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IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

STATE OF TENNESSEE,

Appellee,

v.

TYSHON BOOKER,

Appellant.

On Appeal from the Court of Criminal Appeals of Tennessee at Knoxville, No. E2018-0143-CCA-R3-CD

BRIEF OF THE CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH AND THE CHILDREN'S DEFENSE FUND AS *AMICI CURIAE* IN SUPPORT OF APPELLANT TYSHON BOOKER

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STATEMENT OF INTEREST

The Campaign for the Fair Sentencing of Youth ("CFSY") is a nonprofit organization that leads, coordinates, develops, and supports efforts to implement fair and age-appropriate sentences for youth, with a focus on abolishing mandatory life without parole sentences for children. CFSY gives technical assistance on strategic communications, litigation, and advocacy to attorneys, advocates, organizers, and others. It engages in public education to arm decision-makers and the broader public with the facts and stories to explain the impacts of these sentences on individuals, families, communities, and society.

The Children's Defense Fund ("CDF") is a nonprofit organization that for nearly 50 years has given a strong and independent voice to all American children who cannot vote, lobby, or otherwise speak for themselves. This includes advocating for an end to life without parole sentences for youth offenders.

Amici Curiae have a particular interest in this case because of their national litigation and advocacy work for youth justice. This case addresses whether sentencing Tennessee children to a mandatory *de facto* life without the possibility of parole sentence (i.e., a mandatory minimum of 51 years' imprisonment) flouts federal and state constitutional prohibitions on cruel and unusual punishment. *See* U.S. CONST. amend. VIII; TENN. CONST. art. I, § 16.[1] Given their missions and

[1] Pursuant to Tenn. S. Ct. R. 49, § 3.02(7), *amici curiae* have provided the Court with external hyperlinks to legal authorities in this brief where available on Westlaw.

histories, *amici* are uniquely positioned to offer assistance to this Court in deciding this case.

SUMMARY OF THE ARGUMENT

Children are not "miniature adults." *Miller v. Alabama*, 567 U.S 460, 482 (2012). They are developmentally dissimilar on a fundamental level, ranging from cognitive capacity, intellect, and psychosocial maturity. This concept is familiar to us. Our own coming-of-age experiences and those of the children in our lives show this is true. It is also what the scientific research tells us. *See Roper v. Simmons*, 543 U.S. 551, 569 (2005).

The U.S. Supreme Court has consistently held accordingly: the Constitution treats children differently for sentencing purposes following a criminal conviction for even the most serious offenses. *See, e.g.*, *Miller*, 567 U.S. at 479 (prohibiting mandatory life without parole sentences for children); *Graham v. Florida*, 560 U.S. 48, 68-69 (2010) (prohibiting mandatory life without parole sentences for children in non-homicide cases); *Roper*, 543 U.S. at 569-70 (prohibiting the death penalty for children). And it has done so because "the imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." *Miller*, 567 U.S. at 503.

But Tennessee law ignores these differences all know to be true. If a child is convicted of first degree homicide in Tennessee, a judge cannot—as a matter of law—consider youth's hallmark attributes before ordering that child to be deprived of liberty without the possibility of release for at least 51 years (assuming the child survives that long). *See Brown v. Jordan*, 563 S.W.3d 196 (Tenn. 2018).

A judge cannot consider, among other factors, the impact that a child's developmental limitations has on her ability to navigate the criminal legal system effectively—including her impaired experiences with police, prosecutors, judges, juries, and even her own attorneys. Children receive their *Miranda* rights differently than adults and falsely confess at rates much higher than adults. Children plead guilty much more often than adults do and are disadvantaged in their interactions with judges and juries. They also lack capacity to fully understand the attorney-client relationship. Because of these and the factors Tyshon Booker and other *amici* in support of him describe, Tennessee's mandatory *de facto* life sentence for children is a cruel and unusual punishment and therefore plainly in violation of the United States and Tennessee Constitutions.

ARGUMENT

I. THE U.S. SUPREME COURT'S EIGHTH AMENDMENT PRECEDENT IS GROUNDED IN THE COGNITIVE DIFFERNCES BETWEEN CHILDREN AND ADULTS AND THE IMPAIRED EXPERIENCES CHILDREN HAVE IN THE CRIMINAL LEGAL SYSTEM

Both the U.S. and Tennessee Constitutions prohibit cruel and unusual punishment and guarantee individuals the right not to be subjected to excessive sanctions. *See* U.S. CONST. amend. VIII; TENN. CONST. art. I, § 16. The U.S. Supreme Court has consistently held children are "constitutionally different" from adults for sentencing purposes because they are not "miniature adults" and have fundamental developmental dissimilarities. *Miller*, 567 U.S at 481. These decisions make abundantly clear an important foundational principle: the

"imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." *Id.* at 503.

This now well-established foundational principle prominently began in *Roper*, where the U.S. Supreme Court held the death penalty is unconstitutional for children. 543 U.S. at 568-69. The Court based its holding on three fundamental differences between children and adults: (1) children lack maturity and have an underdeveloped sense of responsibility, which often result in impetuous and ill-considered actions and decisions; (2) children are more vulnerable or susceptible to negative influences and outside pressures; and (3) a child's character is not "as well formed" as that of an adult. *Id.* at 569-70. The Court therefore recognized that children's conduct "is not as morally reprehensible as that of an adult," so they are "categorically less culpable than the average criminal." *Id.* at 567, 570 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988); *Atkins v. Virginia*, 536 U.S. 304, 316 (2002)).

Five years later in *Graham*, the Court reaffirmed *Roper*'s reasoning and held that life without parole sentences are unconstitutional when imposed on children convicted of offenses other than homicide. 560 U.S. at 75. Developments in psychology and brain science, the Court observed, continue to show fundamental differences between the minds of children and adults, including on parts of the brain involved in behavior control, which continue to mature through late adolescence. *Id.* at 68. Children are also "more capable of change than adults, and their actions are less likely to be evidence of 'irretrievably depraved character' than are the actions of adults." *Id.* (quoting *Roper*, 543 U.S. at 570). The Court held a life without parole sentence imposed on a child ignores these crucial

and fundamental differences because it "means a denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days." *Id.* at 70 (alteration in original) (quoting *Naovarath v. State*, 779 P.2d 944 (Nev. 1989)).

Building on *Roper* and *Graham*, the Court in *Miller* held the Constitution prohibits mandatory life without parole sentences for *all* children, 567 U.S. at 503, and indeed all sentences of life without parole when a child's crime reflects transient immaturity. *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016). State laws that impose a mandatory life without parole sentence on a child prevent a judge from considering a child's age and its hallmark features, including immaturity, impetuosity, and failure to appreciate risks and consequences. *Miller*, 567 U.S. at 477-78. The Court further explained:

> [A mandatory life without parole sentence for a child] prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—***for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.***

Id. at 477-78 (alteration and emphasis added) (citing *Graham*, 560 U.S. at 78 ("[T]he features that distinguish juveniles from adults also put

them at a significant disadvantage in criminal proceedings")); *see* *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011) (discussing children's responses to interrogation).

This brief examines children's diminished ability to navigate the criminal legal system—specifically their inability to interact effectively with police officers, prosecutors, judges, juries, and their very own attorneys. A mandatory *de facto* life sentence for children strips a judge of discretion to consider this diminished ability. As the U.S. Supreme Court held in *Miller*, this violates the Constitution.

II. TENNESSEE IMPOSES THE HARSHEST OF ADULT PENALTIES ON CHILDREN, EVEN THOUGH CHILDREN MIGHT BE CHARGED AND CONVICTED OF LESSER OFFENSES IF NOT FOR THEIR IMPAIRED INTERACTIONS WITH THE POLICE

Children first encounter the criminal legal system when they interact with police. From the very beginning, children have a different experience in that system than adults do. They have a different perception of when they must respond to police questioning and do not fully comprehend their *Miranda* rights or the consequences of waiving them. And once children are in a custodial interrogation, their immaturity, vulnerability to external pressure, societal expectations of obedience to authority, and diminished ability to weigh risks and long-term consequences lead them to falsely confess at rates much higher than adults.

A. Children receive *Miranda* warnings differently than adults.

Children feel compelled to submit to police questioning when an adult would not. The U.S. Supreme Court recognized this to be true—

holding that a child's age properly informs the *Miranda* custody analysis and stating, "[i]t is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave." *J.D.B.*, 564 U.S. at 264.

The disparity is the same when police read children their *Miranda* rights. The research shows children lack the capacity and life experience to comprehend the abstract words of the *Miranda* warning when compared with adults.[2] Children also fail to appreciate the significance and function of *Miranda* rights. Psychological research suggests children struggle to grasp the basic concept of a right as an absolute entitlement they can exercise without adverse consequences. Barry C. Feld, *Juveniles' Competence to Exercise Miranda Rights: An Empirical Study of Policy and Practice*, 91 Minn. L. Rev. 26, 43 (2006). Accordingly, children are more likely than adults to conceive of a right as something authorities allow them to do but can unilaterally retract. *Id.* Children from low-income and ethnic-minority backgrounds are even more likely to expect law enforcement to punish them if they exercise their rights. *Id.*

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[2] When *Mirandized,* approximately 45% of children (relative to 15% of adults) misunderstood their right to consult an attorney and have one present during questioning, roughly 24% of children (compared to just 9% of adults) misunderstood the instruction that anything said during an interrogation could be used against them in court, and approximately 62% of children (compared to approximately 22% of adults) thought a judge could penalize someone for remaining silent. *See* Thomas Grisso, *Juveniles' Capacity to Waive Miranda Rights: An Empirical Analysis*, 68 Calif. L. Rev. 1134, 1154, 1158 (1980).

Lacking in children, too, is the psychosocial maturity and cognitive capacity to make a truly knowing and voluntary waiver of their *Miranda* rights. *See* Kenneth J. King, *Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children from Unknowing, Unintelligent, and Involuntary Waivers of Miranda Rights*, 2006 Wis. L. Rev. 431, 431 (2006); Grisso, *supra*, at 1152-54 (finding that a majority of juveniles who received *Miranda* warnings did not understand them well enough to waive them).

In fact, they are uniquely susceptible to modern interrogation techniques and abuses. Interrogators commonly use rapport-building, small talk before mentioning the warnings, and portray themselves as the suspect's confidant or guardian. Kevin Lapp, *Taking Back Juvenile Confessions*, 64 UCLA L. Rev. 902, 916-17 (2017). These tactics, when coupled with the psychological limitations of children discussed herein, more easily convince a child suspect to waive his rights relative to adults. *Id.*; *see also* Thomas Grisso & Carolyn Pomicter, *Interrogation of Juveniles: An Empirical Study of Procedures, Safeguards, and Rights Waiver*, 1 L. & Hum. Behav. 321, 339 (1977) (reporting that about 10% of youth invoked their rights during interrogation compared to 40% of adults).[3]

[3] Recognizing this issue, California requires youth younger than eighteen to consult with an attorney prior to a custodial interrogation and before waiving their *Miranda* rights. *See* Cal. Welf. & Inst. Code § 625.6.

B. Children are more likely to falsely confess to crimes.

By its very nature, custodial police interrogation entails "inherently compelling pressures." *Miranda v. Arizona*, 384 U.S. 436, 467 (1966). Even for an adult, the physical and psychological isolation of custodial interrogation can undermine the individual's will to resist and compel him to speak where he would not otherwise do so. *See id.* The pressure of custodial interrogation is so immense that it "can induce a frighteningly high percentage of people to confess to crimes they never committed." *Corley v. United States*, 556 U.S. 303, 321 (2009). Admissions of guilt are powerful pieces of evidence. So much so that juries are predisposed to believe confessions over other relevant evidence, such as eyewitness identifications and forensic science. Lindsay C. Malloy et al., *Interrogations, Confessions, and Guilty Pleas Among Serious Adolescent Offenders*, 38 Law & Hum. Behav. 181, 181 (2014).

The U.S. Supreme Court has recognized children's immaturity, vulnerability to external pressure, societal expectations of obedience to authority, and diminished ability to weigh risks and long-term consequences render them uniquely susceptible to making false statements and confessions when interrogated in a custodial setting. *See J.D.B.*, 564 U.S. at 269; *see also Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) ("[N]o matter how sophisticated," a child subject of police interrogation "cannot be compared" to an adult subject); *Haley v. Ohio*, 332 U.S. 596, 599 (1948) (plurality opinion) (events that "would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens").

Thus, it is no surprise that children comprise a disproportionate share of false confessions. *See* Lapp, *supra*, at 920 (35% of proven false confessions involved suspects under the age of eighteen when they make up only approximately 9% of arrests); Samuel R. Gross et al., *Exonerations in the United States 1989 Through 2003*, 95 J. Crim. L. & Criminology 523, 545 (2005) (finding 42% of all juvenile wrongful convictions involved false confessions, compared to only 13% of adult wrongful convictions).

Children are more likely to falsely confess for three main reasons: (1) to end the stressful interrogation; (2) to please their adult interrogator; and (3) the belief in a harsher sentence if they do not confess. Lapp, *supra*, at 920; Allison D. Redlich et al., *Pragmatic Implications in the Interrogation Room: A Comparison of Juveniles and Adults*, J. of Experimental Criminology at 9 (2019). Children typically underestimate the amount and likelihood of risks compared to adults, more heavily discount the future, and prioritize potential immediate gains over more distant losses. Lapp, *supra*, at 918. When police interrogators explain that a confession will end the interrogation, children are more likely to value that immediate gain over the unknown negative consequence from confessing to a crime. *Id.* In addition, children, more than adults, are highly susceptible to peer influence and place a greater importance on peer relationships. Malloy et al., *supra*, at 182. Many children falsely confess to protect a peer. *Id.*

Police interrogation tactics also influence children's likelihood to confess. Police generally question children as they do adults—presenting false evidence, repeatedly questioning the subject, and accusing the

suspect of lying. *See id.* Research has found that children asked the same question more than once may assume they gave the "wrong" answer the first time and feel pressure to provide the "right" answer when the question is repeated. Lapp, *supra*, at 921. In addition, when the interrogator repeatedly demands compliance, children are more likely to confess in obedience to authority. *See* Malloy et al., *supra*, at 182.

III. TENNESSEE'S MANDATORY *DE FACTO* LIFE SENTENCE FOR CHILDREN VIOLATES *MILLER* IN PART BECAUSE IT DOES NOT ACCOUNT FOR CHILDREN'S EXPERIENCES WITH PROSECUTORS, JUDGES, AND JURIES

Children's next interactions in the criminal legal system are with the prosecutor, the judge, and, if the case proceeds to trial, the jury. As discussed above, children may already be disadvantaged from the outset because of a false confession. Moreover, because of their developmental status, delayed communication skills, and inability to evaluate risks and consequences the way adults do, children are likely to have more detrimental interactions with prosecutors, judges, and juries than adults.

A. Children do not evaluate plea deals as effectively as adults and plead guilty when innocent at rates much higher than adults.

Given the frequency of plea deals in the criminal legal system, a child suspect will likely have to evaluate a plea deal's terms, negotiate the plea, and determine the consequences of pleading guilty. This process is complicated for most adults, but children are susceptible to unique and exacerbated pitfalls because of their youth.

Children are expected to have the complex negotiation skills frequently only associated with adults. In other contexts, the law

explicitly recognizes children's diminished capacity to negotiate contracts. *See, e.g.* *Harvey ex rel. Gladden v. Cumberland Tr. & Inv. Co.*, 532 S.W.3d 243, 271 (Tenn. 2017) (reciting the well-settled principle in Tennessee that "a minor's contracts, generally speaking, are voidable."); Tenn. Code Ann. § 29-34-105 (minor settlement agreements in tort cases must be approved by a court). Though plea deals have often been considered a special form of contract, the law does not afford children negotiating plea deals the special protections available to them in other contexts. *See* *State v. Mellon*, 118 S.W.3d 340, 346 (Tenn. 2003). This is contrary to even the elementary rule that Tennessee courts "assume a special responsibility to protect a minor's interests." *Wright v. Wright*, 377 S.W.3d 166, 178 (Tenn. 2011).

Moreover, an individual's willingness to plead guilty decreases with age. *See* Allison D. Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, 62 Rutgers L. Rev. 943, 945-46 (2011). Children are also more likely than adults to plead guilty to crimes they did not commit. *See* Rebecca K. Helm et al., *Too Young to Plead? Risk, Rationality, and Plea Bargaining's Innocence Problem in Adolescents*, 24 Psych., Pub. Pol'y, and L. 180, 183 (2018); *see also* Allison D. Redlich & Reveka V. Shteynberg, *To Plead or Not to Plead: A Comparison of Juvenile and Adult True and False Plea Decisions*, 40 L. & Hum. Behav. 611, 611 (2016) (finding children are twice as likely as adults to plead guilty when they are innocent). This is because children: (1) are more susceptible to pressure from a prosecutor; (2) may be given a worse plea offer due to a coerced confession; and (3) are less able to

properly evaluate the risks associated with accepting a plea deal, including evaluating complex odds associated with a plea offer. *See id.*

Specifically, children "are less likely than adults to consider the short- and long-term consequences of a decision to plead not guilty." *Id.* at 623. Children have never experienced looking for a job, voting, or seeking housing, so they cannot appreciate the harm pleading guilty may have on these aspects of their lives. In addition, when asked to evaluate a plea deal that would decrease a sentence from a charge that would carry a sentence of a longer number of years if convicted, children focused on the length of time associated with taking the plea versus a conviction, whereas the adults' reasoning reflected attempts to weigh the odds, including the possibility of no sentence at all. *Id.*

Likewise, superficial incentives to plead guilty are more likely to influence children than adults. For example, research shows children are more likely to fixate on the difference in the number of years in two sentence options, rather than evaluating more substantive factors such as (a) the odds of being convicted at trial, (b) the consequences of pleading guilty to a felony, or (c) the child's factual guilt or innocence. *See* Rebecca K. Helm et al., *supra*, at 183-89.

B. Children's interactions with judges are impaired.

Children's interactions with judges differ from adults during plea proceedings because children are inherently less likely than adults to understand and appreciate what it means to plead guilty. Guilty pleas must be made knowingly, intelligently, and voluntarily, and judges must evaluate whether the child's plea meets this standard. *See Boykin v. Alabama*, 395 U.S. 238, 245 (1969). One study questioned children about

their understanding of thirty-six words used in the Massachusetts tender-of-plea form and juvenile court colloquies. Redlich, *supra*, at 948. On average, uninstructed children defined only two of thirty-six words correctly. *Id.* This statistic only marginally improved with instruction: juveniles receiving instruction were only able to define five of the thirty-six words in a plea colloquy or tender of plea form correctly. *Id.* For example, one child defined the "presumption of innocence" as "if your attorney feels you didn't do it." *Id.*

Moreover, a large percent of children in criminal legal detention centers are estimated to have learning disabilities, which make these proceedings even more difficult for them. Allison D. Redlich & Catherine L. Bonventre, *Content and Comprehensibility of Juvenile and Adult Tender-of-Plea Forms: Implications for Knowing, Intelligent, and Voluntary Guilty Pleas*, 39 L. & Hum. Behav. 162, 163 (2015). Therefore, because children with instruction cannot even understand or define nearly all of the words in the plea colloquy or tender of plea forms, they are even less able to synthesize the concepts in the colloquy or plea form to allow judges to conclude their pleas are made "knowingly, intelligently, and voluntarily."

Children are also less effective at communicating with judges because of their higher incidences of language impairments compared to adults, which can undermine the efficacy of interactions between a child defendant and judge. For example, "a defendant with a receptive or expressive language impairment may lack the ability to sprinkle his utterances with . . . verbal and non-verbal niceties." Michele LaVigne & Gregory J. Van Rybroek, *Breakdown in the Language Zone: The*

Prevalence of Language Impairments among Juvenile and Adult Offenders and Why It Matters, 15 U.C. Davis J. of Juv. L. & Pol'y 37, 83 (2011). A child defendant's inability to communicate effectively or conform their affect to adult behavioral norms may undermine the child's ability to make a positive impression on the judge, such as failure to make eye contact being interpreted as disrespect, or "it may be more damaging, as when a defendant with a severe deficit tries to express himself during allocution with his limited palette of language and comes across as abrasive, or even aggressive." *Id.* at 83-84. Worst is the possibility that a defendant may give a poor performance on the witness stand, causing a judge to conclude the child defendant has poor moral character. *Id.* at 84.

C. Children face negative perceptions from juries.

Juries are also susceptible to perceiving child defendants negatively. Recognizing this bias, legal educators have recommended changes to model jury instructions pertaining to the presence or absence of a child defendant's testimony in particular. *See* Dulcineia Goncalves et al., *Trying Sex Offense Cases in Massachusetts* § 11.10 (Mass. Continuing Legal Educ. 3d ed. 2017, with 2020 Supp.) (recommending adding instructions about a different standard of evaluation for child testimony versus adults).

Children with low socioeconomic status are even more disadvantaged in their interaction with juries. Research shows mock jurors generally consider children with low socioeconomic status less mature than their middle and high socioeconomic status peers, which can impact their perceptions of a child's character. Katlyn S. Farnum &

Margaret C. Stevenson, *Economically Disadvantaged Juvenile Offenders Tried in Adult Court are Perceived as Less Able to Understand Their Actions, But More Guilty*, 19 Psych. Crime and L. 728, 737 (2013). Mock jurors were seven times more likely to convict low socioeconomic status children of murder than their high socioeconomic status peers. *Id.* at 738.

IV. TENNESSEE'S MANDATORY *DE FACTO* LIFE SENTENCE FOR CHILDREN ALSO NEGLECTS CHILDREN'S INCAPACITY TO ASSIST THEIR VERY OWN ATTORNEYS

Children's relative psychosocial immaturity and deficient intellectual and cognitive development impact their relationship with their attorney because children may not trust their counsel to be an advocate for them. The U.S. Supreme Court has acknowledged children "require[] the guiding hand of counsel" to "cope with the problems of the law." *In re Gault*, 387 U.S. 1, 36 (1967). We can all recognize that trust between defendants and their attorneys is central to formulating an effective legal defense because trust fosters candid communication. Children are less likely to trust lawyers because, unlike other adult figures such as teachers, doctors, and nurses, lawyers are not familiar to them. Theresa Hughes, *A Paradigm of Youth Client Satisfaction: Heightening Professional Responsibility for Children Advocates*, 40 Colum. J. L. & Soc. Probs. 551, 566-67 (2007). Children are therefore less likely than adults to speak openly with their attorneys. *Id.*

Race relations and class differences further exacerbate this lack of trust. *See* Annette Ruth Appell, *Representing Children Representing What?: Critical Reflections on Lawyering for Children*, 39 Colum. Hum. Rts. L. Rev. 573, 608-11 (2008). When a white attorney represents a

black child, trust is harder to establish. *Id.* at 608. The same is true when a child is indigent and has court-appointed counsel. Melinda G. Schmidt et al., *Effectiveness of Participation as a Defendant: The Attorney-Juvenile Client Relationship*, 21 Behav. Sci. & L. 175, 180 (2003); Patricia Puritz & Katayoon Majd, *Ensuring Authentic Youth Participation in Delinquency Cases: Creating a Paradigm for Specialized Juvenile Defense Practice*, 45 Fam. Ct. Rev. 466, 474 (2007).

Furthermore, children are less likely than adults to speak candidly with their own lawyers because they believe their lawyers communicate privileged information to their parents, prosecutors, or a judge. *See* Michelle Peterson-Badali & Rona Abramovitch, *Children's Knowledge of the Legal System: Are they Competent to Instruct Legal Counsel?*, 34 Can. J. Criminology 139, 150-52 (1992) (80% of young adolescents and 46% of middle adolescents believe their counsel could share information with their parents); Laurence Steinberg, *Adolescent Development and Child Justice*, 5 Annu. Rev. Clin. Psych. 47, 63 (2009) (noting children may develop a belief that all adults involved in the proceedings are allied against them after seeing defense attorneys and prosecutors speaking together outside the courtroom); Grisso, *supra*, at 1158 (28% of children, compared to 6% of adults, believed their counsel owed a duty to the juvenile court which interfered with the attorney-client privilege). Children's inability to trust and understand their relationship with their own lawyers causes them to withhold or distort important information, impairing the quality of their legal representation compared to adults.

CONCLUSION

As discussed above, children—by their very nature—have a diminished ability to navigate the criminal legal system. Despite children's developmental immaturity, they can be subjected to lifetime incarceration in a system created specifically for adults. A mandatory *de facto* life sentence forbids a judge from considering a child's diminished ability to navigate the criminal legal system, including the impaired interactions between children and police officers, prosecutors, judges, juries, and their own attorneys. As the U.S. Supreme Court held in *Miller*, this is unconstitutional.

Dated: November 16, 2020

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC FILING COMPLIANCE

This brief consists of 4,494 words and complies with Tennessee Supreme Court Rule 46(3.02).

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served via the electronic filing system on all parties.

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