

THE MINOR MENACE: THE IMPACT OF THE MICHIGAN MENACE STATUTE ON THE JUVENILE JUSTICE SYSTEM

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INTRODUCTION

Theo¹ was an average fifteen-year-old; he played basketball, hated math, had a crush on one of his friends, and played video games any chance he got. But teenagers are known for going through a rebellious streak. Like most fifteen-year-olds, Theo was not exempt from this rite of passage. Except, unlike most teenagers, Theo found himself in the back of a cop car at 10:39 p.m. on October 19, 2024. Theo was arrested for assault and battery after a physical altercation.

After appearing in front of the judge and completing a screening, Theo was to be detained until his case was heard. Theo spent two weeks in the juvenile facility. No one was nice to him, and he felt isolated. Other juveniles in the detention center bullied Theo, and he was tired of it. He finally snapped and started destroying the day room he was in. Staff came and gained physical control over Theo. Theo was placed in pod seclusion while the staff got a handle on things. In pod seclusion, Theo continued to lash out by throwing things, a typical teenager tantrum—a boiling over of complex emotions. Theo became hostile to the staff and refused to be controlled or touched. The facility supervisor contacted the prosecutor handling Theo's case, requesting assistance to file a motion to remove Theo from the facility because he "cannot be safely detained." The motion was put on the docket for the following day.

In the blink of an eye, Theo was transported to an adult facility after being deemed a menace by the court. However, the only way for Theo to be held at the new facility is for him to be sight and sound separated from adult offenders. The local adult facility, however, was not intended to house juveniles in this manner. The only way for the facility to comply is to hold Theo in isolation. Theo booked himself a fast-track ticket to a thirty-day stay in solitary confinement.

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1. This is a fictional narrative meant to simulate the experience of juveniles arrested in Michigan. There is currently no case that would otherwise demonstrate this progression.

While Theo may be fictional, the story is real for Michigan's juveniles. In Michigan, a juvenile as young as fifteen can be held in an adult county jail without being transferred or waived into the adult justice system. Under the MCL 712A.16(1) (Menace Statute),² any juvenile fifteen years old or older "whose habits or conduct are considered a menace to other juveniles, or who may not otherwise be safely detained" may be held in an adult detention facility.³ The Menace Statute is ambiguous and does not align with the juvenile justice system's goals. Michigan's juvenile justice system aims to ensure "rehabilitation opportunities in a safe, supportive, and respectful environment that honors the youth and family voice."⁴ The Menace Statute allows juveniles to be held in adult facilities, where the opportunity to rehabilitate in an environment that respects the youth is dashed.⁵ The Menace Statute sits like a wolf in sheep's clothing, promising to protect juveniles while locking them in cages. It is ripe for abuse as its overly broad and vague language allows for significant and arbitrary judicial discretion; therefore, it must be rewritten. If the Menace Statute is not rewritten to fix the glaring incompatibility with the juvenile justice system, juveniles will be harmed as a result.

This Comment is a deep analysis of the Menace Statute. Section I will provide a brief overview of the juvenile justice system, including key cases and the process by which a juvenile case moves through the Michigan juvenile justice system. This is intended to add important context regarding the system and important case law necessary for understanding the Menace Statute. In Section II, there will be a complete dissection of the Menace Statute. Primarily, this section focuses on interpreting the meaning of menace and the applicability of the Menace Statute. Section III will discuss how the interpretation of the Menace Statute is incompatible with the juvenile justice system. This will cover how the Menace Statute conflicts with federal funding statutes. Further, in Section III, the consequences and issues with the Menace Statute will be covered in detail. Finally, Section IV outlines the necessary changes to the Menace Statute to prevent undue harm to juveniles.

I. AN OVERVIEW OF THE JUVENILE JUSTICE SYSTEM

A. *Key Juvenile Justice Cases*

Courts did not previously recognize any difference between juveniles and adults. Until the Federal Juvenile Delinquency Act of 1938,⁶ juveniles over seven⁷

2. MICH. COMP. LAWS ANN. § 712A.16(1) (West 2025).

3. *Id.*

4. *Juvenile Justice*, MICH. DEP'T OF HEALTH AND HUM. SERVS., <https://www.michigan.gov/mdhhs/adult-child-serv/juvenilejustice> (last visited Dec. 18, 2025).

5. § 712A.16(1).

6. Juvenile Delinquency Act, 18 U.S.C. § 5031-43 (1938).

7. *Allen v. United States*, 150 U.S. 551, 558 (1893) (explaining children under seven years old were considered infants and presumed incapable of committing crimes).

and adult offenders were subject to prosecution in the same manner.⁸ Once juvenile prosecutions were handled separately, issues arose regarding the proper procedures to follow.

In *Kent v. United States*, the United States Supreme Court held waiving a juvenile into adult court without a hearing violated the Due Process Clause.⁹ In *Kent*, sixteen-year-old Kent's fingerprints were found at the scene of a recent home invasion and rape.¹⁰ The police took Kent into custody, where he subsequently confessed to his crimes.¹¹ Kent was then detained without an arraignment for approximately one week.¹² Counsel for Kent filed several motions regarding the juvenile court's jurisdiction and access to Kent's files during this time.¹³ Without a hearing on the motions, or consulting with Kent, Kent's parents, or counsel, the juvenile court entered an order waiving its jurisdiction over Kent.¹⁴

The Supreme Court noted that juveniles are not automatically granted the same criminal rights as adults because juvenile proceedings are considered civil proceedings.¹⁵ The Supreme Court then appropriately limited its scope to deal with the only applicable claim of a due process violation.¹⁶ The Court found, under the Due Process Clause, juveniles are entitled to an opportunity for a hearing with counsel present before an order waiving jurisdiction may be entered.¹⁷ The Supreme Court clarified juveniles are not entitled to a hearing that conforms with any criminal or administrative hearing; instead, it must meet the requirements of due process and fair treatment.¹⁸

In *In re Gault*, the United States Supreme Court established many procedural safeguards that apply to adult criminal proceedings now apply to juvenile proceedings.¹⁹ Gault, the sixteen-year-old defendant in the case, was arrested for allegedly making lewd phone calls to a neighbor.²⁰ Gault was taken into custody without the authorities notifying his parents; and when Ms. Gault went to pick up her son, the probation officers refused to release him.²¹ Further, Gault was not informed about the charges against him.²² At the hearing for the charges, no witnesses were called, there was no record or sworn testimony, and the complainant was absent.²³ The judge, after another hearing at which the

8. *United States v. Allen*, 574 F.2d 435, 437 (8th Cir. 1978).

9. *Kent v. United States*, 383 U.S. 541, 562-65 (1966); see U.S. CONST. amend. V.

10. *Kent*, 383 U.S. at 543.

11. *Id.* at 544.

12. *Id.* at 544-45.

13. *Id.* at 545-46.

14. *Id.* at 546.

15. *Id.* at 555.

16. *Id.*

17. *Id.* at 561.

18. *Id.* at 562.

19. *In re Gault*, 387 U.S. 1 (1967).

20. *Id.* at 4.

21. *Id.* at 5.

22. *Id.*

23. *Id.*

complainant was again noticeably absent, committed Gault as a juvenile delinquent to a detention center.²⁴

The Supreme Court found juveniles have the right to receive notice of charges against them, to have legal counsel, to confront and cross-examine witnesses, and to be protected against self-incrimination.²⁵ The Court noted that while informality is essential in juvenile proceedings, it cannot be so informal as to harm the juvenile.²⁶ The Court elaborated,

[w]hile due process requirements will, in some instances, introduce a degree of order and regularity to Juvenile Court proceedings to determine delinquency, and in contested cases will introduce some elements of the adversary system, nothing will require that the conception of the kindly juvenile judge be replaced by its opposite.²⁷

Other protections to the juvenile justice system have become solidified into case law through decisions like *Miller v. Alabama*.²⁸ In *Miller*, the Supreme Court decided mandatory life without parole for juveniles violated the Eighth Amendment.²⁹ The *Miller* Court determined juveniles “are less deserving of the most severe punishments” because of the inherent characteristics of youth.³⁰ The *Miller* Court affirmed three primary characteristics of youth, which justify why juveniles are less deserving of the most severe punishments.³¹ The first difference is juveniles have a “lack of maturity and an underdeveloped sense of responsibility.”³² Second, children “are more vulnerable...to negative influences and outside pressures” and “have limited control over their environment.”³³ Finally, a child’s character is not as developed, their traits are “less fixed,” and their actions are less likely to be “evidence of irretrievabl[e] deprav[ity].”³⁴ Further, the *Miller* Court found that a judge or a jury must consider the mitigating factors of youth before imposing the harshest punishment.³⁵ Therefore, the Supreme Court held mandatory life without parole for juveniles did violate the Eighth Amendment provision against cruel and unusual punishment.³⁶

These cases blazed the trail for how juveniles are treated in the criminal justice system. They reshaped how courts treat and evaluate juveniles. These cases set a precedent and are often cited repeatedly when a case involves a juvenile. For example, the mitigating factors of youth, as discussed in *Miller*, are consistently

24. *Id.* at 7-8.

25. *Id.* at 33, 41, 57.

26. *Id.* at 26-27.

27. *Id.* at 27.

28. *See generally* *Miller v. Alabama*, 567 U.S. 460, 489 (2012) (holding mandatory life without parole for juveniles unconstitutional).

29. *Id.*

30. *Id.* at 471 (quoting *Graham v. Florida*, 560 U.S. 48, 68 (2010)).

31. *See id.*

32. *Id.* (quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005)).

33. *Id.* (quoting *Roper*, 543 U.S. at 569).

34. *Id.* (quoting *Roper*, 543 U.S. at 570).

35. *Id.* at 489.

36. *Id.*

applied in Michigan cases.³⁷ These cases are crucial to the Michigan juvenile system and the interpretation of the Menace Statute. When interpreting the Menace Statute, it is essential to consider cases that determine how juveniles are treated within the adult criminal justice system. Although juveniles subject to the Menace Statute are in the juvenile justice system, rather than the adult criminal system, the two systems operate in parallel. If factors of youth are to be considered in criminal prosecutions of youth, then they should similarly be considered when a child faces time in an adult detention facility. The mitigating factors of youth do not disappear solely because the juvenile is in a parallel justice system. Therefore, these cases and their holdings should be considered when evaluating the Menace Statute.

B. Traversing the Michigan Juvenile System

1. The Progression of a Case Through the Juvenile System

Before proceeding, it is essential to discuss a few key aspects of Michigan's juvenile justice system. While there is no official order, it may be helpful to consider the juvenile system as consisting of two main phases. The first is the "pre-disposition" phase, which encompasses everything from the preliminary hearing to the disposition, akin to a sentencing hearing for adult offenders. Phase two is the "post-disposition" phase, which includes disposition and continues until the completion of the sentence.

Juveniles can be arrested without a court order if they violate a law or ordinance, or if they commit a status offense.³⁸ Post-arrest, officers will likely take the juvenile to the family division of the local circuit court and file a delinquency petition.³⁹ Officers should notify the parents immediately after the juvenile is taken into custody.⁴⁰ Next, the juvenile can be (1) released into the custody of their parent or guardian or (2) confined in a facility until their court proceeding.⁴¹ The outcome is based on various factors, including the severity of the alleged crime and prior encounters with law enforcement.⁴²

A preliminary hearing should occur within twenty-four hours of the arrest, unless it falls on a holiday or weekend.⁴³ At the preliminary hearing, the court will review the case and decide whether to dismiss it, refer the juvenile to counseling, or place the juvenile on the consent or formal calendar.⁴⁴ This is primarily where the juvenile system diverges from the adult system. The consent calendar is an informal way of dealing with juveniles, in which the court creates a case plan

37. *Id.* at 471; *see, e.g.*, *People v. Boykin*, 987 N.W.2d 58, 61 (Mich. 2022) (holding trial courts must consider a juvenile's youth to be a mitigating factor when sentencing them to term-of-years sentences under MICH. COMP. LAWS ANN. § 769.25).

38. *Navigating the Juvenile Justice System*, ASS'N FOR CHILDS.' MENTAL HEALTH, <https://www.acmh-mi.org/get-help/navigating/the-juvenile-justice-system/> (last visited Dec. 18, 2025).

39. MICH. COMP. LAWS ANN. § 764.27 (West 2025).

40. *Navigating the Juvenile Justice System*, *supra* note 38.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

outlining the services the juveniles must participate in.⁴⁵ After the juvenile completes said services, their case will be closed.⁴⁶ This is like informal probation for juveniles before formal action is taken on their case. A juvenile's case can be moved from the consent calendar to the formal calendar at any point.⁴⁷ The formal calendar is most like criminal proceedings in an adult trial.⁴⁸ Cases may also be "diverted," in which the juvenile faces more community-based requirements, such as writing apology letters or performing community service.⁴⁹

If a juvenile's case is not diverted, dismissed, or placed on the consent calendar, it is placed on the formal calendar.⁵⁰ Being on the formal calendar means formal proceedings will occur similar to those of a criminal trial.⁵¹ At this point, a juvenile can invoke the rights granted by the *Kent*⁵² and *Gault*⁵³ cases, such as the right to an attorney, the right to confront witnesses, and the right against self-incrimination. If a juvenile is found guilty after a trial or admits guilt, the court will set a date for disposition.⁵⁴ At disposition, the court may order the juvenile to be on probation, undergo counseling, perform community service, pay restitution, or be placed in confinement.⁵⁵

2. *Emphasis on the Rehabilitation of Juveniles*

Michigan case law reveals a continued emphasis on the rehabilitation of juveniles. In *In re Diehl*, the Michigan Court of Appeals upheld a trial court's order to unauthorize the respondent's second and third petitions and remove them from the adjudicative process.⁵⁶ In *Diehl*, a juvenile had three separate petitions against him, two for domestic violence and one for committing larceny in a building.⁵⁷ The trial court found, because no additional services could be provided to the juvenile, it was in the juvenile's best interest for the other petitions to be unauthorized.⁵⁸ The *Diehl* court found that the trial court did not abuse its discretion because it followed the proper procedures, including notifying the prosecution.⁵⁹

The *Diehl* court also referenced MCL 712A.1(3), the introduction to the chapter containing the Menace Statute, stating "the purpose of juvenile-justice procedure is not to punish the offender, but to ensure that the juvenile receives the care, guidance, and control necessary to serve his or her welfare as well as to ensure

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Kent v. United States*, 383 U.S. 541, 561 (1966).

53. *In re Gault*, 387 U.S. 1, 33, 41, 57 (1967).

54. *Navigating the Juvenile Justice System*, *supra* note 38.

55. *Id.*

56. *In re Diehl*, 944 N.W.2d 180, 198 (Mich. Ct. App. 2019).

57. *Id.* at 184, 186.

58. *Id.* at 192.

59. *Id.* at 193.

the best interests of the state.”⁶⁰ The court finished its reasoning by stating the juvenile justice system places an “emphasis on rehabilitation rather than retribution.”⁶¹

The Michigan Supreme Court emphasized the importance of considering the mitigating factors of youth when it held juveniles constitutionally different from adults for sentencing purposes.⁶² In *People v. Parks*, the court found the Michigan Constitution offered more protection against cruel and unusual punishment when adjudicating juveniles.⁶³ *Parks* resulted from an appeal from an eighteen-year-old’s life without parole sentence.⁶⁴ *Parks* and his older cousin shot and killed a man in a convenience store parking lot.⁶⁵ However, the prosecutor never accused *Parks* of shooting the victim.⁶⁶ *Parks* was convicted of first-degree murder under the aider and abettor theory.⁶⁷

Since *Parks* was eighteen at the time of the crime, the court had to determine if juvenile protections in sentencing extended to eighteen-year-olds facing mandatory life without parole.⁶⁸ The *Parks* court found consideration of the attributes of youth during the sentencing of eighteen-year-olds is required to comply with the “evolving standards of decency that mark the progress of a maturing society.”⁶⁹ Thus, the court expanded *Miller’s* protection of juveniles to include eighteen-year-olds and required the consideration of youth-related attributes in sentencing.⁷⁰ Recently, the Michigan Supreme Court extended the *Parks* holding to apply to individuals nineteen and twenty years of age.⁷¹

II. THE MICHIGAN MENACE STATUTE IS AMBIGUOUS

Generally, juveniles in Michigan may not be confined to adult detention facilities.⁷² However, the Menace Statute states:

[i]f a juvenile who is less than 18 years of age is taken into custody or detained, the juvenile must not be confined in a police station, prison, jail, lock-up, or reformatory or transported with, or compelled or permitted to associate or mingle with, criminal or dissolute persons. Except as otherwise provided in section 15 of this chapter, the court may order a juvenile 15 years of age or older whose habits or conduct are considered a menace to other juveniles or who may not otherwise be safely detained, placed in a jail or other place of detention for adults, but in a room or ward separate

60. *Id.* at 192; MICH. COMP. LAWS ANN. § 712A.1(3) (West 2025).

61. *Diehl*, 944 N.W.2d at 190 (quoting *In re Lee*, 761 N.W.2d 432, 438 (Mich. Ct. App. 2009)).

62. *See* *People v. Parks*, 987 N.W.2d 161, 166 (Mich. 2022).

63. *Id.* at 183.

64. *Id.* at 164.

65. *Id.* at 165.

66. *Id.*

67. *Id.*

68. *Id.* at 165-66.

69. *Id.* at 171 (quoting *People v. Lorentzen*, 194 N.W.2d 827, 832 (Mich. 1972)).

70. *Id.* at 169.

71. *People v. Taylor*, 2025 WL 1085247, at *1 (Mich. 2025).

72. MICH. COMP. LAWS ANN. § 712A.16(1) (West 2025).

from adults and for not more than 30 days, unless longer detention is necessary for the service of process.⁷³

The Menace Statute is short. At first glance, it appears almost eerily simple to apply; however, upon closer inspection, several issues become apparent. For example, what does it take to be considered a menace? Does it have to be directed at other juveniles? At what stage of juvenile proceedings can it be used? The Menace Statute emphasizes the juvenile being a menace to other juveniles. The type of conduct that constitutes being a menace is unclear and undefined under the Menace Statute. Nor does the Menace Statute provide any standard, subjective or otherwise, to help determine when a juvenile's conduct becomes a menace to other juveniles.

A. *There Is Limited Guidance on How to Interpret the Menace Statute*

The Menace Statute leaves readers with questions its own text cannot answer. If a statute is vague and there is no clarity in the statute itself, clarity can be found in case law, policy, legislative hearings, and intent; however, if those means offer no clarity, a statute should be evaluated in accordance with the rules of interpretation. The Menace Statute has no cases interpreting it. It does appear in a few cases but is mentioned only in passing.

For example, *People v. Williams* only mentions MCL 712A.16 once.⁷⁴ In *Williams*, a fifteen-year-old was charged with first-degree felony murder, allegedly committed during an armed robbery.⁷⁵ The juvenile moved to suppress statements he made post-arrest under the theory that the statements were involuntary.⁷⁶ The trial court determined, during a *Walker* hearing,⁷⁷ the statements were involuntarily made.⁷⁸ The trial court thus suppressed the use of those inculpatory statements.⁷⁹

The *Williams* court upheld the trial court's rulings.⁸⁰ One of the primary reasons the *Williams* court upheld the verdict was because they found the officers did not comply with the procedural safeguards for juveniles.⁸¹ In particular, the officers did not immediately take the defendant before the probate court.⁸² This is where the reference to the Menace Statute appears.⁸³ The *Williams* court cites the Menace Statute to explain that a child under seventeen shall not be confined in any

73. *Id.*

74. *People v. Williams*, 415 N.W.2d 301, 304-05 (Mich. Ct. App. 1987).

75. *Id.* at 302.

76. *Id.*

77. *Id.* at 303; *People v. Ray*, 430 N.W.2d 626, 629-30 (Mich. 1988). *See generally* *People v. Walker*, 132 N.W.2d 87 (Mich. 1965) (establishing a *Walker* hearing as one that determines the voluntariness of a defendant's confession).

78. *Williams*, 415 N.W.2d at 303.

79. *Id.*

80. *Id.* at 306.

81. *Id.* at 305.

82. *See id.* (explaining that probate courts have original jurisdiction in cases of juvenile delinquents); *see* MICH. CONST. art. VI, § 15 (amended 1963).

83. *Williams*, 415 N.W.2d at 304-05.

police station, prison, jail, lockup, or reformatory.⁸⁴ The *Williams* court did not mention the clause of the statute at issue, nor did it offer any interpretation of it.⁸⁵

While no cases directly interpret the meaning of the Menace Statute, *In re McLaughlin*, a court of appeals order, sheds light on the application of the Menace Statute.⁸⁶ Here, the court of appeals granted immediate consideration of an appeal, and on the court's own motion, the appeal was further expedited.⁸⁷ In this order, the dissent explains that the juvenile was in a juvenile detention facility; however, a few "disruptions" created by the juvenile led to the invocation of the Menace Statute.⁸⁸ After a hearing, the juvenile was moved to an adult detention facility.⁸⁹ The dissenting judge noted they would have preemptively reversed the trial court's continued placement of the juvenile at the adult facility.⁹⁰ The dissent elaborated that at the time of the order, the juvenile had been in the adult facility for forty-nine days, past the thirty-day statutory maximum, and no authority supported his detention in the adult facility.⁹¹ Furthermore, the dissent supported its conclusion that the juvenile should be released by finding that the juvenile was held longer than any sentence they would have received if tried as an adult.⁹² No opinion was issued in this case, as the juvenile withdrew the appeal.⁹³ The dissent did not further attempt to define the Menace Statute. However, this dicta helps exemplify the need for further interpretation. The order demonstrates that although the Menace Statute appears facially clear, its application is more complex and raises additional issues, such as holding juveniles past the statutory maximum period.

There is no case law around similar statutes and court rules. MCL 764.27A(2), an almost identical statute, allows juveniles to be held in jail or other places of adult detention.⁹⁴ This statute varies from the Menace Statute because it only applies to juveniles who have been moved or waived into the adult criminal justice system.⁹⁵ Under Michigan law, "juvenile proceedings are not considered to be criminal prosecutions,"⁹⁶ and the Menace Statute only applies to juvenile

84. *Id.* at 304; MICH. COMP. LAWS ANN. § 712A.16; *see also* *People v. Jordan*, 386 N.W.2d 594, 597 (Mich. Ct. App. 1986) (referring to MCL § 712A.16(1) only to explain a child under seventeen shall not be confined in any police station, prison, jail, lockup, or reformatory).

85. *Williams*, 415 N.W.2d at 304.

86. *In re McLaughlin*, No. 371206 (Mich. Ct. App. July 10, 2024), https://www.courts.michigan.gov/49dadf/siteassets/case-documents/uploads/coa/public/orders/2024/371206_25_01.pdf.

87. *Id.* (Jansen, J., dissenting).

88. *Id.*

89. *See id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *See In re McLaughlin*, No. 371206 (Mich. Ct. App. Aug. 20, 2024), https://www.courts.michigan.gov/49dad0/siteassets/case-documents/uploads/coa/public/orders/2024/371206_32_01.pdf (granting appellant's motion to withdraw the appeal).

94. MICH. COMP. LAWS ANN. § 764.27A(2) (West 2025).

95. *Id.*

96. *In re Kerr*, 917 N.W.2d 408, 412 (Mich. Ct. App. 2018) (quoting *In re McDaniel*, 465 N.W.2d 51, 52 (Mich. Ct. App. 1991)).

proceedings.⁹⁷ The most notable difference in the phrasing is that it lacks the thirty-day maximum required in the Menace Statute.⁹⁸ Although different, MCL 764.27A(2) would be helpful in interpreting the Menace Statute; however, there is no case law interpreting this statute either.

Also, the Michigan Court Rules provide procedures for when a juvenile is in the adult criminal system on how to remove a “menacing juvenile.”⁹⁹ Under Michigan Court Rule 6.909(b)(2), upon motion by the prosecutor or the superintendent of the juvenile facility, a court may order a juvenile be moved to an adult facility.¹⁰⁰ It also states that the juvenile must be a menace to other juveniles or otherwise not safely detained.¹⁰¹ The language mimics the language of the Menace Statute, but again, there are no further definitions or case law from this rule. Therefore, other statutes and regulations that mirror the Menace Statute do not offer additional interpretive aid. Considering the lack of definitive language in interpreting the Menace Statute or similar statutes, the only tool left for clarification are the rules of interpretation.

B. *Interpretation of the Michigan Menace Statute*

Statutory interpretation begins with examining the plain language of the statute.¹⁰² If the statute’s language is unambiguous, no further construction is needed.¹⁰³ Most of the Menace Statute is unambiguous; however, “menace to other juveniles” and exceptions on the time limit are not. These terms raise further questions about definitions, tests, and limitations not included in the statute, and further interpretation is necessary.

1. *Pre-Disposition Use*

The text of the Menace Statute does not plainly limit when it can be used during the juvenile process. The issue then becomes when the Menace Statute can be invoked. Recall the two main phases of the juvenile system as discussed in Part I: pre-disposition and post-disposition.¹⁰⁴ However, a few things should be considered when attempting to interpret the Menace Statute’s applicability.

97. See MICH. COMP. LAWS ANN. § 712A.1(2) (showing that since juvenile proceedings are not criminal proceedings, they are not guaranteed all of the constitutional protections otherwise given to criminal defendants). See generally *In re Gault*, 387 U.S. 1 (1967) (establishing that juveniles have the right to receive notice of charges against them, to have legal counsel, to confront and cross-examine witnesses, and to be protected against self-incrimination).

98. Contrast § 764.27A(2) (failing to establish a time limit for confinement), with § 712A.16(1) (establishing a thirty-day maximum confinement).

99. MCR 6.909(b).

100. *Id.*

101. *Id.*

102. *Bank of Am., NA v. First Am. Title Ins. Co.*, 878 N.W.2d 816, 821 (Mich. 2016).

103. *Nastal v. Henderson & Assocs. Investigations, Inc.*, 691 N.W.2d 1, 5 (Mich. 2005).

104. See discussion, *supra* Section I.B.1.

When interpreting statutes, the task is to “discern and give effect to the Legislature’s intent as expressed in the words of the statute.”¹⁰⁵ The legislative chapter governing juveniles, the same one containing the Menace Statute, states it “shall be liberally construed so that each juvenile coming within the court’s jurisdiction receives the care, guidance, and control, preferably in his or her own home, conducive to the juvenile’s welfare and the best interest of the state.”¹⁰⁶ Additionally, the Menace Statute is intended to protect juveniles from others or themselves by removing the “menacing juvenile.”¹⁰⁷ The Menace Statute attempts to protect juveniles placed in adult facilities as it limits detention at the adult facility to thirty days; however, as discussed in *McLaughlin*,¹⁰⁸ it fails to do this. Nonetheless, to give effect to the legislature’s intent, any interpretation of the Menace Statute should, when possible, align with the protection of juveniles.

The Menace Statute specifically created a limited exception to the thirty-day rule for the service of process.¹⁰⁹ Service of process is the delivery “of a writ, summons, or other legal process, pleading, or notice to a litigant or other party interested in litigation.”¹¹⁰ The exception, therefore, allows the juvenile to be held in the adult facility longer to allow them to be served with the proper court paperwork.¹¹¹ The Menace Statute can then clearly be used before the juvenile is sentenced, also known as pre-disposition, because the service of process is generally limited to the start of the juvenile proceeding.¹¹² Service of process is possible before any juvenile proceeding,¹¹³ extending the time frame in which the Menace Statute could be invoked. This exception raises questions about whether the Menace Statute can only be invoked when service of process is possible.

2. *Post-Disposition Use*

If the Menace Statute is interpreted as being limited by the service of process exception, it would only allow the Statute to be used pre-disposition.¹¹⁴ This is because there is almost no need for service of process post-disposition. This interpretation would mean after a juvenile is sentenced to confinement at a juvenile detention center, they would not be subject to transfer to an adult facility under the Menace Statute. If the service of process clause does not limit the Menace Statute, it could be used throughout the juvenile’s time in confinement. Hence, it is vital to determine whether the service exception limits the Menace Statute’s use.

105. *Pohutski v. City of Allen Park*, 641 N.W.2d 219, 226 (Mich. 2002).

106. MICH. COMP. LAWS ANN. § 712A.1(3) (West 2025).

107. *See* § 712A.16(1).

108. *See In re McLaughlin*, No. 371206 (Mich. Ct. App. July 10, 2024) (stating that the juvenile had been in the adult detention facility for forty-nine days).

109. MICH. COMP. LAWS ANN. § 712A.16(1).

110. *Service*, BLACK’S LAW DICTIONARY (11th ed. 2019).

111. MICH. COMP. LAWS ANN. § 712A.16(1).

112. MCR 3.920(B)(1).

113. *Id.* 3.920(G).

114. *Processing a Juvenile Case*, MUSKEGON CNTY., <https://www.co.muskegon.mi.us/603/Processing-a-Juvenile-Case> (last visited Dec. 18, 2025).

The service exception of the Menace Statute should not be read to limit the statute's use. Evaluating the Menace Statute in terms of legislative intent favors its use both pre- and post-disposition. The legislature's underlying concerns are clearly reflected in its wording. The Menace Statute only regulates behavior considered a menace to other juveniles or juveniles who could not otherwise be safely detained.¹¹⁵ The legislature's concerns about juveniles being menaces or not safely detained are not automatically resolved post-disposition. Whenever juveniles are confined together, there is potential for conflict. Nor are juveniles' post-disposition any less deserving of protection from other inmates or themselves. Limiting the Statute's use to only pre-disposition is even less rational when considering juveniles are not technically considered "guilty" before disposition. Allowing juveniles not even formally found guilty of a crime to be held in an adult facility, but not juveniles who have been found guilty, is illogical. Therefore, the legislative intent would only be effectuated if the Menace Statute was applied throughout a juvenile's confinement.

Further, every word of the statute's text should have a distinctive meaning, and any interpretation should avoid redundancy or surplusage.¹¹⁶ Statutes that cover "the same subject or share a common purpose are *in pari materia* and must be read together as a whole."¹¹⁷ The Menace Statute, MCL 712A.15, and MCL 712A.18 are all statutes that provide requirements and regulations for juveniles and counties in multiple types of detention.¹¹⁸ Therefore, they should be read together because they share a common purpose.

MCL 712A.15 is labeled "Detention of child pending hearing; detention screening tool; release of child; petition; limitation on custody of child pending hearing; detention in secure facility, cell, or other secure area designed to incarcerate adults; exception."¹¹⁹ This section is limited to pre-disposition use. Not only does the title suggest this by the references to "pending hearing," but in subsection one it states, "the court may order the juvenile, pending hearing, detained in a facility as the court designates."¹²⁰ MCL 712A.16, the larger statute in which the Menace Statute is couched, is labeled "Detention and [C]are of [J]uvenile."¹²¹ MCL 712A.16 does not reference any specific timeline within the juvenile proceeding.¹²² In subsection one, however, it states a juvenile "taken into custody or detained" generally cannot be held with "criminal or dissolute persons."¹²³ Therefore, the only requirement is for the juvenile to be confined. MCL 712A.18 is related to the post-disposition. Much like the title implies, "Orders of disposition; reimbursement; guidelines; restitution; condition of

115. § 712A.16(1).

116. *Inter Coop. Council v. Dep't of Treasury*, 668 N.W.2d 181, 185 (Mich. Ct. App. 2003) (citing *Karpinski v. St. John Hosp.*, 606 N.W.2d 45, 48 (Mich. Ct. App. 1999)).

117. *People v. Harper*, 739 N.W.2d 523, 536 (Mich. 2007); *People v. Washington*, 916 N.W.2d 477, 354 n.29 (Mich. 2018).

118. *See* § 712A.16(1); § 712A.15(1); § 712A.18.

119. § 712A.15.

120. § 712A.15(1).

121. § 712A.16.

122. *Id.*

123. § 712A.16(1).

probation; revocation or alteration of terms and conditions; community service,” the entire section revolves around the disposition of juveniles.¹²⁴

When reading the statutes together, it appears intentional that the Menace Statute does not have a stated phase limitation like MCL 712A.15 and 712A.18. This implies the Menace Statute is not limited by which phase of the system a case is in. This idea is furthered by the fact the Menace Statute is also textually sandwiched between the other statutes discussing the detention of juveniles.¹²⁵ Since section 712A.16 is plainly labeled, and the statute’s text should have a distinctive meaning and avoid redundancy, it must be read as available whenever a juvenile is in custody or detained. If it is read to be limited only to pre-disposition use, it would have been placed under MCL 712A.15, “Detention of child pending hearing,”¹²⁶ to avoid redundancy. As discussed above, the Menace Statute is not limited to post-dispositional use because it has a service exception which only applies to pre-disposition. The textual and legislative intent interpretations strongly support using the Menace Statute both pre- and post-disposition.

3. Defining “Menace”

The Menace Statute allows a juvenile fifteen or older to be detained in an adult detention facility if their “habits or conduct are considered a menace to other juveniles.”¹²⁷ As provided by the definitions in section 712A.1, a juvenile is “a person who is less than 18 years of age who is the subject of a delinquency petition.”¹²⁸ For juveniles to be subjected to the Menace Statute, they must be detained or confined; thus, “other juveniles” must mean a person under eighteen years old who is detained or confined.¹²⁹ The other juveniles must also have contact with the “menacing juvenile” in the detention facility.¹³⁰ If there is no contact, it is harder to menace other juveniles. Further, where there is no contact, there would be no need to remove the juvenile from the current to an adult detention facility. To avoid redundancy and give meaning to each word, “other juveniles” is best defined as juveniles under eighteen in the same detention facility as the “menacing juvenile.”

One of the many issues with the Menace Statute is there is no case law to help define “menace” in the context of juvenile justice; however, both the Michigan Court of Appeals and the Michigan Supreme Court did define menace in the context of election interference. In *People v. Burkman*, the defendants created and caused robocalls to be disseminated to residents in the Detroit area before the 2020 election.¹³¹ The robocalls contained false and misleading

124. § 712A.18.

125. See § 712A.15; § 712A.16; § 712A.18.

126. § 712A.15.

127. § 712A.16(1); see also *Daniels v. Woodside*, 396 F.3d 730, 735 (6th Cir. 2005) (stating, in general, Michigan juveniles may not be confined awaiting trial).

128. § 712A.1.

129. § 712A.16(1).

130. *Id.*

131. *People v. Burkman*, 992 N.W.2d 341, 348 (Mich. Ct. App. 2022), *rev'd in part*, 15 N.W.3d 216, 222 (Mich. 2024).

statements about mail-in voting, stating that the information collected by mail-in voting can be used “by credit card companies to collect outstanding debts.”¹³² The defendants contended that their conduct was not menacing because it did not involve a threat of physical assault.¹³³

The court used the dictionary definition of menace, as the statute did not define menace.¹³⁴ The court of appeals found a “[m]enace” is defined as ‘a show of intention to inflict harm’; ‘one that represents a threat’; ‘to make a show of intention to harm’; or ‘to represent or pose a threat to.’¹³⁵ The court of appeals determined the voter-suppression statute did not require a physical component.¹³⁶ The defendants subsequently appealed their case to the Michigan Supreme Court.¹³⁷ The Michigan Supreme Court agreed with the court of appeals that the definition of menace does not require a physical component.¹³⁸ However, the Supreme Court found the defendants’ conduct was not covered under the definition of menace.¹³⁹ The Court found “menace” requires the victim to reasonably believe the speaker will execute a threat, and the defendants’ robocalls implied a third party would act.¹⁴⁰

The Menace Statute does not define menace. When a word is not defined by a statute, “it is appropriate to consult dictionary definitions to determine the plain and ordinary meaning of the word or phrase.”¹⁴¹ Merriam-Webster defines menace as “a show of intention to inflict harm” or “one that represents a threat.”¹⁴² The Law Dictionary defines menace as “[a] threat; the declaration or show of a disposition or determination to...illicit an evil or injury upon another.”¹⁴³ Looking at these definitions, it seems clear to be a menace, one only needs to be threatening. Hence, it is proper to interpret menacing conduct or behavior as threatening conduct or behavior.

Considering the current meaning of the Menace Statute, juveniles may be removed for threatening other juveniles. The Menace Statute does not specify the severity of the threat required for a juvenile to qualify as a menace. For example, Theo, from the introduction, could draw back his fist and attempt to scare another juvenile by acting like he is going to punch the other juvenile. This would be a permissible showing of menace to other juveniles under the Menace Statute

Consequently, this interpretation opens the door to more issues, as no definitive test exists for a menace. Theoretically, it would be impossible to create a menace test. Threatening behavior is hard to define because what induces fear in

132. *Id.* at 347.

133. *Id.* at 353.

134. *Id.* at 352.

135. *Id.* (quoting *Menace*, MERRIAM WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2020)).

136. *Id.* at 353.

137. *People v. Burkman*, 15 N.W.3d 216, 225 (Mich. 2024).

138. *Id.* at 227.

139. *Id.* at 228.

140. *Id.* at 228-29.

141. *Epps v. 4 Quarters Restoration LLC*, 872 N.W.2d 412, 417-18 (Mich. 2015) (citing *Allison v. AEW Capital Mgt., LLP*, 751 N.W.2d 8 (Mich. 2008)).

142. *Menace*, MERRIAM-WEBSTER (12th ed. 2025).

143. *Menace*, BLACK’S LAW DICTIONARY (2d ed. 1910).

one person might not be in another. Any bright-line rule might create application issues regarding the Menace Statute because threats and threatening behavior can be highly subjective. A bright-line rule that any threatening conduct or behavior is enough to qualify as a menace would likely lead to excessive use of the Menace Statute. Thus, the exclusion of any clear test could have been intentional. In either case, interpreting a menace, and what classifies a juvenile as a menace, is up to judicial discretion. The Menace Statute, as it stands based on the rules of interpretation, should be read to apply to juveniles whose behavior or conduct is found to threaten other detainees under eighteen years of age or to a juvenile who can no longer be safely detained.

III. THE MICHIGAN MENACE STATUTE DOES NOT FIT WITHIN THE GREATER JUVENILE JUSTICE SCHEME

A. *Compliance Under the Juvenile Justice and Delinquency Prevention Act*

The Juvenile Justice and Delinquency Prevention Act (JJDP A) was created by the United States Congress to support state and local programs to “prevent juvenile involvement in delinquent behavior.”¹⁴⁴ The JJDP A created restrictions preventing juveniles from being detained in adult jails and lock-ups except before or after a court hearing, in rural areas, or in unsafe travel conditions.¹⁴⁵ The JJDP A also created grants for local delinquency prevention programs that comply with specific application and planning requirements.¹⁴⁶ On August 2, 2022, Michigan’s Governor signed Executive Order 2022-7.¹⁴⁷ This order created a committee to supervise, prepare, and administer a comprehensive Juvenile Justice and Delinquency Prevention Plan as prescribed by the JJDP A.¹⁴⁸

The JJDP A requires participating states to “provide that no juvenile will be detained or confined in any jail or lockup for adults,” except juveniles who are accused of nonstatus offenses and for a period less than six hours for processing, transfer, or court appearances.¹⁴⁹ Additionally, the JJDP A allows for “juveniles who are accused of nonstatus offenses, who are awaiting an initial court appearance that will occur within 48 hours after being taken into custody” and who are located in a rural area where no alternative placement is available or safe travel is not possible to be detained or confined in a jail or lock up for adults.¹⁵⁰ In either case, the juvenile must be sight and sound separated from adult inmates.¹⁵¹

144. Juvenile Justice and Delinquency Prevention Act, 34 U.S.C § 11102(1) (2018).

145. *Juvenile Justice and Delinquency Prevention Act*, COAL. FOR JUV. JUST., <https://www.juvjustice.org/policy/juvenile-justice-and-delinquency-prevent-act> (last visited on Dec. 18, 2025).

146. § 11313(c)-(d).

147. STATE OF MICH. OFF. OF THE GOVERNOR, EXECUTIVE ORDER No. 2022-7 (2022), <https://legislature.mi.gov/documents/2021-2022/executiveorder/pdf/2022-EO-07.pdf>.

148. *Id.*

149. § 11133(a)(13)(A).

150. § 11133(a)(13)(B).

151. § 11133(a)(13)(A)-(B).

The JJDPa only allows juveniles waived into the adult justice system to be held in adult detention facilities if it is in the best interest of justice.¹⁵² When these juveniles are in adult detention facilities, the court must have a hearing at least once every thirty days, unless it is in a rural area where it must occur at least every forty-five days.¹⁵³ At the hearing, the court must determine if it is still in the best interest of justice to hold the juvenile there.¹⁵⁴ Factors in considering if it is in the best interest of justice include the age of the juvenile, physical and mental maturity of the juvenile, present mental state of the juvenile, nature of the alleged offense, the juvenile's prior history, the ability of each facility for the detention center to meet the needs of the juvenile, and any other relevant factors.¹⁵⁵

The Menace Statute does not fit within the constraints of the JJDPa. The Michigan Menace Statute allows juveniles accused of nonstatus and status offenses to be detained or confined in an adult jail for thirty days.¹⁵⁶ The JJDPa only allows for the detention of juveniles who are waived into the adult justice system to be held longer than forty-eight hours.¹⁵⁷ The Menace Statute goes significantly beyond the boundaries established in the JJDPa for the length of time certain offenders can be held. Further, the Menace Statute does not require courts to determine if it is in the best interest of justice before detaining a juvenile in an adult detention facility. The Menace Statute does not require the court to consider similar factors to those listed above in the JJDPa. The JJDPa offers more protection to juveniles, both those who are waived into the adult justice system and those who remain in the juvenile system, than the Menace Statute offers juveniles who remain in the juvenile system. The Menace Statute does not comply with the requirement of the JJDPa, as implemented through an executive order by the Governor. Using the Menace Statute could disqualify or reduce the money Michigan receives from federal grants under the JJDPa.¹⁵⁸

B. *Mental and Physical Effects of Housing Juveniles in Adult Facilities*

Historically, juveniles were housed with adult offenders.¹⁵⁹ As the criminal justice system was reformed and the juvenile justice system was developed, juvenile detention facilities were developed. In 2022, there were 625 juvenile detention facilities throughout the United States.¹⁶⁰ These facilities are far from

152. § 11133(a)(11)(B)(iii).

153. § 11133(1)(11)(B)(iii)(I).

154. *Id.*

155. § 11133(a)(11)(B)(ii)(I)-(VII).

156. MICH. COMP. LAWS ANN. § 712A.16(1) (West 2025).

157. § 11133(a)(13)(B).

158. *See* § 11133(c) (explaining that if a state fails to comply with any of the core requirements, the grant shall be reduced by not less than twenty percent for each requirement it failed, and funding can be withheld unless the state agrees to spend at least fifty percent of the grant on achieving compliance).

159. *Juvenile Justice History*, CTR. ON JUV. & CRIM. JUST., <https://www.cjcr.org/history-education/juvenile-justice-history> (last visited Dec. 18, 2025).

160. *Juvenile Detention Explained*, THE ANNIE E. CASEY FOUND.: BLOG (Mar. 26, 2021), <https://www.aecf.org/blog/what-is-juvenile-detention>.

perfect and have restrictions similar to adult facilities; however, they are necessary to accomplish the goals of the juvenile justice system.

This necessity becomes apparent when evaluating the effects of housing juvenile and adult offenders together. Housing juveniles in adult facilities is correlated with increased mental illness in juveniles because of increased exposure to violence, higher rates of physical and sexual victimization, and a lack of mental health services.¹⁶¹ This, in turn, can lead to higher suicide rates.¹⁶² Juveniles are “36 times more likely to die by suicide in an adult jail than a juvenile detention facility.”¹⁶³ Mental health is not the only issue with juveniles confined in adult facilities; physical safety is another concern.

Housing juveniles in adult facilities poses a risk to the physical safety of juveniles as well. State and federal laws have been enacted to address the safety concerns associated with housing juveniles and adult offenders together. The Prison Rape Elimination Act (PREA) was adopted to protect inmates from sexual abuse and rape.¹⁶⁴ PREA offers additional protections to juveniles housed in adult facilities. Primarily, it prohibits facilities from placing juveniles in housing units where they may have sight, sound, or physical contact with adult inmates.¹⁶⁵ This separation or supervision is required outside of the housing unit.¹⁶⁶ Assuming a juvenile is not already held in confinement for safety or compliance with rules, acting recklessly can lead to additional punishment, typically solitary confinement.¹⁶⁷ It is essential to highlight that while facilities are instructed to make the best efforts to comply with the provision without isolating the youth, isolation is often the only way to comply with PREA.¹⁶⁸

The impact associated with housing juveniles in adult facilities on the juveniles’ physical and mental health is known. Some states prohibit placing juveniles in adult jails and prisons, but most states, like Michigan, allow juveniles to be incarcerated in such places.¹⁶⁹ Even if the system offers protection, it is still flawed. PREA compliance is not foolproof; juveniles are still allowed contact with adult offenders.¹⁷⁰ Juveniles are alternatively held in highly restrictive placements.¹⁷¹ Adult offenders are not the only threat to a juvenile’s physical

161. Daniel C. Semenza et al., *Youth Incarceration in Adult Facilities and Mental Health in Early Adulthood*, 74 J. ADOLESCENT HEALTH 989, 993 (2024).

162. *Minors in Prison*, CHILD CRIME PREVENTION & SAFETY CTR., <https://childsafety.losangelescriminallawyer.pro/minors-in-prison.html> (last visited Dec. 18, 2025).

163. *Children in Adult Prison*, EQUAL JUST. INITIATIVE, <https://eji.org/issues/children-in-prison/> (last visited Dec. 18, 2025).

164. Prison Rape Elimination Act, 34 U.S.C § 30302 (2003).

165. *PREA Standards*, NAT’L PREA RES. CTR., <https://www.prearesourcecenter.org/standard/115-14> (last visited Dec. 18, 2025).

166. *Id.*

167. *Minors in Prison*, *supra* note 162.

168. *PREA Standards*, *supra* note 165; Wendy Sawyer, *Youth Confinement: The Whole Pie 2019*, PRISON POL’Y INITIATIVE (Dec. 19, 2019), <https://www.prisonpolicy.org/reports/youth2019.html>.

169. *Children in Adult Prison*, *supra* note 163.

170. *PREA Standards*, *supra* note 165 (explaining that outside of the housing unit, if juveniles and adults have contact, it must be directly supervised).

171. Sawyer, *supra* note 168.

health. Confinement in an adult detention facility before the age of eighteen has been associated with an increased risk of early death.¹⁷² There are significant risks to a juvenile's mental and physical health when housed with adult offenders as permitted under the Menace Statute.¹⁷³

C. *Compliance with the Goals of the Michigan Juvenile Justice System*

Michigan's juvenile justice system aims to ensure "equitable access to a continuum of research and evidence-based services that provide rehabilitation opportunities in a safe, supportive, and respectful environment that honors the youth and family voice."¹⁷⁴ At first glance, the Menace Statute appears to accomplish these goals. The Menace Statute removes menacing juveniles to protect themselves and others. However, its implementation does not guarantee rehabilitation opportunities in a safe, supportive, and respectful environment.

1. *Protection of Juveniles*

The Menace Statute conflicts with the juvenile justice system's goals of protection. If a juvenile were found to be a menace by a court, they would have to be moved into an adult detention facility. Under the Menace Statute, while in adult detention facilities, juveniles must be sight and sound separated from adult inmates;¹⁷⁵ however, most jails and prisons were not designed to house juveniles. This imposes multiple restrictions, such as the juvenile's access to a communal space with other juveniles and the ability to engage in physical activity.

Most adult jails are not equipped with separate areas for youth,¹⁷⁶ so juveniles are held in solitary or solitary-like confinement.¹⁷⁷ In these situations, juveniles often spend twenty-two or more hours alone daily.¹⁷⁸ Compared to adults, "[i]solation is likely to be more damaging to a juvenile."¹⁷⁹ Humans are inherently

172. Ian A. Silver et al., *Incarceration of Youths in an Adult Correctional Facility and Risk of Premature Death*, JAMA NETWORK OPEN 1 (July 5, 2023), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2806838>.

173. *See id.*

174. *Juvenile Justice*, *supra* note 4.

175. MICH. COMP. LAWS ANN. § 712A.16(1) (West 2025).

176. Barbara Fenton, *Guidelines for Juvenile Solitary Confinement*, LEXIPOL (Sep. 19, 2018), <https://www.lexipol.com/resources/blog/guidelines-for-juvenile-solitary-confinement/>.

177. Juvenile detention facilities do not have the capability to house juveniles in solitary conditions due to their licensure. According to the licensing requirements, juveniles may only be detained for (1) the length of the emergency safety situation and (2) may not exceed four hours for juveniles eighteen and older, two hours for juveniles between nine and seventeen, and less than an hour for juveniles younger than nine. *See* § 722.112d(11)(a)-(b).

178. *Growing up Locked down*, HUM. RTS. WATCH 20 (Oct. 10, 2012), <https://www.hrw.org/sites/default/files/reports/us1012ForUpload.pdf>.

179. Shawn Teague, *Incarcerated Youth in Solitary Confinement: A Growing Concern*, CHILD TRENDS: BLOG YOUTH JUST. (Jan. 5, 2016), <https://www.childtrends.org/publications/incarcerated-youth-in-solitary-confinement-a-growing-concern>.

social creatures, and deprivation of such interaction has negative impacts.¹⁸⁰ Solitary confinement can cause irreparable damage to the brain, especially the prefrontal cortex, which relates to impulse control.¹⁸¹ Individuals held in solitary confinement experience depression, anxiety, paranoia, anger, panic attacks, and many other neurological consequences.¹⁸² Solitary confinement before the age of eighteen is associated with a thirty-three percent increase in the risk of mortality between eighteen and thirty-nine years of age.¹⁸³ Thus, solitary confinement can cause irreparable harm to juveniles.

This does not align with the long-term goal of the juvenile justice system to protect juveniles. Solitary confinement causes irreversible damage to a juvenile's developing prefrontal cortex, impacting impulse control.¹⁸⁴ Juveniles have lower impulse control, are more prone to erratic behavior, and exhibit impulsive behavior.¹⁸⁵ Impulsivity causes juveniles to make irrational decisions, which can lead them to commit more crimes.¹⁸⁶ Therefore, the use of solitary confinement is likely to create more mental and physical health effects for juveniles and increase recidivism.¹⁸⁷ Since the Menace Statute effectively leads to juvenile solitary confinement, which increases the risk of psychological trauma, it does not align with the juvenile justice system's goal of protection.

2. *Rehabilitation of Juveniles*

The Menace Statute emphasizes punishment over rehabilitation. The Menace Statute requires menacing behavior or conduct *or* an inability to be safely detained.¹⁸⁸ Thus, the Menace Statute can be invoked without any serious safety concerns. When a juvenile exhibits menacing behavior, there is no requirement for the conduct or behavior to create any safety concern. This means a juvenile could be considered a menace to another juvenile even if they make only one offhand threat, whether intended or not. Even empty threats would allow the Menace Statute to place a juvenile in an adult facility. The Menace Statute allows the punishment of juveniles merely for their behavior.

180. Amy Roe, *Solitary Confinement Is Especially Harmful to Juveniles and Should Not Be Used to Punish Them*, ACLU WASH. (Nov. 17, 2017), <https://www.aclu-wa.org/story/solitary-confinement-especially-harmful-juveniles-and-should-not-be-used-punish-them>.

181. Madison Polay, *Solitary Confinement of Adolescents: A Mental Health Crisis*, UNIV. OF MICH. SCH. OF PUB. HEALTH: THE PURSUIT (June 26, 2019), https://sph.umich.edu/pursuit/2019posts/solitary_confinement_of_minors.html.

182. *Id.*

183. Silver et al., *supra* note 172.

184. Polay, *supra* note 181.

185. Abena, *Why Young People Should Not Be Tried as Adults in America*, COAL. FOR JUV. JUST. (Dec. 22, 2022), <https://juvjustice.org/blog/why-young-people-should-not-be-tried-as-adults-in-america/>.

186. *Id.*

187. Nicole Karem, *Young People in Solitary Confinement*, COAL. FOR JUV. JUST. (Apr. 20, 2022), <https://juvjustice.org/blog/young-people-in-solitary-confinement/>.

188. MICH. COMP. LAWS ANN. § 712A.16(1) (West 2025).

Additionally, juveniles in this type of confinement are often denied meaningful programming and education.¹⁸⁹ A lack of education can lead to juvenile recidivism.¹⁹⁰ Juveniles, post-release, struggle to adjust to life because they have not received any life or educational training.¹⁹¹ Juveniles in juvenile detention centers have a lower graduation rate than those arrested but not confined.¹⁹² This problem is inflamed when the juvenile is held at an adult facility away from additional educational opportunities, but it is not limited only to actively confined juveniles.¹⁹³ Juveniles who have been confined also experience lower rates of school re-enrollment after release.¹⁹⁴ Incarceration can also lead to reduced college enrollment and lower completion rates.¹⁹⁵ Research also revealed juveniles who were incarcerated experienced lower wages, fewer work opportunities, and less job experience.¹⁹⁶ One of the primary reasons for juveniles to re-offend is a lack of education.¹⁹⁷ Thus, the Menace Statute, by promoting increased incarceration with less access to educational opportunities, does not align with the goal of rehabilitation.

Those held in solitary confinement are also more likely to commit crimes upon release and more likely to be rearrested.¹⁹⁸ Moreover, not only is there a plethora of studies documenting the adverse side effects of solitary confinement on juveniles,¹⁹⁹ but this placement can occur even if the juvenile has yet to be found guilty. Detained juveniles can be held in adult facilities without being found guilty of an offense. The Menace Statute only requires a juvenile to be a menace to other juveniles or otherwise not safely detained.²⁰⁰ These periods of confinement, regardless of their length, have significant implications. Considering the Menace Statute allows confinement of juveniles in adult facilities that lack essential education and programming for juveniles, even before they are found guilty of an offense and without reasonable safety concern, it is contrary to the goal of rehabilitation.

189. *Growing up Locked down*, *supra* note 178, at 58.

190. Isabelle Hansen, *Rehabilitation over Reincarceration: Reducing Juvenile Recidivism*, JUST. EDUC. PROJECT, <https://www.justiceeducationproject.org/post/rehabilitation-over-reincarceration-reducing-juvenile-recidivism> (last visited Dec. 18, 2025).

191. *Id.*

192. Richard Mendel, *Why Youth Incarceration Fails: An Updated Review of the Evidence*, THE SENT'G PROJECT 14 (Mar. 1, 2023), <https://www.sentencingproject.org/app/uploads/2023/03/Why-Youth-Incarceration-Fails.pdf>.

193. Mahari Simmonds, *Education Behind Bars: Can Young People Be Taught in Adult Justice System?*, JUV. JUST. INFO. EXCH. (Jan. 2, 2019), <https://jjie.org/2019/01/02/education-behind-bars-can-young-people-be-taught-in-adult-justice-system/>.

194. Mendel, *supra* note 192, at 15.

195. *Id.*

196. *Id.*

197. Hansen, *supra* note 190.

198. Karem, *supra* note 187.

199. Emily Restivo, *For Juveniles in Solitary Confinement, the Psychological Torture Lingers*, SALON (Jan. 29, 2019, at 18:00 ET), <https://www.salon.com/2019/01/29/for-juveniles-in-solitary-confinement-the-psychological-torture-lingers/>.

200. MICH. COMP. LAWS ANN. § 712A.16(1) (West 2025).

IV. THE MICHIGAN MENACE STATUTE SHOULD BE REWRITTEN

Currently, the Michigan Menace Statute is vulnerable to abuse. The Menace Statute leaves all discretion within the court and offers no guidance on what constitutes a menace. Without this necessary guidance on what constitutes a menace, courts' rulings will vary greatly and can even conflict. Courts will even have the discretion to repeatedly sentence the same juvenile to confinement at an adult detention facility. Although it was created to protect juveniles, it fails to deliver such results. Statutes like the Menace Statute are extremely dangerous because they can easily be abused without much recourse, as there is no clear guidance on the statute's applicability. This leaves the courts with almost untethered discretion. That does not mean the Menace Statute should be discarded, as its intent revolves around such a vital goal. It is crucial to have the ability to protect juveniles from each other when they are detained, but it cannot be vague and vulnerable to abuse. Therefore, the Michigan Menace Statute should be rewritten to address its ambiguity.

A. *Factors for Menace*

As discussed above, creating a bright-line rule for what constitutes a menace has several issues; however, other guidance methods can be utilized. The Menace Statute should be amended with a non-exhaustive list of factors for a court to consider before declaring a juvenile a menace. The court should be required to consider the juvenile's age, physical and mental maturity, present mental state, the nature of the alleged offense, and the juvenile's prior history of delinquent acts. These factors are listed in the JJDPa and should be considered to allow Michigan to align more with the JJDPa. Further, factors like these are essential because they help consider mitigating factors of youth before the juvenile is sentenced to an adult facility.

Other factors, including the conduct or behavior alleged to be menacing, the severity of the menacing behavior, safety implications at the juvenile facility, prior remedial steps taken, the juvenile's current educational and programming needs, and the potential for solitary-like conditions, should also be considered by the courts. These factors include consideration of other remedial steps taken before the motion as additional protection for juveniles. When considering other remedial steps, the court can address other methods that were tried before the motion was submitted to place the juvenile in an adult facility. If other methods were abandoned and never tried, courts could consider that before granting the motion, thus preventing an avenue of abuse of the Menace Statute. By adopting a factor approach, the court can weigh considerations such as access to educational or program needs and the likelihood that the juvenile will be isolated against the juvenile's conduct. For example, if Theo was at a hearing to determine if he was a menace, the court could consider facts such as the educational program he needs, which is not offered at the adult facility. Additionally, the court could consider the solitary-like conditions Theo will be placed in and weigh them against his conduct in destroying the day room.

A non-exhaustive list of factors also clarifies what is likely to be considered a menace. Given the above factors, the more severe the conduct or behavior, the more likely a juvenile will be considered a menace. These more explicit standards are more manageable for both the court and juvenile detention facilities to work within. Adding these factors makes determining what constitutes a menace less arbitrary and provides courts with a structure within which to work. Additionally, a non-exhaustive factor approach allows courts to maintain discretion and case-by-case determinations. The Michigan Menace Statute should be amended to add a non-exhaustive list of factors, including the juvenile's age, the juvenile's physical and mental maturity, the present mental state of the juvenile, the nature of the alleged offense, the juvenile's prior history of delinquent acts, the severity of the menacing, the safety implications at the juvenile facility, the prior remedial steps taken, the juvenile's current educational and programming needs, and the potential for solitary-like conditions for courts to consider before placing a juvenile in an adult jail to add additional protections for juveniles.

B. Narrowed Scope

The Michigan Menace Statute currently has a wide application that conflicts with the goals of the juvenile justice system and the JJDP. As it is read now, the Menace Statute can be used without considering alternative methods such as pod seclusion. Narrowing the Menace Statute's scope and applicability would bring the statute closer to the goals of the juvenile justice system. First, the Menace Statute should be narrowed in scope by restricting its use until other methods have been reasonably attempted. By only allowing the Menace Statute to be used in this way, the court ensures juvenile detention facilities first attempt to use other methods more aligned with the goal of rehabilitation. This could include options such as group therapy, pod seclusion, or attempting to reduce contact between individual juveniles. As discussed in Section III, typically when juveniles are housed in adult detention facilities, they experience solitary-like conditions. Solitary-like conditions can be harmful to juveniles.²⁰¹ A narrow scope would prevent the Menace Statute from being overused when other remedies are available, increasing juvenile protection. The limitation would prevent detention at an adult facility unless it is the only reasonable option to adequately address the issue at hand. It should not require that all other methods be exhausted.

Second, the Menace Statute should also be amended to narrow its applicability. This can be accomplished by prohibiting repetitive invocation of the Menace Statute. After the maximum holding period of thirty days is met and the juvenile is returned to the juvenile detention facility, nothing prevents another immediate invocation of the Menace Statute. If Theo, after thirty days, is transferred back to his juvenile facility, nothing prevents the facility from again motioning to have him deemed a menace and removed. The Menace Statute must be amended to prevent this from happening except under the most drastic circumstances. The Menace Statute should include a clause requiring a hearing with a heavy presumption in favor of the juvenile not being removed when

201. *Growing up Locked down*, *supra* note 178, at 22.

facilities move for the repetitive removal of a juvenile. The Menace Statute should be amended in accordance with these recommendations to narrow its scope. Narrowing the scope would prevent more juveniles from being housed with adult offenders and, therefore, align more with the goals of the juvenile justice system.

CONCLUSION

Children are a vulnerable population deserving of additional protection from any system they pass through, especially the justice system. This belief is reflected in the juvenile justice system's goal to rehabilitate children who encounter it. This goal is significantly impeded when juveniles are allowed to be housed in adult jails, as permitted by the Menace Statute. When juveniles are housed in adult facilities, they are more susceptible to physical and sexual abuse and mental health issues. In its current form, the Menace Statute no longer makes sense in society. Not only does it conflict with federal funding statutes, but it is also incredibly vague. The Menace Statute does not define or offer any guidance for its key term, "menace." Under its current reading, any threat or threatening conduct is enough to qualify one as a menace. This vague and relaxed standard is subject to arbitrary and conflicting rulings.

The Michigan Menace Statute must be amended. These amendments should promote the ideas encapsulated in the goals of the juvenile justice system: protection and rehabilitation. The Menace Statute should be altered to include a non-exhaustive list of factors for courts to use when determining if a juvenile is a menace to other juveniles. The Menace Statute should also only be used after all reasonable alternative methods have been exhausted. Without these amendments, the Statute remains a wolf in sheep's clothing. The risk of abuse is more than enough cause to amend a statute, even if no abuse is yet present. While the Menace Statute was crafted with good intentions, it fails to adequately protect and rehabilitate juveniles; therefore, it must be amended to carry out those intentions.