STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,	)	
Plaintiff-Appellee,	)	MSC No.: 168706
	)	COA No.: 374273
v.	)	Trial Court No.: 22-279506-FC
ETHAN ROBERT CRUMBLEY,	)	
Defendant-Appellant.	)	

AMENDED BRIEF[1] FOR THE STATE LAW RESEARCH INITIATIVE AND RODERICK & SOLANGE MACARTHUR JUSTICE CENTER AS *AMICI CURIAE* SUPPORTING DEFENDANT-APPELLANT

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[1] This brief was amended after filing to include the disclosure required by MCR 7.312(H)(5) and to correct pagination in the Table of Contents and Index of Authorities. It is in all other respects identical to the original filing.

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STATEMENT OF INTEREST[2]

Amicus Curiae, SLRI, a fiscally-sponsored project of the Proteus Fund, Inc., is a legal advocacy organization dedicated to reviving and strengthening state constitutional rights that prevent extremes in our criminal systems, with a focus on excessive prison terms and inhumane conditions of confinement. SLRI has unique expertise in the development and application of state constitutional law, particularly in the context of criminal legal systems. SLRI's work includes, among other things, fostering and developing legal scholarship on the history and meaning of state constitutional rights, as well as working with legal scholars and criminologists to file amicus briefs in state courts of appeal.

Amicus Curiae the Roderick & Solange MacArthur Justice Center (RSMJC) is a public interest law firm founded in 1985 by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. RSMJC has offices at Northwestern Pritzker School of Law, at the University of Mississippi School of Law, in New Orleans, in St. Louis, and in Washington, D.C. RSMJC attorneys have participated in civil rights

[2] Counsel for a party did not author this brief, in whole or in part, and did not make a monetary contribution intended to fund the preparation or submission of this brief. The State Law Research Initiative is a fiscally-sponsored project of the Proteus Fund. Otherwise, no person or organization other than the *amici curiae* made any monetary contributions towards the writing of this brief.

campaigns in areas that include police misconduct, compensation for the wrongfully convicted, extreme sentences, and the treatment of incarcerated people.

INTRODUCTION AND SUMMARY OF ARGUMENT

This brief addresses the fifth issue presented in Defendant-Appellant's Application for Leave to Appeal: Whether a life sentence without the possibility of parole (LWOP) for a fifteen-year-old with intellectual disability violates Michigan's ban on "cruel or unusual punishment." Mich. Const., art. 1, § 16. Amici argue that it does; indeed, imposing LWOP on someone with an intellectual disability of *any* age is cruel and unconstitutional.[3] This conclusion follows from existing precedent that limits the most severe criminal punishments as applied to categories of people with inherently reduced culpability and other mitigating characteristics that demand heightened constitutional protections. In our view, Section 16 does not permit LWOP—a punishment that shares much in common with the death penalty—for any person with intellectual disability, regardless of age. But at a minimum, this Court should hold that sentencing intellectually disabled youth under age 21 to LWOP is unconstitutional.

[3] Our argument applies not just to "intellectual disability" per se, but to any functionally equivalent neurodevelopmental disorder.

Over 20 years ago, in *Atkins v. Virginia*, 536 U.S. 304 (2002), the U.S. Supreme Court held that it is "cruel and unusual" punishment to execute people with intellectual disability. The Court's conclusion rested on two main findings: (1) the reduced culpability inherent to intellectual disability cannot justify the most severe criminal punishment; and (2) people with intellectual disability face systemic disadvantages and biases in criminal proceedings that unfairly expose them to inappropriately severe punishment. *Id.* at 318-21. Both the Supreme Court and this Court echoed this analysis in later cases protecting youth and emerging adults from life prison terms, including state constitutional rulings that bar mandatory LWOP sentences with explicit reliance on *Atkins*. *See People v. Parks*, 987 N.W.2d 161, 173 (Mich. 2022) (relying on *Atkins* to bar mandatory LWOP for 18 year-olds under Section 16). *Atkins*, in other words, is not solely about limits on capital punishment. It is about the constitutional limits on how the most severe punishments are applied to categorically vulnerable and less culpable people.

Yet despite more expansive state constitutional rights against excessive punishment and a longstanding constitutional commitment to pursue rehabilitation, Michigan still subjects both children and adults with intellectual disability to LWOP, the state's most severe criminal penalty. There is no death penalty in Michigan, but there is still death by incarceration, even

for people whose disability diminishes their criminal responsibility and poses profound risks of unjust punishment.

This gap in constitutional rights makes little sense as a matter of logic or legal analysis. It is true that some federal courts have cabined *Atkins* to the capital context, repeating the axiom that "death is different" from other criminal punishments and therefore justifies distinct constitutional restrictions. *See, e.g., United States v. Moore*, 643 F.3d 451, 455 (6th Cir. 2011). But as this and other courts (along with numerous scholars) have observed, *Atkins* was based on the reduced culpability and vulnerabilities shared by people with intellectual disability—empirical facts, grounded in scientific evidence, that are relevant to *all* sentencing decisions and support the proposition that intellectual disability should *always* be a mitigating factor, even when relatively lenient punishments are at stake. Of course *Atkins* does not demand a categorical bar against all punishments for people with intellectual disability. But to draw a bright line between capital and non-capital cases, with *Atkins* irrelevant to the latter, short-circuits the analysis.

Indeed, the U.S. Supreme Court itself dispensed with the death-is-different barrier when in 2010 it categorically barred LWOP for youth convicted of nonhomicide offenses in *Graham v. Florida*, 560 U.S. 48 (2010), and again in 2012 when it categorically barred all mandatory LWOP for youths, even for first-degree homicide, in *Miller v. Alabama*, 567 U.S. 460

(2012). Where courts had isolated capital punishment as a qualitatively different punishment meriting constitutionally different treatment from LWOP, *Graham* and *Miller* "eviscerate[d]" that distinction; as even Justice Thomas observed, "[d]eath is different no longer." *Graham*, 560 U.S. at 103 (Thomas, J., dissenting). Similar to *Atkins*, these cases—along with the Section 16 rulings in Michigan that have built upon them—rely on the reduced culpability shared by a category of people.

They also explain how death is not materially different from death by incarceration. In Michigan, LWOP is the most severe punishment available. Unlike any other punishment, LWOP "share[s] some characteristics with death sentences because … imprisonment without hope of release for the whole of a person's natural life is a forfeiture that is irrevocable." *Parks*, 987 N.W.2d at 177-78 (internal quotations omitted). This is especially true when LWOP is mandatory, imposed without regard to any mitigating circumstances or individual characteristics. But even with the individualized sentencing required for youth, *see* MICH. COMP. LAWS § 769.25, the traits of intellectual disability—including less ability to build a case in mitigation and difficulty showing remorse—make an unnecessary and unjust LWOP sentence more likely. That is precisely why *Atkins* imposed a categorical bar that foreclosed such proceedings in capital cases. If the death penalty warrants such heightened protection, so too does death by incarceration. *See State v. Ryan*,

396 P.3d 867, 876-77 (Or. 2017) (observing that decisions restricting *Atkins* to capital cases "have not provided extended explanations for why the *Atkins* rationale should not apply to true-life or other long-term prison sentences"); Carol S. Steiker & Jordan M. Steiker, *Sober Second Thoughts: Reflections on Two Decades of Constitutional Regulation of Capital Punishment*, 109 Harv. L. Rev. 355 (1995) ("the Court has not explained precisely how death is different from all other punishments other than to reassert that death is final and severe.").

Given *Graham* and *Miller*, the lack of an explicit federal rule barring LWOP for people with intellectual disability is of no significance, especially in a Section 16 analysis. Eighth Amendment case law is often criticized for its inconsistency and lack of principled approach. *See* Rachel Barkow, *The Court of Life & Death: The Two Tracks of Constitutional Sentencing Law and the Case for Uniformity*, 107 Mich. L. Rev. 1145 (2009). And lower federal courts that have declined to apply *Atkins* in non-capital cases may be reluctant to extend holdings to legal and factual contexts where the Supreme Court has not yet done so. These federal limitations only underscore the vital role of state constitutional rights and this Court's duty to independently interpret Section 16. Indeed, rejecting illogical and destructive flaws in federal excessive

punishment jurisprudence is a critical function of state constitutionalism.[4] This Court has rigorously engaged in this work when expanding rights for young people under state constitutional principles, and it should continue to do so with regard to how people with intellectual disability are punished.

Ultimately, LWOP for people with intellectual disability fails to serve any penological purpose and creates a grave risk that people capable of rehabilitation are needlessly consigned to die in prison. Particularly in light of Michigan's long and unique constitutional history of "maximizing the offender's rehabilitative potential," *People v. McFarlin*, 339 Mich. 557, 574 (1973), such punishment is cruel and violates Section 16. At a minimum, though, LWOP sentences for intellectually disabled youth—who have "twice diminished culpability" born of age and disability—are unconstitutional. *Graham*, 560 U.S. at 69.

ARGUMENT

I. Legal Background

This Court is "duty-bound" to independently interpret Section 16, which under "longstanding Michigan precedent" demands "a broader interpretation"

[4] *See, e.g.,* Kyle C. Barry, *What Is 'Punishment'? How State Courts Can Fix a Destructive Flaw In Eighth Amendment Case Law*, State Court Report (Dec. 13, 2023), https://statecourtreport.org/our-work/analysis-opinion/what-punishment-how-state-courts-can-fix-destructive-flaw-eighth.

than the federal Eighth Amendment's ban on "cruel and unusual" punishment. *People v. Bullock*, 440 Mich. 15, 41, (1992); *People v. Stovall*, 987 N.W.2d 85, 90 (Mich. 2022). Section 16's "use of 'or' rather than 'and' provides additional protection" … as it "prohibits punishments that are cruel, even if they are not unusual, and prohibits punishments that are unusual, even if they are not cruel." *People v. Lymon*, ___ Mich. ___; No. 164685, 2024 WL 3573528, *4 n.7 (S. Ct. Mich. July 29, 2024) (citing *Bullock*, 440 Mich. 15, 32-33 (1992)). In addition to the distinct text, this more expansive reading is compelled by state constitutional history and Michigan's longstanding commitment to the goal of rehabilitation. *People v. Parks*, 510 Mich. 225, 242 (2022) (citing *People v. Lorentzen*, 387 Mich. 167 (1992)).

"Determining what constitutes cruel or unusual punishment is guided by 'evolving standards of decency that mark the progress of a maturing society." *People v. Taylor/People v. Czarnecki*, ___ N.W.3d. ___; Nos. 166428 and 166654, 2025 WL 1085247, *3 (S. Ct. Mich. April 10, 2025) (quoting *Parks*, 987 N.W.2d at 166). This standard "enforces the Constitution's protection of human dignity," *Hall v. Florida*, 572 U.S. 701, 708 (2014), and "as society progresses, punishments that were once acceptable can later be considered cruel or unusual." *Taylor/Czarnecki*, 2025 WL 1085247 at *3.

Central to evolving standards review is an empirical assessment of whether punishments are effective. Regardless of whether they are "unusual,"

punishments are unconstitutionally cruel if they do not serve a legitimate penological goal "more effectively than a less severe punishment," *Furman v. Georgia*, 408 U.S. 238, 280 (1972) (Brennan, J., concurring), or at least make a "measurable contribution to acceptable goals of punishment." *Coker v. Georgia*, 433 U.S. 584, 592 (1977). If a "significantly less severe punishment" exists that is "adequate to achieve the purposes for which the punishment is inflicted," the punishment imposed is "unnecessary and therefore excessive." *Furman*, 408 U.S. at 279 (Brennan, J., concurring) (citations omitted); *see also* 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."). In Michigan, the goal of rehabilitation is paramount—"[i]ndeed, it is the only penological goal enshrined in [the state constitution's] proportionality test as a 'criterion rooted in Michigan's legal traditions." *Parks*, 987 N.W.2d at 182 (quoting *Bullock*, 440 Mich. at 34).

This inquiry must account for the offender's personal characteristics—ensuring that the punishment is "tailored to a defendant's personal responsibility and moral guilt," *Bullock*, 440 Mich. at 39—and Michigan courts have "an obligation to 'consider objective, undisputed scientific evidence when determining whether a punishment is unconstitutional as to a certain class of

defendants." *Taylor/Czarnecki*, 2025 WL 1085247 at *7 (quoting *Parks*, 510 Mich. at 249).[5]

II. Life Sentences Without The Possibility of Parole For People With Intellectual Disability Are "Cruel" Under Article 1, § 16

To hold that LWOP is categorically unconstitutional as applied to people with intellectual disability, this Court need only apply well-established constitutional principles that restrict the most severe punishments (whether death sentences or long prison terms) from categories of people who, as determined by scientific evidence, have inherently reduced culpability based on cognitive and adaptive limitations—in particular people with intellectual disability and younger people with still-developing brains. Together, these cases dispense with the artificial "death is different" limitation on constitutional rights, and stand for the proposition that it is cruel to "forswear[] altogether the rehabilitative ideal," *Parks*, 987 N.W.2d at 182, and impose Michigan's most severe and permanent punishment on disabled people for whom the sentence is especially harsh and without purpose.

[5] This Court has distilled these overarching principles into a flexible four-factor inquiry, which considers: "(1) the severity of the sentence imposed compared to the gravity of the offense, (2) the penalty imposed for the offense compared to penalties imposed on other offenders in Michigan, (3) the penalty imposed for the offense in Michigan compared to the penalty imposed for the same offense in other states, and (4) whether the penalty imposed advances the penological goal of rehabilitation." *Stovall*, 510 Mich. at 314; see also *Bullock*, 440 Mich. at 33-36 (citing *Lorentzen*, 387 Mich. at 176-81).

A. This categorical challenge to LWOP must be analyzed under the principles set forth in *Atkins v. Virginia*—just as this Court has done in age-based challenges

In 2002, applying the evolving standards framework under the federal Eighth Amendment, the U.S. Supreme Court in *Atkins* held that it is categorically cruel and unusual to impose death sentences on people with intellectual disability. *Atkins*, 536 U.S. at 319. The Court cited two reasons for this holding. First, relying on scientific consensus, the Court found that the death penalty cannot be justified by any legitimate purpose of punishment when the person sentenced is intellectually disabled. Specifically, deterrence is not furthered because "those with intellectual disability … have a 'diminished ability' to process information, to learn from experience, to engage in logical reasoning, or to control impulses … [which] make[s] it less likely that they can process the information of the possibility of execution as a penalty and, as a result, control their conduct based upon that information.'" *Hall*, 572 U.S. at 709 (quoting *Atkins*, 536 U.S. at 320). And "[r]etributive values are also ill-served by executing those with intellectual disability," because their "diminished capacity … lessens moral culpability[.]" *Id.*

Second, the Court found that people with intellectual disability are more likely to be both wrongfully convicted and wrongfully punished—that is, given an inappropriately severe sentence despite the existence of crucial mitigating factors. *Atkins*, 536 U.S. at 320-21. In practice, people with intellectual

disability are more likely to falsely confess and are less able to assist their counsel in building a mitigation defense. Their disability may make them unpersuasive witnesses and unreliable personal historians, and "their demeanor may create an unwarranted impression of lack of remorse for their crimes." *Id*. *See also* Katie Kronick, *Intellectual Disability, Mitigation & Punishment*, 65 B.C. L. Rev. 1561, 1581 (2024). With these twin rationales, the Court concluded that, even with individualized sentencing, it is categorically unconstitutional to treat people with intellectual disability as "the worst of the worst" and sentence them to death.

While *Atkins* was itself a capital case, its rationale cannot be cabined to the death penalty context, particularly after *Graham* and *Miller*. In those cases, the U.S. Supreme Court made clear that LWOP, like the death penalty, may be categorically disproportionate when imposed on people with diminished culpability, thus "eviscerat[ing]" any distinction between constitutional protections in death and LWOP cases. *Graham*, 560 U.S. at 103 (Thomas, J., dissenting). Under the federal Eighth Amendment, youth under 18 cannot receive mandatory LWOP, *Miller*, 567 U.S. at 460, or any LWOP sentence (mandatory or discretionary) for nonhomicide offenses. *Graham*, 560 U.S. at 48. In Michigan, this Court has extended these rulings through Section 16's more expansive "cruel or unusual" clause, holding that mandatory LWOP is barred for people under age 21, *Taylor/Czarnecki*, 2025 WL 1085247, and

that all life terms, even those *with* the possibility of parole, are barred for youth under 18 convicted of second degree murder. *Stovall*, 987 N.W.2d at 85.[6]

As in *Atkins*, these decisions rest largely on undisputed scientific evidence showing that a category of people—in these cases, younger people without a fully-developed prefrontal cortex—have inherently reduced culpability that is incompatible with the most severe criminal punishments. Just as *Atkins* relied on the "cognitive and behavioral impairments that make [people with intellectual disability] less morally culpable," this Court in *Parks*, which barred mandatory LWOP for 18-year-olds, explained that the "features that characterize the late-adolescent brain also diminish the culpability of these youthful offenders." *Parks*, 987 N.W.2d at 178; *see also Graham*, 560 U.S. at 67 ("because juveniles have lessened culpability they are less deserving of the most severe punishments").

Other state courts have already applied *Atkins'* reasoning to sentencing generally, holding that sentencing courts must at least always consider intellectual disability as a mitigating factor, even when sentences far less

[6] Michigan is not alone in enforcing state constitutional rights that categorically restrict or bar life prison terms for younger people. Both the Washington and Iowa state supreme courts have imposed a categorical bar on *all* youth LWOP sentences, *State v. Bassett*, 428 P.3d 343 (Wash. 2018); *State v. Sweet*, 879 N.W.2d 811 (Iowa 2016), while the Massachusetts Supreme Court—applying its state's own "cruel or unusual" punishment clause—barred all LWOP for people under age 21. *Commonwealth v. Mattis*, 224 N.E.3d 410 (Mass. 2024).

severe than LWOP are at issue. After all, "if one believes what the Court wrote in *Atkins* about [intellectually] disabled defendants being less culpable than others," then applying the case to reduce excessive prison terms "should be applauded, not avoided." Paul Marcus, *Does* Atkins *Make a Difference in Non-Capital Cases? Should It?*, 23 WM & Mary Bill Rts J. 431, 465 (2014). In Oregon, for example, the state constitution provides that "[c]ruel and unusual punishment shall not be inflicted," and that "[a]ll penalties shall be proportioned to the nature of the offense." Or. Const., art. 1, § 16. Applying this clause to an excessive punishment claim, the Oregon Supreme Court in 2017 overturned a six-year sentence and held that "a sentencing court must consider an offender's intellectual disability" when deciding whether a sentence is proportionate to the offense and the individual offender. *Ryan*, 396 P.3d at 877 (citing *Atkins*, 536 U.S. at 306-321); *see also State v. Nataluk*, 720 A.2d 401, 408 (N.J. Superior Court-Appellate Div. Nov. 13, 1998) (holding that even when the jury rejects the insanity defense, sentencing courts must consider intellectual disability as a mitigating factor).

The Eighth Amendment and Section 16 cases (along with other state constitutional rulings from around the country) that categorically restrict or prohibit life terms for young people betray the fallacy in reflexively confining *Atkins* to the capital context. Even if some federal courts still read *Atkins* incorrectly as a "death is different" case, this Court is "duty-bound" to

independently interpret Section 16 from the Eighth Amendment and it should do so in a principled and logically consistent way. Properly understood through the lens of Section 16, *Atkins* asks whether its two related rationales—one grounded in how reduced culpability undermines the purposes of punishment, the other in how people with intellectual disability face unfair bias and other disadvantages in the criminal legal system—apply equally when the punishment in question is LWOP. As shown below, the same reasoning applies, and the punishment is therefore categorically cruel.

B. Death by incarceration is not materially different from capital punishment: LWOP for people with intellectual disability is categorically cruel because it does not serve rehabilitation or other purposes of punishment

In Michigan, LWOP is the most severe penalty allowed by law. As the U.S. Supreme Court has recognized, LWOP "share[s] some characteristics with death sentences that are shared by no other sentence"—including that it "alters the offender's life by forfeiture that is irrevocable" and "deprives the [person] of the most basic liberties without giving hope of restoration." *Graham*, 560 U.S. at 69. Sentencing someone to die in prison "means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convicted person], he will remain in prison for the rest of his days." *Id.* (quoting *Naovarath v. State*, 779 P.2d 944 (Nev. 1989)). One man who served

decades of an LWOP sentence before it was overturned described it as "the sense of being dead while you're still alive, the feeling of being dumped into a deep well struggling to tread water until, some 40 or 50 years later, you drown."[7]

In assessing LWOP's severity in age-based cases, this Court emphasized that life in prison for younger people is especially harsh. LWOP is "particularly acute for young persons," because "they will inevitably serve more time and spend a greater percentage of their lives behind prison walls than similarly situated older adult offenders." *Parks*, 987 N.W.2d at 257; *see also Miller*, 567 U.S. at 475 ("The penalty [of LWOP] when imposed on a teenager, as compared with an older person, is therefore the same in name only") (internal quotation omitted). Similar reasoning applies to people with intellectual disability who are sentenced to life terms. For various reasons, "[p]rison can be a more traumatic experience for individuals with intellectual disability than for the general population." Kronick, *Intellectual Disability, Mitigation & Punishment*, *supra,* at 1599. They are more likely to experience abuse from both corrections officers and other incarcerated people—including theft of belongings, sexual assault, or being exploited to break prison rules on someone

[7] Kennth E. Hartman, *Death by Another Name*, The Marshall Project (Oct. 13, 2016), https://www.themarshallproject.org/2016/10/23/death-by-another-name.

else's behalf—and to be sent to solitary confinement, which can inflict profound psychological harm that amounts to torture. *Id.* at n.238.[8] People with intellectual disability also have fewer opportunities for appropriate remedial programming, *id.* at 1594—a factor crucial to this Court's holding that all life sentences for youth convicted of second degree murder constitute cruel or unusual punishment. *See Stovall*, 987 N.W.2d at 94 ("prisoners who receive parolable life sentences are given lower priority when it comes to educational and rehabilitative programming," yet "[a]ccess to these programs is vital, especially for juvenile offenders, to enhance their growth and rehabilitative potential.").

Applying this uniquely severe punishment to people with intellectual disability does not serve any legitimate purpose. First, as with capital punishment, no one can argue that LWOP furthers the goal of rehabilitation—the primary goal of Michigan's criminal-punishment system and the penological purpose against which all excessive punishment claims must be assessed. *Parks*, 987 N.W.2d at 182. LWOP "forswears altogether the rehabilitative ideal," *id.*, and a "punishment which consigns an offender to spend his or her entire life in prison is plainly unconcerned with reforming the

[8] *See also* Tiana Herring, *The research is clear: Solitary confinement causes long-lasting harm*, Prison Policy Initiative (Dec. 8, 2020), https://www.prisonpolicy.org/blog/2020/12/08/solitary_symposium/.

offender." *State v. Kelliher*, 873 S.E.2d 366, 386 (N.C. 2022) (internal quotation marks omitted).

Moreover, the systemic disadvantages and biases that people with intellectual disability face in sentencing proceedings exacerbate how LWOP needlessly and unfairly dispenses with the possibility of rehabilitation, and underscores why this category of people warrant heightened constitutional protection. As the Court put it in *Atkins*, "their impairments can jeopardize the reliability and fairness of [sentencing] proceedings against [them]." 536 U.S. at 306-07. Even when someone is afforded an individualized sentencing hearing, people with intellectual disability are generally less able to assist their counsel and "make a persuasive showing of mitigation in the face of prosecutorial evidence of one or more aggravating factors." *Atkins*, 536 U.S. at 320; *see also Sweet*, 879 N.W.2d at 831 (barring all youth LWOP in part because youth "are less able to provide meaningful assistance to their lawyers than adults, a factor that … gives rise to a risk of erroneous conclusions regarding [youth] culpability."); *Graham*, 560 U.S. at 78 (barring youth LWOP for nonhomicide offenses in part because children "are less likely than adults to work effectively with their lawyers to aid in their defense").

Further, scholars have documented how judges often believe "that individuals with intellectual disability are *more* likely to recidivate" and are *less* capable of rehabilitation, because they "believe intellectual disability is

related to the criminal conduct itself and unlikely to change." Kronick, *Intellectual Disability, Mitigation & Punishment*, *supra*, at 1600. In fact, "[n]ot only do people with intellectual disability demonstrate growth over time, but with specific interventions and supports … can advance further[.]" *Id*. Thus, the "belief that individuals with intellectual disability cannot change and develop is incorrect[.]" *Id*. at 1601.

Given the primacy that Michigan's state constitution places on rehabilitation, this reason is sufficient alone to impose a categorical bar under Section 16 against LWOP for people with intellectual disability.

But beyond rehabilitation, LWOP for people with intellectual disability does not further deterrence or retribution for the same reasons set forth in *Atkins*—and that this Court relied on in *Taylor/Czarnecki*, *Parks*, *Stovall*, and related cases. First, life prison terms are a poor deterrent as applied to anyone. Decades of experience and empirical study have thoroughly discredited the theory that severe punishments deter criminal conduct. If anything, it is the *certainty* of punishment, not the *severity*, that deters. *See* Marta Nelson, Sam Feineh, & Maris Mapolski, *A New Paradigm for Sentencing in the United States*, Vera Institute of Justice (Feb. 2023); see also Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 CRIME & JUST. IN AM.: 1975-2025 199, 199 (2013) (noting "lengthy prison sentences and mandatory minimum sentencing cannot be justified on deterrence"). This is even more

true as applied to people with intellectual disability, who have "diminished ability to understand and process information, to learn from experience, to engage in logical reasoning, or to control impulses," all of which "make it less likely that they can process the information of the possibility of [LWOP] as a penalty and, as a result, control their conduct based upon that information." *Atkins*, 536 U.S. at 320.

These same characteristics render people with intellectual disability inherently less culpable, and therefore less deserving of the law's most severe penalty. "Because of their disabilities in areas of reasoning, judgment, and control of their impulses, [people with intellectual disability] do not act with the level of moral culpability that characterizes the most serious adult criminal conduct." *Id*. at 306-07.

This analysis could very well support an Eighth Amendment categorical bar on LWOP for people with intellectual disability—though again, the U.S. Supreme Court's and other federal courts' failure to consistently enforce Eighth Amendment rights is well-documented. *See* Barkow, *The Court of Life & Death*, *supra*. But that failure presents an opportunity for state constitutionalism. Particularly given Michigan's more expansive cruel or unusual clause, its longstanding commitment to rehabilitation, and the unique severity of LWOP in Michigan, this Court should hold that *Atkins*' bar on death

sentences applies equally to death by incarceration and categorically bar LWOP for people with intellectual disability.

III. Life Without Parole Sentences For Intellectually Disabled Youth Are "Cruel" Under Article 1, § 16

If this Court does not impose a categorical bar on LWOP for all people with intellectual disability under Section 16, it should at the very least bar LWOP for intellectually disabled youth under age 21. The foregoing arguments apply with even greater force to this category.

For intellectually disabled youth, LWOP is even more severe, as the trauma of prison life and the duration of incarceration are compounded. As the Massachusetts Supreme Judicial Court explained, "[w]hen considered in the context of the offender's age and the wholesale forfeiture of all liberties, the imposition of a sentence of life without parole on a juvenile homicide offender is strikingly similar … to the death penalty." *Diatchenko v. DA*, 1 N.E.3d 270, 284 (Mass. 2013).

Youth and emerging adults with intellectual disability also share the same sort of "twice diminished moral culpability" on which the U.S. Supreme Court relied to categorically bar all LWOP sentences, including discretionary LWOP, for youth convicted of nonhomicide offenses. *Graham*, 560 U.S. at 69. In addition, young people retain a heightened capacity to grow and change. Their brains will "transform as they age, allowing them to reform into persons

who are more likely to be capable of making more thoughtful and rational decisions." *Parks*, 987 N.W.2d at 178. This renders LWOP an especially cruel punishment that abandons the rehabilitative ideal for those still capable of achieving it. *See id.*; *Graham*, 560 U.S. at 79 ("The juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential.").

Finally, extending this category to intellectually disabled people under age 21 aligns with this Court's case law recognizing that the same neuroscience supporting restrictions against LWOP for youth applies equally to emerging adults at least to this age, if not up to age 25. *Taylor/Czarnecki*, 2025 WL 1085247 at *6; *Parks*, 510 Mich. at 251 ("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."); *see also Taylor/Czarnecki*, 2025 WL 1085247 at *17 (Bernstein, J., concurring) ("I would instead follow the thoughtful conclusions of the many scientific studies presented before us and relied upon in both *Parks* and these cases, and hold that the turning point for any test … starts at age 25 and not age 21.").

CONCLUSION

For the reasons set forth above, this Court should hold that life without parole sentences for people with intellectual disability violate Michigan's

constitutional ban on "cruel or unusual punishment." At the very least, this Court should hold such sentences unconstitutional for intellectually disabled youth and emerging adults under age 21.

Respectfully submitted,

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Dated: August 5, 2025

CERTIFICATE OF COMPLIANCE

As required by Michigan Court Rule 7.212, I certify that this document contains 5,012 words, excluding the parts of this document that are exempted by Court Rules MCR 7.212(C)(6). I declare under penalty of perjury that the foregoing is true and correct.

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