

1 Name: \_\_\_\_\_

2 Address: \_\_\_\_\_

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

8

IN AND FOR THE COUNTY OF \_\_\_\_\_

9

10

11 People of the State of California,

12 *Plaintiff,*

Superior Court No.

13

v.

\_\_\_\_\_

14

\_\_\_\_\_

15

*Defendant.*

16

17

**Motion for a *Franklin/Cook* proceeding  
under Penal Code section 1203.01  
and for appointment of counsel**

18

19

20

\_\_\_\_\_ respectfully files this motion seeking an evidence

21

preservation proceeding under *People v. Franklin* (2016) 63 Cal.4th 261, and *In re Cook* (2019)

22

7 Cal.5th 439, at which s/he will be permitted to make a record of mitigating evidence tied to

23

her/his youth. (See also *People v. Perez* (2016) 3 Cal.App.5th 612.) S/he further requests

24

appointment of counsel to effectuate her/his rights at this proceeding. (See *Penon v. Ohio*

25

(1988) 488 U.S. 75, 84; *People v. Hackett* (1995) 36 Cal.App.4th 1297, 1307-1308; U.S. Const.,

26

27

6th & 14th Amends.; Cal. Const., art. I, §§ 7, 15.)

28

1 **Background**

2  
3 On \_\_\_\_\_, 20\_\_, \_\_\_\_\_ was charged with:

4 \_\_\_\_\_ and with the following enhancements/special  
5 circumstances: \_\_\_\_\_ . On

6 \_\_\_\_\_, 20\_\_, \_\_\_\_\_ was found guilty of \_\_\_\_\_ and the  
7 following allegations were found true: \_\_\_\_\_ .

8  
9 On \_\_\_\_\_, 20\_\_, \_\_\_\_\_ was sentenced to life without the possibility of  
10 parole (LWOP).

11 \_\_\_\_\_ now files this motion seeking a *Franklin/Cook*  
12 proceeding under Penal Code section 1203.01, and the appointment of counsel to represent  
13 him/her at the proceeding.

14  
15 \_\_\_\_\_ acknowledges that this court is bound by Court of Appeal  
16 authority holding that the exclusion of 18- to 25-year-olds sentenced to LWOP from youth  
17 offender parole does not violate equal protection. (See, e.g., *People v. Jackson* (2021) 279  
18 Cal.Rptr.3d 396, 401-404.) Nonetheless, to preserve this claim for further review, s/he files this  
19 section 1203.01 motion contending that the exclusion of 18- to 25-year-olds from youth offender  
20 parole violates his/her constitutional rights to equal protection (U.S. Const., 14th Amend.; Cal.  
21 Const., art. I, § 7.)

22  
23 \_\_\_\_\_ further contends that the exclusion of 18- to 25-year-olds from  
24 youth offender parole, and the failure to provide any mechanism for parole in his/her case,  
25 violates the state constitutional ban on cruel or unusual punishment. (Cal. Const., art. I, § 17.)  
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27  
28

1 \_\_\_\_\_ is entitled to an evidence preservation proceeding under  
2 *Franklin, Cook*, equal protection principles, and the state constitutional ban on cruel or  
3 unusual punishment.

4 Offenders who, after final judgment, seek to preserve evidence for a youth  
5 offender parole hearing may file a Penal Code section 1203.01 motion, under the original caption  
6 and number, in superior court, citing *Cook, supra*, 7 Cal.5th 439. The motion should establish  
7 entitlement to a youth offender parole hearing and indicate when it is expected to occur. (*Id.* at p.  
8 458.) An equal protection challenge to the exclusion of 18- to 25-year-old LWOP offenders from  
9 youth offender parole may be raised in the motion. (*People v. Sands* (2021) 70 Cal.App.5th 193,  
10 200-202.) Likewise, movant's cruel or unusual punishment claim may be raised in the motion.

11 \_\_\_\_\_ was \_\_\_\_\_ years old at the time of the crime(s) of conviction.  
12 (See \_\_\_\_\_.) Based on equal protection and cruel or unusual punishment principles, set  
13 forth in the attached memorandum, s/he is entitled to a youth offender parole hearing under Penal  
14 Code section 3051 after 25 years in state prison. \_\_\_\_\_ has been in custody since  
15 \_\_\_\_\_ and will have served 25 years in \_\_\_\_\_, 20\_\_\_. (See \_\_\_\_\_.)

16 \_\_\_\_\_ requests that upon the filing of this motion, this Court appoint  
17 \_\_\_\_\_  
18 counsel to represent her/him. (See *Penon, supra*, 488 U.S. at p. 84; *Hackett, supra*, 36  
19 Cal.App.4th at pp. 1307-1308; U.S. Const., 6th & 14th Amends.; Cal. Const., art. I, §§ 7, 15.)

20 Dated: \_\_\_\_\_, 20\_\_ Respectfully submitted,  
21 \_\_\_\_\_  
22 \_\_\_\_\_  
23 \_\_\_\_\_  
24 \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_

1 **Memorandum of Points and Authorities**

2 **I. THE EXCLUSION OF EIGHTEEN- TO TWENTY-FIVE-YEAR-**  
3 **OLDS SENTENCED TO LIFE WITHOUT PAROLE FROM**  
4 **YOUTH OFFENDER PAROLE CONSIDERATION VIOLATES**  
5 **EQUAL PROTECTION.**

6 **A. Equal protection is violated when similarly situated groups are**  
7 **treated differently without a rational basis.**

8 The Fourteenth Amendment's equal protection clause "commands that no State  
9 shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is  
10 essentially a direction that all persons similarly situated should be treated alike. [Citation.]" (*City*  
11 *of Cleburne v. Cleburne Living Center* (1985) 473 U.S. 432, 439.) Likewise, Article I, section 7  
12 of the California Constitution guarantees equal protection. (See *People v. Edwards* (2019) 34  
13 Cal.App.5th 183, 195.)

14 In assessing an equal protection claim, the first question is whether "the state has  
15 adopted a classification that affects two or more *similarly situated* groups" unequally. (*People v.*  
16 *Brown* (2012) 54 Cal.4th 314, 328 [citation and internal quotation marks omitted].) "This initial  
17 inquiry is not whether persons are similarly situated for all purposes, but whether they are  
18 similarly situated for purposes of the law challenged." (*Ibid.* [citation and internal quotation  
19 marks omitted].) The second question is whether there is a "rational relationship between the  
20 disparity of treatment and a legitimate governmental purpose" (*Edwards, supra*, 34 Cal.App.5th  
21 at p. 197), i.e., whether the classification "rationally advances a reasonable and identifiable  
22 governmental objective ... ." (*Schweiker v. Wilson* (1981) 450 U.S. 221, 235.) Courts addressing  
23 equal protection claims must "conduct a *serious and genuine judicial inquiry* into the  
24 correspondence between the classification and the legislative goals." (*Fein v. Permanente Med.*  
25 *Grp.* (1985) 38 Cal.3d 137, 163 [citations and internal quotation marks omitted].)

1 Again, movant recognizes that this court is bound to follow Court of Appeal  
2 precedent holding that the exclusion of 18- to 25-year old LWOP offenders from youth offender  
3 parole does not violate equal protection. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57  
4 Cal.2d 450, 455.) Nonetheless, s/he presents the argument below for purposes of further review.  
5

6 **B. There is no rational basis for denying youth offender parole hearings**  
7 **to 18- to 25-year-olds sentenced to LWOP when similarly situated**  
8 **groups are entitled to such hearings.**

9 **1. LWOP offenders aged 18 to 25 are similarly situated to de**  
10 **facto LWOP offenders aged 18 to 25; no rational basis**  
11 **supports granting the possibility of youth offender parole to**  
12 **the latter but not the former.**

13 Eighteen- to 25-year-olds sentenced to LWOP and 18- to 25-year-olds sentenced  
14 to de facto LWOP have effectively the same sentence. They are similarly situated for purposes of  
15 section 3051 – and for purposes of any of the recognized rationales for punishment.

16 The purpose of section 3051 is to determine whether young people sentenced to  
17 life in prison ““have outgrown the youthful impulses that led to the commission of their  
18 offenses.”” (*People v. Acosta* (2021) 60 Cal.App.5th 769, 779, quoting *In re Jones* (2019) 42  
19 Cal.App.5th 477, 486 (conc. opn of Pollak, J.)) Eighteen- to 25-year-olds sentenced to LWOP  
20 are similarly situated to 18- to 25-year-olds sentenced to de facto LWOP. (See *Acosta, supra*, 60  
21 Cal.App.5th at p. 779; *Jackson, supra*, 279 Cal.Rptr.3d at pp. 405-406 (conc. opn. of Dato, J.);  
22 but see, e.g., *In re Williams* (2020) 57 Cal.App.5th 427, 435.)

23  
24 In determining whether there is a rational basis for the distinction the Legislature  
25 has drawn, the purpose of the statute remains critical. (*People v. Morales* (2021) 67 Cal.App.5th  
26 326, 351-352 (conc. & dis. opn. of Pollak, P.J.); *Fein, supra*, 38 Cal.3d at p. 163; *Romer v. Evans*

1 (1996) 517 U.S. 620, 632 [in applying rational basis review, the Court “insist[s] on knowing the  
2 relation between the classification adopted and the object to be attained”].)

3 As Justice Liu has explained, section 3051’s parole eligibility scheme is in tension  
4 with equal protection principles because it excludes certain people depending on the crime of  
5 conviction, when the “mitigating attributes of youth are not ‘crime-specific.’” (*Jackson, supra*,  
6 279 Cal.Rptr.3d at pp. 406-407 (conc. statement of Liu, J., on denial of review).)<sup>1</sup>

7 But even if “crime-specific” distinctions could be drawn, the distinction the  
8 Legislature has drawn does not withstand equal protection scrutiny. Courts that have concluded  
9 that the two groups are not similarly situated, or may rationally be treated differently, have mis-  
10 defined the comparison group, and have concluded based on this mis-definition that those  
11 sentenced to LWOP are more culpable than those sentenced to non-LWOP sentences.  
12

13 For the purpose of this analysis, the group similarly situated to LWOP offenders  
14 aged 18 to 25 is not the entire group of people with sentences less than LWOP, or even the entire  
15 group of people sentenced to parole-eligible life-top sentences. Nor is it, as *Jackson* posits,  
16 “youthful offenders convicted of first degree murder.” (*Jackson, supra*, 279 Cal.Rptr.3d at p.  
17 403; see *Williams, supra*, 57 Cal.App.5th at 435-436 [comparing special circumstances murder  
18 with nonspecial circumstances murder and LWOP to parole-eligible life terms generally].)  
19

20 *Jackson* reasons that “youthful offenders who have been sentenced to LWOP  
21 have committed an aggravated form of first degree murder that distinguishes them from youthful  
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27 <sup>1</sup> More generally, “[t]he mere fact that certain defendants were convicted of different crimes” cannot resolve the  
28 “similarly situated” question. (*Jackson, supra*, 279 Cal.Rptr.3d at p. 405 (conc. opn. of Dato, J.)) “[S]imilar’ does  
not mean ‘identical.’” (*Ibid.*)

1 offenders who have committed first degree murder but done so in the absence of any such  
2 aggravating factors.” (*Jackson, supra*, 279 Cal.Rptr.3d at p. 404.) But those convicted of first-  
3 degree murder alone do not get a benefit from the youth offender parole law. Eighteen- to 25-  
4 year-olds convicted of first-degree murder in the absence of enhancements or other  
5 consecutively-sentenced crimes are eligible for parole after 25 years with or without Penal Code  
6 section 3051. It is primarily those who have been sentenced to lengthy life terms such as 50 to  
7 life, 75 to life, or even 300 to life, who get the benefit of youth offender parole. This group does  
8 not consist of people convicted of first-degree murder without any aggravating circumstances.  
9 Rather, it consists, largely, of people convicted of first-degree murder with enhancements and/or  
10 consecutive sentences for other crimes.  
11  
12

13           When the comparison is made to the appropriate group – the group that benefits  
14 from section 3051, i.e., 18- to 25-year-olds sentenced to de facto LWOP – it is clear the two  
15 groups are similarly situated, and there is no rational basis for treating them differently. There is  
16 no significant difference between LWOP and de facto LWOP. (See, e.g., *People v. Caballero*  
17 (2012) 55 Cal.4th 262, 268-269; *Franklin, supra*, 63 Cal.4th at pp. 275-276; *Moore v. Biter* (9th  
18 Cir. 2013) 725 F.3d 1184, 1187, 1191 [“no constitutionally significant” distinction between  
19 LWOP and 254 years]; *People v. Lewis* (2013) 222 Cal.App.4th 108, 119.)  
20

21           Contrary to the court’s statement in *Williams*, the Legislature has *not* “prescribed  
22 an LWOP sentence for only a small number” of the most “morally depraved” and “injurious”  
23 crimes. (*Williams, supra*, 57 Cal.App.5th at p. 436.) Rather, as this Court has recognized, LWOP  
24 applies to a “broad and diverse range” of first-degree murders. (*People v. Gutierrez* (2014) 58  
25 Cal.4th 1354, 1381.)  
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1           There are 21 special circumstances – one including twelve subsections – which,  
2 if found true, result in mandatory LWOP. (Pen. Code § 190.2(a);<sup>2</sup> Lynch, *Double Duty: The*  
3 *Amplified Role of Special Circumstances in California's Capital Punishment System* (2020) 51  
4 Colum. Hum. Rts. L.Rev. 1008, 1015-1016 [special circumstances do not narrow pool of first-  
5 degree murders much, if at all].) A recent study found that under the statute in effect in 2008,  
6 95% of first-degree murder convictions in California qualify for the death penalty (and therefore  
7 also for LWOP). (Grosso et al., *Death by Stereotype: Race, Ethnicity, and California's Failure*  
8 *to Implement Furman's Narrowing Requirement* (2010) 66 U.C.L.A. L.Rev. 1394, 1397.)<sup>3</sup>

9  
10           While the law identifies special circumstances permitting LWOP, it also, by  
11 providing for enhancements and consecutive sentencing, identifies circumstances permitting de  
12 facto LWOP. De facto LWOP sentences, like LWOP sentences, arise from a broad and diverse  
13 range of first-degree murders, with firearm enhancements and/or additional attempted murders or  
14 other crimes. (E.g. *People v. Sepulveda* (2020) 47 Cal.App.5th 291, 295, 297.)<sup>4</sup>

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21           <sup>2</sup> See *People v. Carrasco* (2014) 59 Cal.4th 924, 970 [heinous, atrocious, and cruel special  
circumstance is unconstitutional].

22           <sup>3</sup> The breadth of the special circumstances and the discretion afforded to prosecutors in  
23 deciding whether to charge such circumstances has led, at minimum, to inconsistency. (See *Morales*,  
24 *supra*, 67 Cal.App.5th at 354 (conc. & dis. opn. of Pollak, P.J.)) Worse, race and class bias may affect  
25 the determination whether to charge special circumstances. (See *ibid.*) Indeed, 79% of individuals  
26 serving LWOP in California are people of color. (Com. on Revision of Pen. Code, 2021 Annual  
Report [CRPC 2021 Annual Report], pp. 50-51 [available at  
[http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC\\_AR2021.pdf](http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf)].)

27           <sup>4</sup> De facto LWOP may also be imposed for second-degree murders with enhancements and  
28 additional convictions, or for multiple serious non-homicide crimes. Likewise, a limited number of  
non-homicide crimes can result in LWOP. (See *Williams, supra*, 57 Cal.App.5th at p. 436, fn. 6.)



1 Both LWOP offenders and de facto LWOP offenders have received an enhanced  
2 sentence that does not allow for parole in their lifetime – and are equally culpable if it is assumed  
3 that sentencing rationally reflects culpability. (See *Caballero, supra*, 55 Cal.4th at p. 272 (conc.  
4 opn. of Werdegar, J.) [“[A] criminal sentence must be directly related to the personal culpability  
5 of the criminal offender[.] [Citation.] [T]his concern applies equally whether the sentence is one  
6 of life without parole or a term of years that cannot be served within the offender’s lifetime.”].)

8 With respect to deterrence, there is no distinction between LWOP and de facto  
9 LWOP. (See *Sumner v. Shuman* (1987) 483 U.S. 66, 83.)

11 With respect to incapacitation, likewise, there is no distinction between LWOP  
12 and de facto LWOP; neither allows a meaningful opportunity to obtain release. (See *Caballero*,  
13 *supra*, 55 Cal.4th at p. 268.) The judgment that a person will be incorrigible for 100 years is no  
14 different from the judgment that they will be incorrigible forever. (Cf. *People v. Contreras*  
15 (2018) 4 Cal.5th 349, 369.)

17 More, both groups are similarly situated for purposes of motivating rehabilitation  
18 – another purpose of youth offender parole hearings. (See *Williams, supra*, 57 Cal.App.5th at pp.  
19 434-435; *Contreras, supra*, 4 Cal.5th at pp. 368-369.) Both groups are “more likely to enroll in  
20 school, drop out of a gang, or participate in positive programs if they can sit before a parole  
21 board sooner, if at all, and have a chance of being released.” (*Williams, supra*, 57 Cal.App.5th at  
22 p. 435; cf. *In re Woods* (2021) 62 Cal.App.5th 740, 752, review granted, June 16, 2021.)

24 In sum, in light of the specific purpose of section 3051, and even in light of any of  
25 the recognized rationales for punishment, 18- to 25-year-olds sentenced to LWOP are similarly  
26 situated to those in the same age group who have been sentenced to de facto LWOP.

1 Constitutionally, and practically, they have the same sentence. There is no rational basis for  
2 treating them differently.

3 **2. LWOP offenders aged 18 to 25 are similarly situated to LWOP**  
4 **offenders under 18; no rational basis supports granting youth**  
5 **offender parole hearings to the latter but not the former.**

6 The purpose of Penal Code section 3051 was to align public policy with scientific  
7 research showing that the brain does not fully develop until the early to mid-20s (see *People v.*  
8 *Montelongo* (2020) 274 Cal.Rptr.3d 267, 286 (conc. opn. of Segal, J.) [quoting legislative  
9 history]) and to permit evaluation of whether, “over an extended period of incarceration, an  
10 individual who committed a serious crime while still youthful has been rehabilitated and can be  
11 released from custody without risk to the public.” (*Morales, supra*, 67 Cal.App.5th at 352 (conc.  
12 & dis. opn. of Pollak, P.J.).)

13  
14  
15 Eighteen- to 25-year-olds sentenced to LWOP are similarly situated to people  
16 under 18 sentenced to LWOP for these purposes. (See *Acosta, supra*, 60 Cal.App.5th at pp. 778-  
17 779; *Jackson, supra*, 279 Cal.Rptr.3d at pp. 405-406 (conc. opn. of Dato, J.); but see *Williams,*  
18 *supra*, 57 Cal.App.5th at p. 435, fn. 5.) And given these purposes, there is no rational basis for  
19 treating the two groups differently.

20  
21 In *Sands*, the Court of Appeal reasoned that the Legislature “could rationally  
22 decide to remedy unconstitutional sentences but go no further.” (*Sands, supra*, 70 Cal.App.5th at  
23 p. 204 [citations omitted].) Examination of the entire youth offender parole scheme, however,  
24 makes clear that that was not the decision the Legislature made. The Eighth Amendment does  
25 not require any youth offender parole consideration for individuals over the age of 18, yet the  
26 Legislature, in light of scientific research on the youthful brain, has extended the scheme up to  
27

1 the age of 26. (See *Montelongo, supra*, 274 Cal.Rptr.3d at p. 286 (conc. opn. of Segal, J.); *id.* at  
2 288-289 (conc. statement of Liu, J., on denial of review).)

3  
4 Given the United States Supreme Court’s “clear statement that the mitigating  
5 attributes of youth are not ‘crime-specific’”<sup>5</sup> and the Legislature’s recognition that these  
6 attributes persist up to age 25, there is no rational basis for section 3051’s exclusion of 18- to 25-  
7 year-olds sentenced to LWOP. (Cf. *Montelongo, supra*, 274 Cal.Rptr.3d at pp. 289-290 (conc.  
8 statement of Liu, J., on denial of review) [questioning rational basis for LWOP exclusion].)

9  
10 **II. THE EXCLUSION OF 18- TO 25-YEAR-OLD LWOP OFFENDERS**  
11 **FROM YOUTH OFFENDER PAROLE VIOLATES THE STATE**  
12 **CONSTITUTIONAL BAN ON CRUEL OR UNUSUAL**  
13 **PUNISHMENT.**

14 Movant was sentenced to mandatory life in prison without the possibility of  
15 parole. All offenders sentenced to LWOP – regardless of age – are sentenced to die in prison.  
16 (See *Graham v. Florida* (2010) 560 U.S. 48, 69.) LWOP is “akin to the death penalty.” (*Miller,*  
17 *supra*, 567 U.S. at pp. 474-475.)

18 But movant effectively received one of the longest, harshest LWOP sentences a  
19 person could receive, perversely, *because of his/her youth*. (Cf. *Miller, supra*, 567 U.S. at p. 475,  
20 quoting *Graham, supra*, 560 U.S. at p. 70 [juvenile LWOP offenders “will almost inevitably  
21 serve ‘more years and a greater percentage of [their lives] in prison than an adult offender’”].)

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<sup>5</sup> *Montelongo, supra*, 274 Cal.Rptr.3d at pp. 289-290 (conc. statement of Liu, J., on denial of  
28 review); see *Miller v. Alabama* (2012) 567 U.S. 460, 473.

1 In recent years, state and federal courts have wrestled with reconciling the  
2 Supreme Court's clear command that "youth matters"<sup>6</sup> – and its rigid definition of youth as  
3 referring to individuals under 18 – with the scientific understanding that youth continues into an  
4 individual's twenties. While *Miller, supra*, 567 U.S. 460, held that a mandatory LWOP sentence  
5 for a juvenile is categorically cruel and unusual, California courts have held *Miller's* concerns  
6 end at age 18.  
7

8 These California decisions have been rooted not in state constitutional analysis or  
9 science, but in deference to the United States Supreme Court's interpretation of the Eighth  
10 Amendment. (See, e.g., *Montelongo, supra*, 274 Cal.Rptr.3d at pp. 279-280; *People v. Argeta*  
11 (2012) 210 Cal.App.4th 1478, 1482.)  
12

13 Some justices have questioned this bright line. One recently observed that while  
14 "the changes in the legal and scientific landscape since the United States Supreme Court decided  
15 *Roper*[<sup>7</sup>] in 2005 suggest we should reconsider the propriety, wisdom, and perhaps even the  
16 constitutionality of imposing a mandatory sentence of life without the possibility of parole on an  
17 18-year-old[.]" courts are "stuck with the line" drawn by the Supreme Court and the state  
18 Legislature. (*Montelongo, supra*, 274 Cal.Rptr.3d at p. 287 (Segal, J., concurring); see *U.S. v.*  
19 *Williston (10th Cir. 2017)* 862 F.3d 1023, 1040.)  
20

21 As research now shows – and as the state Legislature recognizes – youth aged 18  
22 to 25 share the physiological and psychological traits of individuals under 18. (See, e.g.,  
23  
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27 <sup>6</sup> *Miller, supra*, 567 U.S. at 473.

28 <sup>7</sup> *Roper v. Simmons* (2005) 543 U.S. 551, 571-575, banned the death penalty for juveniles.

1 *Montelongo, supra*, 274 Cal.Rptr.3d at 289 (conc. statement of Liu, J., on denial of review); *In re*  
2 *Murray* (2021) 68 Cal.App.5th 456, 460-462.) Eighteen- to 25-year-olds, like juveniles, are  
3 therefore less culpable and less deserving of the harshest punishments, including mandatory  
4 LWOP. It has accordingly become indefensible to exclude youthful offenders aged 18 to 25 from  
5 the benefit of an individualized sentencing that considers the mitigating qualities of youth, and  
6 this Court should so hold under the state constitution.<sup>8</sup>

8 Article I, section 17 of the California Constitution prohibits the infliction of  
9 “[c]ruel or unusual punishment.” A sentence violates this prohibition if it is so disproportionate  
10 to the crime “that it shocks the conscience and offends fundamental notions of human dignity.”  
11 (*People v. Dillon* (1983) 34 Cal.3d 441, 478.) The Eighth Amendment prohibits cruel *and*  
12 unusual punishment. (U.S. Const., 8th Amend.; *Caballero, supra*, 55 Cal.4th at p. 265, fn. 1.)

14 “The distinction in wording between the federal and state constitutions is  
15 substantive and not merely semantic.” (*People v. Avila* (2020) 57 Cal.App.5th 1134, 1145, fn.  
16 13.) While gross disproportionality may be the touchstone under both constitutions, courts must  
17 nonetheless construe the state provision separately from its federal counterpart. (*People v. Baker*  
18 (2018) 20 Cal.App.5th 711, 723; Cal. Const., art. I, § 24; *Raven v. Deukmejian* (1990) 52 Cal.3d  
19 336, 355.)

21 Three techniques, first identified in *In re Lynch* (1972) 8 Cal.3d 410, 425-427, are  
22 employed to determine whether a particular sentence is disproportionate under the California  
23 Constitution: (1) appellant’s background and the nature of the offense; (2) punishment in the

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27 <sup>8</sup> Regarding the Eighth Amendment, movant recognizes this court is bound by decisions of  
28 higher courts. (*Auto Equity, supra*, 57 Cal.2d at p. 455; *People v. Bradley* (1969) 1 Cal.3d 80, 86.)

1 same jurisdiction for more serious offenses; and (3) punishment for similar offenses in other  
2 jurisdictions. (*In re Nunez* (2009) 173 Cal.App.4th 709, 725.) Each “technique” can be sufficient  
3 by itself to demonstrate a particular sentence is unconstitutional. (E.g., *ibid.*; *Avila, supra*, 57  
4 Cal.App.5th at p. 1150; *Dillon, supra*, 34 Cal.3d at pp. 479-489; *id.* at p. 487, fn. 38.)

5  
6 The context in which these techniques are applied is not static; dating back to  
7 *Lynch*, contemporary standards of decency have been brought to bear. Addressing an  
8 indeterminate sentence of one year to life for indecent exposure, *Lynch* noted that at common  
9 law, and for 80 years after enactment of the 1872 Penal Code, indecent exposure was a  
10 misdemeanor. (*Lynch, supra*, 8 Cal.3d at p. 429.) The Court also noted proposed legislation to  
11 reclassify indecent exposure as a misdemeanor. (*Id.* at p. 437.) The life sentence for indecent  
12 exposure was thus, in historical context, an anomaly.

13  
14 Similarly, in *People v. Anderson* (1972) 6 Cal.3d 628, later abrogated, the Court  
15 held that capital punishment was impermissibly cruel judged against “contemporary standards of  
16 decency.” (*Id.* at pp. 650-651.) “The framers of our Constitution ... anticipated that interpretation  
17 of the cruel or unusual punishments clause would not be static but that the clause would be  
18 applied consistently with the standards of the age in which the questioned punishment was  
19 sought to be inflicted.” (*Id.* at p. 648.)

20  
21 And recently, the Court of Appeal noted that the “evolving state of California’s  
22 criminal jurisprudence is relevant to an analysis of disproportionality and, hence, to what is cruel  
23 or unusual punishment under our state constitution.” (*Avila, supra*, 57 Cal.App.5th at p. 1150.)  
24 *Avila* discussed significant changes to the Three Strikes law, additional changes to recidivist laws  
25 and firearms enhancements, and changes to the definitions of culpability for certain crimes as  
26 indicating a “sea change” in sentencing and suggestive of disproportionality in *Avila*’s sentence.  
27

1 (*Id.* at pp. 1150-1151.) *Avila* emphasized that what is common and routine is not necessarily  
2 constitutional, and that courts “must take a fresh look at old habits and the profound  
3 consequences they have in undermining our institutional credibility and public confidence.” (*Id.*  
4 at pp. 1151-1152.)

5  
6 While life sentences, including LWOP, may have become common in California,  
7 true LWOP – with no possibility of parole – may nonetheless, like the life sentence for indecent  
8 exposure in *Lynch*, be viewed as an historical anomaly. True LWOP was not common in  
9 California until the mid-1990s, when Board of Prison Terms reviews of LWOP sentences were  
10 discontinued. (See Com. on Revision of Pen. Code, First Supp. to Staff Memorandum 2021-06,  
11 Extreme Sentences and High Profile Enhancements [CRPC, Extreme Sentences], Panelist  
12 Materials, Exh. C, written submission of Prof. Christopher Seeds [available at:  
13 <http://www.clrc.ca.gov/CRPC/Pub/Memos/CRPC21-06.pdf>].) The Committee on Revision of  
14 the Penal Code has now recommended the creation of a review process for life without parole  
15 sentences. (CRPC 2021 Annual Report, *supra*, p. 50.)

16  
17  
18 More, a sea change has occurred in recent years in sentencing for young  
19 offenders. Contemporary standards, and settled federal constitutional law, now hold that young  
20 people are developmentally different from adults and less deserving of the harshest punishments.  
21 (See, e.g., *Roper, supra*, 543 U.S. at pp. 569-574, 578; *Miller, supra*, 567 U.S. at pp. 465, 471;  
22 *Graham, supra*, 560 U.S. at pp. 52, 82.) The Supreme Court has relied on three developmental  
23 characteristics of youth under the age of 18 to establish their diminished culpability: (1)  
24 impulsivity and immaturity; (2) susceptibility to outside influences, and (3) capacity for change.  
25 (See *Montgomery v. Louisiana* (2016) 577 U.S. 190, 207.)

1 The California Legislature has taken steps to bring juvenile sentencing into  
2 conformity with *Graham, Miller, and Caballero*.<sup>9</sup> And, recognizing that science now establishes  
3 that areas of the brain affecting judgment and decision-making do not fully develop until young  
4 adulthood, the Legislature has gone beyond the requirements established by the courts  
5 interpreting the Eighth Amendment. (See *Montelongo, supra*, 274 Cal.Rptr.3d at pp. 286-287  
6 (Segal, J., concurring).) The Legislature has amended section 3051 twice – first, in 2015, to  
7 extend youth offender parole to those under 23, and again, in 2017, to raise the age of eligibility  
8 to 25. (*Jones, supra*, 42 Cal.App.5th at pp. 484-485 (Pollak, J., concurring).)<sup>10</sup>

9  
10  
11 In addition to recognizing the evolving scientific evidence on brain development,  
12 the Legislature has also recently recognized that racial bias plays a role in who gets punished and  
13 for how long. The Racial Justice Act (“RJA”) now prohibits prosecutors from seeking conviction  
14 or sentence on the basis of race, ethnicity, or national origin.<sup>11</sup> The Legislature declared its intent  
15 “to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing” and  
16

17  
18  
19 <sup>9</sup> *Caballero, supra*, 55 Cal.4th at p. 268, held that a 110-to-life sentence for a juvenile  
20 nonhomicide offender amounted to LWOP and violated the federal constitution.

21 <sup>10</sup> Other states have similarly extended *Miller’s* guidance to age 21 or 25. (See,  
22 e.g., D.C. Code § 24-403.03 [offenders under the age of 25 at the time of the crime may apply  
23 for early release after 15 years]; *Matter of Monschke* (Wash. 2021) 482 P.3d 276, 286-287; The  
24 Sentencing Project, Policy Brief: Juvenile Life Without Parole (May 24, 2021), p. 5 [available at  
25 [https://www. sentencingproject.org/publications/juvenile-life-without-parole/](https://www.sentencingproject.org/publications/juvenile-life-without-parole/)] [in addition to  
26 D.C. and Washington State, legislation for individuals under 21 has progressed elsewhere]; see  
also *Nelson v. State* (Minn. 2020) 947 N.W.2d 31, 57 (Thissen, J., dissenting) [“*Miller’s* logic  
provides no explanation why [appellant who was seven days past his 18th birthday] should not  
be entitled to individualized consideration of his age while an offender who is 17 years and 364  
days old is so entitled.”].)

27 <sup>11</sup> The RJA applies prospectively to cases with trial court judgments on or after January 1,  
28 2021. (Pen. Code § 745(j).)



1 “to reject the conclusion that racial disparities within our criminal justice are inevitable, and to  
2 actively work to eradicate them.” (Stats. 2020, Ch. 317, § 2(i) (AB 2542).)

3 This legislative intent also bears on the application of evolving standards of  
4 decency to LWOP sentences, given the significant racial disparities. 79%-81% of individuals  
5 sentenced to LWOP are people of color; 70% are Black or Latinx. (CRPC 2021 Annual Report,  
6 *supra*, pp. 50-51.) The disparity is even more pronounced for those under 26 at the time of the  
7 offense: people of color are 86-87% of this group and Black and Latinx individuals are 76% of  
8 this group. (*Id.* at p. 51.)

9  
10 By themselves, these legislative choices do not resolve the constitutional issues  
11 this Court must decide. (See *In re Palmer* (2021) 10 Cal.5th 959, 965.) But these developments,  
12 on both fronts – the reduced culpability of offenders under 26 and the impact of racial bias – are  
13 relevant to the question of disproportionality under our state constitution. (See *Avila, supra*, 57  
14 Cal.App.5th at p. 1150.) Contemporary standards on youth and sentencing have changed, and a  
15 mandatory sentence of LWOP – a sentence to die in prison – for an 18- to 25-year-old offender is  
16 disproportionate and shocking to the conscience.

17  
18  
19 **III. THE LWOP SENTENCE IMPOSED IN THIS CASE, WHICH**  
20 **DOES NOT ALLOW FOR RELEASE ON PAROLE, IS**  
21 **UNCONSTITUTIONAL.**

22 Courts should account for the modern scientific and legislative understanding of  
23 extended adolescence when applying the *Lynch* techniques. Under the first technique, courts  
24 examine the nature of the offense and the offender’s background, looking to the defendant’s  
25 individual culpability, considering his or her age, personal characteristics, any prior criminality,  
26 and state of mind, and the degree of danger presented to society. (See *Nunez, supra*, 173  
27 Cal.App.4th at pp. 725, 731; *Dillon, supra*, 34 Cal.3d at p. 479.) Courts also assess the totality of

1 the circumstances surrounding the offense and whether the punishment fits the offender. (See  
2 *Baker, supra*, 20 Cal.App.5th at p. 724.) These particular facts about movant’s background and  
3 the offense establish a diminished level of culpability in several critical respects:  
4

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18           Second, a court compares the punishment imposed with punishments prescribed  
19 in California for more serious offenses. (*Lynch, supra*, 8 Cal.3d at pp. 426-427.) “[I]f among  
20 them are found more serious crimes punished less severely than the offense in question, the  
21 challenged penalty is to that extent suspect.” (*Id.* at p. 426.) A comparison nonetheless “remains  
22 instructive” when an offense is punished just as severely as a more serious crime. (*Dillon, supra*,  
23 34 Cal.3d at p. 487, fn. 38.) Because some statutes proscribe a wide range of conduct, courts  
24 must consider the entire range of conduct covered by the statute and a determination of the  
25 seriousness of the crime must turn on the facts of the individual case. (See *People v. Wingo*  
26 (1975) 14 Cal.3d 169, 177-178.)  
27

1           Movant’s sentence places him/her in a group that should include the most  
2 culpable offenders, including those who have committed first-degree murders with special  
3 circumstances involving bombing, for example. (See Pen. Code § 190.2(a).) It is unlikely that  
4 movant, a young person at the time of the crime of conviction, belongs in the group of the most  
5 culpable offenders in the state.<sup>12</sup>

7           Finally, in assessing whether a sentence is unconstitutionally disproportionate,  
8 courts compare the sentence with punishments other jurisdictions prescribe for the same offense.  
9 While it may be difficult to establish that California, in comparison to other jurisdictions in the  
10 U.S., disproportionately sentences individuals convicted of movant’s particular crime to LWOP,  
11 it is nonetheless clear that among nations, and across time, the routine use of LWOP, no matter  
12 the crime, is an anomaly. (See CPRC, 2021 Annual Report, *supra*, at pp. 50, 53, 55; The  
13 Sentencing Project, No End in Sight: America’s Enduring Reliance on Life Imprisonment  
14 [available at [https://www.sentencingproject.org/publications/no-end-in-sight-americas-enduring-  
15 reliance-on-life-imprisonment/](https://www.sentencingproject.org/publications/no-end-in-sight-americas-enduring-reliance-on-life-imprisonment/)], pp. 5, 11, 15; cf. *Avila, supra*, 57 Cal.App.5th at pp. 1151-1152  
16 [noting difficulty of interstate comparison, contextualizing lengthy sentences historically, and  
17 noting that “common is not synonymous with constitutional”].)

20           And in California, this extreme punishment is disproportionately imposed on  
21 youthful offenders. The majority of individuals sentenced to LWOP in California are, like  
22 movant, youthful offenders: Of the more than 5,000 people currently serving LWOP in  
23 California, 62 percent were under 26 at the time of their offense. (CRPC 2021 Annual Report,  
24

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27           <sup>12</sup> In general, “special circumstances do not seem to be channeling the most culpable people to  
28 life without parole sentences.” (CPRC, 2021 Annual Report, *supra*, at p. 52.)



ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: ( )- - FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> <b>PEOPLE OF THE STATE OF CALIFORNIA</b> vs. Defendant: Date of birth: _____ Cal. Dept. of Corrections and Rehabilitation No. (if any): _____	
<b>NOTICE OF APPEAL—FELONY (DEFENDANT)</b> (Pen. Code, §§ 1237, 1237.5, 1538.5(m); Cal. Rules of Court, rule 8.304)	CASE NUMBER:

**NOTICE**

- You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.
- **IMPORTANT:** If your appeal challenges the validity of a guilty plea, a no-contest plea, or an admission of a probation violation, you must also complete the Request for Certificate of Probable Cause on page 2 of this form. (Pen. Code, § 1237.5.)

1. Defendant appeals from a judgment rendered or an order made by the superior court.

NAME of defendant:

DATE of the order or judgment:

2. Complete either item a. or item b. Do not complete both.

a. If this appeal is after entry of a plea of guilty or no contest or an admission of a probation violation, check all that apply:

- (1)  This appeal is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea. (Cal. Rules of Court, rule 8.304(b).)
- (2)  This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
- (3)  This appeal challenges the validity of the plea or admission. (You must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature.)
- (4)  Other basis for this appeal (you must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature) (specify):

b. For all other appeals, check one:

- (1)  This appeal is after a jury or court trial. (Pen. Code, § 1237(a).)
- (2)  This appeal is after a contested violation of probation. (Pen. Code, § 1237(b).)
- (3)  Other (specify):

3.  Defendant requests that the court appoint an attorney for this appeal. Defendant  was  was not represented by an appointed attorney in the superior court.

4. Defendant's mailing address is:  same as in attorney box above.  
 as follows:

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE OF DEFENDANT OR ATTORNEY)

<b>PEOPLE OF THE STATE OF CALIFORNIA</b> vs. Defendant:	CASE NUMBER:
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**REQUEST FOR CERTIFICATE OF PROBABLE CAUSE**

I request a certificate of probable cause. The reasonable constitutional, jurisdictional, or other grounds going to the legality of the guilty plea, no-contest plea, or probation violation admission proceeding are *(specify)*:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF DEFENDANT OR ATTORNEY)

**COURT ORDER**

This Request for Certificate of Probable Cause is *(check one)*:  granted  denied.

Date:

\_\_\_\_\_  
JUDGE