

State of Michigan  
In the Supreme Court

**The People of the State of Michigan**

Plaintiff-Appellee,

MSC No. 166428

v.

COA No. 349544

**Montario Marquise Taylor**

Genesee County Circuit Court

Defendant-Appellant.

Case No. 16-40564 FC

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**Defendant-Appellant**  
**Montario Marquise Taylor's**  
**Supplemental Brief**

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## Statement of the Questions Presented

### First Question

Does twenty-year-old Montario Taylor's life without parole sentence violate Const 1963, art 1, § 16, because the mitigating attributes of youth must be considered before a court imposes the harshest sentence available?

Mr. Taylor answers: Yes.

The Court of Appeals answered: No.

### Second Question

Is *People v Hall* non-binding? Should this Court still formally overrule *Hall's* cruel-or-unusual analysis because it is no longer valid, does not reflect contemporary Michigan law, and does not comport with evolving standards of decency?

Mr. Taylor answers: Yes.

The Court of Appeals did not answer.



## Introduction

Eighteen-year-olds are less culpable and more amenable to rehabilitation than adults whose brains are fully developed. *People v Parks*, 510 Mich 225, 259 (2022). Therefore, mandatory life in prison without the possibility of parole for 18-year-olds violates the Michigan Constitution’s prohibition on cruel or unusual punishment. *Id.* at 268. At 20 years old, Montario Taylor’s brain was indistinguishable from an 18-year-old’s brain for the purposes of punishment, deterrence, and rehabilitation. His mandatory LWOP sentence is cruel and/or unusual.

In Montario’s case and many others, the Court of Appeals found that an obsolete and inapt opinion, *People v Hall*, 396 Mich 650, 657-658 (1976), required it to reject claims that mandatory LWOP is cruel or unusual when applied to late adolescents. The *Hall* Court did not recognize the constitutional significance of youth in sentencing, or even acknowledge that Mr. Hall was a child at the time of his offense. The Court summarily rejected Mr. Hall’s cruel-or-unusual claim. Years later, Mr. Hall’s sentence was vacated because the United States Supreme Court recognized that youth are less culpable than adults and LWOP is far harsher when imposed on youth, and therefore held that mandatory LWOP for children was both cruel *and* unusual—overruling *Hall sub silentio*. Further, *Hall* is non-binding because it addressed a sweeping facial challenge. Here, Montario argues that mandatory LWOP is unconstitutional as applied to a particular class: 20-year-olds.

Though *Hall* is not binding on Montario’s case, this Court should explicitly overrule it because it is no longer good law, does not reflect society’s evolving standards of decency, and causes confusion and injustice. In the half-century since *Hall*, standards of decency have seismically shifted. When *Hall* was decided, the United States Supreme Court was still nearly 30 years from outlawing the death penalty for minors. See *Roper v Simmons*, 543 US 551 (2005). Cases like *Miller v Alabama*, 567 US 460 (2012), *Montgomery v Louisiana*, 577 US 190 (2016), *Parks*, 510 Mich 225, and *People v Stovall*, 510 Mich 301 (2022), make clear that Michigan courts cannot rely on *Hall*’s cruel-or-unusual analysis. This Court should grant resentencing and overrule *Hall*.

## Statement of Facts

Montario Taylor was born on March 23, 1996. PSIR, Family. He has never known his father's identity. *Id.* Montario's mother died when he was just nine years old, causing any stability in Montario's life to evaporate. *Id.* After he lost his mother, Montario was "passed around between family members." *Id.*

As a child, Montario did not receive the support or guidance young people need. He began using marijuana regularly at a young age and dropped out of high school. PSIR, Substance Use and Treatment; PSIR, Education.

Despite the lack of structure in his life, Montario was never involved with the juvenile court system. He has just one prior criminal conviction: a nonviolent drug offense. PSIR, Criminal Justice.

The homicide in this case occurred in 2016. The decedent, Montel Wright, died of gunshot wounds. At the time, Montario was 20 years old. Montario's first trial ended in a hung jury. At the second trial, he was convicted of first-degree premeditated murder and felony firearm.

Montario appealed and the Court of Appeals affirmed. *People v Taylor*, unpublished per curiam opinion of the Court of Appeals, issued October 21, 2021 (Docket No. 349544). He then appealed to this Court, which remanded to the Court of Appeals for reconsideration in light of *People v Parks*, 510 Mich 225 (2022). *People v Taylor*, 987 NW2d 203 (2023). On remand, the Court of Appeals affirmed Montario's sentence, relying on *People v Hall*, 396 Mich 650 (1976). *People v Taylor*, unpublished per curiam opinion of the Court of Appeals, issued October 5, 2023 (Docket No. 349544). Montario again appealed to this Court.

This Court granted oral argument on Montario's application and ordered supplemental briefing to address whether his mandatory LWOP sentence is cruel or unusual given his young age; whether such a finding would require this Court to overrule *People v Hall*, 396 Mich 650 (1976); and, if so, whether this Court should overrule *Hall*.

## Arguments

### Issue Preservation and Standard of Review

Montario challenged the constitutionality of his sentence in his initial appellate brief and throughout his direct appeal. When a sentence is cruel or unusual in violation of Const 1963, art 1, § 16, relief is required even where the error was not addressed at sentencing. See *People v Parks*, 510 Mich 225, 234-235, 268 (2022) (finding that Mr. Parks’ mandatory sentence was cruel or unusual and remanding for resentencing, although Mr. Parks did not challenge his sentence in the trial court). See also *People v Stovall*, 510 Mich 301, 308-309 (2022) (Mr. Stovall filed a successive motion for relief from judgment raising a challenge to his parolable life sentence; this Court held the sentence was cruel or unusual and remanded for resentencing).

Questions of constitutional law are reviewed de novo. *People v Babcock*, 469 Mich 247, 268 (2003).

- I. **Twenty-year-old Montario Taylor’s mandatory life without parole sentence violates Const 1963, art 1, § 16, because the mitigating attributes of youth must be considered before a court imposes the harshest sentence available.**

### Discussion

In *Miller v Alabama*, the Supreme Court held that mandatory LWOP, which prevents sentencing courts from “tak[ing] into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison,” is cruel and unusual for children under the age of 18. *Miller*, 567 US at 480. In *People v Parks*, this Court acknowledged the scientific consensus that, “in terms of neurological development, there is no meaningful distinction between those who are 17 years old and those who are 18 years old.” *Parks*, 510 Mich at 252. This led this Court to the “inescapable conclusion that mandatorily condemning 18-year-olds to die in prison, without consideration of the attributes of youth that 18-year-olds and juveniles

share, “no longer comports with the ‘evolving standards of decency that mark the progress of a maturing society.’” *Id.* at 244, quoting *People v Lorentzen*, 387 Mich 167, 179 (1972).

Mandatory life in prison without the possibility of parole is cruel or unusual for 18-year-olds because they are less culpable and more amenable to rehabilitation than adults whose brains are fully developed. *Parks*, 510 Mich at 259, 268 (2022). At 20 years old, Montario’s brain was indistinguishable from an 18-year-old’s brain for the purposes of punishment, deterrence, and rehabilitation.<sup>1</sup> His mandatory LWOP sentence is cruel and/or unusual.

To pass constitutional muster, a punishment must reflect the “evolving standards of decency that mark the progress of a maturing society.” *Lorentzen*, 387 Mich at 179 (quotation marks and citation omitted). This is because the definition of cruel or unusual is “progressive and is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice.” *Id.* at 178 (quotation marks and citation omitted).

To evaluate a claim under Const 1963, art 1, § 16, this Court considers the factors set out in *Lorentzen* and reaffirmed in *People v Bullock*, 440 Mich 15, 33-34 (1992): (1) the severity of the sentence relative to the gravity of the offense, (2) sentences imposed in the same jurisdiction for other offenses, (3) sentences imposed in other jurisdictions for the same offense, and (4) the goal of rehabilitation, which is specifically rooted in Michigan’s legal traditions. Const 1963, art 1, § 16 provides broader protection than the Eighth Amendment. *Bullock*, 440 Mich at 30-35; *Parks*, 510 Mich at 241.

When applied here, the *Lorentzen* factors demonstrate that mandatory LWOP is cruel and/or unusual when imposed on 20-year-

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<sup>1</sup> Insel, Tabashneck, et al., *White Paper on the Science of Late Adolescence*, Center for Law, Brain & Behavior (2022), p 2, available at <https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence/>

olds—late adolescents whose brains are not yet fully developed. Mandatorily condemning 20-year-olds to die in prison, without considering their reduced culpability and their heightened amenability to rehabilitation, does not comport with modern science or society’s evolving standards of decency.

**A. Mandatory LWOP for late adolescents is too severe, even for the gravest offenses.**

The first *Lorentzen* factor compares the severity of the sentence to the gravity of the offense. *Bullock*, 440 Mich at 33. While murder is a very grave offense, LWOP—death in prison—is the most severe sentence available in Michigan. *Parks*, 510 Mich at 257. LWOP is particularly severe when imposed without judicial discretion, and when imposed on a young person. A sentence of LWOP requires a young person to serve “more years and a greater percentage of his life in prison than an adult offender.” *Graham v Florida*, 560 US 48, 70 (2010). “The penalty when imposed on a teenager, as compared with an older person, is therefore ‘the same . . . in name only.’” *Id.* See also *Parks*, 510 Mich at 257-258.

Mandatory LWOP is excessive for late adolescents because their brains are still developing, which reduces their culpability and increases their capacity for change. In *Parks*, this Court recognized that the human brain is not fully developed until age 25. *Parks*, 510 Mich at 250-251. This Court relied on scientific studies that identify adolescence as the period between ages 10 to 24. *Id.* at 250-253, citing Arain et al, *Maturation of the Adolescent Brain*, 9 *Neuropsychiatric Disease & Treatment* 449, 450 (2013), and National Academies of Sciences, Engineering, and Medicine, *The Promise of Adolescence: Realizing Opportunity for All Youth* (Washington, DC: The National Academies

Press, 2019).<sup>2</sup> Because Mr. Parks was 18 years old at the time of his offense, this Court did not address the constitutional requirements for sentencing adolescents over the age of 18. *Parks*, 510 Mich at 245.

“The unique period of brain development and heightened brain plasticity . . . continues into the mid-20s.” National Academies of Sciences, Engineering, and Medicine, *The Promise of Adolescence: Realizing Opportunity for All Youth* (Washington, DC: The National Academies Press, 2019), p 22. Like 18-year-olds, 20-year-olds are late adolescents. They share the neurological qualities that make young people less deserving of the harshest punishments:

[S]cientific research has emerged which reinforces the reasoning of the *Miller*<sup>3</sup> decision and, if its implications are accepted, extends much of the science that resonated with the *Miller* court to late adolescents (ages 18–21).

Maturation of brain structure, brain function, and brain connectivity continues throughout the early twenties. This ongoing brain development has profound implications for decision-making, self-control and emotional processing. For example, new neuroscience research reveals that during emotionally charged situations, late adolescents (ages 18–21) respond more like younger adolescents (ages

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<sup>2</sup> In *Parks*, this Court cited *The Promise of Adolescence* by the National Academies of Science, Engineering, and Medicine. *Parks*, 510 Mich at 250. *The Promise of Adolescence* is a “Consensus Study Report”, which is defined on page iv of the report: “Consensus Study Reports published by the National Academies of Sciences, Engineering, and Medicine document the evidence-based consensus on the study’s statement of task by an authoring committee of experts. Reports typically include findings, conclusions, and recommendations based on information gathered by the committee and the committee’s deliberations. Each report has been subjected to a rigorous and independent peer-review process and it represents the position of the National Academies on the statement of task.”

<sup>3</sup> *Miller v Alabama*, 567 US 460 (2012).

13–17) than like young adults (ages 22–25) due to differences in brain maturation.

Compared to young adults above age 21, late adolescents (ages 18–21) also take more risks and engage in more sensation-seeking behavior. Due to differences in brain development, late adolescents are more likely than young adults to respond to immediate outcomes and are less likely to delay gratification. The presence of peers can intensify these behaviors, and the brains of late adolescents are more responsive to peer involvement than those of young adults. Late adolescents are also more easily swayed by adult influence and coercion than their adult counterparts. [Insel, Tabashneck, et al., at p 2.]

In *Parks*, this Court recognized that late adolescents’ brains are equivalent to juveniles’ brains for the purposes relevant to punishment, deterrence, and rehabilitation. *Parks*, 510 Mich at 249-252. The Court explained that “late adolescents are hampered in their ability to make decisions, exercise self-control, appreciate risks or consequences, feel fear, and plan ahead.” *Id.* at 250. Late adolescents like Montario, who was 20 years old at the time of the offense, are also “more susceptible to negative outside influences, including peer pressure” than fully developed adults. *Id.* at 251.

Dr. BJ Casey, a leading national expert on adolescent brain development and self-control, explains that both brain science and behavioral science support extending the rule in *Parks* to late adolescents who are over the age of 18:

The decisions made in *Roper*<sup>4</sup> and *Miller* were based largely on behavioral evidence of differences between youths and adults, with little knowledge or appreciation of the functionally significant and legally relevant brain changes throughout adolescence and into young adulthood.

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<sup>4</sup> *Roper v Simmons*, 543 US 551 (2005).

That evidence is now available and further confirms the behavioral science. Not only do these findings apply to *Roper*, *Miller*, and *Montgomery*<sup>5</sup> but they also inform the extension of these decisions beyond 18 years. [Casey et al., *Making the Sentencing Case: Psychological and neuroscientific evidence for expanding the age of youthful offenders*, 5 Ann Rev Criminology 321, 337 (2022).]

The 20-year-old brain is indistinguishable from the 17- or 18-year-old brain for the purposes of punishment, deterrence, and rehabilitation. Dr. Casey explains, “Distinguishing the [cognitive] capacity of a 17-year-old from an 18-, 19-, 20-, or 21-year-old would be impossible for a single individual or even group of individuals, but this distinction in performance becomes more obvious by the mid-twenties.” *Id.* at 327-328.

There is widespread recognition that the harshest punishments are too severe for 20-year-olds. The American Bar Association issued a resolution urging jurisdictions to prohibit the imposition of a death sentence on anyone who was under the age of 22 at the time of the offense. In support, the ABA noted that “research has consistently shown that [brain] development actually continues beyond the age of 18.”<sup>6</sup> Fair and Just Prosecution, a network of elected local prosecutors, published an issue brief calling for less punitive approaches to 18- to 24-year-olds—a “distinct developmental group” that generally ages out of crime.<sup>7</sup>

Society has recognized that youthful immaturity, impulsivity, and vulnerability persist even after a person turns 18 years old. Therefore,

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<sup>5</sup> *Montgomery v Louisiana*, 577 US 190 (2016).

<sup>6</sup> *ABA Resolution 111*, 2018 MY 111 (2018) at 6, available at [https://www.americanbar.org/content/dam/aba/administrative/death\\_penalty\\_representation/2018\\_my\\_111.pdf](https://www.americanbar.org/content/dam/aba/administrative/death_penalty_representation/2018_my_111.pdf)

<sup>7</sup> Fair and Just Prosecution, *Young Adults in the Justice System* (2019), available at, [https://www.fairandjustprosecution.org/staging/wp-content/uploads/2019/01/FJP\\_Brief\\_YoungAdults.pdf](https://www.fairandjustprosecution.org/staging/wp-content/uploads/2019/01/FJP_Brief_YoungAdults.pdf)



many laws protect late adolescents like Montario.<sup>8</sup> For example, 20-year-olds are prohibited from purchasing alcohol, 23 USC 158; purchasing tobacco, 21 USC 387f; possessing or consuming marijuana, MCL 333.27955; and opening a credit card without a cosigner, 15 USC 1637(c)(8). The law recognizes that 20-year-olds have not yet developed sound judgment: for example, a 20-year-old is not permitted to be a member of Congress, US Const, art I, § 2-3; obtain a concealed-carry permit, MCL 28.425b(7)(a); or receive an airline transport pilot certificate, 14 CFR 61.153(a)(1). Even in the face of national emergencies, 20-year-olds have been protected. When the United States entered World War I, Congress authorized mandatory military registration of all men between ages of 21 and 31. 50 USC 201-211, PL 65-12.

While 20-year-olds must be held accountable for their actions, that accountability must be proportionate. Mandatory LWOP is too severe because it prohibits the sentencing court from considering the mitigating attributes of youth. “[I]t would be profoundly unfair to impute full personal responsibility and moral guilt to those who are likely to be biologically incapable of full culpability.” *Parks*, 510 Mich at 259 (quotation marks and citation omitted). Given “the dynamic neurological changes that late adolescents undergo as their brains develop over time and essentially rewire themselves,” *Id.* at 258, automatically condemning 20-year-olds to die in prison is excessive and cruel.

**B. Mandatory LWOP for late adolescents is disproportionate compared to penalties imposed on others in Michigan.**

The second *Lorentzen* factor compares the penalty in question to the sentences imposed on others in the same jurisdiction. *Bullock*, 440 Mich at 33-34. In *Parks*, this Court found that the second *Lorentzen* factor supported the conclusion that mandatory LWOP is unconstitutional for

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<sup>8</sup> Ryan, *The Law of Emerging Adults*, 97 Wash U L Rev 1131, 1137-1141, 1150 (2020).

18-year-olds because they will spend more time and a greater percentage of their lives in prison than others who are convicted of the same or similarly severe crime. *Parks*, 510 Mich at 260.

This Court also observed that late adolescents sentenced to LWOP will spend more time in prison than most equally culpable juvenile offenders, who are eligible for term-of-years sentences with the possibility of parole at some point in their adult lives pursuant to *Miller*, *Montgomery*, and MCL 769.25. Therefore, mandatory LWOP for 18-year-olds is disproportionate to other penalties imposed in Michigan. The same is true for 20-year-olds, and the science of adolescent brain development supports treating them equally to 18-year-olds. “[A]rbitrary line-drawing for punishment of defendants with equal moral culpability neurologically does not pass scrutiny under the second *Lorentzen* factor.” *Parks*, 510 Mich at 262.

Recognizing the evolving science on late-adolescent brains, the Michigan Legislature recently relied on scientific research to expand the Holmes Youthful Trainee Act (HYTA) to allow even more young people—up to age 26—to avoid a criminal record. See MCL 762.11. In 2015, the Legislature increased the HYTA eligibility cutoff from 21 to 24 years old. 2015 PA 31. In 2020, the Legislature further expanded eligibility, raising the cutoff age to 26 years old. 2020 PA 369. During the Michigan House Judiciary Committee’s hearing on the latest HYTA expansion bill, legislators cited developments in brain science in support of including 24- and 25-year-olds.<sup>9</sup>

There are only a handful of offenses in Michigan for which LWOP is mandatory for people aged 19 and older. See MCL 791.234(6). Aside from first-degree murder, the crimes for which Michigan mandates LWOP involve repeat sexual assaults of children under 13 or conduct that endangers the lives of many people and results in death—for example, possession of explosives with intent to intimidate, injure, or

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<sup>9</sup> House Judiciary Committee, December 16, 2020, at 30:05-40:20, available at <https://www.house.mi.gov/VideoArchivePlayer?video=JUDI-121620.mp4>

kill, causing death, MCL 750.210(2)(e). Mandatory LWOP is rare and is reserved for the most severe offenses and most blameworthy individuals. Late adolescents are less blameworthy than adults due to their still-developing brains, so they are generally less deserving of the harshest punishment.

It is disproportionate for 20-year-olds to automatically receive the same LWOP sentence as a middle-aged adult who detonated a bomb in an office building or serially raped small children. Michigan has acknowledged that, compared to fully developed adults, youth are less culpable and more likely to reform. When sentencing a late adolescent like Montario, a sentencing court should consider mitigating evidence of youth and use that evidence to fashion a proportionate sentence. The second *Lorentzen* factor weighs in favor of finding that mandatory LWOP for late adolescents violates Const 1963, art 1, § 16.

### **C. A small minority of states impose mandatory LWOP.**

The third *Lorentzen* factor considers the sentences imposed for the same crime in other jurisdictions. *Bullock*, 440 Mich at 34. In *Parks*, this Court observed that only 17 states impose mandatory LWOP for first-degree murder. *Parks*, 510 Mich at 263. In light of *Commonwealth v Mattis*, 224 NE 3d 410 (Mass 2024), discussed below, now only 16 states impose mandatory LWOP for first-degree murder on an individual who was under the age of 21 at the time of the offense.

Twenty-five states and the District of Columbia do not impose mandatory LWOP for equivalent first-degree murder, regardless of age. *Parks*, 510 Mich at 263. Six more states only mandate life without parole for equivalent first-degree murder when there are proven aggravated circumstances. *Id.* This Court found that the third *Lorentzen* factor weighed in favor of finding mandatory LWOP for 18-year-olds to be cruel or unusual. *Parks*, 510 Mich at 264. The same is true for 20-year-olds.

In states where judges have the discretion to impose LWOP on youth under the age of 18, that happens only rarely. Just 3.2% of people who

have been resentenced pursuant to *Miller* were resentenced to LWOP; 96.8% received a lesser sentence.<sup>10</sup> The median term-of-years sentence is 25 years.<sup>11</sup> Where only 3.2% of people under age 18 have been resentenced to LWOP, it is disproportionate to sentence 100% of 20-year-olds to LWOP.

The Washington Supreme Court, interpreting Washington's constitutional prohibition on cruel punishment, found that 19- and 20-year-olds are neurologically equivalent to juveniles, and are therefore entitled to the same individualized sentencing protections. *Matter of Monschke*, 197 Wash 2d 305 (2021). The *Monschke* Court explained that, because “no meaningful neurological bright line exists . . . between age 17 on the one hand, and ages 19 and 20 on the other hand,” the statute that mandated LWOP for anyone over the age of 18 convicted of aggravated murder “create[d] an unacceptable risk that youthful defendants without fully developed brains will receive a cruel LWOP sentence.” *Id.* at 325-326.

Similarly, the Massachusetts Supreme Court recently held that mandatory LWOP for 18-, 19-, and 20-year-olds violated the Massachusetts Constitution's prohibition on cruel or unusual punishment. *Mattis*, 224 NE 3d at 234-235. The Court reasoned that the brains of youth between ages 18 and 20 are not fully developed and are more similar to those of juveniles than those of older adults, and that contemporary standards of decency in Massachusetts and elsewhere disfavor imposing the harshest sentence on 18- to 20-year-olds. *Id.* at 225-234.

Illinois is one of the many states that does not mandate LWOP. *Parks*, 510 Mich at 262 n 15. In 2023, after *Parks*, Illinois enacted

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<sup>10</sup> Campaign for the Fair Sentencing of Youth, *Juvenile life without parole*, April 2024, p 9, available at <https://cfsy.org/wp-content/uploads/JLWOP-Unusual-Unequal-April-2024.pdf>

<sup>11</sup> Campaign for the Fair Sentencing of Youth, *Montgomery v Louisiana Anniversary*, January 25, 2020, p 3, available at <https://cfsy.org/wp-content/uploads/Montgomery-Anniversary-1.24.pdf>

legislation making people who were under the age of 21 when they committed first-degree murder eligible for parole after serving 20 years or, in cases where the person was sentenced to natural life for first-degree murder, after serving 40 years. 2024 IL PA 103-605; Ill Comp Stat 730 § 5/5-4.5-115(b). This statute outlawed *discretionary* life without parole for people under the age of 21, except for those convicted of predatory criminal sexual assault of a child.

California has also recognized that the mitigating attributes of youth apply to late adolescents over the age of 18 by expanding its youth offender parole hearings to include those who were under the age of 26 at the time of their offense. Cal Penal Code 3051, 4801. At a youth offender hearing, the hearing panel is “required to give great weight to the diminished culpability of juveniles, the hallmark features of youth,” and to the individual’s “subsequent growth and increased maturity”.<sup>12</sup> “The idea of a youth offender parole hearing is based on scientific evidence showing that parts of the brain involved in behavior control continue to mature through late adolescence and that adolescent brains are not yet fully mature until a person is in their mid-to-late 20s. Specifically, the area of the brain responsible for impulse control, understanding consequences, and other executive functions is not fully developed until that time.”<sup>13</sup>

Other developed nations protect young people from the harshest punishments. For example, in the United Kingdom, LWOP is prohibited for anyone who was under the age of 21 at the time of the offense. Sentencing Act 2020, c 17, § 322, sch 21, para 2-3 (UK). In 2022, the Supreme Court of Canada unanimously ruled that life without parole sentences were unconstitutional, regardless of age. *R v Bissonnette*, 2022 SCC 23. In Sweden, youth can be tried in juvenile court until age 25, and courts cannot impose mandatory minimum sentences on those

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<sup>12</sup> California Department of Corrections and Rehabilitation, *Youth Offender Parole Hearings*, available at <https://www.cdcr.ca.gov/bph/youth-offender-hearings-overview/>

<sup>13</sup> *Id.*

under 21.<sup>14</sup> In Switzerland, youth up to age 25 can be treated as juveniles.<sup>15</sup> The Netherlands offers juvenile alternatives up to age 23.<sup>16</sup> In Germany, all people ages 18 to 21 are tried in a specialized youth court, and judges have discretion to impose either a juvenile or adult sentence, depending on an individual's circumstances.<sup>17</sup> The vast majority of youth convicted of homicide, rape, and other serious bodily injury crimes in Germany are sentenced as juveniles—over 90% in 2012.<sup>18</sup>

Like Michigan has done with HYTA, other state legislatures have created less punitive, more rehabilitative programs for late adolescents. See, e.g., Colo Rev Stat 18-1.3-407(2)(a)(III)(B) (defining “‘[y]oung adult offender’” to mean “a person who is at least eighteen years of age but under twenty years of age when the crime is committed and under twenty-one years of age at the time of sentencing”); DC Code § 24-901(6) (defining “‘[y]outh offender’” as “a person 24 years of age or younger at the time that the person committed a crime other than murder” or

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<sup>14</sup> Ishida, *Young Adults in Conflict with the Law: Opportunities for Diversion*, Juvenile Justice Initiative (2015), p 3, available at <https://static1.squarespace.com/static/63d1611dce49d866f7193ab1/t/63dbcb495be73b678ac6b552/1675348810669/Young-Adults-in-Conflict-with-the-Law-Opportunities-for-Diversion.pdf>

<sup>15</sup> Transition to Adulthood Alliance, *Young Adults and Criminal Justice: International Norms and Practices* (2011), p 3, available at <https://t2a.org.uk/wp-content/uploads/2016/02/T2A-International-Norms-and-Practices.pdf>

<sup>16</sup> Matthews, Schiraldi, and Chester, *Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System*, 1 Justice Evaluation J 59 (2018), available at [https://www.researchgate.net/publication/326725544\\_Youth\\_Justice\\_in\\_Europe\\_Experience\\_of\\_Germany\\_the\\_Netherlands\\_and\\_Croatia\\_in\\_Providing\\_Developmentally\\_Appropriate\\_Responses\\_to\\_Emerging\\_Adults\\_in\\_the\\_Criminal\\_Justice\\_System](https://www.researchgate.net/publication/326725544_Youth_Justice_in_Europe_Experience_of_Germany_the_Netherlands_and_Croatia_in_Providing_Developmentally_Appropriate_Responses_to_Emerging_Adults_in_the_Criminal_Justice_System). See also Dünkel, *Youth Justice in Germany*, Oxford Handbook (2016), p 2.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

several other specific crimes); Fla Stat 958.04 (permitting courts to sentence as “ ‘youthful offenders’ ” defendants between 18 and 21 of a noncapital or “life” felony); Ga Code 42-7-2(7) (defining “ ‘[y]outhful offender’ ” to mean “any male offender who is at least 17 but less than 25 years of age at the time of conviction and who in the opinion of the department has the potential and desire for rehabilitation”); SC Code 24-19-10(d)(ii) (defining “ ‘[y]outhful offender’ ” to include persons “seventeen but less than twenty-five years of age at the time of conviction for an offense that is not a violent crime” and meets other specifications); Vt Stat 33 § 5281 (allowing “defendant[s] under 22 years of age” to move to be treated as a “youthful offender”); Wyo Stat 7-13-1003 (defining a “youthful offender” as an incarcerated person who is under the age of 30 and has not previously served a term of incarceration). While some of these youthful offender programs contain exceptions for murder, the creation of such programs nevertheless demonstrates an evolution toward treating late adolescents less punitively. And, in most of these jurisdictions, a 20-year-old would not be subject to mandatory LWOP if convicted of murder.<sup>19</sup>

Michigan’s mandatory LWOP sentence is more severe than the penalties for murder in 33 states and many nations. As the *Parks* Court observed, “The majority of jurisdictions now reflect a society and a criminal-punishment system more ‘enlightened by a humane justice’ than Michigan’s current sentencing scheme [of mandatory LWOP for every person over the age of 17 who is convicted of first-degree murder].” *Parks*, 510 Mich at 264, citing *Lorentzen*, 387 Mich at 178.

Since *Parks*, even more states have shifted away from imposing the harshest punishments on late adolescents. This reflects contemporary societal norms and the modern scientific consensus that late adolescents’ brains are still developing; therefore, mandatory LWOP is excessive when applied to them. The third *Lorentzen* factor supports a

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<sup>19</sup> Washington, D.C., Georgia, South Carolina, and Wyoming do not mandate LWOP for murder. DC Code 22-2104; Ga Code 16-5-1; SC Code 16-3-20; Wyo Stat 6-2-101. In Vermont, LWOP is mandatory only where aggravating circumstances are proven. Vt Stat 13 §§ 2303 and 2311.

finding that mandatory LWOP is a disproportionate punishment for 20-year-olds.

**D. Mandatory LWOP for late adolescents does not advance the penological goal of rehabilitation.**

The fourth and final *Lorentzen* factor requires the Court to consider whether mandatory LWOP furthers Michigan’s core value of rehabilitation. *Bullock*, 440 Mich at 33-34 (the goal of rehabilitation is specifically “rooted in Michigan’s legal traditions”). See also *Lorentzen*, 387 Mich at 179-180. Mandatory LWOP does nothing to accomplish the goal of rehabilitation—it “forswears altogether the rehabilitative ideal.” *Parks*, 510 at 265 (quotation marks and citation omitted).

Particularly in cases involving young people, the goal of rehabilitation weighs heavily against mandatory LWOP. Because their brains are still developing, late adolescents are uniquely amenable to rehabilitation.<sup>20</sup> See *Parks*, 510 Mich at 265. Criminological data show “a transient pattern in criminal behavior that peaks during adolescence and subsides by the mid-twenties.”<sup>21</sup> “The transience of criminal behavior during adolescence and subsequent decline in adulthood suggests that the logic behind punitive life sentences, i.e., youth who commit violent crimes will inevitably commit violent crimes as adults, is *not* supported by these data.”<sup>22</sup>

“Late adolescents exhibit enhanced neural sensitivity to rewards, as compared to children and adults, which enhances the vulnerabilities for risk-taking described above, but also creates a window of opportunity for prosocial learning and adaptation.”<sup>23</sup> This makes them uniquely

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<sup>20</sup> Tanner & Arnett, “The Emergence of ‘Emerging Adulthood’: The New Life Stage Between Adolescence and Young Adulthood,” in *Handbook of Youth and Young Adulthood: New perspectives and agendas* (New York: Routledge, 2009), p 42.

<sup>21</sup> Casey et al., 5 Ann Rev Criminology at 332.

<sup>22</sup> *Id.* (emphasis added).

<sup>23</sup> Insel, Tabashneck, et al., at p 36.



amenable to reformation: “Relative to children and early-middle adolescents, late adolescents ages 18–21 are more likely to update and refine their decision-making strategies after receiving rewards for ‘successful’ decisions.” *Id.*

For late adolescents, aging is a major factor that facilitates rehabilitation. “[E]motional stability shows the biggest change after 22 years. This latter finding is reminiscent of the previously described differences between individuals under and over 22 years in patterns of brain activity and cognitive performance under emotional arousal.”<sup>24</sup> Adults over the age of 22 are more stable, more resistant to impulses, and thus more law abiding.

In *Parks*, this Court recognized that the “hallmarks of the developing brain render late adolescents less fixed in their characteristics and more susceptible to change as they age.” *Parks*, 510 Mich at 251. As they mature, late adolescents better understand the consequences of their actions, take fewer risks, become less susceptible to peer pressure, and tend less toward aggression. *Id.* at 251-252. This means that, as their cognitive abilities reach full development, late adolescents are capable of significant change and a turn toward rational behavior that conforms to societal expectations. *Id.* at 251-252. Indeed, young people who serve prison terms for homicide and re-enter society as adults are far less likely to re-offend than people who commit homicide as adults.<sup>25</sup>

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A sentence must be “proportionate to the seriousness of the circumstances surrounding the offense and the offender.” *People v Steanhouse*, 500 Mich 453, 459 (2017), citing *People v Milbourn*, 435 Mich 630, 636 (1990). The circumstances of a 20-year-old adolescent

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<sup>24</sup> Casey et al., 5 Ann Rev Criminology at 333.

<sup>25</sup> Daftary-Kapur and Zottoli, *Resentencing of Juvenile Lifers: The Philadelphia Experience*, Montclair State University (2020), p 3, 10, available at <https://digitalcommons.montclair.edu/justice-studies-facpubs/84>

include a heightened capacity for change. Mandatory LWOP for late adolescents flies in the face of Michigan’s emphasis on rehabilitation.

Each of the four *Lorentzen* factors counsels against the mandatory imposition of LWOP on 20-year-olds. Mandatory LWOP (1) poses too great a risk of disproportionate punishment because the sentencer cannot consider any individual circumstances; (2) is disproportionate when automatically imposed on late adolescents, whom the law protects in other contexts; (3) is imposed by a minority of states; and (4) does not advance the goals of rehabilitation. This Court should apply its holding in *Parks* to 20-year-olds like Montario.

II. *People v Hall* is not controlling because it has been overruled *sub silentio* and because it is inapplicable to the as-applied challenge presented here. This Court should formally overrule *Hall's* cruel-or-unusual analysis because it is no longer valid, does not reflect contemporary Michigan law, and does not comport with evolving standards of decency.

In *People v Hall*, 396 Mich 650 (1976), Mr. Hall challenged the mandatory LWOP sentence for felony murder as violative of the Eighth Amendment to the United States Constitution and Const 1963, art 1, § 16. Without describing Mr. Hall's role in the offense, his age at the time, his criminal or psychiatric history, or anything that might differentiate him from anyone else convicted of the same crime and subject to the same mandatory penalty, the three-justice majority in *Hall* simply concluded that "the punishment exacted is proportionate to the crime" and that "[a] mandatory life sentence without possibility of parole for this crime does not shock the conscience." *Hall*, 396 Mich at 658. The *Hall* Court held that mandatory LWOP for felony murder was not facially unconstitutional.

The Court does not need to overrule *Hall* to hold that 20-year-olds are entitled to an individualized sentencing hearing, just as it did not need to overrule *Hall* before holding the same as to 18-year-olds. Still, the Court must overrule *Hall* because it is no longer good law, is out of step with Michigan's current laws and values, and has resulted in mass confusion and injustice.

**A. *Miller v Alabama*, 567 US 460 (2012), and *Montgomery v Louisiana*, 577 US 190 (2016), overruled *Hall sub silentio*.**

Mr. Hall was 17 years old at the time of his offense. When he was sentenced, Michigan law mandated LWOP for anyone convicted of first-degree murder, regardless of their age. In its opinion in *Hall*, this Court did not recognize the constitutional significance of youth in sentencing, or even mention Mr. Hall's age. See *Parks*, 510 Mich at 255 n 9 (*Hall*

“did not address the issue of sentencing a *juvenile* to life without parole”; “*Hall* was decided before the United States Supreme Court decided *Miller* and its progeny”; and “the *Hall* Court did not have the benefit of the scientific literature cited in [*Parks*].”).

Following significant societal changes and legal developments, the very sentence this Court upheld in *Hall* was vacated after the United States Supreme Court held that mandatory LWOP for children was cruel *and* unusual.<sup>26</sup> Since the Michigan Constitution’s prohibition on cruel or unusual punishment provides broader protection than the Eighth Amendment, Mr. Hall’s mandatory LWOP necessarily also violated Const 1963, art 1, § 16. *Miller* and *Montgomery* overruled *Hall sub silentio*.

Mr. Hall is a free man,<sup>27</sup> and *Hall*’s cruel-or-unusual analysis is outdated and non-binding.

**B. *Hall* addressed a facial challenge to the constitutionality of mandatory LWOP. It did not preclude as-applied challenges based on the circumstances of the offense or offender.**

This Court did not need to overrule *Hall* to issue *Parks* and does not need to overrule *Hall* to grant Montario resentencing. In *Hall*, this Court rejected a facial challenge to the constitutionality of mandatory LWOP but left the door open for as-applied challenges like Montario’s. A facial challenge asserts that there is no set of circumstances under which a

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<sup>26</sup> Because Mr. Hall was 17 years old at the time of his offense, his mandatory LWOP sentence was vacated and he was resentenced to a term of years following *Miller v Alabama*, 567 US 460 (2012), and *Montgomery v Louisiana*, 577 US 190 (2016). See Register of Actions for *People v John Hall*, Wayne County Circuit Court Case No. 67-134610, attached hereto and available via Odyssey Public Access at <https://cmspublic.3rdcc.org/CaseDetail.aspx?CaseID=2332206>

<sup>27</sup> See Neal Rubin, *After 50 years in prison, a second chance*, The Detroit News (May 18, 2017), available at <https://www.detroitnews.com/story/opinion/columnists/neal-rubin/2017/05/18/john-sam-hall-juvenile-lifer/101860568/>

statute is constitutionally valid. *Bonner v Brighton*, 495 Mich 209, 223 (2014). “It is axiomatic that a ‘statute may be invalid as applied to one state of facts and yet valid as applied to another.’ ” *Ayotte v Planned Parenthood of Northern New England*, 546 US 320, 329 (2006), quoting *Dahnke-Walker Milling Co. v Bondurant*, 257 US 282, 289 (1921). *Parks* held that mandatory LWOP is cruel or unusual as applied to a particular class: 18-year-olds. *Parks* did not hold that the statute mandating LWOP is facially invalid. Applying *Parks* to 20-year-olds would not compel the conclusion that mandatory LWOP is facially invalid, and therefore, would not conflict with *Hall*.

Since the late nineteenth century, this Court has addressed two general categories of cruel-or-unusual arguments: facial challenges, which assert that the punishment imposed is always cruel or unusual in light of the sentencing offense,<sup>28</sup> and as-applied challenges,<sup>29</sup> which assert that a punishment is cruel or unusual as applied to the specific circumstances of the offense, the offender, or a certain class of offenders. This Court’s analysis in *People v Lorentzen*, 387 Mich 167 (1972), addressed an as-applied challenge to the defendant’s sentence for delivering a controlled substance, whereas *Hall* addressed a facial challenge to mandatory LWOP for felony murder.

In *Lorentzen*, this Court considered the “defendant’s individual personality and history” and concluded that his “compulsory prison sentence of 20 years for a non-violent crime” was cruel or unusual. *Lorentzen*, 387 Mich at 181. The Court considered Mr. Lorentzen’s age in deciding that Michigan’s penological goals favored finding the sentence unconstitutional: “If we apply the goal of rehabilitation, it seems dubious, to say the least, that now 26-year-old Eric Lorentzen will

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<sup>28</sup> See, e.g., *Robison v Miner and Haug*, 68 Mich 549, 561-564 (1888) (holding that mandatory forfeiture of paid taxes and one-year prohibition of doing business for druggist’s violation of record keeping laws was cruel and unusual punishment).

<sup>29</sup> See, e.g., *People v Murray*, 72 Mich 10, 17 (1888) (considering defendant’s age, alcoholism, and facts of the offense before finding 50-year prison sentence for raping a minor unconstitutionally excessive).

be a better member of society after serving a prison sentence of at least 10 years, 7 months, and 6 days.” *Id.* at 181. Mr. Lorentzen’s status as a non-habitual offender also influenced this Court to find his lengthy sentence unduly harsh:

A 20-year mandatory minimum sentence for first offenders dispensing marijuana does not meet the evolving standards of the decency test. [*Id.* at 176, 179.]

In support of its analysis, the *Lorentzen* Court referenced its decision in *People v Murray*, 72 Mich 10 (1888), where it considered the specific circumstances of the offense and the “young defendant,” who was “about 23 years of age,” before finding Mr. Murray’s sentence unconstitutionally excessive:

The case does not show the aggravating circumstances which so frequently accompany criminal conduct of the character charged, and especially is this true when we consider the intoxicated condition of the respondent. While this cannot furnish any legal excuse for what he did, it has an important bearing upon the turpitude of the respondent, and the quality of his crime, and should have had an important influence in determining the extent of the punishment to be inflicted after conviction had. Such considerations, however, seem to have been entirely without weight with the court below, as is very clearly manifest from the extent of the punishment meted out to the respondent. ...

It is for 50 years, and will very likely reach beyond the natural life of the respondent, unrestrained of his liberty, and overreach by 10 or 15 years his natural life if so restrained. We see nothing in this record warranting any such sentence, and it must be regarded as excessive. [*Murray*, 72 Mich at 13, 17.]

*Murray* was not unique in considering the circumstances of the offense and offender when addressing as-applied challenges to criminal sentences. See *Cummins v People*, 42 Mich 142, 144 (1879) (explaining that “[u]nless the case presented differed materially from what it would appear to have been, as shown by the bill of exceptions, we think the punishment inflicted was unusually severe”). See also *People v Sinclair*, 387 Mich 91, 151-153 (1972) (BRENNAN, J., concurring, and three Justices agreeing):

While certain aggravated circumstances might be supposed justifying such penalties in some cases, it would be shocking indeed if the maximum penalty should be meted out for a commonplace left turn violation! ...

Where a minimum sentence is imposed which is demonstrably and grossly excessive, in the light of the depravity of the criminal as shown in the commission of the act and in light of the usual and customary disposition of those convicted of like conduct, such minimum sentence violates the constitutional prohibition against the inflicting of cruel or unusual punishment, and is illegal and void.

*Hall*, on the other hand, addressed a facial challenge to mandatory LWOP, without regard for the specific circumstances of the offender or the offense. See *Hall*, 396 Mich at 657-658. Mr. Hall argued only that mandatory LWOP for felony murder was cruel or unusual on its face. And the *Hall* opinion did not criticize or disagree with prior precedent that had addressed a person’s age, criminal record, or individual culpability in finding a sentence cruel and/or unusual as applied. *Hall* left the door open for as-applied challenges to LWOP sentences.

After *Hall*, this Court continued to recognize that facial challenges require consideration of different factors than as-applied challenges. For example, in *People v Bullock*, 440 Mich 15 (1992), this Court addressed a facial challenge to the statute that mandated LWOP for possession of a controlled substance, determined the penalty portion of the statute was “unconstitutional on its face,” and therefore, “str[uck it] down, with

regard to these defendants and all others who have been sentenced under the same penalty.” *Bullock*, 440 Mich at 40, 42. The mandatory sentence [w]as unjustifiably disproportionate to the crime for which it is imposed,” because it was a more severe penalty than the sentences permitted for other, exceptionally grave crimes. *Id.* at 39-40. This analysis involved only consideration of the statutory offense and the penalty, as opposed to the individual circumstances of the offender or the facts underlying their conviction.

Using the same analysis, the Court found that the same LWOP sentence was not facially unconstitutional when imposed for manufacturing, delivering, or possession with intent to deliver the same controlled substance. *People v Fluker*, 442 Mich 891 (1993); *People v Lopez*, 442 Mich 889 (1993). The Court concluded that the nature of those offenses made their commission substantially more dangerous, and those who committed them substantially more culpable, rendering the punishment proportionate. As in *Hall*, the characteristics of the individuals raising facial challenges were irrelevant to the analysis and largely ignored.

There is no conflict between *Hall*’s rejection of a facial challenge to LWOP for felony murder and this Court’s holding in *Parks*: that “mandatorily subjecting **18-year-old defendants** to life in prison, without first considering the attributes of youth” is cruel or unusual. *Parks*, 510 Mich at 255 (emphasis added). *Parks* properly adhered to the “normal rule,” which is that “partial, rather than facial, invalidation is the required course,” such that a “statute may . . . be declared invalid to the extent that it reaches too far, but otherwise left intact.” *Brockett v Spokane Arcades, Inc.*, 472 US 491, 504 (1985). Because the as-applied analysis in *Parks* relates equally to 18-year-olds and 20-year-olds, this Court must extend *Parks* to 20-year-olds like Montario.

**C. This Court should repudiate *Hall*’s cruel-or-unusual analysis.**

Although *Hall* does not prevent this Court from finding mandatory LWOP unconstitutional as applied to 20-year-olds, this Court has a



“duty to re-examine a precedent where its reasoning or understanding of the Constitution is fairly called into question.” *Robinson v City of Detroit*, 462 Mich 439, 464 (2000) (quotation marks and citation omitted). In doing so, this Court considers “whether the decision at issue defies practical workability, whether reliance interests would work an undue hardship, and whether changes in the law or facts no longer justify the questioned decision.” *Id.*

This Court should formally repudiate *Hall* because it has already been informally overruled, it does not reflect Michigan’s constitutional or societal values in the twenty-first century, and it is poorly reasoned. Even though *Miller* held that Mr. Hall’s mandatory sentence was cruel and unusual, the Court of Appeals has recently stretched *Hall*’s scope and significance. Declaring *Hall*’s obsolete would not amount to mere housekeeping to prune away outdated precedent—our Court of Appeals needs guidance about *Hall*’s inapplicability.

The Court of Appeals has repeatedly misinterpreted *Hall* as barring as-applied challenges. In 2023 and 2024, the Court of Appeals frequently cited *Hall* as compelling it to affirm mandatory LWOP sentences imposed on 19, 20, and 21-year-olds.<sup>30</sup> But *Hall* did not address youth.

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<sup>30</sup> *People v Elliot*, unpublished per curiam opinion of the Court of Appeals, issued June 13, 2024 (Docket No. 364096); *People v Lawson*, unpublished per curiam opinion of the Court of Appeals, issued May 30, 2024 (Docket No. 354113); *People v Dean*, unpublished per curiam opinion of the Court of Appeals, issued March 21, 2024 (Docket No. 354605); *People v Wogoman*, unpublished per curiam opinion of the Court of Appeals, issued January 25, 2024 (Docket No. 364096); *People v Taylor*, unpublished per curiam opinion of the Court of Appeals, issued December 28, 2023 (Docket No. 354823); *People v Hassel*, unpublished per curiam opinion of the Court of Appeals, issued November 2, 2023 (Docket No. 346378); *People v Taylor*, unpublished per curiam opinion of the Court of Appeals, issued October 5, 2023 (Docket No. 349544); *People v Czarnecki*, \_\_ Mich App \_\_ (2023) (Docket No. 348732); *People v Gelia*, unpublished per curiam opinion of the Court of Appeals, issued October 5, 2023 (Docket No. 344130); *People v Rush*, unpublished per curiam opinion of the Court of Appeals, issued June 22, 2023 (Docket No. 353182); *People v Adamowicz*, \_\_ Mich App \_\_ (2023) (Docket No. 330612).

In 2022, the Court of Appeals relied on *Hall* to reject a claim that a mandatory LWOP sentence was cruel or unusual in light of the jury’s guilty-but-mentally-ill verdict.<sup>31</sup> But *Hall* did not address mental illness—or any other specific circumstances of the offender or offense. The Court of Appeals’ reliance on *Hall* has resulted in confusion about the state of the law in Michigan and has worked substantial injustice by erroneously foreclosing as-applied challenges.

**1. Substantial changes in the definition of, and defenses to, felony murder have rendered *Hall* irrelevant and misleading.**

*Hall* is an anachronism for several reasons, including that Michigan’s current concept of felony murder is far different from what it was in 1976, when *Hall* was decided. The conduct that can give rise to a felony murder conviction—and thus, the gravity of the offense and culpability of the offender—has changed dramatically since *Hall* deemed LWOP proportionate to the offense. Even between the offense date in *Hall* and the issuance of this Court’s opinion, the felony murder statute was amended to add kidnapping, extortion, and “larceny of any kind” as potential predicate offenses.<sup>32</sup>

Felony murder is a compound offense that has evolved over the years and is now frequently committed in ways that the *Hall* Court did not consider. In 1976, only “arson, rape, robbery, burglary, larceny of any kind, extortion or kidnapping” could serve as a predicate offense to felony murder. In just the past twenty years, the Legislature has added to the enumerated felonies the crimes of second-degree criminal sexual conduct, first- and second- degree home invasion, carjacking,<sup>33</sup> first- or

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<sup>31</sup> *People v Mansour*, unpublished per curiam opinion of the Court of Appeals, issued November 10, 2022 (Docket No. 356072).

<sup>32</sup> 1969 PA 331.

<sup>33</sup> 1999 PA 189.

second-degree vulnerable adult abuse,<sup>34</sup> torture,<sup>35</sup> aggravated stalking,<sup>36</sup> and most recently, unlawful imprisonment.<sup>37</sup> Most of these statutory offenses did not exist when *Hall* was decided,<sup>38</sup> and the definitions of most of the offenses have been amended even after they were added as possible predicates for felony murder.<sup>39</sup> The *Hall* Court did not consider the gravity of felony murder as the offense is presently defined.

While the definition of felony murder has expanded since *Hall*, the available defenses to felony murder have contracted. When *Hall* issued, mitigating circumstances such as irresistible impulse<sup>40</sup>, voluntary intoxication,<sup>41</sup> and diminished capacity<sup>42</sup> served as complete or partial defenses to felony murder. Today, while these circumstances are legally irrelevant to guilt or innocence and cannot prevent the imposition of

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<sup>34</sup> 2004 PA 58.

<sup>35</sup> 2013 PA 39.

<sup>36</sup> 2013 PA 39.

<sup>37</sup> 2014 PA 158.

<sup>38</sup> See, e.g., 1983 PA 158 (creating CSC-1, CSC-2, and CSC-3); 1988 PA 251 (creating child abuse); 1992 PA 261 (creating aggravated stalking); 1994 PA 149 (creating vulnerable adult abuse); 1994 PA 191 (creating carjacking); 1994 PA 270 (creating home invasion); 2005 PA 335 (creating torture).

<sup>39</sup> See, e.g., 2007 PA 163 (expanding the definitions of CSC-1, CSC-2, and CSC-3 to prohibit sexual contact and penetration engaged in by certain school employees and volunteers); 1999 PA 44 (expanding first degree home invasion to include entering a dwelling without criminal intent, but also without permission and committing an assault once inside); 2006 PA 159 (expanding the definition of kidnapping to include restraining another with unlawful intent).

<sup>40</sup> *People v Cole*, 382 Mich 695 (1969).

<sup>41</sup> *People v Hearn*, 354 Mich 468, 470 (1958); *People v Jones*, 82 Mich App 510 (1978).

<sup>42</sup> See *People v Lynch*, 47 Mich App 8 (1973); *People v Van Epps*, 59 Mich App 277, 282 (1975).

mandatory LWOP. Because felony murder today is fundamentally different from what it was in 1976, *Hall* is no longer good law.

It is also worth noting that the gravity of felony murder varies greatly depending on the predicate offense and the offender's role in the death. Any analysis under *Lorentzen* that considers one felony murder to be the same as every other will be inherently flawed because a court's conclusion about the nature of the offense informs every other factor the court must consider. See *Enmund v Florida*, 458 US 782, 798 (1982) (constitutional proportionality is determined by a person's culpability, as established by his commission of the offense, and not on the name of the offense the defendant committed). *Hall* does not apply to the modern concept of felony murder.

**2. *Hall's* reliance on the Governor's pardon or clemency power was wrong when it was decided and has been repeatedly rejected.**

While some aspects of *Hall* have since become inapposite due to changes in the law and social norms, the *Hall* majority's analysis of Michigan's penological goals was wrong at the time:

The third *Lorentzen* factor, rehabilitation, was not the only allowable consideration for the legislature to consider in setting punishment. ... In any event rehabilitation and release are still possible, since defendant still has available to him commutation of sentence by the Governor to a parolable offense or outright pardon. [*Hall*, 396 Mich at 658.]

Prior to *Hall*, this Court had considered and rejected the contention that the far-off hope of clemency could lessen the severity of a 50-year sentence: "It will not do to say the executive may apply the remedy in such a case. We do not know what the executive may do." *Murray*, 72 Mich at 16.

*Hall's* reliance on commutation was—and still is—legally and factually erroneous. Shortly after *Hall* issued, the United States

Supreme Court recognized that the possibility of clemency is not significant for Eighth Amendment purposes:

It is little different from the possibility of executive clemency that exists in every case in which a defendant challenges his sentence under the Eighth Amendment. Recognition of such a bare possibility would make judicial review under the Eighth Amendment meaningless. [*Solem v Helm*, 463 US 277, 303 (1983).]

“[H]istory affords no better basis than does logic for placing the final determination of a fact, critical to the trigger of a constitutional limitation upon the State’s power, in the hands of the State’s own chief executive.” *Ford v Wainwright*, 477 US 399, 416 (1986). “In no other circumstance of which we are aware is the vindication of a constitutional right entrusted to the unreviewable discretion of an administrative tribunal.” *Id.* See also *Graham*, 560 US at 69-70 (“A life without parole sentence deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency—the remote possibility of which does not mitigate the harshness of the sentence.”). This Court recently reaffirmed that “the whims of [the] executive branch” to review a sentence cannot insulate that sentence from a cruel-or-unusual challenge. *Stovall*, 510 Mich at 321. *Hall*’s cruel-or-unusual analysis rests on faulty reasoning.

### **3. *Hall* does not reflect evolving standards of decency.**

When *Hall* was decided in 1976, the United States Supreme Court was still nearly 30 years away from outlawing the death penalty for children. See *Roper v Simmons*, 543 US 551 (2005). In the half-century since *Hall*, standards of decency have seismically shifted. The Eighth Amendment, the Michigan Constitution, and MCL 769.25(1) prohibit the mandatory LWOP sentence at issue in *Hall*. Youth is now an essential consideration in sentencing. See *Graham*, 560 US at 76 (“An offender’s age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants’ youthfulness into account

at all would be flawed.”); *Miller*, 567 US at 475 (a life without parole sentence “imposed on a teenager, as compared with an older person, is the same . . . in name only.”); *People v Boykin*, 510 Mich 171, 185 (2022) (“one’s juvenile status matters, and special consideration must be paid to youthful offenders before the harshest sentences may be imposed.”).

Just as contemporary jurisprudence undermines *Hall*, so do current social attitudes. Recent poll results show that few people know that an unintentional killing in the course of a felony may constitute first-degree murder punished by mandatory LWOP, and nearly all participants believed that people guilty of felony murder do not deserve LWOP or the moral stigma that comes with a conviction for first-degree murder.<sup>43</sup> Even when provided with felony murder scenarios involving relatively heightened culpability—e.g., the person in question shot and killed a robbery victim during a struggle—“only 7% of survey respondents believed that life without parole was morally justified.”<sup>44</sup> In other words, mandatory LWOP for felony murder is contrary to the moral standards of 93% of those surveyed.

Given the significant evolution in adolescent brain science, law, and public opinion, *Hall* does not reflect the “evolving standards of decency that mark the progress of a maturing society”, nor is it “enlightened by a humane justice.” *Lorentzen*, 387 Mich at 178-179 (quotation marks and citation omitted). It must be overruled.

**4. *Hall* was poorly reasoned and serves as a poor example of how to analyze the constitutional proportionality of a punishment. Stare decisis principles do not favor adherence to *Hall*.**

An “important factor in determining whether a precedent should be overruled is the quality of its reasoning.” *Janus v American Federation*,

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<sup>43</sup> Farrell, *Moral Judgments and Knowledge about Felony Murder in Colorado: An Empirical Study* (September 5, 2023), p 13, available at <https://ssrn.com/abstract=4562486>

<sup>44</sup> *Id.*, p 10.

585 US 878, 917 (2018). Since *Hall*'s reasoning was neither high-quality nor complete, it should be overruled.

No litigant, lower court, or Legislature would be able to predict whether a particular sentence is cruel or unusual after reading *Hall*, nor would they be able to identify the relevant legal standards. *Hall*'s analysis was cursory. Although the opinion purported to apply *Lorentzen*, its analysis occupies only a few short sentences—perhaps in part because the briefing provided to the Court was incomplete. See *Hall*, 396 Mich at 658 (“Defendant cites no authority for his proposition that a mandatory life sentence violates defendant’s due process and equal protection rights. . . . Defendant has not contended that Michigan’s punishment for felony murder is widely divergent from any sister jurisdiction.”).

The *Hall* Court did not acknowledge that it was diverging from prior precedent establishing that the possibility of clemency has no bearing on the proportionality of the challenged punishment. The opinion concluded its analysis by declaring that mandatory LWOP “for this crime does not shock the conscience,” but did not explain whether this reflected anything beyond the consciousnesses of the Justices signing the opinion.<sup>45</sup> The *Hall* Court did not discuss comparable penalties in Michigan or in any other jurisdiction.

Stare decisis principles do not favor continued adherence to *Hall*. Reliance interests are minimal after *Miller* and *Montgomery*, since those cases displaced the cruel-or-unusual analysis in *Hall*. The United States Supreme Court’s supremacy on matters of federal constitutional law, and the incorporation of the Eighth Amendment by the Fourteenth Amendment, would preclude the Court from reaching the result it reached in *Hall* if it were presented with identical facts today. US Const, art VI, cl 2; *Howlett v Rose*, 496 US 356, 371 (1990).

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<sup>45</sup> The “shock the conscience” standard has since been repudiated. *Milbourn*, 435 Mich at 644, 649.

The three Justices who signed the majority opinion in *Hall* did not have access to the scientific knowledge about the adolescent brain that has emerged over the past half-century. Those developments shifted national consensus and caselaw. We now know that “[a]n offender’s age is relevant to the Eighth Amendment,” and so “criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.” *Miller*, 567 US at 473-474 (quotation marks and citation omitted).

While the Court of Appeals has relied on *Hall* in recent years, this reliance is misplaced. The Court of Appeals has erroneously interpreted *Hall* as requiring it to reject as-applied challenges. As discussed above, *Hall* addressed only a facial challenge and is not binding on any as-applied challenge. And, since standards of decency have evolved so significantly since 1976, *Hall*’s cruel-or-unusual analysis is anachronistic. “[T]he absence of any reasonable reliance interest, coupled with a significant intervening change in our caselaw, weighs heavily in favor of overruling” *Hall*. *People v Wilson*, 500 Mich 521, 530-531 (2017).

Further, “to have reliance the knowledge must be of the sort that causes a person or entity to attempt to conform his conduct to a certain norm before the triggering event.” *Robinson*, 462 Mich at 467. For young people, their “immaturity, recklessness, and impetuosity” “make them less likely to consider potential punishment.” *Miller*, 567 US at 472. Because late adolescents cannot fully appreciate the future consequences of their actions, mandatory LWOP is not an effective deterrent. This reduces reliance interests in *Hall*—to the extent society or courts have relied on mandatory LWOP to deter late adolescents, that reliance is not supported by science.

Unlike the judicial interpretation of a statute or most other constitutional provisions, a court’s analysis of whether a punishment is cruel or unusual is not intended to settle the question for all time. This is by design, since punishment is required to reflect evolving social norms. Subsequent legal and social developments have rendered *Hall* untenable. Recognizing *Hall*’s obsolescence and formally overruling it



would be consistent with this Court’s more recent precedent, and “is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles” in the manner intended by the Framers and compelled by the society’s evolving norms. *Payne v Tennessee*, 501 US 808, 827 (1991).

## Conclusion and Relief Requested

Montario Taylor was sentenced to die in prison without any regard for his youth or its mitigating attributes. The sentencing court could not consider, for example, the trauma Montario experienced during his childhood, his unstable family environment, or his ability to rehabilitate. See *Miller*, 567 US at 477 (discussing the “*Miller* factors” that mitigate against life without parole).

Since 20-year-old Montario’s brain was indistinguishable from an 18-year-old’s brain for the purposes of punishment, deterrence, and rehabilitation, it is cruel and/or unusual to punish him with mandatory life in prison without the possibility of parole. The rationale of *Parks* applies squarely to 20-year-olds like Montario. This Court should apply its holding in *Parks* to 20-year-olds. Further, this Court should provide necessary guidance to the Court of Appeals by overruling *People v Hall*, 396 Mich 650 (1976).

For the reasons stated above, Montario Marquise Taylor respectfully requests that this Honorable Court grant him resentencing pursuant to MCL 769.25 and *People v Taylor*, 510 Mich 112 (2022).

Respectfully submitted,

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