Case No. 128186

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Petition for Leave to Appeal
	)	from the Appellate Court of Illinois,
Respondent-Appellee,	)	First Judicial District, No. 1-20-0112
	)	
v.	)	There heard on Appeal from the
	)	Circuit Court of Cook County,
ANDRE HILLIARD,	)	Illinois, No. 13 CR 19027
	)	
Petitioner-Appellant.	)	The Honorable Vincent M. Gaughan,
	)	Judge Presiding.

BRIEF OF *AMICI CURIAE* RODERICK & SOLANGE MACARTHUR JUSTICE CENTER AND CHILDREN AND FAMILY JUSTICE CENTER IN SUPPORT OF APPELLANT

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INTEREST OF *AMICI CURIAE*

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

Amicus Curiae the Children and Family Justice Center (CFJC), part of Northwestern Pritzker School of Law's Bluhm Legal Clinic, was established in 1992 as a legal service provider for children, youth, and families, as well as a research and policy center dedicated to teaching and training law students. Currently, clinical faculty and staff at the CFJC provide advocacy on policy issues affecting children in the legal system, and legal representation for children, including in the areas of juvenile delinquency, criminal justice, special education, school suspension and expulsion, and immigration and political asylum. In its 30-year history, the CFJC has served as *amicus* in numerous state and United States Supreme Court cases based on its expertise in the representation of children in the legal system.

Together, *Amici* understand that adolescent immaturity manifests itself in ways that implicate culpability, including a diminished ability to assess risks, make good decisions, and control impulses. *Amici* know that a core characteristic of adolescence is the capacity to change and mature, and they believe that the developmental differences between youth and adults warrant distinct treatment. *Amici* recognize—as does the United States Supreme

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Court and this Court—that young people, because of their particular biological and developmental characteristics, are categorically different from adults, and require categorically different treatment, including sentencing practices that account for their capacity to grow, change, and become rehabilitated. *See, e.g., Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *J.D.B. v. North Carolina*, 564 U.S. 261 (2011); *Miller v. Alabama*, 567 U.S. 460 (2012); *Montgomery v. Louisiana*, 577 U.S. 190 (2016); *People v. Holman*, 2017 IL 120655. *Amici* believe that those categorical differences do not disappear on one's 18th birthday.

SUMMARY OF THE ARGUMENT

Today, it is axiomatic that young people are inherently different from adults from a standpoint of maturation and capability of change. Indeed, both the United States Supreme Court and the State of Illinois recognize that children are "constitutionally different from adults for purposes of sentencing." *People v. Buffer*, 2019 IL 122327, ¶ 16 (quoting *Miller v. Alabama*, 567 U.S. 460, 489 (2012)). In recent years, laws surrounding sentencing practices in Illinois and elsewhere have continued to evolve based on empirical evidence, in a way that commands the removal of sentencing distinctions between young people under age 18 and those ages 18 to 21. *Amici* urge this Court to align this State's proportionate penalties jurisprudence with the science on which the recent criminal legal reform in this state is based, and to recognize that the proportionate penalties clause provides broader sentencing protections than the Eighth Amendment, notwithstanding a defendant's age or whether or not a life sentence is at stake. Because mandatory sentencing enhancements for emerging adults prevent courts from assigning age-appropriate

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punishment that comports with the Illinois Constitution's call for restoration to useful citizenship, they should not stand.

ARGUMENT

I. Illinois' Mandatory Firearm Enhancements as Applied to Emerging Adults are Antithetical to Developments in Science and the Law.

It is now well understood that youth who are under the age of 18 should be sentenced in a manner that accounts for their fundamental developmental differences from adults. This youth-centered approach to sentencing is grounded in the Eighth Amendment of the United States Constitution and has been cemented over the last two decades by a series of decisions in the U.S. Supreme Court and the Illinois Supreme Court. *Roper v. Simmons*, 543 U.S. 551, 578 (2005) (banning the death penalty for individuals, under 18 at the time of the offense, convicted of murder); *Graham v. Florida.*, 560 U.S. 48, 82 (2010) (banning life without parole sentences for juveniles convicted of non-homicide offenses); *Miller*, 567 U.S. at 465 (2012) (banning mandatory life without parole sentences for juveniles convicted of homicide); *Montgomery v. Louisiana.*, 577 U.S. 190, 212 (2016) (holding that *Miller* protections are retroactive); *People v. Holman*, 2017 IL 120655, ¶ 40 (finding that *Miller* applies to youth under the age of 18 at the time of the offense who are subject to mandatory life, discretionary life sentences, and *de facto* life sentences)*; Buffer*, 2019 IL 122327, ¶ 41 (defining a *de facto* life sentence as over 40 years for purposes of *Miller's* Eighth Amendment analysis).

However, *Miller*'s demarcation at the age of 18 is a legal limitation, not a scientific one. This Court has recognized as much in its decision in *People v. Harris*, 2018 IL 121932, ¶ 60. Scientific studies definitively prove that older adolescents continue to mature well into their mid-20s. Therefore, the very concerns regarding proportionality and

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constitutionality that affect youth under 18 who are serving lengthy mandatory sentences should apply to emerging adults.

A. Scientific developments establish that emerging adults are similar to adolescents under the age of 18, particularly in the areas of decision-making, cognitive processing, and impulse control.

Research shows that certain physiological and psychological traits persist beyond age 18, well into early adulthood. "Late adolescents"—also referred to as emerging adults—share physiological and psychological traits with juveniles even beyond age 18 and in their early adulthood. When compared with older adults, late adolescents exhibit diminished capacity for self-control and greater susceptibility to peer pressure, risk-seeking behaviors, excitement, and stress. Catherine Insel, Stephanie Tabashneck, Francis X. Shen, Judith G. Edersheim & Robert T. Kinscherff, *White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys, and Policy Makers*, CTR. FOR L., BRAIN & BEHAV. at 2, 10-16 (Jan. 27, 2022) [hereinafter *White Paper*], available at https://clbb.mgh.harvard.edu/wp-content/uploads/CLBB-White-Paper-on-the-Science-of-Late-Adolescence-3.pdf.[1] It is now widely accepted in the scientific community that the characteristics cited by the United States Supreme Court in the seminal juvenile sentencing cases persist later than was previously understood, and certainly beyond age 18. *See, e.g., id.* at 2 ("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."); Andrew Michaels, *A Decent*

[1] This White Paper defines young people aged 18-21 as "late adolescents." Scientific literature and cases also refer to this cohort as "emerging adults" or "young adults." Therefore, in this brief, *Amici* refer to individuals in this age group by these terms interchangeably.

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Proposal: Exempting Eighteen- to Twenty-Year-Olds From the Death Penalty, 40 N.Y.U. REV. L. & SOC. CHANGE 139, 142 n.20, 163 (2016) (citing to research that found antisocial peer pressure was a highly significant predictor of reckless behavior in emerging adults 18 to 25); Alexander Weigard et al., *Effects of Anonymous Peer Observation on Adolescents' Preference for Immediate Rewards*, 17 DEVELOPMENTAL SCI. 71, 72 (2014) (proposing that a propensity for risky behaviors, including "smoking cigarettes, binge drinking, driving recklessly, and committing theft," exists into early adulthood past 18, because of a young adult's "still maturing cognitive control system").

Post-*Miller* studies comparing emerging adults aged 18 to 25 to younger adolescents aged 13 to 17 reveal that 18 to 21-year-olds are more developmentally similar to 13 to 17-year-olds than they are to 22 to 25-year-olds, particularly in emotionally charged situations. Alexandra O. Cohen et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 PSYCHOL. SCI. 549, 550, 559–60 (2016); Marc D. Rudolph et al., *At Risk of Being Risky: The Relationship Between "Brain Age" Under Emotional States and Risk Preference*, 24 DEVELOPMENTAL COGNITIVE NEUROSCIENCE 93, 102-03 (2017).

Thus, the "[d]evelopmental research shows that young adults continue to mature well into their 20s and exhibit clear differences from both youth and older adults." *Spotlight on Young Adults in the Justice System: Emerging Approaches to a Population in Flux*, COUNCIL OF STATE GOVERNMENTS JUST. CTR. (Dec. 20, 2016), https://csgjusticecenter.org/2016/12/20/spotlight-on-young-adults-in-the-justice-system-emerging-approaches-to-a-population-in-flux/. Furthermore, "[t]he neuroscience and social-behavioral science . . . indicates there is no solid basis in science for a line drawn at

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18 for criminal jurisdiction." *White Paper* at 42. Indeed, neuroscientific research suggests that the prefrontal cortex region, which regulates impulse control and reasoning, continues developing well into a person's 20s. Vincent Schiraldi, Bruce Western, & Kendra Bradner, *Community-Based Responses to Justice-Involved Young Adults*, New Thinking in Community Corrections Bulletin, NAT'L. INST. OF JUST. 3 (Sept. 2015), https://www.ncjrs.gov/pdffiles1/nij/248900.pdf.

However, despite their proclivity toward risk-taking, susceptibility to peer pressure, and lack of ability to foresee long-term consequences, late adolescents' negative behaviors are time-limited like that of their younger counterparts: "[a]cross person, place, and historical time, data reveals a well-defined age-graded nature of offending characterized by the swift acceleration in adolescence that peaks during the transition to young adulthood and declines precipitously soon thereafter[.]" Elaine Eggleston Doherty & Bianca E. Bersani, *Mapping the Age of Official Desistance for Adult Offenders: Implications for Research and Policy*, J. OF DEVELOPMENTAL & LIFE-COURSE CRIMINOLOGY 517 (Nov. 9, 2018). In other words, older adolescents are likely to desist from their negative behaviors over time, even as they move into their early and mid-twenties. *White Paper* at 3.

The import of the research is this: there are limited penological justifications for imposing lengthy sentences on emerging adults. Indeed, the research shows that "from a deterrence perspective, 'there is little evidence that increases in the length of already long prison sentences yield general deterrent effects that are sufficiently large to justify their social and economic costs.'" Doherty & Bersani at 530. Additionally, "[f]rom a criminal justice perspective, research indicates that continuing traditional supervision and sentencing practices inadvertently tend to increase recidivism, fail to foster diversion from

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unwarranted penetration into the criminal justice system, and continue the pattern of disproportionate entanglement of young persons of color." *White Paper* at 43. Mandatory, lengthy enhancements for youth both preclude adequate consideration of developmental and individual circumstances, and subject late adolescents to substantial prison terms that serve little benefit from both an individual and a societal perspective.

B. Illinois law treats emerging adults similarly to adolescents who are under the age of 18, and by so doing, recognizes that emerging adults are a distinct group deserving of youth-based protections.

Illinois law recognizes the similarities of late adolescents to those under the age of 18, specifically in the criminal law context. For instance, juvenile court jurisdiction extends until a youth reaches the age of 21. *See* 705 ILCS 405/5-755(1) (West 1999). Indeed, the Juvenile Court Act defines a "minor" as a person under the age of 21. 705 ILCS 405/1-3(10) (West 2021); 705 ILCS 405/5-105(10) (West 2021). Thus, age 21, rather than 18, marks the latest date on which a term of commitment to the Department of Juvenile Justice automatically terminates, including for individuals adjudged to be "habitual juvenile offenders" or "violent juvenile offenders." 705 ILCS 405/5-750(3) (West 2021); 705 ILCS 405/5-815(f) (West 2021); 705 ILCS 405/5-820(f) (West 2021). And last year, the General Assembly revised the statute applying harsher Class X sentencing ranges to recidivist offenders, to eliminated all offenses committed before the age of 21 from eligibility for consideration. *See* 730 ILCS 5/5-4.5-95(a)(4)(E), (b)(4) (West 2021).

Tellingly, the Illinois legislature reinstated parole for most emerging adults under 21 less than three years ago. *See* 730 ILCS 5/5-4.5-115(b) (West 2019). The legislative history of this section repeatedly underscores the immaturity and capacity for rehabilitation of emerging adults. One Senate cosponsor of the bill emphasized that the bill was a

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response to "the fundamental notion [in *Miller*] that juvenile offenders are simply wired differently and have a propensity, much more so than older offenders, to be rehabilitated." 100th Ill. Gen. Assem., Senate Proceedings, May 31, 2017, at 31 (statements of Senator Harmon). *See also id.* at 36 ("[T]he science of brain development suggests that young people don't reach the age of fully formed brains at eighteen or at twenty-one. It's not till the mid twenties .... [T]here is no judge on the planet who can look at a nineteen year old and say, I know for a fact that you're the kind of young person who is going to mature and rehabilitate in prison or you're the kind who is never going to get out of prison."). A House cosponsor of the bill also likened emerging adults to juveniles, explaining that "the young people that are the subject of this Bill, those who are under 21, are similarly lacking at least in some circumstances good judgment, and they are also people who do not think through the consequences of their actions." 100th Ill. Gen. Assem., House Proceedings, Nov. 28, 2018, at 51 (statements of Representative Currie).

The General Assembly also recognizes the need to protect emerging adults up to age 21 in quasi-criminal and non-criminal contexts. Illinois law prohibits the sale and delivery to persons under the age of 21 of alcohol, *see* 235 ILCS 5/10-1 (West 2015), cannabis, *see* 410 ILCS 705/10-15 (West 2019), and tobacco products, electronic cigarettes, and alternative nicotine products, *see* 720 ILCS 675/1 (West 2022). The prohibition with respect to tobacco and nicotine products, in particular, reflects an affirmative legislative determination in 2019 that emerging adults between ages 18 and 21 require heightened protections just as juveniles do. *See* Pub. Act 100-1012, § 25 (eff. July 1, 2019) (raising the purchase age from 18 to 21). Celebrating this piece of legislation, the Director of the Department of Public Health explained, "Nicotine is addictive, and

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adolescents and young adults are more susceptible to its effects because their brains are still developing." *The Age to Buy Tobacco is Now 21*, ILL. DEP'T OF PUB. HEALTH (July 2, 2019), https://dph.illinois.gov/resource-center/news/2019/july/age-buy-tobacco-now21. And even before the passage of this law, the legal drinking age in every state was 21. *See generally* Traci L. Toomey, et al., *The Minimum Legal Drinking Age: History, Effectiveness, & Ongoing Debate*, 20 ALCOHOL HEALTH RES. WORLD 213-218 (1996).

As with controlled substances, Illinois law recognizes the vulnerabilities and compromised decision making of emerging adults under age 21 by limiting their access to firearms and explosives. Illinois prohibits firearm possession by individuals under age 21 unless they are active-duty members of the Armed Forces or have written parental consent. *See* 430 ILCS 65/4 (West 2022); 430 ILCS 65/8 (West 2022). Illinois also sets a minimum age of 21 for licenses to possess, use, transfer, or dispose of explosive materials, *see* Ill. Admin. Code tit. 62, § 200.98(a)(1) (2021), and to operate pyrotechnic displays, *see* 225 ILCS 227/35(d)(1) (West 2018).

Illinois law has also distinguished between emerging adults and older adults who operate vehicles. As of 2014, applicants between the ages of 18 and 21 must complete a driver education course, just as juvenile applicants for a driver's license or instruction permit must. Pub. Act 98-167, § 5, codified as 625 ILCS 5/6-103(1) (eff. July 1, 2014) (West 2018). And even upon issuance of a driver's license, a person must first attain age 21 before they may operate a school bus, (625 ILCS 5/6-106.1(a) (West 2023)), drive to transport senior citizens (625 ILCS 5/6-106.3(1) (West 2023)), or drive pursuant to a for-profit ridesharing arrangement, (625 ILCS 5/6-106.4(1) (West 2023)).

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Furthermore, Illinois law increasingly recognizes the need to protect emerging adults in other situations in which their limited abilities to weigh risks and rewards may impair decision making. Persons under the age of 21 now may only be issued a credit card with either confirmation that the person can make the minimum required payments or the agreement of a cosigner or guarantor older than 21. *See* 815 ILCS 140/7.2 (West 2010); *see also* Pub. Act 96-1193, § 10 (eff. July 22, 2010) (raising the age from 18 to 21). The law also bars persons younger than 21 from placing wagers in various gambling activities. *See, e.g.*, 230 ILCS 10/11(10) (West 2021); 230 ILCS 45/25-25(b) (West 2021); 230 ILCS 40/40 (West 2009). And with respect to the handling of property more generally, the Illinois Uniform Transfers to Minors Act defines "minor" as anyone under age 21, 760 ILCS 20/2(12) (West 2000), and implements a process for a custodian to manage property transferred for a "minor's" benefit while the minor assumes only limited rights and duties with respect to the property, *see* 760 ILCS 20/12(b) (West 1986).

And just this year, the General Assembly amended the statutory definitions of "developmental disability" and "intellectual disability" in most contexts to recognize disabilities manifesting before an individual turns 22 years old, rather than 18. *See* Pub. Act 102-972, § 45 (eff. Jan. 1, 2023) (amending *inter alia* 405 ILCS 5/1-106 and 405 ILCS 5/1-116). As amended, the definition of "intellectual disability" characterizes the "developmental period" as the time "before the individual reaches age 22." 405 ILCS 5/1-116 (West 2023); Pub. Act 102-972, § 45.

Consistent with the General Assembly, this Court has begun to recognize that potential similarities exist between youth under age 18 and emerging adults for the purpose of sentencing. In *People v. Harris*, 2018 IL 121932, while rejecting the defendant's Eighth

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Amendment claim because *Miller* did not apply directly to the defendant—who was 18 at the time of the offenses—this Court acknowledged that further development of the record was necessary to determine "how the evolving science on juvenile maturity and brain development that helped form the basis for the *Miller* decision applies to defendant's specific facts and circumstances." *Harris*, 2018 IL 121932 at ¶¶ 45-46.

Similarly, in *People v. House*, 2021 IL 125124, this Court reversed the appellate court's decision finding the 19-year-old defendant's life sentence unconstitutional under the Illinois Constitution, but remanded the matter for further post-conviction proceedings to develop the record on the question of "whether the science concerning juvenile maturity and brain development applies equally to young adults, or to petitioner specifically, as he argued in the appellate court." *House*, 2021 IL 125124 at ¶ 29. Presumably, *Harris* and *House* leave open the possibility that, at a minimum, late adolescents who provide evidence in the lower court that the relevant developmental science applies to them and to the circumstances of the offense would have a viable argument that their sentence violates the Illinois Constitution.

C. Illinois' mandatory firearm enhancement law does not reflect developments in science or an individualized approach to age-appropriate sentencing for emerging adults.

The legislative policies behind mandatory firearm enhancement laws in Illinois are no longer aligned with our modern understanding of effective and appropriate sentencing for youth under 18 and emerging adults. Mandatory firearm sentencing enhancements originally were designed to exacerbate punishment, and to purportedly serve twin aims of deterrence and retribution. The Gun Control Act of 1968—passed following the assassinations of John F. Kennedy, Robert F. Kennedy, and Dr. Martin Luther King Jr.—

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included a sentencing enhancement for the use of a firearm during a federal crime. *Gun Control Act*, Bureau of Alcohol, Tobacco, Firearms & Explosives, https://www.atf.gov/rules-and-regulations/gun-control-act. The Act's deterrent intent was explicit: it was passed to "persuade the man who is tempted to commit a federal felony to leave his gun at home." 114 Cong. Rec. 22231 (1968) (statements of Representative Poff).

Decades later, in the 1990s, the nation saw a sharp uptick in crime. John Gramlich, *What the data says (and doesn't say) about crime in the United States*, Pew Research Center (Nov. 20, 2020), https://www.pewresearch.org/fact-tank/2020/11/20/facts-about-crime-in-the-u-s/; Carroll Bogert & LynNell Hancock, *Analysis: How the media created a 'superpredator' myth that harmed a generation of Black youth*, NBC NEWS (Nov. 20, 2020, 5:00 AM), https://www.nbcnews.com/news/us-news/analysis-how-media-created-superpredator-myth-harmed-generation-black-youth-n1248101. Sentencing enhancements for firearms and other aggravating factors increased in popularity during this time, triggered by fears of juvenile "super predators" and gang activity. The 1994 Violent Crime Control and Law Enforcement Act expanded punitive measures for so-called "hardcore" juveniles by allowing juveniles to be tried as adults for certain crimes, and imposed sentencing enhancements for youth associated with gangs and other offenses. *See* PL 103-322, §§ 150001-150002, 108 Stat 1796, 2033-35 (1994) (West 2022); 140 Cong. Rec. S12399-03, at S12414 (1994) (statements of Sen. Feinstein). This statute enacted harsher penalties for repeat offenders and added semiautomatic weapons to the list of qualifying weapons under the federal firearm sentencing enhancements statute, 18 USC § 924(c). PL 103-322, § 110501, 108 Stat 1796, 2015 (1994). Four years later, Congress created additional penalties by expanding the statute's application from only someone who "uses

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or carries a firearm" to a person who "possesses a firearm," and by increasing mandatory sentences to 7 and 10 years for a person who "brandished" or "discharged" a firearm during the crime. *See* Pub. L. No. 105-386, 112 Stat. 3469 (1998).

States similarly responded to demands for harsher sentencing by increasing penalties for youth who commit crimes. Bogert & Hancock, *Analysis: How the media created a 'superpredator' myth that harmed a generation of Black youth*. The fear that drove legislation during this punitive period was rooted in racism and relied on "materially false and unreliable" premises about youth. *See The Superpredator Myth, 25 Years Later*, EQUAL JUST. INITIATIVE (Apr. 7, 2014), https://eji.org/news/superpredator-myth-20-years-later/; *State v. Belcher*, 342 Conn. 1, 13–15, 268 A.3d 616, 623–24 (2022) (overturning denial of juvenile resentencing where original sentencing court had relied on unsubstantiated characterization of defendant as a "superpredator."). Nonetheless, "by the end of the 1990s, virtually every state had toughened its laws on juveniles: sending them more readily into adult prisons; gutting and sidelining family courts; and imposing mandatory sentences, including life sentences without parole." Bogert & Hancock.

Following trends at the federal level and in states such as California, Illinois ultimately enacted its firearm enhancement law, the "15-20 & Life" bill in 1999, with the express goal of deterrence. 91st Ill. Gen. Assem., Senate Proceedings, March 25, 1999, at 285-86 (statements of Senator Dillard). *See also* 730 ILCS 5/5-8-1 (West 2022);720 Ill. Comp. Stat. Ann. 5/33A-1(b)(1) (West 2022). But the Illinois law reached further, as it was intended to be "one of the most … severe and far-reaching bills in the entire country." 91st Ill. Gen. Assem., House Proceedings, May 13, 1999, at 73 (statements of Representative Turner). The bill's sponsor explained that the law would require a judge to decide the initial

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sentence based *only* on the underlying crime, but that afterwards the judge would be required to add on the mandatory number of years for the enhancement. *Id*. at 68. Although lawmakers spoke of the bill's deterrent goals, they stressed its other aim: "much more prison time." 91st Ill. Gen. Assem., Senate Proceedings, May 18, 1999, at 47 (statements of Senator Dillard). The punitive goal was unequivocal: "The message that we want to send from Governor Ryan and the Illinois State Senate is clear: Committing a crime with a gun is going to mean a long, long prison term or the death penalty." *Id*. at 42.

The deterrent and retributive policies underlying the mandatory sentencing enhancements of the 1990s have been debunked when it comes to juveniles and emerging adults. In recent decades, courts and legislatures have recalibrated how the law treats youthful defendants in response to changing knowledge of neurological development for people under 21. *See* discussion *supra* Part I.A. In light of the evolving research and law, mandatory enhancements for the sake of deterrence and retribution are no longer justified for young adults.

Because late adolescents share relevant developmental characteristics with adolescents under the age of 18, deterrence—the expressed legislative purpose of Illinois' sentencing enhancements—is similarly not effective for them, and thus not a legitimate sentencing rationale. In *Montgomery*, the United States Supreme Court affirmed that harsh penalties on youth under 18 do not serve any of the penological justifications of retribution, deterrence, or incapacitation because a young person is categorically less culpable and less likely to be forever a danger to society, given young people's greater capacity for change. *Montgomery*, 577 U.S. at 207-08. The diminished salience of deterrence for young people is especially critical in the context of mandatory firearm enhancements, because research

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demonstrates that there is little support for the deterrent effect of enhancements on even fully-developed adults. *See* U.S. DEP'T OF JUST. OFFICE OF JUST. PROGRAMS, *Five Things About Deterrence*, Nat'l. Inst. of Just. (May 2016), https://www.ojp.gov/pdffiles1/nij/247350.pdf ("increasing the severity of punishment does little to deter crime.").

Despite these developments, Illinois' mandatory firearm enhancements persist as the highest and most restrictive in the country. *Know More: Firearm Sentence Enhancements*, RESTORE JUSTICE FOUNDATION, https://www.restorejustice.org/about-us/resources/know-more/know-more-firearm-sentence-enhancements/. While several states impose a minimum of one to five years, Illinois' begins at 15 years. *Id*. *See also, e.g.*, I.C.A § 902.7 (five years); Wis. Stat. Ann. § 939.63 (West) (maximum felony enhancement is five years); Mich. Comp. Laws Ann. § 750.227b (West 2022) (two years).

Moreover, it is worth noting that other states' enhancements are discretionary rather than mandatory. *See*, *e.g.*, Ind. Code Ann. § 35-50-2-11 (West 2022) (discretionary between 5 and 20 years); Wis. Stat. Ann. § 939.63 (West); Ohio Rev. Code Ann. § 2923.132 (West 2022). Some states have enacted firearm enhancements that do not automatically increase the time served in prison. For instance, Oklahoma and South Carolina allow judges to decide whether to order that the enhancements be served concurrently with the underlying sentence. Okla. Stat. Ann. tit. 21, § 1287.1 (West 2022); S.C. Code Ann. § 16-23-490(b) (West 2022). Minnesota does not allow a firearm enhancement to increase the total sentence to higher than the maximum allowed sentence for the underlying offense. Minn. Stat. Ann. § 609.11 (West 2022).

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Illinois' mandatory firearm enhancements are the product of misinformed, reactionary, and racially biased policies, and the underlying law relies on scientifically faulty pillars of deterrence and retribution. In light of the overwhelming consensus that an individual's brain continues to develop into their twenties, little reason exists to treat an 18-year-old differently from a 17-year-old with regards to mandatory sentencing enhancements. To continue to do so ignores our modern understandings of developmental neuroscience and the development of state and federal law, and flies in the face of the Illinois Constitution's proportionality requirements.

II. Banning Mandatory Firearm Enhancements for Emerging Adults Ensures Sentences are Constitutionally Proportionate and Imposed with an Eye Toward a Return to Useful Citizenship.

The sea change in Illinois law surrounding the treatment of people under the age of 21 marks an evolution in the community's standards of decency with regards to youth in general, not just for individuals under age 18. Additionally, sentencing laws that focus more on rehabilitation and release than on retribution are consistent with the principle of proportionate criminal punishment that has framed Illinois sentencing policy since this State's inception. Criminal penalties must be tailored to individual culpability and restoration to useful citizenship—the ultimate goal of sentencing as imagined by the framers of the Illinois Constitution.

Mandatory firearm enhancements as applied to late adolescents fall short of the principles articulated by the proportionate penalties clause. Mandatory enhancements for these emerging adults give courts no opportunity to consider individual culpability or rehabilitative potential. Furthermore, courts must give litigants the opportunity to raise constitutional proportionality challenges, whether or not they were sentenced to life in prison. Otherwise, mandatory enhancements leave individuals like Mr. Hilliard—who, as

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an 18-year-old at the time of the offense, was developmentally similar to youth under 18—to serve an ultimate sentence that is *more than double* that which the sentencing judge thought appropriate under the circumstances.

A. Proportionate punishment is a hallmark of this State.

Trial courts have the discretion to determine criminal sentences, but all criminal penalties must satisfy constitutional constrictions. *People v. Leon Miller*, 202 Ill. 2d 328, 336 (2002). The principal constitutional limit on Illinois sentences is crystal clear: "All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. of 1970, art. I, § 11. This constitutional mandate means that a penalty may not focus solely on the offense itself; rather, it must also prioritize the defendant's rehabilitation, with the goal of release into *useful* citizenship.

The Illinois proportionate penalties clause is firmly rooted in the state's founding. A similar version appeared in the very first constitution signed in 1818, reading, "all penalties shall be proportioned to the nature of the offence, the true design of all punishment being to reform, not to exterminate mankind." Ill. Const. of 1818, art. VIII, § 14. This language persisted throughout the next three iterations of the constitution. Andrea D. Lyon & Hannah J. Brooks, *Stepping Towards Justice: The Case for the Illinois Constitution Requiring More Protection than Not Falling Below "Cruel and Unusual" Punishment*, 41 N. ILL. U. L. REV. 47, 52 (2020).

By the late 19th century, Illinois courts had articulated three frameworks to make proportionality challenges. Sean Kiley, *Criminal Procedure: Proportionate Penalties-Judging Proportionality Without Comparison: A Criminal Defendant May Not Challenge*

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a Penalty Under the Proportionate Penalties Clause by Comparing It to the Penalty for an Offense with Different Elements, 37 RUTGERS L.J. 1337, 1340 (2006). As relevant here, this Court specified in 1894 that punishment is disproportionate if it "is so wholly disproportioned to the offense committed as to shock the moral sense of the community." *People ex rel. Bradley v. Ill. State Reformatory*, 148 Ill. 413, 421-22 (1894). Although this standard lends great deference to the legislature, the "shock the moral sense of the community" standard also assumes that the laws in place represent the current moral sense of the people of the State of Illinois.

The Illinois proportionate penalties clause as it now exists was added via revision in 1970. At that time, an emphasis remained on proportionate punishments, but the framers clarified this State's main objective of punishment: rehabilitation. The sponsor of the amendment, Leonard Foster, stated:

> Traditionally the constitution has stated that a penalty should be proportionate to the nature of the offense. I feel that with all we've learned about phenology that somewhere along the line we ought to indicate that in addition to looking to the act that the person committed, we also should look at the person who committed the act and determine to what extent he can be restored to useful citizenship.

7 Record of Proceedings, Sixth Illinois Constitutional Convention 1391 (1972). Chairman of the Committee Elmer Gertz agreed, stating, "the spirit of the proposed amendment is in accordance with modern penology." *Id.* at 1392. Chairman Gertz spoke of this amendment as necessary not just to lower the crime rate, but also to make the world more "livable." *Id*. Representative Foster continued, in response to questioning on whether a major emphasis would be placed on rehabilitation, that in deciding on a punishment, the court would "do that which with regard to this particular convicted person is most likely to get him back into useful citizenship. It means that they can't just take rules of thumbs and

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apply them willy-nilly, but they have to look at each situation rather carefully, applying whatever standards are developed." *Id*. at 1392. Foster then expressed a hope that the thrust of punishments would be towards rehabilitation rather than just punishment. *Id.*

The 1970 version of the proportionate penalties clause thus removed the phrase stating that the design of punishment was not meant to "exterminate mankind," and replaced it with a broader demand that punishment restore an offender to "useful citizenship." Ill. Const. of 1970, art. 1, § 11. Since then, Courts must ensure that punishments are proportionate to the crime itself, while also prioritizing rehabilitation.

B. The Proportionate Penalties Clause affords broader protection than the Eighth Amendment, and is not limited to youth under the age of 18 or any particular length of sentence.

The appellate court denied relief under the Illinois Constitution's proportionate penalties clause because Mr. Hilliard was 18 years old at the time of the crime, and his 40-year sentence was less than *de facto* life for purposes of a federal Eighth Amendment claim. That finding misses the mark. At times, Illinois courts have interpreted claims under the proportionate penalties clause in a similar way to the U.S. Supreme Court's interpretation of the Eighth Amendment. William W. Berry III, *Cruel State Punishments*, 98 N.C. L. REV. 1201, 1240 n. 287 (2020). And to be sure, Eighth Amendment jurisprudence draws a clear line between individuals under the age of 18, who are entitled to *Miller* protections at sentencing, and individuals age 18 and older, who are not. *People v. Harris*, 2018 IL 121932, ¶¶ 56-58. But this interpretation loses sight of the fact that the Illinois proportionate penalties clause contains stricter limitations on criminal punishment than does federal Eighth Amendment. *People v. Clemons*, 2012 IL 107821, ¶¶ 37-40. And the

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framers intended it this way, as is clear and unambiguous from the drafting history of the proportionate penalties clause, and from Illinois jurisprudence.

1. The text and drafting history of the proportionate penalties clause demonstrate its broad sentencing protections.

Textual and historical differences between the proportionate penalties clause and the Eighth Amendment show that a departure from Eighth Amendment jurisprudence when considering Illinois constitutional claims is appropriate. While the federal Eighth Amendment prohibits "cruel and unusual punishments" (U.S. Const. amend. VIII), no such language appears in the Illinois Constitution. Instead of focusing on whether a given criminal punishment is cruel and unusual, the Illinois proportionate penalties clause grants a right to proportionality that is notably absent from its federal counterpart. Indeed, as U.S. Supreme Court Justice Scalia stated three decades ago, "the Eighth Amendment contains no proportionality guarantee." *Harmelin v. Michigan*, 501 U.S. 957, 965 (1991). Importantly, the express proportionality clause means that the Illinois Constitution, unlike its federal counterpart, contemplates considering the degree of blameworthiness in assigning a sentence. Richard S. Frase, *Limiting Excessive Prison Sentences under Federal & State Constitutions*, 11 U. PA J. CONST. L. 39, 70-71 (2008). *See also People v. Gleckler*, 82 Ill. 2d 145, 162 (1980) (finding that article I, section 11 of the Illinois Constitution compelled this Court "to consider both the circumstances of the offense and the character of a defendant" when reviewing a sentence).

In addition to demanding that punishment be assigned according to the seriousness of the offense, the proportionate penalties clause focuses on rehabilitation. The Eighth Amendment does not address rehabilitation, and this focus also sets Illinois apart from other states whose analogues focus on proportionality alone. *See* Berry at 1238-40 (listing

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Illinois as one of three states with constitutional language that take a "separate" departure from the Eighth Amendment). This distinction is essential, and it was deliberate. The addition of language requiring the restoration to useful citizenship was not the only proposed modification to the proportionate penalties clause in 1970. The full text of the revision as introduced was, "[a]ll penalties shall be proportioned both to the nature of the offense and to the objective of restoring the offender to useful citizenship, and the basis of such penalties shall be explained by the court and subject to review." 7 Record of Proceedings, Sixth Illinois Constitutional Convention at 1391 (statements of Clerk). Although some lawmakers questioned the inclusion of a right to appellate review, as such review was already ingrained in the law in Illinois, little debate took place about rehabilitation as the objective of punishment. (*See id*. at 1392 (statements of Vice-President Smith) ("[T]he objective of rehabilitation is a laudable one.")). Ultimately, the right to an explanation of the sentence was stricken from the final draft of the proportionate penalties clause, but the goal of restoration to useful citizenship passed as a constitutional mandate. *Id.* at 1394-95. The passage of this provision, after thoughtful debate, solidifies the essential and expansive nature of the proportionate penalties clause.

In the past, this Court interpreted at least the first portion of the Illinois proportionate penalties clause as being in lock-step with the federal Eighth Amendment. *See People v. McDonald*, 168 Ill. 2d 420, 455 (1995), abrogated by *Clemons*, 2012 IL 107821 (characterizing the framers as believing Article I section 20 "was synonymous with the cruel and unusual punishment clause of the eighth amendment to the United States Constitution."). However, more recently, this Court has explicitly and correctly recognized the text of the proportionate penalties cause as commanding a broader interpretation than

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the federal Eighth Amendment. *See Clemons*, 2012 IL 107821, ¶ 40 (clarifying that although some relationship may exist between the first clause of the proportionate penalties clause and the Eighth Amendment, "the limitation on penalties set forth in the second clause of article I, section 11, which focuses on the objective of rehabilitation, went beyond the framers' understanding of the Eighth Amendment and is not synonymous with that provision"). *See also* Berry at 1240 (explaining that Illinois courts depart from United States Supreme Court jurisprudence even when applying a similar standard because the state constitution requires a balance of rehabilitation with retribution).[2] As Justice Theis, writing for the majority in *Clemons*, explained, the language and tone of the first clause of the 1970 proportionate penalties clause differed from that of its predecessor, changing "all penalties shall be proportioned to the nature of the offense," to "all penalties shall be determined . . . according to the seriousness of the offense," and adding that penalties must be determined "with the objective of restoring the offender to useful citizenship." *Clemons*, 2012 IL 107821, ¶¶ 38.

Indeed, Illinois is one of few states whose constitutional construction includes an explicit right to proportionality. Frase, 11 U. PA J. CONST. L. at 64. The express guarantee of proportionate sentences, combined with the added goal of rehabilitation, signaled that the framers of the 1970 constitution intended the proportionate penalties clause to place greater limitations on penalties than the federal Eighth Amendment does. *Clemons*, 2012 IL 107821, at ¶ 39.

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[2] In 2014, this Court stated in *People v. Patterson*, 2014 IL 115102, ¶ 106 that the "Illinois proportionate penalties clause is co-extensive with the eighth amendment's cruel and unusual punishment clause." However, in that case the Court was addressing whether transfer to adult court constituted "punishment," a word which serves as a prerequisite to raising claims under both the eighth amendment and the proportionate penalties clause.

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2. Proportionality review is not limited to individuals serving life sentences.

The argument of the State—adopted by the Appellate Court—that proportionate penalties challenges are limited to individuals who received life sentences is unsupported by law or the history of the clause. The proportionate penalties clause provides the only avenue for a litigant over the age of 18 to challenge the constitutionality of a statute as applied to them, and the only means for a reviewing court to address the proportionality of a non-life sentence. *See People v. Hill*, 2022 IL App (1st) 171739-B, ¶ 40 (internal citations omitted) ("[L]ate adolescents cannot claim *Miller* protection under the eighth amendment. That young adults are constrained to raise their *Miller* claims under the proportionate penalties clause does not constrain juvenile defendants to rely solely on the eighth amendment."); *see also People v. Harris*, 2018 IL 121932 and *People v. House,* 2021 IL 125124, discussed *supra* Part I.B. Similarly, that young adults are barred from raising *Miller* claims under the Eighth Amendment does not constrain their ability to raise similar claims under the proportionate penalties clause, life sentence or not.

The history of the Illinois Constitution of 1970 undermines the idea that the framers intended to limit proportionality review to individuals who were serving life sentences. Indeed, the 1970 revision removed from the proportionate penalties clause the phrase, "the true design of all punishment being to reform, *not to exterminate mankind*." *Compare* Ill. Const. of 1818, art. VIII, § 14 with Ill. Const. of 1970, art. I, § 11. The omission of the phrase "not to exterminate mankind" suggests that the framers contemplated that even individuals with sentences other than death or death in prison might challenge their punishment under that portion of the constitution. Indeed, reviewing courts in this State have recognized proportionate penalties violations in cases involving non-life sentences.

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See People v. Taylor, 2015 IL 117267, ¶ 15 (mandatory 15-year sentencing enhancement that brought maximum sentence for armed robbery with a firearm to 45 years violated the proportionate penalties clause); *People v. Aikens*, 2016 IL App (1st) 133578, ¶¶ 37-38 (mandatory 20-year firearm enhancement that brought defendant's sentence to 40 years' imprisonment violated the proportionate penalties clause). There is no constitutional basis for prohibiting a state proportionate penalties analysis in cases where sentences are less than life.

C. This Court should join other state reviewing courts to recognize that youthful characteristics of emerging adults implicate proportionate sentencing under the state constitution.

State reviewing courts are beginning to recognize that the mitigating weight of youthfulness does not end abruptly at age 18, and that their own state constitutions provide additional sentencing protections for emerging adults. This State's constitutional limits on punishment should compel this Court to join the jurisdictions that now grant the same sentencing considerations to emerging adults that are granted to their younger peers.

In *State v. O'Dell*, 358 P.3d 359 (Wash. 2015) (en banc), the Washington Supreme Court held, "a trial court must be allowed to consider youth as a mitigating factor when imposing a sentence on an offender like [the petitioner], who committed his offense just a few days after he turned 18." *Id.* at 366. Notwithstanding the state legislature's determination "that all defendants 18 and over are, *in general*, equally culpable for equivalent crimes," the court stressed that the legislature "could not have considered the particular vulnerabilities—for example, impulsivity, poor judgment, and susceptibility to outside influences—of specific individuals." *Id.* at 364. On this basis, and in reliance on "advances in the scientific literature" demonstrating "that age may well mitigate a

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defendant's culpability, even if that defendant is over the age of 18," *id.* at 366, the court reasoned that a trial court "must be allowed to consider"—and, indeed, abuses its discretion if it does not "meaningfully consider"—"youth as a possible mitigating circumstance" that could support a departure from the standard adult sentencing range. *Id.* at 366-67. *See also In re Monschke*, 482 P.3d 276, 280 n. 8 (Wash. 2021) (identifying "an affirmative trend among the states to carve out rehabilitative space for 'young' or 'youthful' offenders as old as their mid-20s"). Drawing on the scientific literature that has continued to evolve before and after *Miller*, *cf. supra* Part I.A., and noting that the varying age-based distinctions across Washington's statutes "reflect the need for flexibility in defining the nebulous concept of 'adulthood' or 'majority,'" the plurality stressed the need for sentencing discretion that is robust enough to permit individualized consideration of the differences between youthful defendants, including emerging adults, and defendants with fully developed brains. *Monschke*, 482 P.3d at 284. *See also supra* Part I.B (examining similar variations in Illinois's laws). The Court continued:

> The State's conclusion from these [scientific] articles appears to be that because there is no accounting for the brain development and maturity of particular individuals, we may as well give up and let the legislature draw its arbitrary lines—because they will necessarily be arbitrary no matter where they are drawn. But giving up would abdicate our responsibility to interpret the constitution. The State is correct that every individual is different, and perhaps not every 20-year-old offender will deserve leniency on account of youthfulness. *But the variability in individual attributes of youthfulness are exactly why courts must have discretion to consider those attributes as they apply to each individual youthful offender. That is why mandatory sentences for youthful defendants are unconstitutional.*

Monschke, 482 P.3d at 285 (emphasis added).

Likewise, the Michigan Supreme Court recently held that the sentence of mandatory life without parole for a defendant who was 18 years old at the time of his offense violated the Michigan Constitution's "cruel or unusual punishment" clause, Mich.

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Const. art. I, § 16. *People v. Parks*, No. 162086, -- N.W.2d ---, 2022 WL 3008548 (Mich. July 28, 2022). Specifically, the court held "that the Michigan Constitution requires that 18-year-olds convicted of first-degree murder receive the same individualized sentencing procedure ... as juveniles who have committed first-degree murder, instead of being subjected to a mandatory life-without-parole sentence like other older adults." *Id.* at *10. The court observed, based on what it characterized as "a clear consensus that late adolescence—which includes the age of 18—is a key stage of development characterized by significant brain, behavioral, and psychological change," *id.* at *13, that "there is no meaningful distinction between those who are 17 years old and those who are 18 years old." *Id.* at *14. The court also acknowledged that "[t]he ongoing neurodevelopment described in scientific and medical literature, characterized by neuroplasticity and its attendant characteristics, blurs the already thin societal line between childhood and young adulthood." *Id*. Accordingly, the court determined that the principle of proportionality derived from the Michigan Constitution requires that "[t]he attributes of youth must be considered to ensure that the sentencing of 18-year-old defendants found guilty of first-degree murder passes constitutional muster." *Id.* at *20.

Still other reviewing courts are also beginning to consider claims that mandatory sentences without any allowance for individualized consideration of an emerging-adult defendant's youthfulness violate many of the same constitutional guarantees applicable to juveniles. The Appellate Court of Connecticut, for instance, reversed a trial court's failure to provide an evidentiary hearing to a defendant who filed a motion to correct an illegal sentence and argued that his 35-year sentence for a murder offense committed when he was 19 violated the state constitution. *See State v. Miller*, 200 A.3d 735, 741-42 (Conn.

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App. Ct. 2018); *see also State v. Turner*, -- A.3d ---, 214 Conn. App. 584 n.8 (Conn. App. Ct. Aug. 23, 2022) (noting that the state constitutional question remains "undecided"). The Pennsylvania Superior Court, in recognizing that the United States Supreme Court's decisions in *Miller* and *Montgomery* were inapplicable to a petitioner for postconviction relief who was 18 at the time of her offense, has "urge[d]" the Pennsylvania Supreme Court to review the issue of whether such a constitutional right applies to individuals older than 18, in light of research conducted after a 2017 decision that recognized the scientific principles underlying *Miller* and its progeny. *Commonwealth v. Lee*, 206 A.3d 1, 11 n.11 (Pa. Super. Ct. 2019) (en banc); *see also id.* at 4, 10 (recognizing the "compelling" nature of the petitioner's argument that the principles underlying *Miller* apply to an 18-year-old).[3]

Notably, the constitutional directive to extend the safeguard of individualized consideration of youthfulness and its potential mitigating weight to late adolescents in Illinois is stronger than in other states upon comparison of the states' constitutions. Washington and Michigan have constitutions prohibiting "cruel punishment" and "cruel or unusual punishment," respectively, which their highest courts have long interpreted to incorporate some constitutional guarantee of proportionality in sentencing. *See, e.g.*, *State*

[3] Even in states that have rejected such arguments by emerging adults, some jurists have opined that individualized consideration of youth for individuals over the age of 18 is necessary to prevent disproportionate punishments. *See, e.g., State v. Hassan*, 977 N.W.2d 633, 644 (Minn. 2022) (Chutich, J., concurring in part and dissenting in part) ("Given recent and compelling advances in brain science, it is hard not to imagine a situation in which sentencing a 21-year-old offender to life without the possibility of release would be without any penological justification . . . I would adopt a procedural rule that requires a district court to hold an individualized sentencing hearing to determine whether, based on relevant brain science, the brain of the youthful offender was fully developed at the time of the offense before the court may sentence the offender to life in prison without the hope of release."); *Dorsey v. State*, 975 N.W.2d 356, 380 (Iowa 2022) (Appel, J., dissenting); *Benton v. Kelley*, 602 S.W.3d 96, 101 (Ark. 2020) (Hart, J., dissenting).

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v. Fain, 617 P.2d 720, 725, 728 (Wash. 1980) (en banc) (recognizing that evolving proportionality standards inform the definition of cruel punishment); *People v. Lorentzen*, 194 N.W.2d 827, 830-31 (Mich. 1972) (collecting cases in support of Michigan's historical application of a proportionality test to define cruel or unusual punishment and concluding "that the dominant test of cruel and unusual punishment is that the punishment is in excess of any that would be suitable to fit the crime"). But in Illinois, no inferential step is necessary; the twin sentencing imperatives of proportionality ("penalties ... determined ... according to the seriousness of the offense") and rehabilitation ("penalties ... determined ... with the objective of restoring the offender to useful citizenship") are plain on the face of the Illinois Constitution. Ill. Const. 1970, art. I, § 11. Mandatory sentencing enhancements that preclude consideration of youthful characteristics that bear on culpability for an offense *and* potential for rehabilitation disregard both of these constitutional provisions. This Court should join those courts that have extended their states' implicit constitutional guarantees to emerging adults at sentencing and give full effect to the Illinois Constitution's explicit guarantees.

The groundwork has already been laid in Illinois. The Illinois General Assembly has enacted legislative reform that is responsive to emerging evidence that late adolescents are continuing to develop, just like their younger peers. Additionally, this Court has established that in sentencing, the gravity of the offense is reviewed in connection with the severity of the sentence "within our community's evolving standard of decency." *Miller*, 202 Ill. 2d at 340. Holding that mandatory firearm enhancements are unconstitutional as applied to individuals ages 18-21 is a fitting next step in this state's proportionate penalties jurisprudence.

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This case illustrates the problem with imposing mandatory sentencing enhancements on young adolescents from a constitutional standpoint. Here, the trial court's assessment of Mr. Hilliard's level of blameworthiness can be ascertained through his underlying sentence for attempted murder. Attempted murder is a Class X felony, punishable by a maximum term of 30 years in prison. 720 ILCS 5/8-4(c)(1) (attempt first-degree murder is a Class X felony); 730 ILCS 5/5-4.5-25(a) (Class X felonies are subject to a prison term of 6 to 30 years). Mr. Hilliard's 15-year sentence signals that the trial judge did not find him so blameworthy that he deserved a sentence of several decades in prison. Upon addressing the mandatory sentencing enhancement, the court ordered the minimum term of 25 years, again showing that the court did not believe Mr. Hilliard was blameworthy enough to warrant a high penalty. A mandatory enhancement that far exceeds the underlying sentence itself, without consideration of an 18-year-old's age and attendant circumstances, is disproportionate without more to suggest the individual is more culpable than a similarly-situated defendant just a few months younger.

Nor could the court consider Mr. Hilliard's capacity for rehabilitation and return to useful citizenship. Studies have consistently shown that overly-long sentences for adolescents increase, rather than decrease, the risk of recidivism and failure to live successfully outside the criminal legal system. *See* discussion *supra* Part I.A. Here, for first two or more decades of Mr. Hilliard's adult life, he will be prevented from taking the steps needed to develop into what society considers a useful citizen such as obtaining a job, housing, or credit history, solely because of a mandatory 25-year increase on his sentence.

Any sentence that must be given without consideration of youth and rehabilitative potential shocks the moral sense of the community. *Miller*, 202 Ill. 2d at 341. As explained

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by the *Leon Miller* court, and expounded on above, Illinois has long distinguished between adult and juvenile offenders and has led the charge to treat juveniles in a developmentally appropriate manner in criminal matters. *Id*. And as explained herein, Illinois has also come to understand and recognize that little developmental distinction exists between older juvenile offenders and emerging adults, and its laws have evolved accordingly. So mandatory sentencing enhancements—particularly for emerging adults—are unconstitutional.

CONCLUSION

Now is the time for this Court to firmly state that the Eighth Amendment and the proportionate penalties clause are separate entities, and that young people may raise claims under the proportionate penalties clause regardless of their sentences. This State recognizes that juveniles are more capable of rehabilitation, and that juveniles who are beyond rehabilitation are exceedingly rare. Principles of neuroscience and psychology affirm that 18-year-olds are not categorically different from juveniles from a developmental standpoint. Accordingly, the sentencing of emerging adults between the ages of 18 and 21 should always reflect the focus of article I section 11: restoring a person to useful citizenship. For these reasons, this Court should hold that mandatory firearm sentencing enhancements for emerging adults between the ages of 18 and 21 violate the Illinois Constitution, and at minimum, this Court should hold that Mr. Hilliard's sentence is unconstitutional.

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 31 pages.

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