CA 2, 2020), citing *United States v Sierra*, 933 F 3d 95 (CA 2, 2019). Ultimately, the District Court granted the defendant’s motion for reduction of sentence, citing in part his young age and the mitigating characteristics of his youth at the time of the crime. See *United States v Cruz*, unpublished order of the United States District for the District of Connecticut, issued April 9, 2021 (Docket No. 3:94-CR-112 (JCH)), 2021 WL 1326851, at *7 (“The court finds the scientific evidence just discussed to be persuasive and well-founded and concludes that, because 18-year-olds are still developing in terms of maturity, impulse control, ability to resist peer pressure, and character, they are less than fully blameworthy for criminal conduct.”).

B. Given Their Shared Developmental Characteristics, Youth and Older Adolescents Are Less Culpable Than Older Adults

Just as the Court found with youth under age 18, “[w]hether viewed as an attempt to express the community’s moral outrage or as an attempt to right the balance for the wrong to the victim,” the case for retribution is not as strong for older adolescents, particularly 18-year-olds. *Roper*, 543 US at 571.

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

adolescents is more gradual than in female adolescents).

For older adolescents, these lags in impulse control are particularly pronounced in emotionally charged situations. Psychologists distinguish between “cold cognition,” which refers to thinking and decision making under calm circumstances, and “hot cognition,” which refers to thinking and decision making under emotionally arousing circumstances. Scott, Bonnie & Steinberg, *supra*, at 652. Relative to adults, adolescents’ deficiencies in judgment and self-control are greater under “hot” circumstances in which emotions are aroused than they are under calmer “cold” circumstances. Cohen et al, *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts*, 27 *Psychol Sci* 549, 559-60 (2016); Rudolph et al, *At Risk of Being Risky: The Relationship Between “Brain Age” Under Emotional States and Risk Preference*, 24 *Dev Cognitive Neuroscience* 93, 93 (2017). In circumstances of “hot cognition,” brain function among 18- to 21-year-olds resembles that of a 16- or 17-year-old. Scott, Bonnie & Steinberg, *supra*, at 650, citing Cohen et al, *supra*, at 559-60.

Older adolescents also face increased susceptibility to peer pressure, as do younger teens and adolescents. See 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, 83 (2019) (explaining that 18-year-olds “are more likely than somewhat older adults to be impulsive, sensation seeking, and sensitive to peer influence in ways that influence their criminal conduct”). Another study examined a sample of 306 individuals in three age groups—adolescents (13-16), youths (18-22), and adults (24 and older)—and found that “although the sample as a whole took more risks and made more risky decisions in groups than when alone, this effect was more pronounced during middle and late adolescence than during adulthood” and that “the presence of peers makes adolescents and youth, but not adults, more

likely to take risks and more likely to make risky decisions.” Gardner & Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 Dev Psychol 625, 632, 634 (2005). Confirmed by numerous subsequent studies, there is now widespread agreement that the development of the prefrontal cortex, which plays a key role in “higher-order cognitive functions” like “planning ahead, weighing risks and rewards, and making complicated decisions” continues into the early twenties. Monahan, Steinberg & Piquero, *supra*, at 582. The presence of friends has also been shown to double risk-taking among adolescents, increasing it by fifty percent among older adolescents, but having no effect on older adults. Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 Dev Rev 78, 91 (2008). And, more recently, studies have confirmed that “exposure to peers increases young adults’ preference for immediate rewards” and their “willingness to engage in exploratory behavior.” Scott, Bonnie & Steinberg, *supra*, at 649 (citations omitted).

The existing scientific research also addresses differences in brain development with respect to specific activities, suggesting more delayed development in brain functions related to impulse control, hot cognition, and susceptibility to peer pressure than for activities involving informed decision-making and logical reasoning, such as voting. Thus, the appropriate legal age of “adulthood” may vary depending on the particular context. See, e.g., Cohen et al, *When Does a Juvenile Become an Adult? Implications for Law and Policy*, 88 Temple L Rev 769, 786-787 (2016) (defining “young adulthood” at 21 for purposes of cognitive capacity and the ability for “overriding emotionally triggered actions,” and encouraging evaluation of the “appropriate age cutoff[] relevant to policy judgments relating to risk-taking, accountability, and punishment”). As Dr. Steinberg explains:

[t]o the extent that we wish to rely on developmental neuroscience to inform where we draw age boundaries between adolescence and adulthood for purposes of social

policy, it is important to match the policy question with the right science. . . . For example, although the APA was criticized for apparent inconsistency in its positions on adolescents' abortion rights and the juvenile death penalty, it is entirely possible for adolescents to be too immature to face the death penalty but mature enough to make autonomous abortion decisions, because the circumstances under which individuals make medical decisions and commit crimes are very different and make different sorts of demands on individuals' abilities.

Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 64 *Am Psychologist* 739, 744 (2009); cf. *Roper*, 543 US at 620 (O'Connor, J., dissenting) (questioning why the age for abortion without parental involvement "should be any different" given that it is a "more complex decision for a young person than whether to kill an innocent person in cold blood").

Overall, older adolescents are more prone to risk-taking and impulsivity—traits that likely influence their criminal conduct—and are not yet mature enough to anticipate the future consequences of their actions. See Monahan, Steinberg & Piquero, *supra*, at 582; Scott, Bonnie & Steinberg, *supra*, at 644; Steinberg et al, *Age Differences in Future Orientation and Delay Discounting*, 80 *Child Dev* 28, 35 (2009). Indeed, the instant case aptly illustrates this finding.

C. Because 18-year-olds Possess The Same Developmental Characteristics As Their Younger Peers, They Cannot Be Subject To Mandatory Life Without Parole Sentences Under *Miller* and the Eighth Amendment

In striking the death penalty and limiting life without parole sentences for juveniles, the Supreme Court has emphasized that, "[b]ecause juveniles have diminished culpability and greater prospects for reform, . . . 'they are less deserving of the most severe punishments.'" *Miller*, 567 US at 471, quoting *Graham*, 560 US at 68. Its decisions relied on "what 'any parent knows'" and the science and social science regarding adolescent development. *Id.*, quoting *Roper*, 543 US at 569.

In *Roper*, [the Court] cited studies showing that '[o]nly a relatively small proportion of adolescents' who engage in illegal activity 'develop entrenched patterns of problem behavior.' And in *Graham*, [it] noted that 'developments in psychology and brain science continue to show fundamental differences between juvenile and

adult minds’—for example, in parts of the brain involved in behavior control. [It] reasoned that those findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child’s ‘moral culpability’ and enhanced the prospect that, as the years go by and neurological development occurs, his ‘deficiencies will be reformed.’

Id. at 471-472, first quoting *Roper*, 543 US at 570, then quoting *Graham*, 560 US at 68 (second alteration in original) (citations omitted). The scientific research now shows that older adolescents must likewise be included in the protected class of individuals.

The Supreme Court’s own evolving interpretation of the proscriptions of the Eighth Amendment illustrate why older adolescents must now be included in this framework. In first protecting youthful offenders from the death penalty, the Court limited the class to include only those youth who were under the age of 16. *Thompson*, 487 US at 838. The Court reasoned, “inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult.” *Id.* at 835. The Court then extended its holding in *Thompson* to youth ages 17 and 18, recognizing “the import of these characteristics with respect to juveniles under 16” and found that “*the same reasoning* applies to all juvenile offenders under 18.” *Roper*, 543 US at 570-571 (emphasis added) (citation omitted). The developmental differences between youth under the age of 18 and adults “render[ed] suspect any conclusion that a juvenile falls among the worst offenders. . . . for a greater possibility exists that a minor’s character deficiencies will be reformed.” *Id.* at 570.

The Court once again relied on these distinct attributes of youth in holding mandatory life without parole unconstitutional in *Miller* as “the mandatory penalty schemes . . . prevent the sentencer from taking account of these central considerations.” 567 US at 474. Therefore, “[b]y removing youth from the balance,” mandatory life without parole sentences contradicted the

Court’s precedent forbidding the imposition of the harshest penalties on juveniles as if they were miniature adults. *Id.* “[N]one of what [the Court] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific,” *id.* at 473, but, as current research teaches, nor is it specific to those under 18. As the research grows, it has become indefensible to exclude older adolescents, who share the identical attributes of younger teens, from the required individualized sentencing and consideration of the mitigating qualities of youth.

This extended protection is in line with the Supreme Court’s other Eighth Amendment jurisprudence which has also been modified to reflect emerging research on individual culpability. *Hall v Florida* is instructive. The *Hall* Court found unconstitutional a Florida rule that limited evidence of qualifying intellectual disability under *Atkins v Virginia*, 536 US 304; 122 S Ct 2242; 153 L Ed 2d 335 (2002), to proof that the individual had an I.Q. of 70 or lower. *Hall v Florida*, 572 US 701, 710-714, 721-724; 134 S Ct 1986; 188 L Ed 2d 1007 (2014). While acknowledging the important role of the medical community in defining and diagnosing the condition, the Court struck down the “rigid rule” concerning I.Q. scores because it “creates an unacceptable risk that persons with intellectual disability will be executed.” *Id.* at 704, 724. Just as “[i]ntellectual disability is a condition, not a number,” *id.* at 723, “youth [also] is more than a chronological fact,” *Miller*, 567 US at 476, quoting *Eddings v Oklahoma*, 455 US 104, 115; 102 S Ct 869; 71 L Ed 2d 1 (1982). Youth is also a “condition of life”—“a time of immaturity, irresponsibility, ‘impetuosity[,] and recklessness’” that creates an unacceptable risk of a disproportionate sentence when disregarded. *Id.*, first quoting *Eddings*, 455 US at 115, then quoting *Johnson v Texas*, 509 US 350, 368; 113 S Ct 2658; 125 L Ed 2d 290 (1993) (alteration in original). Like a fixed I.Q. score, the age 18 is too rigid a measure to accurately mark the passage from adolescence to adulthood.

As the current research conclusively shows, the age of 18 is not an acceptable proxy for developmental maturity and adult-like culpability. People who commit criminal acts just beyond their eighteenth birthday—like Mr. Poole—are developmentally indistinguishable from their slightly younger peers. Therefore, mandatory imposition of a sentence of life without parole on an 18-year-old defendant, without any ability for a sentencing court to consider the “mitigating qualities of youth,” is unconstitutional under *Miller*. See 567 US at 476, quoting *Johnson*, 509 US at 367.

D. Sentencing Older Adolescents To Life Without Parole Also Violates The Michigan Constitution’s Ban On Cruel Or Unusual Punishment

Mr. Poole’s life without parole sentence violates the Michigan Constitution’s prohibition against “cruel or unusual punishment.” Const 1963, art 1, § 16. The state constitutional prohibition is intentionally broader and more protective than the Eighth Amendment. Applying the growing scientific evidence demonstrating that adolescents carry with them indistinguishable characteristics of youth past age 18, individualized sentencing and consideration of the mitigating qualities of youth are required before imposing the harshest penalty of life in prison without parole. This Court can and should apply the *Miller* factors to older adolescents and Mr. Poole’s sentence should be struck down as unconstitutional under state law.

1. Mr. Poole’s sentence is unconstitutional because the Michigan Constitution’s “cruel or unusual punishment” clause is broader than the Eighth Amendment’s “cruel and unusual punishments” clause

Since 1850, Michigan’s Constitution has prohibited the imposition of “cruel or unusual punishment,” a broader interpretation than the U.S. Constitution’s ban on “cruel and unusual punishment.” Const 1850, art 6, § 31. Michigan has adopted four constitutions since 1835. The first prohibited the imposition of “cruel and unjust punishment,” but every constitution thereafter adopted the broader, more expansive “cruel or unusual punishment” language. Const 1835, art 1, § 18; Const 1908, art 2, § 15; Const 1963, art 1, § 16. The “cruel or unusual” phrase dates back to the Northwest Ordinance of 1787, which the Continental Congress passed weeks prior to the ratification of the U.S. Constitution. Bessler, *Cruel & Unusual: The American Death Penalty and the Founders’ Eighth Amendment* (Boston: Northeastern University Press, 2012), pp 118-19. The decision to include the more expansive language in Michigan’s Constitution was not accidental or inadvertent. *People v Bullock*, 440 Mich 15, 30 n 11; 485 NW2d 866 (1992).

The Michigan Supreme Court has long recognized the textual difference between the Eighth Amendment and Article 1, § 16 of Michigan’s Constitution and interprets this provision to provide more extensive protection than the U.S. Constitution. *Bullock*, 440 Mich at 27-36 (declining to follow the U.S. Supreme Court’s Eighth Amendment interpretation). This is, in part, because the text of the Michigan provision protects against cruel *or* unusual punishment while the text of the U.S. provision protects only against cruel *and* unusual punishment. *Id.* at 30-31. Therefore, a punishment need not be both cruel and unusual to violate the Michigan Constitution. *Id.* at 31. “The prohibition of punishment that is unusual but not necessarily cruel carries an implication that unusually excessive imprisonment is included in that prohibition.” *People v Lorentzen*, 387 Mich 167, 172; 194 NW2d 827 (1972).

Bullock is an example of a case in which the Michigan Supreme Court, guided by the analysis of the U.S. Supreme Court, interpreted Michigan’s cruel or unusual prohibition more broadly than the Eighth Amendment and granted relief from a life-without-parole sentence under the Michigan Constitution. In *Harmelin v Michigan*, the U.S. Supreme Court rejected, by a vote of 5-4, an Eighth Amendment challenge to Michigan’s mandatory sentence of life without parole for possessing 650 grams or more of a mixture containing cocaine. 501 US 957, 996; 111 S Ct 2680; 115 L Ed 2d 836 (1991). One year later in *Bullock*, however, the Michigan Supreme Court struck down the sentencing practice upheld by the Supreme Court in *Harmelin*. 440 Mich at 41-42. Michigan courts have continued to recognize this Court’s broader interpretation of Article 1, § 16. See *Carlton v Dep’t of Corrections*, 215 Mich App 490, 505; 546 NW2d 671 (1996) (“[T]he Michigan Constitution’s prohibition against ‘cruel or unusual’ punishment may be interpreted more broadly than the Eighth Amendment’s prohibition against ‘cruel and unusual’ punishment.”); *People v Nunez*, 242 Mich App 610, 618 n 2; 619 NW2d 550 (2000) (stating that the Eighth Amendment provides “lesser protection” than Const 1963, art I, § 16 and that, if a punishment “passes muster under the state constitution, then it necessarily passes muster under the federal constitution.”); *People v Benton*, 294 Mich App 191, 204; 817 NW2d 599 (2011); *People v Bosca*, 310 Mich App 1, 71-72 n 24; 871 NW2d 307 (2015) (“[Const 1963, art I, § 16] has been interpreted as providing broader protection than its federal counterpart.”); *People v Tucker*, 312 Mich App 645, 654 n 5; 879 NW2d 906 (2015).

2. Mr. Poole’s life without parole sentence is disproportionate, unusual, and undermines the goal of rehabilitation in violation of the Michigan Constitution

Pursuant to this more expansive reading, Michigan courts consider four factors in evaluating challenges to sentences under the “cruel or unusual punishment” clause of the Michigan Constitution: (1) the severity of the sentence relative to the gravity of the offense; (2) sentences

imposed in the same jurisdiction for other offenses; (3) sentences imposed in other jurisdictions for the same offense; and (4) the goal of rehabilitation. *Bullock*, 440 Mich at 33-34, citing *Lorentzen*, 387 Mich at 176-81. Applying these factors demonstrate that Mr. Poole's life without parole sentence violates Michigan's constitution.

First, Michigan's mandatory life without parole sentence for 18-year-olds is disproportionately severe in light of the gravity of the offense. The gravity of the offense must include the background and culpability of the offender. See *Bullock*, 440 Mich at 37-38. Under Michigan's constitution, youth is a factor in the constitutional analysis. See *Lorentzen*, 387 Mich at 176, 181 (finding 20-year sentence unconstitutional as applied to first-offender high school student convicted of selling marijuana). Yet, because 18-year-olds are considered adults in Michigan, youth is never a consideration, and the sentence is mandatory.

In *Graham* and *Miller*, the Supreme Court concluded that because young people as a class have diminished culpability, they should not be subjected to a mandatory life sentence without the mitigating consideration of their youth. *Graham*, 560 US at 82; *Miller*, 567 US at 465. In light of current research demonstrating that older adolescents share the same developmental characteristics as teenagers, as discussed above in Sections I.A and I.B, a mandatory life-without-parole sentence for an 18-year-old, results in a gross inference of disproportionality.

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

imposing the harshest available penalties. Life without parole sentences are becoming increasingly rare in Michigan for adolescents. According to data provided to the American Civil Liberties Union of Michigan, of the original 363 youth who are entitled to resentencing based on *Miller* and *Montgomery*, 202 youth or 56% of them were 17 at the time of their offense. As of November 2021, 146 or 72% out of those 202 youth have now been resentenced. The majority of those who have been resentenced so far have received term-of-years sentences; only eleven have been resentenced to life without the possibility of parole.⁴

Youth, and the circumstances of that youth, are critical factors in Michigan’s constitutional analysis. In *Lorentzen*, this Court found a sentence of twenty to twenty-one years for the sale of marijuana unconstitutional as applied to “a first offender high school student” who was twenty-three at the time of the offense. 387 Mich at 176, 181. In *People v. DiPiazza*, the Michigan Court of Appeals found that mandatory registration as a sex offender for ten years constituted cruel or unusual punishment as applied to an eighteen-year-old whose crime was consensual sexual activity with a teenager and whose conviction was dismissed under the terms of the Holmes Youthful Trainee Act. 286 Mich App 137, 140, 156; 778 NW2d 264 (2009). Michigan’s own youthful offender law and similar youthful offender laws are also examples where the Michigan Legislature has explicitly granted greater protections from long sentences for youth above 18, as discussed below in Section II. These examples and data about sentencing of young people in Michigan demonstrate that consideration of youth matters—when courts consider youth-related factors, they sentence differently.

Third, Mr. Poole’s sentence is also unusual and disproportionate nationwide. As discussed further in Section II, several states across the country are drawing the line between childhood and

⁴ Data on file with the American Civil Liberties Union of Michigan (available upon request).

adulthood above age 18 and granting special protections for individuals exhibiting developmental characteristics recognized in *Miller*. The Campaign for Fair Sentencing of Youth (CFSY) has collected data on *Miller* resentencings in states nationwide. At the time of *Montgomery*, approximately 2,800 individuals were serving life without parole sentences for offenses that occurred when they were children. CFSY, *Montgomery v. Louisiana Anniversary: Four Years Since the U.S. Supreme Court Decision in Montgomery v. Louisiana* (2020), p 1 <<http://www.fairsentencingofyouth.org/wp-content/uploads/Montgomery-Anniversary-1.24.pdf>>. As of January 2020, approximately 2,000 juvenile life without parole sentences had been altered through judicial resentencing or legislative reform. *Id.* at 3. Overall, the median for these modified sentences is 25 years' incarceration before parole or release eligibility. *Id.* Notably, this median is the same when the data is isolated to include only those who committed offenses at age 17.⁵

Further, in cases of judicial resentencing hearings, judges are rarely imposing life without parole on young people when they have the ability to take youth into account. Nationwide, fewer than 100 individuals have been resentedenced to life without parole following *Miller*. CFSY, *supra*, at 2. Slightly more than half of the resentencings completed thus far (approximately 1086 of the 2041 total resolved cases) involve individuals who committed offenses at age 17, and life without parole has been re-imposed in fewer than 50 of these cases.⁶ Accordingly, judges are concluding that life without parole is an excessive sentence for 17-year-olds just as frequently as they are in cases involving younger teens. In short, when courts have the opportunity to consider the mitigating effect of the hallmark characteristics of youth, they rarely impose life without parole

⁵ Data collected by Campaign for Fair Sentencing of Youth (available upon request).

⁶ See note 4.

sentences, even in cases involving older adolescents—further reinforcing that age 18 is an arbitrary boundary that cannot define the constitutional limits on sentencing practices.

Lastly, the punitive goal of rehabilitation is not served by Mr. Poole’s life without parole sentence. A sentence of life in prison without the possibility of parole completely undermines the goal of rehabilitation: “A sentence of life imprisonment without parole . . . cannot be justified by the goal of rehabilitation. The penalty forswears altogether the rehabilitative idea.” *Graham*, 560 US at 74. And the Michigan Supreme Court has noted that “only the rarest of individual is wholly bereft of the capacity for redemption.” *Bullock*, 440 Mich at 39 n 23, quoting *People v. Schultz*, 453 Mich 517, 533-34; 460 NW2d 505 (1990) (Boyle, J., concurring). Rehabilitation is an especially important factor in the imposition of a sentence on an older adolescent. As evidenced by the scientific studies cited above, older adolescents have a greater chance of rehabilitation and must be given the opportunity to demonstrate their diminished culpability and capacity for change before being sentenced to the harshest penalty under Michigan law.

Indeed, Mr. Poole’s remarkable growth in prison exemplifies this capacity for rehabilitation. No longer a lost teenager, he is enthusiastically pursuing a college degree, has completed numerous programs and courses, serves as an aide to elderly prisoners, is an American Sign Language interpreter, and facilitates cultural events and arts programming. (Appellant’s Suppl. Br. on Appeal at 38). Yet, Mr. Poole’s mandatory sentence precludes consideration of even the *possibility* of such transformation, much less his current capacity to contribute to the world outside prison walls.

II. THERE IS NOW A CLEAR CONSENSUS IN MICHIGAN AND ACROSS THE COUNTRY THAT THE LINE BETWEEN CHILDHOOD AND ADULTHOOD SHOULD BE SET ABOVE AGE 18

In recognition of these developmental characteristics of youth, Michigan and other jurisdictions around the country have enacted legislation that treats youth above age 18 differently than older adults in the criminal justice system, limits their abilities to engage in risky conduct, and offers them additional protection and support. Many of these laws have been on the books for decades, while others reflect more recent trends in response to the growing scientific and societal consensus that young people continue to develop and mature into their twenties. The legal landscape in Michigan and throughout the country therefore increasingly reflects the current developmental research: drawing the line between childhood and adulthood above age 18 in contexts that implicate the age-related characteristics described in *Miller*.

Michigan's own youthful offender law and similar youthful offender laws, young adult courts around the country, and the emerging movement to raise the age of juvenile court jurisdiction above 18 demonstrate that legislators and criminal justice officials increasingly recognize the emerging developmental science demonstrating that 18-year-olds share the same traits of immaturity as their younger peers that make them less culpable and less deserving of serious punishment.

A. Michigan's Criminal Legal System Provides Youth Above Age 18 Special Privileges And Protections That Reflect The Three Key Developmental Characteristics Identified In *Miller*

Michigan is a national leader among many states that provide special processes and less severe penalties to young people through their early twenties, and it has explicitly rooted its "youthful offender" program in the same core characteristics that animated *Miller*.

Michigan has one of the oldest and most robust laws in the country shielding young people

who were not eligible for the protections of the juvenile justice system, from prison sentences and the stain of a criminal record. In 1966, Michigan passed the Holmes Youthful Trainee Act (“HYTA”), allowing 17- to 20-year-olds who pled guilty to a crime, other than a very serious felony, to have the conviction suspended upon completion of probation in the community or receive no more than three years in of supervised probation in a prison with dismissal of the conviction upon successful completion of the supervised probationary period. 1966 PA 301. The HYTA initially set the maximum age for the program at 20 and the maximum prison sentence at three years, but the Act was amended in 2015 to raise the age of eligibility to 23 and reduce the maximum sentence to two years. 2015 HB 4169; 2015 HB 4069. The Court of Appeals explained the justification for HYTA in 1981:

The age classification indicates a legislative belief that individuals in the 17 to 20 age bracket would be more amenable to the training and rehabilitation provided under the act. The statute also evidences a legislative desire that persons in this age group not be stigmatized with criminal records for unreflective and immature acts.

People v Perkins, 107 Mich App 440, 444; 309 NW2d 634 (1981). The Michigan legislature was prescient in recognizing that older adolescents’ relative immaturity and potential for rehabilitation warrant a less punitive approach in the criminal justice system.

Michigan’s 2015 expansion of the HYTA was also based on more recent research showing that the characteristics of youth at the heart of the U.S. Supreme Court’s sentencing cases persist through a young person’s early twenties. The Michigan House of Representatives Fiscal Agency explained that “[t]his expansion acknowledges and incorporates recent research as to how the human brain matures.” House Legislative Analysis, HB 4069, HB 4135, and HB 4169 (March 14, 2015), p 6 <<http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-4069-912816A6.pdf>>. It stressed that the bill “represents a compromise as some, including advocates and judges, believe that 24- and 25-year-olds should be eligible, as well, in keeping with

the conclusions of scientists regarding the development of the brain and ability to make good decisions and judgments.” *Id.* Echoing this rationale, a sponsor of the bill in the Michigan House of Representatives stated that she “liked it, because it dealt with giving juveniles the opportunity to be in a separate system. . . . Basically, it’s to give people a second chance.” Kloosterman, *Second Chances for Youthful Offenders Key Point of Bill, State Rep Says*, Michigan Live (June 16, 2015) <https://www.mlive.com/news/muskegon/2015/06/new_michigan_law_lets_more_you.html>.

In 2019, in another step reflective of and responding to the evolving developmental research on older adolescents, the legislature, after raising the age for inclusion in the juvenile justice system, from age 17 to age 18, again amended HYTA to include youth between the ages of 18 and 26 within the protections and provisions of the second chance HYTA provisions for youthful trainee status. MCL 762.11.

While Michigan was one of the first states to extend some advantages of the juvenile justice system to older youth, it is far from alone nationwide. Many states have adopted “youthful offender” laws like the HYTA that extend special protections, such as criminal record sealing and shorter maximum sentences, to individuals ages 18 to 21.⁷ There are also at least 50 young adult courts, specialty probation programs, correctional facilities, and other specialized justice services around the country targeted specifically at older adolescents ages 18 to 21. See Hayek, National Institute of Justice, *Environmental Scan of Developmentally Appropriate Criminal Justice Responses to Justice-Involved Young Adults* (2016), pp 6, 9<<https://www.ojp.gov/>

⁷ See, e.g., Ala Code 15-19-1; Colo Rev Stat Ann 18-1.3-407 and Colo Rev Stat Ann 18-1.3-407.5; Fla Stat Ann 958.011 through Fla Stat Ann 958.15; Ga Code Ann 42-7-2(7); NJ Stat Ann 52:17B-182 and NJ Stat Ann 52:17B-183; NY Crim Proc Law 720.10 and NY Crim Proc Law 720.15; SC Code Ann 24-19-10; VI Code Ann tit 5, § 3712; Vt Stat Ann tit 33, § 5280, Vt Stat Ann tit 33, § 5281 and Vt Stat Ann tit 33, § 5287; Va Code Ann 19.2-311.

pdffiles1/nij/249902.pdf>. One such court, the Young Adult Diversion Court (“YADC”), sits in Kalamazoo, Michigan. There, 17- to 20-year-olds who are charged with certain crimes under a diversion statute may have their charges dismissed upon successful completion of YADC’s program, which includes, among other things, access to additional supportive services. *Young Adult Diversion Court* <<https://yadckalamazoo.weebly.com/about-yadc.html>> (accessed January 5, 2022).

Other states are beginning to go further, expanding juvenile court jurisdiction to those above age 18. In 2018, Vermont became the first state in the country to expand its juvenile court to include 18- and 19-year-olds. S 234, § 12 (Vt 2018) (enacted as Vt Stat Ann tit 33, § 5201). Explaining the law, an official with the Vermont Department of Children and Family Services stated: “For 18- and 19-year-olds, they’re actually not that different from their 16- and 17-[year-old] counterparts. We know that, generally, emerging adults grow out of impulsive behavior.” Becker, *Why Vermont Raised its Juvenile Court Age Above 18—and Why Mass Might, Too*, WBUR News (October 3, 2019) (alteration in original), <<https://www.wbur.org/news/2019/10/03/juvenile-court-age-vermont-massachusetts>>. Several other states, including nearby Illinois, have introduced similar legislation to include 18-year-olds in their juvenile court systems.⁸

B. Youth Above Age 18 Are Afforded Special Protections In Sentencing

Several states have also extended special protections to older adolescents and young adults in their adult criminal justice systems. For example, the Washington Supreme Court held in 2021

⁸ See, e.g., Governor’s B 5040, 2018 Gen Assemb, February Sess (Conn 2018) <<https://www.cga.ct.gov/2018/TOB/h/2018HB-05040-R00-HB.htm>>; HB 4581, 100th Gen Assemb (Ill 2017) <<https://www.ilga.gov/legislation/fulltext.asp?DocName=10000HB4581&GA=100&SessionId=91&DocTypeId=HB&LegID=&DocNum=4581&GAID=14&SpecSess=&Session=>>>.

that the state constitution prohibits mandatory life-without-parole sentences for 18-, 19-, and 20-year-old offenders, reasoning that “no clear line exists between childhood and adulthood.” *Matter of Monschke*, 197 Wash 2d 305, 306; 482 P3d 276 (2021). It further held that “*Miller*’s constitutional guarantee of an individualized sentence” that “considers the mitigating qualities of youth” must apply to defendants at least under age 21, as to whom any distinction based on neuroscience, brain development, and behavioral attributes would be arbitrary. *Id.*⁹ On the legislative front, California passed a statute in 2017 extending youth offender parole eligibility to individuals who committed offenses before age 25. Assemb B 1308 (Cal 2017) (amending Cal

⁹ Similarly, in *State v O’Dell*, the Washington Supreme Court held that the trial court erred in failing to consider the youth of an 18-year-old offender as a mitigating factor justifying an exceptional sentence under the state’s sentencing scheme. 183 Wash 2d 680, 689; 358 P3d 359(2015) (en banc). A federal district court in Wisconsin has likewise relied on *Miller* to support imposition of a reduced sentence for a 19-year-old offender. *United States v Walters*, 253 F Supp 3d 1033, 1036 (ED Wis, 2017) (imposing a sentence of time served, which was below the range recommended by the federal sentencing guidelines, explaining: “[c]ourts and researchers have recognized that given their immaturity and undeveloped sense of responsibility, teens are prone to doing foolish and impetuous things”). And numerous federal district courts across the country have cited the relative youth of older adolescents and young adults as an extraordinary and compelling circumstance supporting a sentence reduction under the First Step Act. See eg, *United States v. Ramsay*, 538 F Supp 3d 407, 423-24, 429 (SDNY, 2021) (reasoning that the defendant’s youth—18—at the time of the crime is “highly relevant” to the Court’s understanding of the offense and the defendant’s blameworthiness, reducing the sentence from life to 360 months); *United States v. Sims*, unpublished memorandum opinion of the United States District Court for the Eastern District of Virginia, issued April 23, 2021 (Docket No 3:98-CR-45), 2021 WL 1603959, at *7 (“While the *Miller* categorical ban on mandatory sentences for life without parole for juveniles does not technically apply to defendants in their low to mid-twenties, research demonstrates that such individuals still experience many of the same behavioral, psychological, and neurological development factors that affect the ability to understand risks and consequences and to make informed, mature decisions. Thus, even without a categorical ban, several courts within the Fourth Circuit have found arrest at a young age, particularly when accompanied by a minimal prior criminal history and subsequent rehabilitation, favors sentence reduction in most cases.”); *United States v. Johnson*, unpublished order of the United States District Court for the Northern District of California, issued October 30, 2021 (Docket No. 05-CR-00167), 2021 WL 5037679, at *3 (granting motion for compassionate release, reducing sentence for crimes committed at ages 18 and 19 from 23 years to approximately 16.5 years, citing “the greater recognition of differences in young brains” and the defendant’s demonstrated rehabilitation).

Penal Code 3051). The relevant parole statute instructs the parole board to “give great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.” Cal Penal Code 4801(c). Illinois similarly provides for a special parole review for persons under age 21 at the time of the commission of the crime, directing the Prisoner Review Board to consider, *inter alia*, “the diminished culpability of youthful offenders, the hallmark features of youth, and any subsequent growth and maturity of the youthful offender during incarceration.” 730 Ill Comp Stat 5/5-4.5-115(b), (j).¹⁰ And Washington D.C. recently expanded the reach of its Incarceration Reduction Amendment Act—which originally permitted persons who committed serious crimes under age 18 to petition for resentencing after serving at least 15 years in prison—to include persons who committed crimes under age 25. Omnibus Public Safety and Justice Amendment Act of 2020, DC Law 23-274 (amending DC Code 24-403.03).

C. Jurisdictions Across The Country Increasingly Set The Age Of Adulthood Above 18 In Situations Implicating Immaturity And Susceptibility To Peer Pressure

Beyond the criminal justice system, many jurisdictions—including Michigan—set the age of adulthood above 18 in contexts involving dangerous, risky, and potentially addictive behaviors. These regulations take account of the emerging scientific and societal consensus that young people above age 18 share some of the *Miller* traits first identified with younger teens: (1) they have a “‘lack of maturity and an underdeveloped sense of responsibility,’ leading to recklessness, impulsivity, and heedless risk-taking;” and (2) they remain “more vulnerable . . . to negative influences and outside pressures.” *Miller*, 567 US at 471, quoting *Roper*, 543 US at 569 (alteration in original).

¹⁰ Note that the bill excludes those convicted of predatory criminal sexual assault of a child, certain types of first-degree murder, and those sentenced to natural life in prison.

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

- **Alcohol:** Michigan’s drinking age of 21 is enshrined in the state constitution. Const 1963, art 4, § 40. All 50 states and the District of Columbia now set the drinking age at 21 following Congress’s enactment of the National Minimum Drinking Age Act in 1984. 23 USC 158(a).
- **Tobacco:** In 2015, the National Academies of Sciences concluded that raising the minimum age to purchase tobacco from 18 to 21 would be beneficial because “the parts of the brain most responsible for decision making, impulse control, sensation seeking, future perspective taking, and peer susceptibility and conformity continue to develop and change through young adulthood.” Nat’l Academies of Sciences, *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products* (Washington, DC: The National Academies Press, 2015), p 3 <<https://www.nap.edu/read/18997/chapter/2>>. In 2019, consistent with this scientific recommendation, Congress raised the national age to purchase tobacco from 18 to 21. Further Consolidated Appropriations Act, 2020, PL 116-94, § 603; 133 Stat 2534, 3123 (amending 21 USC 387f(d)(5)). The federal increase in the smoking age followed similar action by more than a dozen states and hundreds of municipalities, representing more than half of the U.S. population. Campaign for Tobacco-Free Kids, *States and Localities that Have Raised the Minimum Legal Sale Age for Tobacco Products to 21* <https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf> (accessed January 5, 2022).

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

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

- **Driving:** Numerous studies show that impulsivity among young drivers through their early twenties leads to increased risk of traffic violations and accidents. See, e.g., Pearson, Murphy & Doane, *Impulsivity-Like Traits and Risky Driving Behaviors Among College Students*, 53 *Accident Analysis & Prevention* 142, 142 (2013) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5242231/>>. Michigan, like many other states, makes 21 the minimum age for several driving-related activities, including riding a motorcycle without a helmet, MCL 257.658(5), transporting hazardous materials, MCL 480.12d(2)(b), and becoming a driver education instructor, MCL 256.637(3)(b).¹¹ Federal law also prohibits individuals under age 21 from driving most commercial vehicles across state lines. 49 CFR 391.11(b)(1). Though not statutory, most rental car companies limit or bar rentals to individuals under age twenty-five, recognizing the increased risk posed by this age group. See, e.g., Enterprise, *Can You Rent a Car Under 25 in the US and Canada?* <<https://www.enterprise.com/en/help/faqs/car-rental-under-25.html>> (accessed January 5, 2022).
- **Gambling:** Like most jurisdictions that have legalized some form of casino gambling, Michigan requires people to be 21 to gamble at a casino. MCL 432.209(9).

¹¹ See also *Selected State Law Restrictions on Young Adults Under Age 21* Table, attached hereto as Appendix A.

- **Firearms:** Michigan raised the age to obtain a license to carry a concealed pistol from 18 to 21 in 2001. MCL 28.425b(7)(a), as amended by 2000 PA 381. Federal law bars licensed dealers from selling handguns to youth under 21, 18 USC 922(b)(1), and eighteen states, including neighboring states of Illinois and Ohio, set the minimum age to purchase at least some types of guns at 21, Giffords Law Center, *Minimum Age to Purchase & Possess* <<https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/minimum-age/>> (accessed January 5, 2022). Finally, federal appellate courts, rejecting Second Amendment challenges to laws raising the legal age to purchase guns to 21, have highlighted psychological research “support[ing] the commonsense notion that 18-to-20-year-olds tend to be more impulsive than young adults aged 21 and over.” *Nat’l Rifle Ass’n of America, Inc v Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F3d 185, 210 n 21 (CA 5, 2012); see also *Horsley v Trame*, 808 F3d 1126, 1133 (CA 7, 2015) (“The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable.”), quoting Declaration of Ruben C. Gur, Ph.D..
- **Fireworks:** Consistent with most states in the country, Michigan raised the minimum age to obtain a fireworks and pyrotechnic display license from 18 to 21 in 2011. MCL 28.466(4) (adopting National Fire Protection Association Code 1123).¹²

¹² See also Appendix A.

D. Many Jurisdictions Extend Additional Supports To Youth Through Their Mid-Twenties In Recognition Of Their Developmental Immaturity

Many jurisdictions, including Michigan, have further recognized the developmental characteristics of older adolescents by extending additional supports and benefits to youth through age 21, and in some instances even older. Such laws reflect the understanding that youth are less deserving of the law’s harshest punishments. *Roper*, 543 US at 570. They also reflect the increasing social reality that most young people continue to receive substantial support from parents well into their twenties, as young people above 18 still have a “lack of control over their immediate surroundings” compared to older adults. *Id.*

For example, with support from the federal government, states around the country have recently expanded foster care beyond age 18. In 2008, Congress passed the Fostering Connections to Success and Increasing Adoptions Act, allowing states to use federal funding to extend foster care up to age 21. 42 USC 675(8)(B). Since then, Michigan, along with 45 states and the District of Columbia, have extended foster care eligibility past age 18, with most, including Michigan, extending foster care up to age 21. U.S. Dep’t of Health & Human Services, *Extension of Foster Care Beyond Age 18* (February 2017), p 2 n 3 <<https://www.childwelfare.gov/pubPDFs/extensionfc.pdf>>. The near universal extension of foster care beyond age 18 reflects researchers’ conclusions that there is “nothing magical about age 18 or even age 21 as a marker of adulthood, and few children outside the child welfare system are expected to be ‘independent’ once they reach the age of majority.” Nat’l Academies of Sciences, Engineering & Medicine, *The Promise of Adolescence*, *supra*, at 267. Michigan Governor Rick Snyder, upon signing the state’s bill extending care, explained that “[y]oung people in foster care need the same kind of support other 18-year-olds do as they navigate the crucial years leading up to age 21. . . . The Fostering Connections legislation will give those who wish to receive it the extra assistance they need to

become successful adults.” State of Michigan, *Gov. Snyder Signs Fostering Connections Legislation* (November 22, 2011) <https://www.michigan.gov/formergovernors/0,4584,7-212-96477_90815_57657-266082--,00.html>. Thus, extended foster care reflects both scientific and social realities that young people are not fully formed at age 18 and that most older adolescents receive support to transition to adulthood through at least age 21.

The healthcare system also increasingly recognizes that young people need additional support beyond age 18. Under the Affordable Care Act, young adults may remain on their parents’ health care plans until age 26, in part to combat high rates of uninsurance among young adults. Center for Consumer Information & Insurance Oversight, *Young Adults and the Affordable Care Act: Protecting Young Adults and Eliminating Burdens on Families and Businesses* <https://www.cms.gov/CCIIO/Resources/Files/adult_child_fact_sheet.html> (accessed January 5, 2022). Children receiving Medicaid also continue to be able to access all medically necessary services under the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) guarantee until age 21 (whereas coverage for older adults on Medicaid is more limited). 42 CFR 441.50.

Access to education also extends into early adulthood. All fifty states and the District of Columbia provide a right to a free education until at least age 19, and more than half of states provide a right to education until at least age 21. Aragon, *Free and Compulsory School Age Requirements* (2015), pp 3-6 <<https://www.ecs.org/clearinghouse/01/18/68/11868.pdf#targetText=22%20Although%20state%20statute%20in,of%204%20and%206%20years>>. Indeed, Michigan provides a right to free public education up to age 20. MCL 388.1606(4)(l). In addition, the federal Individuals with Disabilities Education Act (IDEA) requires states and school districts to offer special education services to children and youth with disabilities up to age 21 (or until high school graduation). 20 USC 1412(a)(1)(A).

In sum, a panoply of state and federal laws set the line of adulthood above age 18, particularly in fields that implicate the three characteristics of youth that led the Supreme Court to conclude that it is cruel and unusual to sentence a juvenile to life without parole.¹³

CONCLUSION

Wherefore, *amici curiae* respectfully request that this Honorable Court vacate John Antonio Poole’s sentence of life without the possibility of parole and remand for resentencing.

Respectfully submitted,

/s/ Bonsitu Kitaba-Gaviglio
 Bonsitu Kitaba-Gaviglio (P78822)
 Daniel S. Korobkin (P72842)
 American Civil Liberties Union
 Fund of Michigan
 2966 Woodward Ave.
 Detroit, MI 48201
 (313) 578-6800
 bkitaba@aclumich.org

¹³ Although states continue to set 18 as the relevant age marker for certain other regulated activities—including voting, marrying without consent, entering the military and serving on juries—the rationales sustaining those laws are based on different characteristics than those underpinning the U.S. Supreme Court’s decision in *Miller*. For example, voting, marrying without consent, and serving on juries are not activities that are highly susceptible to impulsive behavior: they allow a person time to make a decision, and center on characteristics of “logical reasoning,” which society and the medical community explain develop at a much earlier age. Steinberg, *A 16-year-old Is as Good as an 18-year-old—or a 40-year-old—at Voting*, Los Angeles Times (November 3, 2014) <<http://www.latimes.com/opinion/op-ed/la-oe-steinberg-lower-voting-age-20141104-story.html>> (explaining that there is a difference when considering laws such as “voting or granting informed consent for medical procedures” where “[a]dolescents can gather evidence, consult with others and take time before making a decision” because while “[a]dolescents may make bad choices . . . statistically speaking, they won’t make them any more often than adults”). By contrast, the purchase or use of tobacco or alcohol, firearm and explosive use, and motor vehicle operation are all potentially emotionally arousing activities where maturity, vulnerability and susceptibility to influence, and underdeveloped character come into play—much as they do when young people engage in criminal acts. Thus, the fact that the legal boundary for adulthood remains 18 in some instances does not undercut the trend toward raising the age of majority, but instead reflects the growing national census that the line for adulthood should be set at age 18 (or lower) for activities characterized by considered, logical decision-making, and should be raised above age 18 for circumstances characterized by “emotionally arousing conditions.” Scott, Bonnie & Steinberg, *supra*, at 652.

dkorobkin@aclumich.org

/s/ Marsha L. Levick

Marsha Levick, PA Bar # 22535
Riya Saha Shah, PA Bar # 200644
Juvenile Law Center
1800 JFK Blvd., Ste. 1900B
Philadelphia, PA 19103
(215) 625-0551
mlevick@jlc.org

/s/ Tessa Bialek

Tessa Bialek (P78080)
Sarah F. Russell, CT Bar # 428094
Juvenile Sentencing Project
Legal Clinic
Quinnipiac University School of Law
275 Mount Carmel Avenue
Hamden, CT 06518
(203) 582-5258
tessa.bialek@quinnipiac.edu
sarah.russell@quinnipiac.edu

/s/ Deborah Labelle

Deborah A. Labelle (P31595)
221 N. Main St., Ste. 300
Ann Arbor, MI 48104
(734) 996-5620
deblabelle@aol.com

Counsel for *Amici Curiae*

Dated: January 11, 2022

APPENDIX A

STATE LAW RESTRICTIONS ON YOUNG ADULTS UNDER AGE 21

Selected Examples of Driving Restrictions on Young Adults	
Alaska	Alaska Stat 28.15.046(b) (school bus driver license)
Arizona	Ariz Admin Code R17-7-301 (driver's license examiner)
Arkansas	Ark Code Ann 14-57-402 and 14-57-404 (bus or taxicab driver's license) Ark Admin Code 142.00.1-XIV(2)(F) (driver education instructor)
California	Cal Veh Code 12515(b) (driving vehicle engaged in interstate commerce or transportation of hazardous material) Cal Veh Code 11102.5(a)(3) and 11102.6(a)(3) (driving school operator)
District of Columbia	DC Mun Regs tit. 18, § 1302 (operation of a school bus and transportation of hazardous materials, among others)
Florida	Fla Admin Code r 5J-20.033(3) (drive liquid petroleum commercial motor vehicle) Fla Admin Code r 15A-11.006(2)(a) (commercial driving school instructor)
Hawaii	Haw Code R 19-139-10 (driver education instructor)
Idaho	Idaho Code Ann 54-5406 (driving instructor license)
Indiana	Ind Code 20-27-8-1 (school bus driver)
Kansas	Kan Admin Regs 91-38-6 (school bus driver)
Kentucky	Ky Rev Stat Ann 332.204 (teach at a driving school) 601 Ky Admin Regs 1:005 (transport hazardous materials in interstate commerce) 702 Ky Admin Regs 5:080 (school bus driver)

Louisiana	La Admin Code tit 28, pt CXIII, § 303 (school bus driver)
Maine	Me Stat Ann tit 29-A, § 1304(4-A)(E) (commercial driver license) Me Stat Ann tit 29-A § 1354 (driver's education instructor)
Maryland	Md Code Ann, Transp 16-817 (commercial driver's license)
Michigan	MCL 480.12d (transportation of hazardous materials)
Nebraska	Neb Admin Code tit 250, ch 3, § 006 (driving instructor)
Nevada	Nev Rev Stat Ann 483.720 (driving instructor license)
North Carolina	NC Gen Stat Ann 20-37.13 (commercial driver's license)
North Dakota	ND Cent Code 15.1-07-20 (school vehicle driver)
Ohio	Ohio Rev Code Ann 4506.05 (commercial driver's license for interstate commerce)
Oklahoma	Okla Admin Code 595:40-1-4 (driving instructor)
Pennsylvania	53 Pa Cons Stat Ann 57B02 (taxi cab driver)
Rhode Island	RI Gen Laws 31-10-5 (school bus driver)
Utah	Utah Code Ann 53-3-213 (drive a school bus or commercial motor vehicle, or transport hazardous materials)
Vermont	Vt Admin Code 22-1-2 (driver training)
Virginia	Va Code Ann 46.2-341.9 (commercial driver's license)
Washington	Wash Rev Code Ann 46.82.330 (driver training)
Wisconsin	Wis Stat 343.06(3) (commercial driver license)

Motorcycle Helmet Requirements for Young Adults	
Arkansas	Ark Code Ann 27-20-104
Delaware	Del Code Ann tit. 21, § 4185
Florida	Fla Stat 316.211
Kentucky	Ky Rev Stat Ann 189.285
Michigan	MCL 257.658
Pennsylvania	75 Pa Cons Stat Ann 3525
Rhode Island	RI Gen Laws 31-10.1-4
South Carolina	SC Code Ann 56-5-3660
Texas	Tex Transp Code Ann 661.003
Utah	Utah Code Ann 41-6a-1505

Explosives and Blasting Use Restrictions for Young Adults	
Alabama	Ala Code 8-17-243
California	Cal Code Regs tit. 8, § 5238
Colorado	7 Colo Code Regs 1101-9.3-3
Connecticut	Conn Agencies Regs 29-349-205
Delaware	Del Code Ann tit. 16 § 7107
Georgia	Ga Comp R & Regs 120-3-10.05
Hawaii	Haw Code R 12-58-1
Idaho	Idaho Admin Code r 18.08.01 (adopting the International Fire Code (IFC), which sets minimum age for handling explosives at twenty-one. IFC 5601.4)
Illinois	Ill Admin Code tit 62, § 200.98
Indiana	675 Ind Admin Code 26-2-2
Iowa	Iowa Admin Code r 661-235.5(5)
Kansas	Kan Admin Regs 22-4-5
Kentucky	Ky Rev Stat Ann 351.315
Maryland	Md Code Regs 26.20.22.08
Massachusetts	527 Mass Code Regs 1.05
Missouri	Mo Rev Stat 319.306

Nebraska	Neb Rev Stat 28-1229
New Hampshire	NH Code R Saf-C 1604.03
New Jersey	NJ Admin Code 12:190-3.6
New York	NY Comp Codes R & Regs tit 12, § 61-4.4
Oregon	Or Rev Stat 480.225
Pennsylvania	25 Pa Code 210.14
Rhode Island	RI Gen Laws 23-28.28-5
Tennessee	Tenn Code Ann 68-105-106(c)
Texas	16 Tex Admin Code 12.702
Utah	Utah Admin Code r 645-105-300
Virginia	13 Va Admin Code 5-51-150 (adopting IFC 5601.4)
Washington	Wash Rev Code 70.74.360
West Virginia	W Va Code. R 199-1-4
Wisconsin	Wis Admin Code SPS 305.20(2)
Fireworks Restrictions for Young Adults	
Alabama	Ala Code 8-17-231
Alaska	Alaska Admin Code tit 13, § 50.025 (adopting the IFC, which sets the minimum age for operating fireworks and pyrotechnic displays at twenty-one. IFC 5601.4)
Arizona	Ariz Admin Code R4-36-201 and Ariz Admin Code R4-36-310 (adopting IFC 5601.4)
Arkansas	Ark Code Ann 20-22-707
California	Cal Health & Safety Code 12517
Colorado	8 Colo Code Regs 1507-101:3 (adopting National Fire Protection Association (“NFPA”) 1123, Code for Fireworks Display, which sets the minimum age for operating fireworks at twenty-one)
Delaware	1 Del Admin Code 704-2-5.0 (adopting NFPA 1123)
Florida	Fla Stat 791.012 (adopting NFPA 1123)
Georgia	Ga Comp R & Regs 120-3-22-.07 (adopting NFPA 1123)

Hawaii	Haw Code R 12-58-1
Idaho	Idaho Admin Code r 18.01.50.041 (adopting IFC 5601.4)
Illinois	225 Ill Comp Stat 227/35
Indiana	675 Ind Admin Code 22-2.2-26
Kansas	Kan Stat Ann 31-503
Louisiana	La Rev Stat Ann 51:655
Maine	Me Rev Stat Ann tit 8, § 231
Maryland	Md Code Regs 29.06.01.09 (adopting NFPA 1123)
Massachusetts	527 Mass Code Regs 1.05 (adopting NFPA 1123)
Michigan	MCL 28.466 (adopting NFPA 1123)
Minnesota	Minn Stat 624.22
Mississippi	Miss Code Ann 45-13-11 (adopting NFPA 1123)
Missouri	Mo Code Regs Ann tit 11, § 40-3.010
Nevada	Nev Admin Code 477.636
New Hampshire	NH Rev Stat Ann 160-B:6
New Jersey	NJ Admin Code 5:70-3.2 (adopting IFC 5601.4)
New York	NY Penal Law 405.10
North Carolina	NC Gen Stat 58-82A-10
North Dakota	ND Admin Code 10-07-01-04 (adopting NFPA 1123)
Ohio	Ohio Rev Code Ann 3743.50
Oklahoma	Okla Stat tit 68, § 1636
Oregon	Or Admin R 837-012-0780
Pennsylvania	72 Pa Stat Ann 9402
Rhode Island	450 RI Code R 00-00-7.1
South Carolina	SC Code Ann Regs 71-8300.2 (adopting NFPA 1123)
South Dakota	SD Codified Laws 34-37-13 (adopting NFPA 1123)

Tennessee	Tenn Code Ann 68-104-208
Texas	Tex Occ Code Ann 2154.101
Utah	Utah Admin Code R710-2-8
Virginia	13 Va Admin Code 5-51-150 (adopting IFC 5601.4)
Washington	Wash Admin Code 212-17-220
West Virginia	W Va Code R 103-4-4 (adopting NFPA 1123)