

IN THE
MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff- Appellee,

v.

Supreme Court No. 160034
Court of Appeals No. 345268
Saginaw CC: 84-000570-FC

ROBIN RICK MANNING,
Defendant-Appellant.

On Appeal from the Court of Appeals

**BRIEF OF AMICI CURIAE JUVENILE LAW CENTER AND
AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN IN SUPPORT OF
DEFENDANT-APPELLANT ROBIN MANNING**

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INTEREST AND IDENTITY OF *AMICI CURIAE*

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the justice and child welfare systems through litigation and appellate advocacy, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity, are rooted in developmental research, and reflective of international human rights values.

The American Civil Liberties Union of Michigan (“ACLU”) is the Michigan affiliate of a nationwide, nonpartisan organization with over a million members dedicated to protecting the rights guaranteed by the United States Constitution. The ACLU has long advocated for an end to the practice of sentencing children in Michigan to life in prison, including through litigation, as *amicus curiae*, and through public education. See, e.g., *Hill v Snyder*, 900 F3d 260 (CA 6, 2018); *People v Carp*, 496 Mich 440; 852 NW2d 801 (2014), vacated by *Carp v Michigan* 136 S Ct 1355 (2016); ACLU of Michigan, *Second Chances: Juveniles Serving Life Without Parole in Michigan Prisons* (2004).

SUMMARY OF THE ARGUMENT

In *Miller v Alabama*, the United States Supreme Court ruled that mandatory life without parole sentences are unconstitutional for individuals who were juveniles at the time of their offenses under the Eighth Amendment’s prohibition on cruel and unusual punishment. 567 US 460, 465; 132 S Ct 2455; 183 L Ed 2d 407 (2012). The Court, relying on the same underlying scientific research used to bar the death penalty for juveniles, held that children are less culpable than their adult counterparts because of their immaturity, impetuosity, susceptibility to peer

influence, and greater capacity for change. *Id.* Further research now indicates that young people retain these characteristics beyond age 18. Because young adults possess the same adolescent characteristics that the Supreme Court has determined reduce criminal culpability, mandatory life without parole sentences for this population are also disproportionate under both the Eighth Amendment and Article 1, § 16 of the Michigan Constitution. Indeed, in recognition of the current developmental research, jurisdictions around the country are increasingly raising the age of adulthood above age 18 in situations that implicate the developmental characteristics relied upon in *Miller*, reinforcing how current sentencing practices wrongly turn on the arbitrary boundary of age 18. Further, as courts around the country have considered age and its attendant characteristics in sentencing even older adolescents, they have consistently found them less deserving of the harshest available penalties. This Court should therefore grant Mr. Manning’s application for leave to appeal, as Mr. Manning is developmentally indistinguishable from a defendant under age 18 and cannot constitutionally be sentenced to mandatory life without parole under the rule set forth in *Miller*.

ARGUMENT

I. MANDATORY IMPOSITION OF LIFE WITHOUT PAROLE ON AN 18-YEAR-OLD IS UNCONSTITUTIONAL FOR THE SAME REASONS THE *MILLER* COURT BARRED SUCH SENTENCES FOR YOUTH UNDER 18

It is settled constitutional law that children are developmentally different from adults and that, under the Eighth Amendment, these differences require individualized consideration of their youthful characteristics prior to imposition of the law’s harshest adult punishments. See, e.g., *Roper v Simmons*, 543 US 551, 578; 125 S Ct 1183; 161 L Ed 2d 1 (2005) (banning the death penalty for individuals convicted of murder under the age of eighteen); *Graham v Florida*, 560 US 48, 82; 130 S Ct 2011; 176 L Ed 2d 825 (2010) (banning life without parole sentences on juveniles

convicted of non-homicide offenses); and *Miller v Alabama*, 567 US 460, 465; 132 S Ct 2455; 183 L Ed 2d 407 (2012) (banning mandatory life without parole sentences for juveniles convicted of homicide).

The Supreme Court relied on three key developmental characteristics of youth in reaching its conclusions in the above-cited cases: (1) youth’s lack of maturity, impulsivity and impetuosity; (2) youth’s susceptibility to outside influences; and (3) youth’s capacity for change. See *Montgomery v Louisiana*, 136 S Ct 718, 733; 193 L Ed 2d 599 (2016), quoting *Miller*, 567 US at 471. Because of these developmental differences, juvenile defendants are less culpable; their “conduct is not as morally reprehensible as that of an adult,” *Roper*, 543 US at 570, quoting *Thompson v Oklahoma*, 487 US 815, 835; 108 S Ct 2687; 101 L Ed 2d 702 (1988) (plurality opinion), making them “less deserving of the most severe punishment,” *Miller*, 567 US at 471, quoting *Graham*, 560 US at 68. Current research now shows that young adults, especially 18-year-olds, share these same physiological and psychological traits, making them less culpable and thus less deserving of the most serious punishments.

A. Research Now Shows Neurodevelopmental Growth Continues For Young Adults Beyond Age 18

Prior to 2010, brain maturation research focused predominantly on individuals under 18 years of age. This research proved critical in *Roper*, *Graham*, and *Miller*, each of which involved defendants under the age of 18.¹ More recently, researchers have established that the regions of

¹ In *Roper*, the U.S. Supreme Court relied on three scientific and sociological studies—from 1968, 1992, and 2003—to reach its conclusion that children under age 18 are categorically different from adults. See 543 US at 568-572, citing Erikson, *Identity: Youth and Crisis* (1968); Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 *Developmental Rev* 339 (1992); Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am Psychologist* 1009, 1014 (2003). The Court looked to the same research in *Graham* and *Miller*, noting that it had continued to grow stronger. See *Miller*, 567 US at 471-472 & n 5; *Graham*, 560 US at 68. In each of these cases, the defendant

the brain associated with the characteristics relied on in *Roper* continue to mature beyond age 18. See Beaulieu & Lebel, *Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood*, 27 J Neuroscience 31 (2011); Pfefferbaum et al, *Variation in Longitudinal Trajectories of Regional Brain Volumes of Healthy Men and Women (Ages 0 to 85 Years) Measures with Atlas-Based Parcellation of MRI*, 65 NeuroImage 176, 176-193 (2013).

For example, the Court in both *Roper* and *Miller* relied on a 2003 study by Laurence Steinberg and Elizabeth Scott to confirm its understanding that the appropriate line between childhood and adulthood should be set at 18. See Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am Psychologist 1009, 1014 (2003). In the seventeen years since that study, Dr. Steinberg has published numerous papers concluding that research now shows that the parts of the brain active in most “crime situations,” including those associated with characteristics of impulse control, propensity for risky behavior, vulnerability, and susceptibility to peer pressure, are still developing at age 21. Steinberg, *Does Recent Research on Adolescent Brain Development Inform the Mature Minor Doctrine*, 38 J Med & Phil 256 (2013); see also Scott et al, *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L Rev 641, 642 (2016) (“Over the past decade, developmental psychologists and neuroscientists have found that biological and psychological development continues into the early twenties, well beyond the age of majority.”). In recent testimony before the United States District Court for the District of Connecticut in *Cruz v United States*, Dr. Steinberg explained that “we didn’t know a great deal about brain development during late adolescence” until recently, but now he is

was under the age of 18, and so there was no need for the Court to consider whether the scientific evidence also applied to older adolescents.

“[a]bsolutely certain” that the developmental characteristics underpinning *Roper*, *Miller*, and *Graham* also apply to 18-year-olds. Transcript of September 13, 2017 Hearing at 14:20–25 and 71:6, *Cruz v United States*, 2018 WL 1541898 (D Conn) (No. 3:11-cv-00787).²

Indeed, it is now widely accepted that the characteristics cited by the Supreme Court in the youth sentencing cases persist “far later than was previously thought,” and certainly beyond age 18. Schiraldi & Western, *Why 21 Year-old Offenders Should Be Tried in Family Court*, Washington Post (October 2, 2015) <https://www.washingtonpost.com/opinions/time-to-raise-the-juvenile-age-limit/2015/10/02/948e317c-6862-11e5-9ef3-fde182507eac_story.html?utm_term=.82fc4353830d>. See, e.g., Michaels, *A Decent Proposal: Exempting Eighteen- to Twenty-Year-Olds From the Death Penalty*, 40 NYU Rev L & Soc Change 139, 163 (2016); Weingard et al, *Effects of Anonymous Peer Observation on Adolescents’ Preference for Immediate Rewards*, 17 Developmental Sci 71 (2013); Monahan et al, *Juvenile Justice Policy and Practice: A Developmental Perspective*, 44 Crime & Justice: A Review of Research 577, 582 (2015). A comprehensive 2019 report from the National Academies of Sciences explains this shift in the understanding of adolescence, noting that “the unique period of brain development and heightened brain plasticity . . . continues into the mid-20s,” and that “most 18-25 year-olds experience a prolonged period of transition to *independent* adulthood, a worldwide trend that blurs the boundary between adolescence and ‘young adulthood,’ developmentally speaking.” National Academies of Sciences, *The Promise of Adolescence: Realizing Opportunity for All Youth* 22 (2019). The report concludes it would be “arbitrary in developmental terms to draw a cut-off line at age 18.” *Id.*

² Based on this testimony, the court extended *Miller* to life without parole sentences for 18-year-old offenders and re-sentenced Cruz. *Cruz v United States*, No. 3:11-cv-00787, 2018 WL 1541898 at *25 (D Conn, March 29, 2018). That decision is currently on appeal before the Second Circuit.

B. Given Their Shared Developmental Characteristics, Both Adolescents And Young Adults Are Less Culpable Than Older Adults

Just as the Court found with juveniles, “[w]hether viewed as an attempt to express the community’s moral outrage or as an attempt to right the balance for the wrong to the victim,” the case for retribution is not as strong for young adults, particularly 18-year-olds. *Roper*, 543 US at 571.

Researchers have found specifically that two important parts of the brain develop at different times, leading to a “maturational imbalance” in middle to late adolescence. The area of the brain responsive to rewards and heightened sensation kicks into high gear around the time of puberty. But the part of the brain that regulates behavior—self-control, thinking ahead, evaluating the rewards and costs of a risky act, and resisting peer pressure—is still developing well into the mid-twenties. See, e.g., Michaels, *supra*, at 163 (citing to research that found antisocial peer pressure was a highly significant predictor of reckless behavior in emerging adults 18 to 25); Weingard et al, *supra*, at 72 (finding 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”); Monahan et al, *supra*, at 582 (finding that the development of the prefrontal cortex which plays an “important role” in regulating “impulse control,” decision-making, and pre-disposition towards “risk[y]” behavior, extends at least to 21); Shulman et al, *Sex Differences in the Developmental Trajectories of Impulse Control and Sensation-Seeking from Early Adolescence to Early Adulthood*, 44 *J Youth & Adolescence* 1 (2015) (finding that male adolescents have greater levels of sensation-seeking and lower levels of impulse control than female adolescents, and that the development of impulse control in male adolescents is more gradual than in female adolescents).

For young adults, these lags in impulse control are particularly pronounced in emotionally

charged situations. Psychologists distinguish between “cold cognition,” which refers to thinking and decision making under calm circumstances, and “hot cognition,” which refers to thinking and decision making under emotionally arousing circumstances. Scott et al, *supra*, at 652. Relative to adults, adolescents’ deficiencies in judgment and self-control are greater under “hot” circumstances in which emotions are aroused than they are under calmer “cold” circumstances. Cohen et al, *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts*, 4 Psychol Sci 549-562 (2016); Rudolph et al, *At Risk of Being Risky: The Relationship Between “Brain Age” Under Emotional States and Risk Preference*, 24 Dev Cognitive Neuroscience 93 (2017). In circumstances of “hot cognition,” brain function among 18- to 21-year-olds resembles that of a 16- or 17-year-old. Scott et al, *supra*, at 650.

Young adults also face the same types of susceptibility to peer pressure as younger teens and adolescents. See Caulum, *Postadolescent Brain Development: A Disconnect Between Neuroscience, Emerging Adults, and the Corrections System*, 2007 Wis L Rev 729, 731-732 (2007) (“When a highly impressionable emerging adult is placed in a social environment composed of adult offenders, this environment may affect the individual’s future behavior and structural brain development.”), citing Bennett & Baird, *Anatomical Changes in Emerging Adult Brain: A Voxel-Based Morphometry Study*, 27 Hum Brain Mapping 766, 766–767 (2006). Another study examined a sample of 306 individuals in three age groups—adolescents (13-16), youths (18-22), and adults (24 and older)—and found that “although the sample as a whole took more risks and made more risky decisions in groups than when alone, this effect was more pronounced during middle and late adolescence than during adulthood” and that “the presence of peers makes adolescents and youth, but not adults, more likely to take risks and more likely to make risky decisions.” Gardner & Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in*

Adolescence and Adulthood: An Experimental Study, 41 Dev Psychol 625, 632, 634 (2005). The presence of friends has also been shown to double risk-taking among adolescents, increasing it by fifty percent among young adults, but having no effect on older adults. Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 Dev Rev 78, 91 (2008). And, more recently, studies have confirmed that “exposure to peers increases young adults’ preference for immediate rewards” and their “willingness to engage in exploratory behavior.” Scott et al, *supra*, at 649 (internal citations omitted).

The existing scientific research also addresses differences in brain development with respect to specific activities, suggesting more delayed development in brain functions related to impulse control, hot cognition, and susceptibility to peer pressure than for activities involving informed decision-making and logical reasoning, such as voting. Thus, the appropriate legal age of “adulthood” may vary depending on the particular context. See, e.g., Cohen et al, *When Does a Juvenile Become an Adult? Implications for Law and Policy*, 88 Temple L Rev 769, 786-787 (2016) (defining “young adulthood” at 21 for purposes of cognitive capacity and the ability for “overriding emotionally triggered actions,” and finding that 21 is the “appropriate age cutoff[] relevant to policy judgments relating to risk-taking, accountability, and punishment”). As Dr. Steinberg explains:

[t]o the extent that we wish to rely on developmental neuroscience to inform where we draw age boundaries between adolescence and adulthood for purposes of social policy, it is important to match the policy question with the right science. . . . For example, although the APA was criticized for apparent inconsistency in its positions on adolescents’ abortion rights and the juvenile death penalty, it is entirely possible for adolescents to be too immature to face the death penalty but mature enough to make autonomous abortion decisions, because the circumstances under which individuals make medical decisions and commit crimes are very different and make different sorts of demands on individuals’ abilities.

Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 64 Am Psychologist 739, 744 (2009); cf. *Roper*, 543 US at 620 (O'Connor, J., dissenting) (questioning why the age for abortion without parental involvement “should be any different” given that it is a “more complex decision for a young person than whether to kill an innocent person in cold blood”).

Overall, young adults are more prone to risk-taking and impulsivity—traits that likely influence their criminal conduct—and are not yet mature enough to anticipate the future consequences of their actions. See Scott et al, *supra*, at 644; Steinberg et al, *Age Differences in Future Orientation and Delay Discounting*, 80 Child Dev 28, 35 (2009). Indeed, the instant case aptly illustrates this finding. Mr. Manning was just three months beyond his eighteenth birthday when, in the company of friends and under the influence of alcohol, he became involved in a teenage fight. (Appl for Leave to Appeal at 3-4.) He agreed to ride along with friends when they returned to the scene of the fight, but his codefendant testified he never fired a shot—he was merely present when the shooting took place. *People v Manning*, 434 Mich 1, 4-5; 450 NW2d 534 (1990) His conduct shows precisely the “immaturity,” “failure to appreciate risks and consequences,” and vulnerability to peer pressure that characterize adolescence and render mandatory juvenile life without parole sentences unconstitutional for individuals like Mr. Manning under *Miller*. *Miller*, 567 US at 477.

C. Because 18-year-olds Possess The Same Developmental Characteristics As Their Younger Peers, They Cannot Be Subject To Mandatory Life Without Parole Sentences Under *Miller*

In striking the death penalty and limiting life without parole sentences for juveniles, the Supreme Court has emphasized that, “[b]ecause juveniles have diminished culpability and greater prospects for reform, . . . ‘they are less deserving of the most severe punishments.’” *Miller*, 567 US at 471, quoting *Graham*, 560 US at 68. Its decisions relied on “what ‘any parent knows’” and

the science and social science regarding adolescent development. *Id.*, quoting *Roper*, 543 US at 569.

In *Roper*, [the Court] cited studies showing that [o]nly a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior. And in *Graham*, [it] noted that developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds—for example, in parts of the brain involved in behavior control. [It] reasoned that those findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child's moral culpability and enhanced the prospect that, as the years go by and neurological development occurs, his deficiencies will be reformed.

Id. at 471-472 (second alteration in original) (internal citations and quotation marks omitted). The scientific research now shows that young adults must likewise be included in the protected class of individuals.

The Supreme Court's own evolving interpretation of the proscriptions of the Eighth Amendment illustrate why older youth must now be included in this framework. In first protecting youthful offenders from the death penalty, the Court limited the class to include only those youth who were under the age of 16. *Thompson v Oklahoma*, 487 US 815, 838; 108 S Ct 2687; 101 L Ed 2d 702 (1988) (plurality opinion). The Court reasoned, “inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult.” *Id.* at 835. The Court then held in *Roper*:

[A] plurality of the [*Thompson*] Court recognized the import of these characteristics with respect to juveniles under 16, and relied on them to hold that the Eighth Amendment prohibited the imposition of the death penalty on juveniles below that age. We conclude that *the same reasoning* applies to all juvenile offenders under 18.

543 US at 570-571 (emphasis added) (internal citation omitted). The developmental differences between juveniles under the age of 18 and adults “render[ed] suspect any conclusion that a juvenile

falls among the worst offenders. . . . for a greater possibility exists that a minor’s character deficiencies will be reformed.” *Id.* at 570.

The Court once again relied on these distinct attributes of youth in holding mandatory life without parole unconstitutional in *Miller* as “the mandatory penalty schemes . . . prevent the sentencer from taking account of these central considerations.” 567 US at 474. Therefore, “[b]y removing youth from the balance,” mandatory life without parole sentences contradicted the Court’s precedent forbidding the imposition of the harshest penalties on juveniles as if they were miniature adults. *Id.* “[N]one of what [the Court] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific,” *id.* at 473, but, as current research teaches, nor is it specific to those under 18. As the research grows, it has become indefensible to exclude young adults, who share the identical attributes of younger teens, from the required individualized sentencing and consideration of the mitigating qualities of youth.

This extended protection is in line with the Court’s other Eighth Amendment jurisprudence which has also been modified to reflect emerging research on individual culpability. *Hall v Florida* is instructive. In *Hall*, the Court found unconstitutional a Florida rule that limited evidence of qualifying intellectual disability under *Atkins v Virginia*, 536 US 304; 122 S Ct 2242; 153 L Ed 2d 335 (2002), to proof that the individual had an I.Q. of 70 or lower. *Hall v Florida*, 572 US 701, 710-714, 721-724; 134 S Ct 1986; 188 L Ed 2d 1007 (2014). While acknowledging the important role of the medical community in defining and diagnosing the condition, the Court struck down the “rigid rule” concerning I.Q. scores because it “creates an unacceptable risk that persons with intellectual disability will be executed.” *Id.* at 704, 724. Just as “[i]ntellectual disability is a condition, not a number,” *id.* at 723, “youth [also] is more than a chronological fact.” *Miller*, 567 US at 476, quoting *Eddings v Oklahoma*, 455 US 104, 115; 102 S Ct 869; 71 L Ed 2d 1 (1982).

Youth is also a “condition of life”—“a time of immaturity, irresponsibility, ‘impetuosity[,] and recklessness’” that creates an unacceptable risk of a disproportionate sentence when disregarded. *Id.* (alteration in original), first quoting *Johnson v Texas*, 509 US 350, 368; 113 S Ct 2658; 125 L Ed 2d 290 (1993), then quoting *Eddings*, 455 US at 115. Like a fixed IQ score, the age 18 is too rigid a measure to accurately mark the passage from adolescence to adulthood.

As the current research conclusively shows, the age of 18 is not an acceptable proxy for developmental maturity and adult-like culpability. People who commit criminal acts just beyond their eighteenth birthday—like Mr. Manning—are developmentally indistinguishable from their slightly younger peers. Therefore, mandatory imposition of a sentence of life without parole on an 18-year-old defendant, without any ability for a sentencing court to consider the “mitigating qualities of youth,” is unconstitutional under *Miller*. See 567 US at 476, quoting *Johnson*, 509 US at 367.³

II. THERE IS NOW A CLEAR CONSENSUS IN MICHIGAN AND ACROSS THE COUNTRY THAT THE LINE BETWEEN CHILDHOOD AND ADULTHOOD SHOULD BE SET ABOVE AGE 18 WHEN CONSIDERING THE FACTORS RELIED ON IN *MILLER*

In recognition of these developmental characteristics of youth, Michigan and jurisdictions around the country have enacted legislation that treats youth above age 18 differently than older adults in the criminal justice system, limits their abilities to engage in risky conduct, and offers them additional protection and support. Many of these laws have been on the books for decades, while others reflect more recent trends in response to the growing scientific and societal consensus

³ For the same reasons, mandatory life without parole imposed upon an 18-year-old also violates the Michigan Constitution, which bars “cruel *or* unusual punishment” and thus “provides greater protection against certain punishments than its federal counterpart.” See *People v Carp*, 496 Mich 440, 519; 852 NW2d 801 (2014), vacated on other grounds by *Carp v Michigan*, 136 S Ct 1355 (2016).

that young people continue to develop and mature into their twenties. The legal landscape in Michigan and throughout the country therefore increasingly reflects the current developmental research: drawing the line between childhood and adulthood above age 18 in contexts that implicate the age-related characteristics described in *Miller*.

A. Criminal Justice Systems In Michigan And Nationwide Provide Youth Above Age 18 Special Privileges And Protections That Reflect The Three Key Developmental Characteristics Identified In *Miller*

Michigan is a national leader among many states that provide special processes and less severe penalties to young people through their early twenties, and it has explicitly rooted its “youthful offender” program in the same core characteristics that animated *Miller*.

Michigan has one of the oldest and most robust laws in the country shielding young people above age 18 from long prison sentences and the stain of a criminal record. In 1966, Michigan passed the Holmes Youthful Trainee Act (“HYTA”), allowing 17- to 23-year-olds who have pleaded guilty to a crime, other than a very serious felony, to receive no more than two years in prison and have their case processed without a conviction if they satisfy the conditions set forth by a judge. MCL 762.11; MCL 762.13. The HYTA initially set the maximum age for the program at 20 and the maximum prison sentence at three years, but the Act was amended in 2015 to raise the age of eligibility to 23 and reduce the maximum sentence to two years. 2015 HB 4169; 2015 HB 4069. The Court of Appeals explained the justification for HYTA in 1981:

The age classification indicates a legislative belief that individuals in the 17 to 20 age bracket would be more amenable to the training and rehabilitation provided under the act. The statute also evidences a legislative desire that persons in this age group not be stigmatized with criminal records for unreflective and immature acts.

People v Perkins, 107 Mich App 440, 444; 309 NW2d 634 (1981). The Michigan legislature was prescient in recognizing that young adults’ relative immaturity and potential for rehabilitation warrant a less punitive approach in the criminal justice system.

Michigan's 2015 expansion of the HYTA was also based on more recent research showing that the characteristics of youth at the heart of the U.S. Supreme Court's sentencing cases persist through a young person's early twenties. The Michigan House of Representatives Fiscal Agency explained that "[t]his expansion acknowledges and incorporates recent research as to how the human brain matures." House Legislative Analysis, HB 4069, HB 4135, and HB 4169 (March 14, 2015), p 6 <<http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-4069-912816A6.pdf>>. It stressed that the bill "represents a compromise as some, including advocates and judges, believe that 24 and 25 year olds should be eligible, as well, in keeping with the conclusions of scientists regarding the development of the brain and ability to make good decisions and judgments." *Id.* Echoing this rationale, a sponsor of the bill in the Michigan House of Representatives stated that she "liked it, because it dealt with giving juveniles the opportunity to be in a separate system.' . . . 'Basically, it's to give people a second chance.'" Kloosterman, *Second Chances for Youthful Offenders Key Point of Bill, State Rep Says*, Michigan Live (June 16, 2015) <https://www.mlive.com/news/muskegon/2015/06/new_michigan_law_lets_more_you.html>.

While Michigan was one of the first states to extend some advantages of the juvenile justice system to older youth, it is far from alone nationwide. Many states have adopted "youthful offender" laws like the HYTA that extend special protections, such as criminal record sealing and shorter maximum sentences, to individuals ages 18 to 21.⁴ There are also at least 50 young adult courts, specialty probation programs, correctional facilities, and other specialized justice services

⁴ See, e.g., Ala Code 15-19-1; Colo Rev Stat Ann 18-1.3-407 and Colo Rev Stat Ann 18-1.3-407.5; Fla Stat Ann 958.011 through Fla Stat Ann 958.15; Ga Code Ann 42-7-2(7); NJ Stat Ann 52:17B-182; NY Crim Proc Law 720.15; SC Stat Ann 24-19-10; VI Code Ann tit 5 § 3712; Vt Stat Ann tit 33, § 5280 and Vt Stat Ann tit 33, § 5287; Va Code Ann 19.2-311.

around the country targeted specifically at young adults ages 18 to 21. See Hayek, Environmental Scan of Developmentally Appropriate Criminal Justice Responses to Justice-Involved Young Adults (2016), p 6 <<https://www.ncjrs.gov/pdffiles1/nij/249902.pdf>>. One such court, the Young Adult Diversion Court (“YADC”), sits in Kalamazoo, Michigan. There, 17- to 20-year-olds who are charged with certain crimes under a diversion statute may have their charges dismissed upon successful completion of YADC’s program, which includes, among other things, access to additional supportive services. Young Adult Diversion Court <<https://yadckalamazoo.weebly.com/about-yadc.html>> (accessed July 2, 2020).

In 2019, in another step reflective of the emerging developmental research, Michigan raised the age of jurisdiction of its juvenile courts to include 17-year-olds. 2019 PA 98. Other states are beginning to go further, expanding juvenile court jurisdiction to those above age 18. In 2018, Vermont became the first state in the country to expand its juvenile court to include 18- and 19-year-olds. S 234, 2018 Sess, 2018 Vermont Laws No. 201, § 12. Explaining the law, an official with the Vermont Department of Children and Family Services stated: “For 18 and 19 year olds, they’re actually not that different from their 16- and 17-[year-old] counterparts. We know that, generally, emerging adults grow out of impulsive behavior.” Becker, *Why Vermont Raised its Juvenile Court Age Above 18—and Why Mass Might, Too*, WBUR News, October 3, 2019 (alteration in original), <<https://www.wbur.org/news/2019/10/03/juvenile-court-age-vermont-massachusetts>>. Several other states, including nearby Illinois, have introduced similar legislation to include 18-year-olds in their juvenile court systems.⁵

⁵ See, e.g., Gov Bill 5040, February 2018 Gen Assemb Sess (Conn, 2018) <<https://www.cga.ct.gov/2018/TOB/h/2018HB-05040-R00-HB.htm>>; HB 4581, 100th Gen Assemb (Ill, 2017) <<http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=91&GA=100&DocTypeID=HB&DocNum=4581&GAID=14&LegID=&SpecSess=&Session=>>>.

The HYTA and similar youthful offender laws, young adult courts around the country, and the emerging movement to raise the age of juvenile court jurisdiction above 18 demonstrate that legislators and criminal justice officials increasingly recognize the emerging developmental science demonstrating that 18-year-olds share the same traits of immaturity as their younger peers that make them less culpable and less deserving of serious punishment.

B. Jurisdictions Across The Country Increasingly Set The Age Of Adulthood Above 18 In Situations Implicating Immaturity And Susceptibility To Peer Pressure

Beyond the criminal justice system, many jurisdictions—including Michigan—set the age of adulthood above 18 in contexts involving dangerous, risky, and potentially addictive behaviors. These regulations take account of the emerging scientific and societal consensus that young people above age 18 share some of the *Miller* traits first identified with younger teens: (1) they have a “‘lack of maturity and an underdeveloped sense of responsibility,’ leading to recklessness, impulsivity, and heedless risk-taking;” and (2) they remain “more vulnerable . . . to negative influences and outside pressures.” *Miller*, 567 US at 471, quoting *Roper*, 543 US at 569 (alteration in original).

For example, the minimum age to purchase tobacco, alcohol, and marijuana (where legal) is universally set at 21 across the country. To the extent that some jurisdictions previously set the smoking or drinking age at 18, recent federal action has ended these practices in response to the emerging scientific research about the brain development of older adolescents. More specifically:

- **Alcohol:** Michigan’s drinking age of 21 is enshrined in the state constitution. Const 1963, art 4, § 40. All 50 states and the District of Columbia now set the drinking age at 21 following Congress’s enactment of the National Minimum Drinking Age Act in 1984. 23 USC 158(a).
- **Tobacco:** In 2015, the National Academies of Sciences concluded that raising the

minimum age to purchase tobacco from 18 to 21 would be beneficial because “the parts of the brain most responsible for decision making, impulse control, sensation seeking, future perspective taking, and peer susceptibility and conformity continue to develop and change through young adulthood.” Institute of Medicine of the National Academies of Sciences, *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products* (March 2015), p 3 <<https://www.nap.edu/read/18997/chapter/2>>. In 2019, consistent with this scientific recommendation, Congress raised the national age to purchase tobacco from 18 to 21. Further Consolidated Appropriations Act, 2020, PL 116-94, § 603, 133 Stat 2534, 3123 (2019), amending 21 USC 387f(d). The federal increase in the smoking age followed similar action by more than a dozen states and hundreds of municipalities, representing more than half of the U.S. population. Campaign for Tobacco-Free Kids, *States and Localities that Have Raised the Minimum Legal Sale Age for Tobacco Products to 21* (2019) <https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf>.

- **Marijuana:** Every state to legalize marijuana has set the legal age at 21. Cohen et al, *When Does a Juvenile Become an Adult?*, *supra*, at 778. Michigan is no exception; in 2018, it passed a ballot initiative that set the legal age to possess or purchase marijuana at 21. MCL 333.27955.

In addition to controlled substance use, Michigan and other states around the country set the minimum age to engage in an array of other risky activities at above 18. For example:

- **Driving:** Numerous studies show that impulsivity among young drivers through their early twenties leads to increased risk of traffic violations and accidents. See, e.g., Pearson et al,

Impulsivity-Like Traits and Risky Driving Behaviors Among College Students, 53 Accident Analysis & Prevention 142 (April 2013)

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5242231/> (collecting studies).

Michigan, like many other states, makes 21 the minimum age for several driving-related activities, including riding a motorcycle without a helmet, MCL 257.658(5), transporting hazardous materials, MCL 480.12d(2)(b), and becoming a driver education instructor, MCL 256.637(3)(b).⁶ Federal law also prohibits individuals under age 21 from driving most commercial vehicles across state lines. 49 CFR 391.11(b)(1). Though not statutory, most rental car companies limit or bar rentals to individuals under age twenty-five, recognizing the increased risk posed by this age group.⁷

- **Gambling:** Like most jurisdictions that have legalized some form of casino gambling, Michigan requires people to be 21 to gamble at a casino. MCL 432.209(9).
- **Firearms:** Michigan raised the age to obtain a license to carry a concealed pistol from 18 to 21 in 2001. MCL 28.425b(7)(a), as amended by 2000 PA 381. Federal law bars licensed dealers from selling handguns to youth under 21, 18 USC 922(b)(1), and eighteen states, including neighboring states of Illinois and Ohio, set the minimum age to purchase at least some types of guns at 21, Giffords Law Center, *Minimum Age to Purchase & Possess* <https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/minimum-age/> (accessed July 2, 2020). Finally, federal appellate courts, rejecting Second Amendment challenges to laws raising the legal age to purchase guns to 21, have

⁶ See also *Selected State Law Restrictions on Young Adults Under Age 21* Table, attached hereto as Appendix A.

⁷ See, e.g., *Can You Rent a Car Under 25 in the US and Canada?*, ENTERPRISE <https://www.enterprise.com/en/help/faqs/car-rental-under-25.html> (accessed July 2, 2020).

highlighted psychological research “support[ing] the commonsense notion that 18-to-20-year-olds tend to be more impulsive than young adults aged 21 and over.” *Nat’l Rifle Ass’n of America, Inc v Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F3d 185, 210 n 21 (CA 5, 2012); see also *Horsley v Trame*, 808 F3d 1126, 1133 (CA 7, 2015) (“The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable.”).

- **Fireworks:** Consistent with most states in the country, Michigan raised the minimum age to obtain a fireworks and pyrotechnic display license from eighteen to twenty-one in 2011. MCL 28.466(4) (adopting National Fire Protection Association Code 1123).⁸

C. Many Jurisdictions Extend Additional Supports To Youth Through Their Mid-Twenties In Recognition Of Their Continued Character Formation And Growth

Many jurisdictions, including Michigan, have further recognized the developmental characteristics of young adults by extending additional supports and benefits to youth through age 21, and in some instances even older. Such laws reflect the third characteristic of youth identified in *Roper*, *Graham*, and *Miller* that makes them less deserving of the law’s harshest punishments: the character of a young person above age 18, like those under 18, remains “not as well formed as that of an adult.” *Roper*, 543 US at 570. They also reflect the increasing social reality that most young people continue to receive substantial support from parents well into their twenties, as

⁸ See also Appendix A.

young people above 18 still have a “lack of control over their immediate surroundings” compared to older adults. *Id.*

For example, with support from the federal government, states around the country have recently expanded foster care beyond age 18. In 2008, Congress passed the Fostering Connections to Success and Increasing Adoptions Act, allowing states to use federal funding to extend foster care up to age 21. 42 USC 675(8)(B). Since then, Michigan, along with 45 states and the District of Columbia, have extended foster care eligibility past age 18, with most, including Michigan, extending foster care up to age 21. U.S. Dep’t of Health & Human Services, Extension of Foster Care Beyond Age 18 (February 2017), p 2 n 3 <<https://www.childwelfare.gov/pubPDFs/extensionfc.pdf>>. The near universal extension of foster care beyond age 18 reflects researchers’ conclusions that there is “nothing magical about age 18 or even age 21 as a marker of adulthood, and few children outside the child welfare system are expected to be ‘independent’ once they reach the age of majority.” National Academies of Sciences, The Promise of Adolescence, *supra*, at 267. Michigan Governor Rick Snyder, upon signing the state’s bill extending care, explained that “[y]oung people in foster care need the same kind of support other 18-year-olds do as they navigate the crucial years leading up to age 21.” . . . “The Fostering Connections legislation will give those who wish to receive it the extra assistance they need to become successful adults.”⁹ Thus, extended foster care reflects both scientific and

⁹ State of Michigan, Former Governors, Gov. Snyder Signs Fostering Connections Legislation (November 22, 2011) <https://www.michigan.gov/formergovernors/0,4584,7-212-96477_90815_57657-266082--,00.html>.

social realities that young people are not fully formed at age eighteen and that most young adults receive support to transition to adulthood through at least age 21.

The healthcare system also increasingly recognizes that young people need additional support beyond age 18. Under the Affordable Care Act, young adults may remain on their parents' health care plans until age 26, in part to combat high rates of uninsurance among young adults. Center for Consumer Information & Insurance Oversight, *Young Adults and the Affordable Care Act: Protecting Young Adults and Eliminating Burdens on Families and Businesses*, Centers for Medicare & Medicaid Services <https://www.cms.gov/CCIIO/Resources/Files/adult_child_fact_sheet.html> (accessed July 2, 2020). Children receiving Medicaid also continue to be able to access all medically necessary services under the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) guarantee until age 21 (whereas coverage for older adults on Medicaid is more limited). 42 CFR 441.50.

Access to education also extends into early adulthood. All fifty states and the District of Columbia provide a right to a free education until at least age 19, and more than half of states provide a right to education until at least age 21. Aragon, *Free and Compulsory School Age Requirements* (2015), pp 3-6 <<https://www.ecs.org/clearinghouse/01/18/68/11868.pdf#targetText=22%20Although%20state%20statute%20in,of%204%20and%206%20years>>. Indeed, Michigan provides a right to free public education up to age 20. MCL 388.1606(4)(1). In addition, the federal Individuals with Disabilities Education Act (IDEA) requires states and school districts to offer special education services to children and youth with disabilities up to age 21 (or until high school graduation). 20 USC 1412(a)(1)(A).

In sum, a panoply of state and federal laws set the line of adulthood above age 18,

particularly in fields that implicate the three characteristics of youth that led the Supreme Court to conclude that it is cruel and unusual to sentence a juvenile to life without parole.¹⁰

III. INDIVIDUALS RESENTENCED UNDER *MILLER* IN MICHIGAN AND NATIONALLY HAVE RARELY RECEIVED LIFE WITHOUT PAROLE

Since the U.S. Supreme Court's decision in *Miller*, lower courts in Michigan and around the country have had the opportunity to consider the effect of the mitigating qualities of youth on individual sentences in hundreds of cases. In the overwhelming majority of these cases—including cases involving older adolescents—courts have concluded that age and its attendant characteristics counsel against imposing the harshest available penalties.

The Campaign for Fair Sentencing of Youth (CFSY) has collected data on *Miller* resentencings in states nationwide. At the time of *Montgomery*, approximately 2,800 individuals were serving life without parole sentences for offenses that occurred when they were

¹⁰ Although states continue to set 18 as the relevant age marker for certain other regulated activities—including voting, marrying without consent, entering the military and serving on juries—the rationales sustaining those laws are based on different characteristics than those underpinning the U.S. Supreme Court's decision in *Miller*. For example, voting, marrying without consent, and serving on juries are not activities that are highly susceptible to impulsive behavior: they allow a person time to make a decision, and center on characteristics of “logical reasoning,” which society and the medical community explain develop at a much earlier age. Steinberg, *A 16-year-old Is as Good as an 18-year-old—or a 40-year-old—at Voting*, Los Angeles Times (November 3, 2014) <<http://www.latimes.com/opinion/op-ed/la-oe-steinberg-lower-voting-age-20141104-story.html>> (explaining that there is a difference when considering laws such as “voting or granting informed consent for medical procedures” where “[a]dolescents can gather evidence, consult with others and take time before making a decision” because while “[a]dolescents may make bad choices . . . statistically speaking, they won't make them any more often than adults”). By contrast, the purchase or use of tobacco or alcohol, firearm and explosive use, and motor vehicle operation are all potentially emotionally arousing activities where maturity, vulnerability and susceptibility to influence, and underdeveloped character come into play—much as they do when young people engage in criminal acts. Thus, the fact that the legal boundary for adulthood remains 18 in some instances does not undercut the trend toward raising the age of majority, but instead reflects the growing national census that the line for adulthood should be set at age 18 (or lower) for activities characterized by considered, logical decision-making, and should be raised above age 18 for circumstances characterized by “emotionally arousing conditions.” Scott et al, *supra*, at 652.

children. CFSY, *Montgomery v. Louisiana Anniversary: Four Years Since the U.S. Supreme Court Decision in Montgomery v. Louisiana* (January 25, 2020) <<http://www.fairsentencingofyouth.org/wp-content/uploads/Montgomery-Anniversary-1.24.pdf>>. As of January 2020, approximately 2,000 juvenile life without parole sentences have been altered through judicial resentencing or legislative reform. *Id.* Overall, the median for these modified sentences is 25 years' incarceration before parole or release eligibility. *Id.* Notably, this median is the same when the data is isolated to include only those who committed offenses at age 17.¹¹

Further, in cases of judicial resentencings, judges are rarely imposing life without parole on juvenile offenders when they have the ability to take youth into account. Nationwide, fewer than 100 individuals have been resentenced to life without parole following *Miller*. CFSY, *supra*. Slightly more than half of the resentencings completed thus far (approximately 1086 of the 2041 total resolved cases) involve individuals who committed offenses at age 17, and life without parole has been re-imposed in fewer than 50 of these cases.¹² Accordingly, judges are concluding that life without parole is an excessive sentence for 17-year-olds just as frequently as they are in cases involving younger teens.

Michigan resentencings are consistent with these national trends. According to data provided to the American Civil Liberties Union of Michigan, 202 individuals had been resentenced as of March 2020, 115 of whom were age 17 at the time of their offense. The overwhelming majority of those who have been resentenced so far have received term-of-years sentences; only fourteen have been resentenced to life without the possibility of parole.¹³

¹¹ Data collected by Campaign for Fair Sentencing of Youth (available upon request).

¹² See *supra* note 11.

¹³ Data on file with the American Civil Liberties Union of Michigan (available upon request).

In short, when courts have the opportunity to consider the mitigating effect of the hallmark characteristics of youth, they rarely impose life without parole sentences, even in cases involving older adolescents—further reinforcing that age 18 is an arbitrary boundary that cannot define the constitutional limits on sentencing practices under the Eighth Amendment.

CONCLUSION

Wherefore, *amici curiae* respectfully request that this Honorable Court grant Mr. Manning's application for leave to appeal, vacate his sentence of life without the possibility of parole, and remand for resentencing.

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APPENDIX A

STATE LAW RESTRICTIONS ON YOUNG ADULTS UNDER AGE 21

Selected Examples of Driving Restrictions on Young Adults	
Alaska	Alaska Stat 28.15.046(b) (school bus driver license)
Arizona	Ariz Admin Code R17-7-301 (driver's license examiner)
Arkansas	Ark Code Ann 14-57-402 and 14-57-404 (bus or taxicab driver's license) Ark Admin Code 142.00.1-XIV(2)(F) (driver education instructor)
California	Cal Veh Code 12515(b) (driving vehicle engaged in interstate commerce or transportation of hazardous material) Cal Veh Code 11102.5(a)(3) and 11102.6(a)(3) (driving school operator)
District of Columbia	DC Mun Regs tit. 18, § 1302 (operation of a school bus and transportation of hazardous materials, among others)
Florida	Fla Admin Code r 5J-20.033(3) (drive liquid petroleum commercial motor vehicle) Fla Admin Code r 15A-11.006(2)(a) (commercial driving school instructor)
Hawaii	Haw Code R 19-139-10 (driver education instructor)
Idaho	Idaho Code Ann 54-5406 (driving instructor license)
Indiana	Ind Code 20-27-8-1 (school bus driver)
Kansas	Kan Admin Regs 91-38-6 (school bus driver)
Kentucky	Ky Rev Stat Ann 332.204 (teach at a driving school) 601 Ky Admin Regs 1:005 (transport hazardous materials in interstate commerce) 702 Ky Admin Regs 5:080 (school bus driver)

Louisiana	La Admin Code tit 28, pt CXIII, § 303 (school bus driver)
Maine	Me Stat Ann tit 29-A, § 1304(4-A)(E) (commercial driver license) Me Stat Ann tit 29-A § 1354 (driver's education instructor)
Maryland	Md Code Ann, Transp 16-817 (commercial driver's license)
Michigan	MCL 480.12d (transportation of hazardous materials)
Nebraska	Neb Admin Code tit 250, ch 3, § 006 (driving instructor)
Nevada	Nev Rev Stat Ann 483.720 (driving instructor license)
North Carolina	NC Gen Stat Ann 20-37.13 (commercial driver's license)
North Dakota	ND Cent Code 15.1-07-20 (school vehicle driver)
Ohio	Ohio Rev Code Ann 4506.05 (commercial driver's license for interstate commerce)
Oklahoma	Okla Admin Code 595:40-1-4 (driving instructor)
Pennsylvania	53 Pa Cons Stat Ann 57B02 (taxi cab driver)
Rhode Island	RI Gen Laws 31-10-5 (school bus driver)
Utah	Utah Code Ann 53-3-213 (drive a school bus or commercial motor vehicle, or transport hazardous materials)
Vermont	Vt Admin Code 22-1-2 (driver training)
Virginia	Va Code Ann 46.2-341.9 (commercial driver's license)
Washington	Wash Rev Code Ann 46.82.330 (driver training)
Wisconsin	Wis Stat 343.06(3) (commercial driver license)
Motorcycle Helmet Requirements for Young Adults	
Arkansas	Ark Code Ann 27-20-104

Delaware	Del Code Ann tit. 21, § 4185
Florida	Fla Stat 316.211
Kentucky	Ky Rev Stat Ann 189.285
Michigan	MCL 257.658
Pennsylvania	75 Pa Cons Stat Ann 3525
Rhode Island	RI Gen Laws 31-10.1-4
South Carolina	SC Code Ann 56-5-3660
Texas	Tex Transp Code Ann 661.003
Utah	Utah Code Ann 41-6a-1505

Explosives and Blasting Use Restrictions for Young Adults	
Alabama	Ala Code 8-17-243
California	Cal Code Regs tit. 8, § 5238
Colorado	7 Colo Code Regs 1101-9.3-3
Connecticut	Conn Agencies Regs 29-349-205
Delaware	Del Code Ann tit. 16 § 7107
Georgia	Ga Comp R & Regs 120-3-10.05
Hawaii	Haw Code R 12-58-1
Idaho	Idaho Admin Code r 18.08.01 (adopting the International Fire Code (IFC), which sets minimum age for handling explosives at twenty-one. IFC 5601.4)
Illinois	Ill Admin Code tit 62, § 200.98
Indiana	675 Ind Admin Code 26-2-2
Iowa	Iowa Admin Code r 661-235.5(5)
Kansas	Kan Admin Regs 22-4-5
Kentucky	Ky Rev Stat Ann 351.315
Maryland	Md Code Regs 26.20.22.08
Massachusetts	527 Mass Code Regs 1.05
Missouri	Mo Rev Stat 319.306
Nebraska	Neb Rev Stat 28-1229
New Hampshire	NH Code R Saf-C 1604.03
New Jersey	NJ Admin Code 12:190-3.6
New York	NY Comp Codes R & Regs tit 12, § 61-4.4
Oregon	Or Rev Stat 480.225
Pennsylvania	25 Pa Code 210.14
Rhode Island	RI Gen Laws 23-28.28-5
Tennessee	Tenn Code Ann 68-105-106(c)
Texas	16 Tex Admin Code 12.702
Utah	Utah Admin Code r 645-105-300
Virginia	13 Va Admin Code 5-51-150 (adopting IFC 5601.4)

Washington	Wash Rev Code 70.74.360
West Virginia	W Va Code. R 199-1-4
Wisconsin	Wis Admin Code SPS 305.20(2)
Fireworks Restrictions for Young Adults	
Alabama	Ala Code 8-17-231
Alaska	Alaska Admin Code tit 13, § 50.025 (adopting the IFC, which sets the minimum age for operating fireworks and pyrotechnic displays at twenty-one. IFC 5601.4)
Arizona	Ariz Admin Code R4-36-201 and Ariz Admin Code R4-36-310 (adopting IFC 5601.4)
Arkansas	Ark Code Ann 20-22-707
California	Cal Health & Safety Code 12517
Colorado	8 Colo Code Regs 1507-101:3 (adopting National Fire Protection Association (“NFPA”) 1123, Code for Fireworks Display, which sets the minimum age for operating fireworks at twenty-one)
Delaware	1 Del Admin Code 704-2-5.0 (adopting NFPA 1123)
Florida	Fla Stat 791.012 (adopting NFPA 1123)
Georgia	Ga Comp R & Regs 120-3-22-.07 (adopting NFPA 1123)
Hawaii	Haw Code R 12-58-1
Idaho	Idaho Admin Code r 18.01.50.041 (adopting IFC 5601.4)
Illinois	225 Ill Comp Stat 227/35
Indiana	675 Ind Admin Code 22-2.2-26
Kansas	Kan Stat Ann 31-503
Louisiana	La Rev Stat Ann 51:655
Maine	Me Rev Stat Ann tit 8, § 231
Maryland	Md Code Regs 29.06.01.09 (adopting NFPA 1123)
Massachusetts	527 Mass Code Regs 1.05 (adopting NFPA 1123)

Michigan	MCL 28.466 (adopting NFPA 1123)
Minnesota	Minn Stat 624.22
Mississippi	Miss Code Ann 45-13-11 (adopting NFPA 1123)
Missouri	Mo Code Regs Ann tit 11, § 40-3.010
Nevada	Nev Admin Code 477.636
New Hampshire	NH Rev Stat Ann 160-B:6
New Jersey	NJ Admin Code 5:70-3.2 (adopting IFC 5601.4)
New York	NY Penal Law 405.10
North Carolina	NC Gen Stat 58-82A-10
North Dakota	ND Admin Code 10-07-01-04 (adopting NFPA 1123)
Ohio	Ohio Rev Code Ann 3743.50
Oklahoma	Okla Stat tit 68, § 1636
Oregon	Or Admin R 837-012-0780
Pennsylvania	72 Pa Stat Ann 9402
Rhode Island	450 RI Code R 00-00-7.1
South Carolina	SC Code Ann Regs 71-8300.2 (adopting NFPA 1123)
South Dakota	SD Codified Laws 34-37-13 (adopting NFPA 1123)
Tennessee	Tenn Code Ann 68-104-208
Texas	Tex Occ Code Ann 2154.101
Utah	Utah Admin Code R710-2-8
Virginia	13 Va Admin Code 5-51-150 (adopting IFC 5601.4)
Washington	Wash Admin Code 212-17-220
West Virginia	W Va Code R 103-4-4 (adopting NFPA 1123)