

**STATE OF MICHIGAN
IN THE SUPREME COURT**

The People of the State of Michigan
Plaintiff-Appellee,

MSC No. 166654

v

COA No. 348732

Andrew Michael Czarnecki
Defendant-Appellee.

Wayne County Circuit Court
Case No. 16-10813-01-FC

**AMICUS CURIAE BRIEF
OF THE CHILDREN'S LAW SECTION OF THE STATE BAR OF MICHIGAN**

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Statement of Questions Presented

The Children's Law Section concurs with the Statement of Questions Involved contained in the Defendant-Appellant's Supplemental Brief (Questions I-II).

**STATEMENT OF INTEREST OF AMICUS CURIAE CHILDREN’S LAW SECTION OF
THE STATE BAR OF MICHIGAN**

The Children’s Law Section (Section or CLS) is a recognized section of the State Bar of Michigan, with over 400 members who are attorneys and judges working in Michigan’s child welfare system. The Section works to advance the rights and protect the interests of children and families who become involved in matters before the Probate Courts and Family Divisions of the Circuit Courts, in the State of Michigan. The Section strives to improve the courts and agencies serving children and their families, through regular meetings among peers, organizing and attending relevant training events, active engagement by members on multi-disciplinary task forces convened by the Section itself, as well as by the Michigan Department of Health and Human Services (DHHS), the State Court Administrative Office (SCAO), Michigan Courts, and others. The Section provides services to its membership in the form of educational seminars, and advocating for and commenting on proposed legislation relating to child welfare law topics. The Section also files *amicus curiae* briefs in selected child welfare law cases with the potential for widespread impact in the field of child welfare law, such as the one before this Court.

The Children’s Law Section concurs with the arguments made in Appellant Andrew Czarnecki’s Supplemental Brief.¹

Introduction

Andrew’s Supplemental Brief raises several points related to proceedings under Michigan’s Juvenile Code and about which the Children’s Law Section has expertise/experience: first, the obvious but important fact that children differ from adults, which fact is reflected in

¹ Per MCR 7.312(H)(5), undersigned counsel declares that the CLS in its Amicus Brief concurs in and adopts the arguments made and positions taken by Andrew Czarnecki in his Supplemental Brief. No counsel for a party and no party made any monetary contribution intended to fund the preparation or submission of this Amicus Brief.

special rules, statutes, and considerations for Juvenile Code proceedings as well as in state and federal caselaw; second, the imperative for courts presiding over cases involving children to consider a wide range of facts and details concerning those children; and third, the critical importance of a judge's discretion and individualized decision-making when it comes to youth. On a related point and as detailed below, the law, science, and the Section all recognize that youth are uniquely amenable to rehabilitation.

Andrew's Supplemental Brief reveals that Andrew was an abused and neglected child, but it does not appear that any Child Protective Proceeding was ever filed to protect and provide services to Andrew. The Children's Law Section acknowledges that Andrew's instant appeal arises from a criminal case, conviction and sentencing. The Section's experience with state and federal laws and policies, supporting and requiring efforts to rehabilitate each child in juvenile justice proceedings is relevant to Andrew's request for resentencing for an offense he committed when he was just 19 years old. To permit resentencing so that the sentencing judge could assess and consider facts and circumstances relating to Andrew's life and circumstances as the child he was before and at age 19, and about how he has developed, learned, and matured since he was incarcerated, is consistent with the spirit, intent, and purpose of and underlying state and federal laws and policies governing proceedings involving children.

Statement of Facts

Amicus Curiae Children's Law Section concurs with the Statement of Facts set forth in Andrew's Supplemental Brief, and incorporates same into this brief. (Andrew's Supplemental Brief, pp 9-12).

Standard of Review

Amicus Curiae Children's Law Section concurs with the Standard of Review as set forth

in Andrew's Brief, and incorporates same into this brief. (Andrew's Supplemental Brief, p 13).

Arguments

Amicus Curiae Children's Law Section concurs with Andrew's arguments in his Supplemental Brief and incorporates same into this brief. (Andrew's Supplemental Brief, pp 13-42). In addition, the Section adds to Andrew's Arguments, as follows:

Children's Law Section's Argument Overview

Under Michigan's Juvenile Code, the family court division of circuit court may extend its jurisdiction over youth beyond the age of majority. See, *e.g.*, MCL 712A.2a(1) ("... if the court has exercised jurisdiction over a juvenile under section 2(a) or (b) of this chapter, **jurisdiction shall continue for a period of 2 years beyond the maximum age of jurisdiction** conferred under section 2 of this chapter, unless the juvenile is released sooner by court order."). MCL 712A.2a(1) (emphasis added). See also MCL 712A.2a(5),² and MCR 3.903(A)(4) ("'Court' means the family division of the circuit court...").

Twin hallmarks of proceedings under the Juvenile Code are the trial court's broad discretion and the requirement for courts to consider, assess and determine each individual child's needs, well-being, and circumstances in all cases involving children. The paramount purpose of

² "MCL 712A.2a(5) and MCL 712A.18d(1) provide that **the court may extend jurisdiction over a juvenile until age 21** if the juvenile is committed to a public institution or agency under MCL 712A.18(1)(e) for an offense that would be a violation or attempted violation of any of the following: *** •first-degree murder, MCL 750.316; •second-degree murder, MCL 750.317;..." Michigan Judicial Institute Benchbook, *Delinquency and Criminal Proceedings*, Third Edition, section 12.2 "Continued Jurisdiction Beyond a Juvenile's 18th Birthday," subsection C (emphasis added), available at:

https://www.courts.michigan.gov/4a7d32/siteassets/publications/benchbooks/jjbb/jjbbresponsive.html5.zip/index.html#t=JJBB%2FCh_12_Review_of_Juvenile_Dispositions_and_Extending_Jurisdiction%2FContinued_Jurisdiction_Beyond_aJuveniles_18th_Birthday-gqb41326b.htm.

Michigan’s Juvenile Code, which governs child protective and juvenile justice³ proceedings, is to protect and ensure the well-being of children. MCL 712A.1(3) (“This chapter shall be liberally construed so that each juvenile coming within the court’s jurisdiction receives the care, guidance, and control, ... conducive to the juvenile’s welfare and the best interest of the state.”). Juvenile Code proceedings – even those cases in which a child is charged with what would be a criminal offense if the child were an adult – recognize the fundamental distinctions between children and adults, and such proceedings are geared toward rehabilitating the child, ensuring the child gets necessary services, treatment, and other supports required to counteract childhood abuse, neglect and trauma.⁴ The science, reasoning, and philosophy which underlie Juvenile Code proceedings – the recognition that children are constantly evolving and learning such that no “one-size-fits-all” approach can be taken – should equally apply to and guide a trial court when it must impose a criminal sentence for a serious crime on a young person like Andrew.

I. Federal and Michigan laws and policies define “child” as an individual up to 21 years of age in some cases, in recognition of the material differences between adults and children and of the adverse impacts of abuse, neglect and other trauma.

Michigan’s Juvenile Code defines the word “child” to include those who are less than, but also, **over** the age of 18:

“Except as provided in subsection (9), as used in this chapter, “child”, “minor”, “youth”, or any other term signifying a person under the age of 18 applies to a person 18 years of age **or older** concerning whom proceedings are commenced in the court under section 2 of this chapter and over whom the court has continuing jurisdiction under subsections (1) to (6).” MCL 712A.2a(8).⁵ (emphasis added).

³ Sometimes referred to as “delinquency” proceedings. See, *e.g.*, MCR 3.900; MCR 3.903(B)(3); Michigan Judicial Institute Benchbook, *Delinquency and Criminal Proceedings*, Third Edition.

⁴ Andrew cites expert studies detailing some of the differences between children and adults, including developmental issues, emotional and psychological maturity, lack of judgment, risk-taking, among others. See, *e.g.*, Andrew’s Supplemental Brief, pp 15-18.

⁵ This definition comes from a chapter of the Probate Code entitled “Jurisdiction, Procedure, and Disposition Involving Minors.” Probate Code of 1939 (excerpt), Act 288 of 1939, Chapter XIIA.

In juvenile justice proceedings in which a court has asserted jurisdiction over a child before the age of 18, the court can retain jurisdiction of the child until he reaches 21 years of age. See, *e.g.*, MCL 712A.2a(5) (“If the court has exercised jurisdiction over a juvenile under section 2(a)(1) of this chapter for an offense that, if committed by an adult, would be a violation or attempted violation of section ... 750.316 [first degree murder], 750.317 [second degree murder], ... **jurisdiction may be continued under section 18d of this chapter until the juvenile is 21 years of age.**” (emphasis added)).⁶ See also, MCL 803.307 (youth accepted as public wards “for purposes of care and rehabilitation,” MCL 803.303(1), can remain under court jurisdiction until age 19 or 21, in certain circumstances).⁷

Federal law similarly defines “child” in several ways, to include those persons not yet 18 years old, but also those older than 18 at “the option of a State.” Thus, the term “child” “... shall include an individual --- (i)(ii) who has attained 18 years of age;...” and the term “child” shall *also* include an individual “(iii) who has not attained 19, 20, or 21 years of age, as the State may elect;...” 42 USC 675(8)(A), (B)(ii) and (iii).⁸ The federal government grants this flexibility to states to define a “child” as a person up to age 21 under state law, both to acknowledge the known adverse and lifelong impacts of childhood abuse and neglect as well as the recognition of how young people are continuing to develop, learn, and mature into their twenties.

⁶ In turn, MCL 712A.2a(1) provides: “Except as otherwise provided in this section, if the court has exercised jurisdiction over a juvenile under section 2(a) or (b) of this chapter, jurisdiction shall continue for a period of 2 years beyond the maximum age of jurisdiction conferred under section 2 of this chapter, unless the juvenile is released sooner by court order.” See also, MCR 3.903(A)(16), defining “minor” as “a person under the age of 18, **and may include a person of age 18 or older...**” (emphasis added).

⁷ As further example, in the Foster Care Independence Act, Michigan defines the term “young adult” as “an individual 14 years of age or older but less than 21 years of age.” MCL 722.981(2)(f).

⁸ The federal law cited here is contained within Title IV-E of the Social Security Act, 42 USC 670, *et seq.*, which governs federal funding for foster care and adoptive cases. See, *In re Rood*, 483 Mich 73, 78-79 and 102-106 (2009).

In *People v Parks*, 510 Mich 225, 236-237 (2022), this Court noted the three significant differences between children and adults. “First, children have a ‘lack of maturity and an underdeveloped sense of responsibility,’ leading to recklessness, impulsivity, and heedless risk-taking.” *Parks*, 510 Mich at 235, quoting *Miller v Alabama*, 567 US 460, 471 (2012). “Second, children ‘are more vulnerable ... to negative influences and outside pressures,’ including from their family and peers; they have limited ‘contro[l] over their own environment’ and lack the ability to extricate themselves from horrific, crime-producing settings.” *Id.* at 235-236. “And third, a child’s character is not as ‘well formed’ as an adult’s; his traits are ‘less fixed’ and his actions less likely to be ‘evidence of irretrievabl[e] deprav[ity].’” *Id.* at 236.

If one adds abuse, neglect, and homelessness, on top of the baseline elements of youth described in *Miller/Parks*, it is clear Andrew would fall squarely within the group of children and youth for whom Michigan’s child welfare and juvenile justice exist to support and protect. The federal government permits the states to access federal funding to care for, house, and offer treatment and counseling to, system-involved youth⁹ well beyond the typical “age of majority” because such youth are often suffering from long-term adverse consequences of neglect or abuse by their parents and other caregivers, and when provided necessary supports and services, these young people can make important and necessary changes. Such young people are uniquely capable of growth and rehabilitation.

Federal and state laws and policies reflect the expert findings and research showing how child abuse and neglect adversely impacts children, not only physically but developmentally, emotionally, and psychologically. Harvard University’s Center on the Developing Child offers a

⁹ The phrase “system-involved youth” refers to children involved in child protective proceedings and juvenile-justice proceedings.

website and working papers devoted to the science of “brain architecture.”¹⁰ On this site, Harvard documents how a child’s brain development can be stunted and derailed by adverse childhood experiences like abuse and neglect:

Early experiences affect the development of brain architecture, which provides the foundation for all future learning, behavior, and health. Just as a weak foundation compromises the quality and strength of a house, **adverse experiences early in life can impair brain architecture**, with negative effects lasting into adulthood.

Brains are built over time, from the bottom up. The basic architecture of the brain is constructed through an ongoing process that begins before birth and continues into adulthood. ...

The interactions of genes and experience shape the developing brain. ... In the absence of responsive caregiving—or if responses are unreliable or inappropriate—the brain’s architecture does not form as expected, which can lead to disparities in learning and behavior. [Harvard University’s Center on the Developing Child, “Brain Architecture” (emphasis added).¹¹]

Harvard’s Center on the Developing Child discusses the 1995 “ACEs” study on adverse childhood experiences,¹² which focused on three types of “...adversity children faced in the home environment – [] physical and emotional abuse, neglect, and household dysfunction.”¹³ The site explains how the ACEs research correlated adverse childhood events with “poor outcomes” later in life and discussed the effects of “toxic stress” on the child’s developing brain:

Toxic stress explains how ACEs “get under the skin” and trigger biological reactions that lead to those outcomes. In the early 2000s, the National Scientific Council on the Developing Child coined the term “toxic stress” to describe extensive, scientific knowledge about the effects of excessive activation of stress response systems on a child’s developing brain, as well as the immune system,

¹⁰ Available at: <https://developingchild.harvard.edu/science/key-concepts/brain-architecture/>

¹¹ Available at: <https://developingchild.harvard.edu/science/key-concepts/brain-architecture/>

¹² See notes to CDC’s “About Adverse Childhood Experiences,” page, available at: <https://www.cdc.gov/aces/about/index.html>

¹³ The ACEs study is described as a “groundbreaking study conducted in 1995 by the Centers for Disease Control and the Kaiser Permanente health care organization in California. Available at: <https://developingchild.harvard.edu/resources/infographics/aces-and-toxic-stress-frequently-asked-questions/>. See also, notes to CDC’s “About Adverse Childhood Experiences,” page, available at: <https://www.cdc.gov/aces/about/index.html>

metabolic regulatory systems, and cardiovascular system. Experiencing ACEs triggers all of these interacting stress response systems. When a child experiences multiple ACEs over time—especially without supportive relationships with adults to provide buffering protection—the experiences will trigger an excessive and long-lasting stress response, which can have a wear-and-tear effect on the body, like revving a car engine for days or weeks at a time.¹⁴

In Michigan, reports prepared around and in advance of enactment of the “Raise the Age” legislation further documented the adverse impacts of abuse/neglect and trauma, and the importance of individualized attention to, and consideration of, the circumstances for each system-involved youth:

Almost all system-involved youth have experienced Adverse Childhood Experiences (ACEs) such as physical or emotional abuse ... These ACEs can have long-term physical health impacts ... and longterm mental health outcomes like disruptive and/or antisocial behavior, psychosis, and mood disorders.

It’s common and normal for youth to engage in risky behaviors that may negatively impact their health. The prefrontal cortex is responsible for advanced reasoning and managing impulses; this part of the brain doesn’t fully develop until the mid-20s. Physiologically, a kid’s ability to demonstrate self control, fully process decisions, and regulate emotions at the same time is a challenge. Therefore, youth have less capacity for self-regulation in emotionally charged situations, increased sensitivity to environmental influences and peer pressure, and difficulty considering the consequences of their actions. *Raise the Age: Protecting Kids and Enhancing Public Safety in Michigan*, Human Impact Partners, November 2017, p 2.¹⁵

¹⁴ Harvard University’s Center on the Developing Child, “ACEs and Toxic Stress: Frequently Asked Questions,” available at: <https://developingchild.harvard.edu/resources/infographics/aces-and-toxic-stress-frequently-asked-questions/>

¹⁵ Human Impact Partners report is available at: <https://humanimpact.org/hipprojects/raise-the-age-protecting-kids-and-enhancing-public-safety-in-michigan/?strategy=research>. The internal footnotes to the above-referenced paragraphs from the Human Impact Partners report, *Raise the Age: Protecting Kids and Enhancing Public Safety in Michigan*, are as follows:

9. About the CDC-Kaiser ACE Study. Centers for Disease Control and Prevention. <http://www.cdc.gov/violenceprevention/acestudy/about.html>. Published June 14, 2016.

10. Adverse Childhood Experiences International Questionnaire (ACE-IQ). World Health Organization. http://www.who.int/violence_injury_prevention/violence/activities/adverse_childhood_experiences/en/. Published 2016.

13. Keyes KM, Eaton NR, Krueger RF, et al. Childhood maltreatment and the structure of common psychiatric disorders. *Br J Psychiatry J Ment Sci*. 2012;200(2):107-115.

Such studies and data, among others, have informed developments in federal law and policies geared to helping abused and neglected children, including through recent amendments to federal laws requiring states to employ “trauma-informed,” and other best practices in developing and implementing case service plans for children who have suffered abuse and neglect.

For example, in the 2018 Family First Prevention Services Act,¹⁶ Congress acknowledged the adverse impacts of abuse and neglect and mandated the use of trauma-informed services for abused and neglected children. See, *e.g.*, 42 USC 671(e)(1)(A); and (4)(B) (“The services or programs to be provided to or on behalf of a child are provided under an organizational structure and treatment framework **that involves understanding, recognizing, and responding to the effects of all types of trauma** and in accordance with **recognized principles of a trauma-informed** approach and **trauma-specific** interventions to address trauma’s consequences and facilitate healing.”); and (5)(A), and (B)(vii) and (viii) (“In order to meet the requirements of this subparagraph, a prevention services and programs plan component [of the State plan], ... shall include the following: (vii) Descriptions of steps the State is taking to support and enhance a competent, skilled, and professional child welfare workforce **to deliver trauma-informed** ...services, ... (viii) A description of how the State will provide training and support for caseworkers in assessing what children and their families need, connecting to the families served,

14. Kitzmann KM, Gaylord NK, Holt AR, Kenny ED. Child witnesses to domestic violence: a meta-analytic review. *J Consult Clin Psychol*. 2003;71(2):339-352.

15. Turner HA, Finkelhor D, Ormrod R. The effect of lifetime victimization on the mental health of children and adolescents. *Soc Sci Med*. 2006;62(1):13-27.

24. McNeely C, Blanchard J. *The Teen Years Explained: A Guide to Healthy Adolescent Development*. Center for Adolescent Health at Johns Hopkins Bloomberg School of Public Health; 2009. www.jhsph.edu/adolescenthealth.

25. McCarthy P, Schiraldi V, Shark M. The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model. *New Think Community Correct*. 2016;2.

¹⁶ Signed into law by the 115th Congress as part of Public Law 115-123.

knowing how to access and deliver the needed trauma-informed ... services, and overseeing and evaluating the continuing appropriateness of the services.”) (all emphases added).

After Congress passed the Families First Preservation Services Act (FFPSA) in 2018, the congressionally-created National Child Traumatic Stress Network (NCTSN)¹⁷ issued recommendations for trauma-informed care, noting:

Trauma can disrupt and derail typical development in children, causing changes in both brain structure and brain chemistry. Children who experience trauma may have delays in meeting developmental milestones, may see impacts on their ability to learn, and may experience long term physical and emotional impacts. NCTSN Recommendations, p 2 of 16.¹⁸

The recommendations of NCTSN further note that:

Children who come to the attention of the juvenile justice system are a challenging and underserved population, with high rates of exposure to trauma. The National Child Traumatic Stress Network has developed resources to help juvenile justice professionals (including judges, attorneys, law enforcement, probation officers, frontline residential staff, and mental health personnel) understand and provide trauma-focused services to these youth, create trauma-informed juvenile justice systems that are effective, and ensure the safety of youth, family members, staff, and community.¹⁹

Similarly, in further recommendations, the NCTSN indicates that:

¹⁷ “The National Child Traumatic Stress Network (NCTSN) was created by Congress in 2000 to raise the standard of care and increase access to services for children and families who experience or witness traumatic events.” <https://www.nctsn.org/about-us/who-we-are>

¹⁸ Available at:

https://www.nctsn.org/sites/default/files/resources/special-resource/recommendations_for_trauma_informed_care_under_the_family_first_prevention_services_act.pdf, citing

National Scientific Council on the Developing Child (2005/2014). Excessive stress disrupts the architecture of the developing brain: Working paper No. 3. Updated Edition. Retrieved from www.developingchild.harvard.edu, and citing

National Child Traumatic Stress Network Core Curriculum on Childhood Trauma Task Force. (2010). The 12 core concepts: Concepts for understanding trauma stress responses in children and families. Los Angeles, CA & Durham, NC: National Center for Child Traumatic Stress. Retrieved from <https://www.nctsn.org/resources/12-core-concepts-concepts-understanding-traumatic-stress-responses-children-and-families>.

¹⁹ <https://www.nctsn.org/trauma-informed-care/creating-trauma-informed-systems/justice>

More than 80% of juvenile justice-involved youth report experiencing trauma, with many having experienced multiple, chronic, and pervasive interpersonal traumas. This exposure places them at risk for emotional, behavioral, developmental, and legal problems. Unresolved posttraumatic stress symptoms can lead to serious long-term consequences across the entire lifespan, such as problems with interpersonal relationships; cognitive functioning; and mental health disorders including PTSD, substance abuse, anxiety, disordered eating, depression, self-injury, and conduct problems -- all of which can increase the likelihood of involvement in delinquency, crime, and the justice system.²⁰

In the juvenile justice context, Congress has acknowledged the adverse impacts of abuse, neglect, and trauma on children, mandating a "...trauma-informed continuum of programs ... to address the needs of at-risk youth and youth who come into contact with the justice system." See, *e.g.*, Juvenile Justice and Delinquency Prevention Reauthorization Act of 2015.²¹ Congress required that this continuum of programs be evidence-based and should "reflect the science of adolescent development..." 34 USC 11102, Purposes, (4). As part of this 2015 juvenile justice reauthorization act, Congress defined "trauma-informed" as:

the term 'trauma-informed' means — "(A) understanding the impact that exposure to violence and trauma have on a youth's physical, psychological, and psychosocial development; "(B) recognizing when a youth has been exposed to violence and trauma and is in need of help to recover from the adverse impacts of trauma; and "(C) responding by helping in ways that reflect awareness of the adverse impacts of trauma; ... [34 USC 11102(40).]

These efforts and laws show that special consideration is necessary when dealing with young people, where the focus should be on rehabilitation, not on harsh mandatory penalties such as life without parole applied to 19-year olds. These efforts and laws further demonstrate how

²⁰Available at:

<https://www.nctsn.org/trauma-informed-care/trauma-informed-systems/justice/essential-elements>

²¹ 114th Congress, 1st Session, S. 1169, 42 USC 5602 [editorially reclassified as section 11102 of Title 34, Crime Control and Law Enforcement], statement of purpose: ... "(4) to support a trauma-informed continuum of programs (including delinquency prevention, intervention, mental health and substance abuse treatment, and aftercare) to address the needs of at risk youth and youth who come into contact with the justice system."

important it is that trial court judges possess the necessary broad discretion to be able to consider and address each child’s unique circumstances and needs, rather than being limited to some “one-size-fits-all” approach.

Other federal laws not only recognize how system-involved youth require continuing supports and services as they “age out” of the system at 18 years of age, but also authorize significant federal funding for such supports and services. See, *e.g.*, 42 USC 674(e),²² 42 USC 675(1)(D),²³ 42 USC 675(5)(H),²⁴ and 42 USC 677.²⁵ In this regard, for example, the John H. Chafee Foster Care Program for Successful Transition to Adulthood, provides in pertinent part:

(a) Purpose. The purpose of this section is to provide States with flexible funding that will enable programs to be designed and conducted—

(1) to support all youth who have experienced foster care at age 14 or older in their transition to adulthood through transitional services such as assistance in obtaining a high school diploma and post-secondary education, career exploration, vocational training, job placement and retention, training and opportunities to practice daily living skills (such as financial literacy training and driving instruction), substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention);

(2) to help children who have experienced foster care at age 14 or older achieve meaningful, permanent connections with a caring adult;

²² 42 USC 674(e) – Payments to States, includes “Discretionary grants for educational and training vouchers for youths aging out of foster care.”

²³ 42 USC 675 – Definitions. “As used in this part or part B of this subchapter: (1) The term “case plan” means a written document which meets the requirements of section 675a of this title and includes at least the following: ... (D) For a child who has attained 14 years of age or over, a written description of the programs and services which will help such child prepare for the transition from foster care to a successful adulthood.”

²⁴ 42 USC 675(5)(H) – “The term “case review system” means a procedure for assuring that—(H) during the 90-day period immediately prior to the date on which the child will attain 18 years of age, **or such greater age as the State may elect** under paragraph (8)(B)(iii), ... a caseworker on the staff of the State agency, ... provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child, includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services, includes information about the importance of designating another individual to make health care treatment decisions on behalf of the child...;

²⁵ The John H. Chafee Foster Care Program for Successful Transition to Adulthood.

...

(4) to provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age (or 23 years of age, ...) to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood; ...

In clear recognition that youth who experience ACEs are entitled to special protections, Michigan has elected to offer programs and services to abused and neglected children to continue foster care and guardianship assistance up to age 21. For example, in Michigan's Young Adult Voluntary Foster Care (YAVFC) program, MCL 400.641, *et seq.*, the state defines "youth" as "an individual who is at least 18 years of age but less than 21 years of age." MCL 400.643(c). See also, MDHHS's FOM 722-16 [FOB 2023-011, 8-1-2023], pp 1, 3, 4, 9, 11, 23 of 26 (**Appendix A**); and MCL 400.647 ("A youth who exited foster care after reaching 18 years of age but before reaching 21 years of age may reenter foster care and receive extended foster care services."); MCR 3.616; 45 CFR 1356.21(k). Michigan's extended guardianship assistance program applies to youth, "...at least 18 years of age but less than 21 years of age..." MCL 400.665(1). See also, MCL 722.876(2) ("The department may provide extended guardianship assistance until the youth reaches 21 years of age..."); MCR 3.979(C)(1)(b) and MCL 712A.2a(4) (addressing the family court's ability to retain jurisdiction over child for purposes of extended guardianship assistance, over age 18); and see DHHS policy manual GDM 716, pp 1-2 of 16. (**Appendix B**). Michigan's YAVFC and Guardianship Assistance programs track federal law and policies acknowledging that "young adults" who have been abused or neglected require assistance and ongoing supports to transition to responsibilities of full adulthood. See, *e.g.*, 42 USC 672(f)(1), (2); 42 USC 675(8); 45 CFR 1356.21(k).

In sum, Michigan's Juvenile Code, court rules, and myriad policies of the Department of

Health and Human Services (DHHS) make clear that, in many circumstances, youth over the age of 18 must be afforded protection and special consideration.

The Children's Law Section supports Andrew's position urging this Court to grant this young man resentencing and to overrule *People v Hall*, 396 Mich 650 (1976).

II. Michigan judges presiding over cases involving young people need broad discretion as they assess and determine the needs, abilities and challenges of each youth who comes before the court.

In the case of *In re Macomber*, 436 Mich 386 (1990), this Court noted how the Legislature has given a "broad grant of authority" and great flexibility to probate courts to enter orders for the well-being of a child, with this Court holding that "...the paramount purpose of the juvenile code being to provide for the well-being of children." *Id.* at 389. In *Macomber*, this Court analyzed a portion of the Juvenile Code, MCL 712A.6, which provides: "The court has jurisdiction over adults as provided in this chapter and as provided in chapter 10A and chapter 10C of the revised judicature act of 1961, ... and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction." In its analysis, this Court described MCL 712A.6 as: "A plainer, more straightforward statement of the authority conferred on the probate court to fashion necessary orders to protect children who come within its jurisdiction would be difficult to imagine." *Id.*, at 391. Put simply, discretion is critical when it comes to youth.

In exercising their broad discretion to safeguard children, youth and society, Michigan courts are required to consider the particular facts and circumstances about each particular child before them. In other words, there is no (or, at least, there should be no) "cookie cutter" approach in child protective and juvenile justice proceedings. Such a required individualized approach, of course, makes great sense: the needs of a child who has suffered from sexual abuse or sexual

exploitation, would vary considerably from those of a child who has been impacted by housing insecurity or educational neglect, for example. And it is not just as to each *case* in which the trial court judge must exercise individualized attention and the broad discretion to help, but as to each *child* within each case.

Thus, when a court is dealing with Juvenile Code cases many court rules and statutes ensure judges have access to *all* relevant and material evidence and information about each particular child. For example, MCR 3.973(E)(2), provides that: “All relevant and material evidence, ...may be received and may be relied on to the extent of its probative value.” And MCR 3.975(E) provides: “The court shall consider any written or oral information concerning the child from the child’s parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom a child is placed, in addition to any other relevant and material evidence at the hearing.” Likewise, MCR 3.976(D)(2) specifies that: “The Michigan Rules of Evidence do not apply, . . . At the permanency planning hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value.” And, MCL 712A.19a(14), reiterates the imperative for the judge to have a vast scope of necessary information, mandating: “In making the determinations under this section, the court shall consider any written or oral information concerning the child from the child’s parent, guardian, custodian, foster parent, ..., relative with whom the child is placed, or guardian ad litem in addition to any other evidence, ... offered at the hearing.” See also, MCL 712A.18d(1) and MCL 722.824 (setting forth mandatory factors for court to examine under the Juvenile Diversion Act before deciding whether to “divert” the case of a minor from juvenile justice proceedings).²⁶

²⁶ MCL 722.824 provides: “Before a decision is made to divert a minor, all of the following factors shall be examined:

The requirement that Michigan courts consider the particularized facts and circumstances of each child's needs, safety, and well-being derives from federal laws and policies. See, *e.g.*, 42 USC 670, *et seq.*; 45 CFR 1356.21(b), (c); MCL 712A.1(3); DHHS Policy Manual, JJM 100, p 1 of 3.²⁷ For example, 42 USC sections 671 and 672 require state courts to make specific determinations about each child removed from his family's home. Likewise, 42 USC 678, contained within the Title IV-E provisions in the Social Security Act, provides: "Nothing in this part shall be construed as precluding State courts from exercising their discretion to protect the health and safety of children in individual cases, including cases other than those described in section 471(a)(15)(D) [aggravated circumstances cases]."

The Children's Law Section supports Andrew's request for this Court to grant him a resentencing where the sentencing court could consider all particular facts and circumstances relevant to Andrew before, at, and after age 19, and exercise discretion in imposing sentence on Andrew, and to overrule *People v Hall*, 396 Mich 650 (1976).

III. Federal and Michigan laws and policies reflect the vast potential for rehabilitation of "system-involved" children and youth.

In Andrew's Supplemental Brief, he cites *Miller v Alabama*, 567 US 460 (2012), the United States Supreme Court decision holding that the imposition of a life without parole sentence on a

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- (a) The nature of the alleged offense.
 - (b) The minor's age.
 - (c) The nature of the problem that led to the alleged offense.
 - (d) The minor's character and conduct.
 - (e) The minor's behavior in school, family, and group settings.
 - (f) Any prior diversion decisions made concerning the minor and the nature of the minor's compliance with the diversion agreement."

²⁷"Delinquent youth under the jurisdiction of the Michigan Department of Health and Human Services (MDHHS) must be provided such care, guidance, and control, preferably in their own home, as will be conducive to the child's welfare and the best interest of the State. To provide safe and proper care that is appropriate to the youth's individual needs while taking into account community safety." **Appendix C**, JJM 100.

child constitutes cruel and unusual punishment. A decade after the *Miller* decision, with the benefit of more advanced science on adolescents' brains and behavior, this Court issued its decision in *People v Parks*, 510 Mich 112, 126 (2022), referencing the *Miller* factors. The Children's Law Section agrees it is imperative for a judge – whether presiding over the case of a young person aged 14 or 19 – to know about, consider, and determine facts related to the *Miller/Parks* factors when making decisions affecting those young lives.

The significance about a presiding court considering a child's "chronological age and its hallmark features -- among them, immaturity, impetuosity, and failure to appreciate risks and consequences" has been briefly addressed in Argument I above, as has the second factor concerning the juvenile's family and home environment, "from which [the child] cannot usually extricate himself -- no matter how brutal or dysfunctional." *Id.* It is evident from the extensive federal and state legislation and significant funding dedicated to helping abused and neglected children how damaging the family and home environment can be to children like Andrew, and how very real are the lifelong adverse impacts from those harmful environments.

As for the fifth factor, that is, the "possibility of rehabilitation" of the young person, the Children's Law Section members – and likely many judges presiding over juvenile justice cases in this state – could attest to how young people in "the system" can learn new skills, change problematic behaviors, end substance use and abuse, and get back on track educationally and otherwise. The various specialty courts around this state further speak to the capacity for self-improvement and rehabilitation: these include Infant-Toddler ("Baby") Court, Veterans Courts, Mental Health Courts, and Drug Treatment Courts.²⁸

²⁸ See information about Michigan's "baby court" (early childhood court) at: <https://michiganeccl.org/>. Michigan's "problem-solving courts" (PSC) "...offer judicial programs

Reflecting the unique ability and continuing opportunities for a child to “turn his life around” and to be rehabilitated, juvenile courts are required to use various youth-specific screenings including risk and needs assessment, mental health and detention screening tools, MCR 3.907(A); and periodic reviews are required to be held for the courts to learn updated status of each child, every 91 days in child protective proceedings. MCL 712A.19; MCR 3.974, MCR 3.975.²⁹ This continuous review of cases involving children – because a child is a “work in progress”, as the scientific studies Andrew cites establish – is in stark contrast to the criminal justice system involving adults.

Some of the federal legislation mentioned above acknowledges the potential for young people to be rehabilitated. See, *e.g.*, 34 USC 11102(4) (“The purposes of this subchapter ... are – (4) to support a continuum of evidence-based or promising programs (including delinquency prevention, intervention, mental health, behavioral health and substance abuse treatment, family services, and services for children exposed to violence) that are trauma informed, reflect the science of adolescent development, and are designed to meet the needs of at-risk youth and youth who come into contact with the justice system.”). Congress further acknowledged the potential for rehabilitation of young people, including within its definition of “treatment” approaches and

that provide alternatives to imprisonment for nonviolent criminal offenders with substance use disorders (SUD) and mental illnesses. The program types include: adult and juvenile drug courts, adult and juvenile mental health courts, and veterans treatment courts. To address offenders cycling in-and-out of the criminal justice system, PSCs use a specialized therapeutic jurisprudence model designed to treat the underlying cause of the criminal behavior and thus reduce future reoffending, or recidivism.” Available at: here: <https://www.courts.michigan.gov/psc>

²⁹ MCR 3.956(A)(1)(a)(ii) further provides for “Review on Request of Institution or Agency” as follows: “If an institution or agency to which the juvenile was committed believes that the juvenile has been rehabilitated and does not present a serious risk to public safety, the institution or agency may petition the court to conduct a review hearing at any time before the juvenile becomes 19 years of age or, if the court has extended jurisdiction, any time before the juvenile becomes 21 years of age.”

methods that include, but are not limited to: "... medical, educational, special education, social, psychological, and vocational services, corrective and preventive guidance and training, and other rehabilitative services designed to protect the public, ...; 34 USC 11102(15).

The reality that rehabilitation is often successful is reflected in the fact that the federal government has made available extensive funding to turn around the lives of system involved youth, and to get them on a better path.

Andrew's statement of facts alludes to his progress while he has been incarcerated, and even his brief sketch about this gives a hint about the potential that he and other system-involved young people have to make necessary changes, and to learn from their mistakes.

The Children's Law Section supports Andrew's position urging this Court to grant this young man resentencing and to overrule *People v Hall*, 396 Mich 650 (1976).

Conclusion and Relief Requested

Amicus Curiae Children's Law Section concurs with the Conclusion and Relief Requested as set forth in Andrew Czarnecki's Supplemental Brief, and incorporates same into this amicus brief. (Andrew's Supplemental Brief, p 43).

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Respectfully submitted,

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