RECEIVED by MSC 11/6/2025 8:25:47 PM

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Court of Appeals

PEOPLE OF THE STATE OF MICHIGAN,	)	
Plaintiff-Appellee,	)	MSC No.: 163968
	)	COA No.: 358537
v.	)	Trial Court No.: 76-002701-FC
EDWIN LAMAR LANGSTON,	)	
Defendant-Appellant.	)	

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

Allison L. Kriger (P76364)
LARENE & KRIGER, P.L.C.
500 Griswold Street, Suite 2400
Detroit, MI 48226
(313) 967-0100
allison.kriger@gmail.com

Christine A. Monta (*Pro Hac Vice*)
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
501 H Street NE, Suite 275
Washington, DC 20002
(202) 869-3308
christine.monta@macarthurjustice.org

Kyle C. Barry (*Pro Hac Vice*)
THE STATE LAW RESEARCH INITIATIVE
303 Wyman Street, Suite 300
Waltham, MA 02451
(802) 318-3433
kylecbarry@gmail.com

Counsel for Amici Curiae *The State Law Research Initiative and Roderick & Solange MacArthur Justice Center*

RECEIVED by MSC 11/6/2025 8:25:47 PM

TABLE OF CONTENTS

TABLE OF CONTENTS i
TABLE OF AUTHORITIES ii
STATEMENT OF INTEREST 1
ARGUMENT 2
CONCLUSION 8
CERTIFICATE OF COMPLIANCE

RECEIVED by MSC 11/6/2025 8:25:47 PM

TABLE OF AUTHORITIES

Page(s)

Cases

Montgomery v. Louisiana,
577 U.S. 190 (2016) 5

People v. Aaron,
409 Mich. 672 (1980) 2

People v. Bullock,
440 Mich. 15 (1992) 6

People v. Hall,
396 Mich. 650 (1976) 2

People v. Parks,
510 Mich. 225 (2022) 3, 5

People v. Stovall,
510 Mich. 301 (2022) 5, 6

People v. Taylor,
No. 166428, 2025 WL 1085247 (Mich. Apr. 10, 2025) 2, 4, 8

State v. Haag,
495 P.3d 241 (Wash. 2021) 5

Constitutional Provisions

MICH. CONST. 1963, art. 1, § 16 ..... 2, 8

Statutes

Mich. Comp. L. § 791.234(7)-(9) 7

Mich. Comp. L. § 791.234(8)(a) 7

Mich. Comp. L. § 791.234(8)(c) 8

Mich. Comp. L. § 791.234(11) 7

RECEIVED by MSC 11/6/2025 8:25:47 PM

Other Authorities

ASHLEY NELLIS, THE SENTENCING PROJECT, NO END IN SIGHT: AMERICA'S ENDURING RELIANCE ON LIFE IMPRISONMENT (2021) 3

CITIZENS ALLIANCE ON PRISONS & PUBLIC SPENDING, WHEN "LIFE" DID NOT MEAN LIFE: A HISTORICAL ANALYSIS OF LIFE SENTENCING IMPOSED IN MICHIGAN SINCE 1990 (2006) 6

Deborah Labelle, *Michigan Life Expectancy Data for Youth Serving Natural Life Sentences* (2013) 7

Emily Widra, *Incarceration shortens life expectancy*, PRISON POLICY INITIATIVE (updated March 2021) 7

Evelyn J. Patterson, *The Dose-Response of Time Served in Prison on Mortality: New York State, 1989-2003*, 103 AM. J. PUB. HEALTH (2013) 6

FAMM, *The Older You Get: Why Incarcerating the Elderly Makes us Less Safe* (2021) 4

MDOC Policy Directive 06.05.104 Parole Process (Aug. 14, 2023) 7, 8

Michael L. Zuckerman, *When a Prison Sentence Becomes Unconstitutional*, 111 GEO L.J. 281 (2022) 5

National Center for Health Statistics, CENTERS FOR DISEASE CONTROL AND PREVENTION 6

RECEIVED by MSC 11/6/2025 8:25:47 PM

STATEMENT OF INTEREST[1]

Amicus Curiae The State Law Research Initiative (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'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 the 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 campaigns in areas that include police misconduct, compensation for the wrongfully convicted, extreme sentences, and the treatment of incarcerated people.

[1] 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.

RECEIVED by MSC 11/6/2025 8:25:47 PM

ARGUMENT

In our brief supporting Defendant-Appellant's Petition for Leave to Appeal, *amici curiae* argued that mandatory life without parole (LWOP) for felony murder, regardless of malice, violates Michigan's ban on "cruel or unusual punishment," MICH. CONST. 1963, art. 1, § 16, and that this Court should overrule *People v. Hall*, 396 Mich. 650 (1976), to the extent it holds otherwise. *See* SLRI & RSMJC Amicus Br. Supporting Defendant-Appellant. This conclusion followed from our broader showing that mandatorily sentencing *anyone* to die in prison without any assessment of their prospects for rehabilitation and without any realistic hope for release is per se "cruel" under Article 1, § 16, given the longstanding commitment to rehabilitation evident in Michigan's constitutional text, ratification history, and historical practice. *See also People v. Taylor*, No. 166428, 2025 WL 1085247, at *13-14 (Mich. Apr. 10, 2025) (emphasizing Michigan's "traditional goal of and preference for rehabilitation," which plays "a unique and height[en]ed role" in the constitutional analysis). That argument addressed what are now questions (2) and (3) of this Court's Order Granting Leave To Appeal, *see* MSC Order March 28, 2025 (hereinafter "March 28 Order"), and we incorporate our prior brief in full here.

Amici curiae submit this supplemental brief to explain how our argument also applies to the fourth and sixth questions raised in the Court's March 28 Order. First, as to question (4), we agree with Defendant-Appellant that mandatory LWOP violates Section 16 in all cases decided before *People v. Aaron*, 409 Mich. 672 (1980), where the jury was not required to make a finding of malice, not only in pre-*Aaron* cases

RECEIVED by MSC 11/6/2025 8:25:47 PM

where overwhelming evidence of malice was not presented. This follows from our position that *all* mandatory LWOP sentences are cruel within the meaning of Section 16 because they "forswear[] altogether the rehabilitative ideal." *People v. Parks*, 510 Mich. 225, 265 (2022). Therefore, even assuming that in some cases there is record evidence that could satisfy *Aaron*'s malice requirement, that would not diminish the cruelty of automatically banishing a person to permanent incarceration without any individualized determination that they are incapable of rehabilitation.

Indeed, this case throws the universal cruelty of mandatory LWOP into sharp relief given the population at issue: elderly and increasingly infirm prisoners who have all served *at least* 45 years and who, according to empirical social science, long-ago aged out of violent behavior (if they ever engaged in any) and now pose virtually zero public safety risk. As of last year, the oldest person serving LWOP for pre-*Aaron* felony murder was 86,[2] and anyone convicted before *Aaron* who is not already entitled to resentencing under this Court's holding in *Taylor*, which banned mandatory LWOP for offenses committed before age 21, would be at least 66 years old. In all cases, the person has been incarcerated for nearly a half century or longer. Even accounting for violent offenses, studies consistently show that "the peak age for murder is 20, a rate that is more than halved by one's 30s and is less than one quarter of its peak by one's 40s." ASHLEY NELLIS, THE SENTENCING PROJECT, NO END IN SIGHT: AMERICA'S ENDURING RELIANCE ON LIFE IMPRISONMENT 25 (2021). In 2019, fewer than 4% of arrests in the United States were of people age 60 or older and "older adults who are

[2] *See* Criminal Defense Attorneys of Michigan Post-Argument Supp. Br. 24.

RECEIVED by MSC 11/6/2025 8:25:47 PM

arrested tend to have relatively minor offenses[.]" FAMM, *The Older You Get: Why Incarcerating the Elderly Makes us Less Safe* (2021), https://famm.org/wp-content/uploads/2021/10/Aging-out-of-crime-FINAL.pdf. Michigan's aging prison population, rather than comprising the most dangerous individuals, presents an extraordinarily low public safety threat. Particularly given Michigan's "traditional goal of and preference for rehabilitation," *Taylor*, 2025 WL 1085247, at *13, it is unconstitutionally cruel to automatically warehouse elderly people who could safely re-enter society without danger to themselves or others.

Accordingly, even aside from the Sixth Amendment and implementation problems that judicial factfinding on malice would create,[3] the State's proposal to deny resentencing relief to some pre-*Aaron* defendants based on a judge's assessment of decades-old trial evidence, irrespective of their rehabilitation or lack of dangerousness, cannot be squared with the "unique and height[en]ed" role rehabilitation holds in Michigan's constitutional analysis. *Id.* at *14. This Court should hold that mandatory LWOP for felony murder violates Section 16 in *all* cases decided before *Aaron* where the jury was not instructed to find malice.

Second, as for remedy (question (6)), we agree with Defendant-Appellant that people now serving an unconstitutional LWOP sentence should be re-sentenced to a term of years consistent with their conviction's underlying felony. We add that, in ordering resentencing, this Court should make clear that imposing a constitutional

[3] *See* Defendant-Appellant Br. on Grant of Leave To Appeal 53-54; Criminal Defense Attorneys of Michigan Post-Argument Supp. Br. 13-21.

RECEIVED by MSC 11/6/2025 8:25:47 PM

sentence requires "an individualized sentencing process" based on the person before the court today—including their age, amount of time already served, and any record of rehabilitation—not merely the person's conviction or who they were a half century ago. *People v. Parks*, 510 Mich. 225 (2022); *see also Montgomery v. Louisiana*, 577 U.S. 190, 213 (2016) (discussing the "kind of evidence that prisoners might use to demonstrate rehabilitation"). As the Washington Supreme Court explained with regard to resentencing youth who were given unconstitutional LWOP sentences, "resentencing courts *must* consider the measure of rehabilitation that has occurred since a youth was originally sentenced … [s]uch hearings must therefore be forward looking, focusing on rehabilitation rather than on the past." *State v. Haag*, 495 P.3d 241, 247 (Wash. 2021) (internal quotation omitted); *see also* Michael L. Zuckerman, *When a Prison Sentence Becomes Unconstitutional*, 111 GEO L.J. 281 (2022) (explaining that prison terms must meaningfully serve a legitimate purpose for their duration, not just at the time of offense or initial sentencing). The same is true here. Especially given Michigan's unique constitutional commitment to rehabilitation, Michigan courts must fashion forward-looking sentences that serve the penological goal of rehabilitation wherever possible; anything more severe would be excessive and cruel in violation of Section 16.

For this reason, we agree with Defendant-Appellant and other *amici* that even life *with* the possibility of parole may be unconstitutionally cruel for many of the reasons set forth in *People v. Stovall*, 510 Mich. 301 (2022). There, this Court barred parolable life sentences for youth convicted of second-degree murder, concluding that

RECEIVED by MSC 11/6/2025 8:25:47 PM

all four "*Bullock* factors"—the test for determining whether a sentence is cruel or unusual in Michigan—showed that punishment to be disproportionate and therefore excessive. *Id.* at 314-22; *see People v. Bullock*, 440 Mich. 15, 33-36 (1992). Most relevant here, the Court concluded that, while parolable life sentences could *theoretically* advance the penological goal of rehabilitation—the fourth *Bullock* factor—they do not do so in practice in Michigan. That is because (1) "prisoners who receive parolable life sentences are given lower priority when it comes to educational and rehabilitative programming," and (2) the parole process is "subject to the fluctuations of executive branch policies" which currently include a "policy directive instructing the Parole Board to forgo consideration of all offenders serving parolable life." *Stovall*, 510 Mich. at 320-21; *see* CITIZENS ALLIANCE ON PRISONS & PUBLIC SPENDING, WHEN "LIFE" DID NOT MEAN LIFE: A HISTORICAL ANALYSIS OF LIFE SENTENCING IMPOSED IN MICHIGAN SINCE 1990, at 3 (2006), https://tinyurl.com/35nrdeej (explaining that Michigan's Parole Board "has adopted the view that "life means life," thus rendering most parolable life sentences *de facto* LWOP).

Although *Stovall* concerned juveniles, the same rationales apply with even greater force to the aging population at issue here, who may not live long enough for even a remote chance at parole. While life expectancy in the United States is about 78 years,[4] "incarceration reduces life span." Evelyn J. Patterson, *The Dose–Response*

[4] *See* National Center for Health Statistics, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/nchs/fastats/life-expectancy.htm.

RECEIVED by MSC 11/6/2025 8:25:47 PM

of Time Served in Prison on Mortality: New York State, 1989–2003, 103 AM. J. PUB. HEALTH 523 (2013), https://tinyurl.com/4am5bbzd; *see also* Emily Widra, *Incarceration shortens life expectancy*, PRISON POLICY INITIATIVE (updated March 2021), https://www.prisonpolicy.org/blog/2017/06/26/life_expectancy/ ("Each year in prison takes 2 years off an individual's life expectancy."). Indeed, one study found that life expectancy for Michigan adults incarcerated for natural life dropped dramatically to 58.1 years. Deborah Labelle, *Michigan Life Expectancy Data for Youth Serving Natural Life Sentences* (2013), https://perma.cc/9PSY-3B6Q. Thus, the window for any pre-*Aaron* defendants to receive parole consideration is closing fast.

Add to this that the Parole Board has complete discretion over whether persons sentenced to parolable life ever even receive a *parole hearing*, much less whether they will be paroled, *see* Mich. Comp. L. § 791.234(11) ("a prisoner's release on parole is discretionary with the parole board"), and the prospects that pre-*Aaron* lifers might ever experience freedom become even more bleak. By statute, parolable lifers sentenced before October 1, 1992, are entitled only to one "interview" with a single parole board member after ten years of incarceration, and then file reviews every five years thereafter. Mich. Comp. L. § 791.234(7)-(9); *see also* MDOC Policy Directive 06.05.104 Parole Process, at 2-4 (Aug. 14, 2023), https://tinyurl.com/54rzb626 (hereinafter "MDOC Policy Directive 06.05.104"). Whether to grant subsequent interviews is entirely within the Parole Board's discretion. Mich. Comp. L. § 791.234(8)(a) ("thereafter as determined by the parole board"); *see also* MDOC Policy Directive 06.05.104, at 3 (stating that Parole Board's "decision not to interview

RECEIVED by MSC 11/6/2025 8:25:47 PM

a prisoner serving a life sentence" is not considered a "denial of parole"). And the interview is just the first step; parole can be granted only after a public hearing, and the Parole Board has total discretion not to proceed with a public parole hearing if it is not "interested in considering [the prisoner] for parole." MDOC Policy Directive 06.05.104, at 3; *see* Mich. Comp. L. § 791.234(8)(c). As a practical matter, then, any pre-*Aaron* defendant resentenced to "parolable" life may never actually receive meaningful parole consideration during his remaining years of life.

In sum, a life sentence subject to the whims and limitations of a politicized and discretionary parole process, which does not offer a meaningful or realistic chance of release for a population that is, even at the lower end, nearing age 70, is functionally no different from the unconstitutional death-by-incarceration sentences these individuals are serving now. A parolable life sentence for this population would therefore be "antithetical to [the Michigan] Constitution's professed goal of rehabilitative sentences." *Taylor*, 2025 WL 1085247, at *14 (quoting *Parks*, 510 Mich. at 265) (cleaned up). We encourage the Court to fashion a remedy that meaningfully advances Michigan's constitutional commitment to rehabilitation.

CONCLUSION

This Court should hold that mandatory life without parole for felony murder, at least when there was no jury finding of malice, violates Michigan's constitutional ban on "cruel or unusual punishment." Art. 1, § 16. Persons currently serving such an unconstitutional sentence should be resentenced to a term of years that meaningfully accounts for, and advances, the penological goal of rehabilitation.

RECEIVED by MSC 11/6/2025 8:25:47 PM

Respectfully submitted,

/s/ Allison L. Kriger

Allison L. Kriger (P76364)
LARENE & KRIGER, P.L.C.
500 Griswold Street, Suite 2400
Detroit, MI 48226
(313) 967-0100
allison.kriger@gmail.com

Kyle C. Barry (*Pro Hac Vice*)
THE STATE LAW RESEARCH INITIATIVE
303 Wyman Street, Suite 300
Waltham, MA 02451
(802) 318-3433
kylecbarry@gmail.com

Christine A. Monta (*Pro Hac Vice*)
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
501 H Street NE, Suite 275
Washington, DC 20002
(202) 869-3308
christine.monta@macarthurjustice.org

Counsel for Amici Curiae *The State Law Research Initiative and Roderick & Solange MacArthur Justice Center*

Dated: November 6, 2025

RECEIVED by MSC 11/6/2025 8:25:47 PM

CERTIFICATE OF COMPLIANCE

As required by Michigan Court Rule 7.212, I certify that this document contains 2,062 words, excluding the parts that are exempted by Court Rules MCR 7.212(C)(6). I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

/s/ Allison L. Kriger

Allison L. Kriger (P76364)
LARENE & KRIGER, P.L.C.
500 Griswold Street, Suite 2400
Detroit, MI 48226
(313) 967-0100
allison.kriger@gmail.com

Dated: November 6, 2025