

IN THE SUPREME COURT OF IOWA
Supreme Court No. 23-0214

IN THE INTEREST OF K.C.,
A Child,
Plaintiff-Appellant,
vs.

THE IOWA DISTRICT COURT FOR POLK COUNTY JUVENILE
DIVISION,
Defendant-Appellee.

ON WRIT OF CERTIORARI FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE RACHAEL E. SEYMOUR

**APPELLANT’S FINAL BRIEF AND REQUEST FOR ORAL
ARGUMENT**

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FINAL

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. The Juvenile Court Recognized K.C., an Indigent Child, had a Due Process Right to Expert Assistance in Defending Against Waiver to Adult Court. However, the Court Capped the Compensation for K.C.’s Expert Thousands of Dollars Below the Requested Amount—Finding the Requested Fees Unreasonable. Did the Juvenile Court Err in Applying the Law and Assessing the Reasonableness of Expert Fees Considering K.C.’s Uncontested Evidence Regarding the Expert’s Qualifications, Scope of Work, Market Rates, Special Needs of Indigent Juveniles, and Expenses Incurred?**

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Statutes

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REASONABLE, Black's Law Dictionary (11th ed. 2019)

II. Was the Juvenile Court's Substantial Limit on the Expert Fees of Dr. Thomas a De Facto Denial of K.C.'s Due Process and Equal Protection Rights under the Constitutions of the United States and the State of Iowa?

Authorities

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Ake v. Oklahoma, 470 U.S. 68 (1985)

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In the Interest of C.P., 569 N.W.2d 810 (Iowa 1997)

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Statutes

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Other Authorities

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Iowa Admin. Code r. 493-12.7(1)

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ROUTING STATEMENT

This case merits retention by the Iowa Supreme Court for three reasons. First, assessing the reasonableness of expert witness fees in the context of a juvenile delinquency case is an issue of first impression. Iowa R. App. P. 6.1101(2)(c). Second, this case represents a fundamental and urgent issue of broad public importance requiring prompt or ultimate determination by the Iowa Supreme Court because this case raises issues of fundamental fairness of trial for an indigent juvenile. Iowa R. App. P. 6.1101(2)(d). Lastly, this case presents substantial questions of enunciating or changing legal principles because case law is inadequate to guide courts in determining reasonableness of expert fees in the juvenile context. Iowa R. App. P. 6.1101(2)(f).

STATEMENT OF THE CASE

Indigent youth, like K.C. in this case, have procedural due process rights under both the 14th Amendment of the U.S. Constitution and Article 1, Section 9 of the Iowa Constitution to prepare and present an adequate defense in juvenile delinquency proceedings through meaningful access to state-funded ancillary litigation services, such as expert witness assistance. *In re Gault*, 387 U.S. 1, 13 (1967) (“[W]hatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.”); *Ake v. Oklahoma*, 470 U.S. 68, 84 (1985) (recognizing a defendant’s due

process right to competent expert assistance); *State Pub. Def. v. Amaya*, 977 N.W.2d 22, 32 (Iowa 2022), as amended (June 30, 2022) (recognizing a defendant’s due process right to state-funded ancillary litigation services). K.C.’s right to expert assistance to aid in his defense was not disputed by the juvenile court below—indeed, it was explicitly recognized. (Order Setting Expert Witness Fees, p. 2; App. 59). However, the juvenile court repeatedly denied K.C.’s uncontested motions to cover the full cost of the expenses incurred by K.C.’s expert—finding that the requested fees were unreasonable. (*Id.*; *see also* Order Regarding Child’s Mot. for Additional Expert Fees, p. 1; App. 59, 157). In this writ of certiorari action, the Court is asked to decide three things: (1) whether the juvenile court erred in applying the law when determining the reasonableness of the expert’s fees (*it did*); (2) whether the juvenile court’s findings regarding the unreasonableness of the expert’s fees were supported by substantial evidence (*they were not*); and (3) whether the juvenile court’s cap on compensation for K.C.’s expert was tantamount to a denial of K.C.’s right to expert assistance, violating both his due process and equal protection rights (*it was*).

STATEMENT OF FACTS AND COURSE OF PROCEEDINGS

K.C. is a son, a brother, a proud uncle, a Black male, a student, a cook, and an aspiring barber. (Child’s Ex. J, Statement of V.C., p. 1; Child’s Ex. I,

Statement of J.J., p. 1; Child's Ex. K, Statement of T.P., p. 1; Child's Ex. S, Statement of Child, p. 1). Most importantly for this appeal, K.C. was only 17 years old when his juvenile delinquency case was initiated on August 15, 2022. (Delinquency Pet., p. 1; App. 7). Because K.C. was a minor child at the time, the juvenile court had initial jurisdiction over K.C.'s case pursuant to Iowa Code section 232.8.

The State filed a Motion to Waive Jurisdiction pursuant to Iowa Code section 232.45 so then-17-year-old K.C. could be criminally prosecuted in the Adult Division of the District Court. (Mot. to Waive Jurisdiction (232.45); App. 12). The juvenile court appointed the Drake Legal Clinic to represent K.C. at the State's expense in his juvenile delinquency proceedings. (Order of Appointment of Counsel for Child, p. 2; App. 10). K.C.'s waiver hearing was initially set for September 12, 2022. (Order Setting Waiver Hr'g, p. 1; App. 13). The central issues for the juvenile court to determine at the waiver hearing were whether reasonable prospects existed for K.C.'s rehabilitation in the juvenile court system and whether waiver of jurisdiction served the best interests of K.C. and the community. (Child's Resistance to the State's Mot. to Waive Jurisdiction, p. 1; App. 68).

On September 1, 2022, K.C. filed a Motion to Continue seeking more time to prepare for the waiver hearing including a search for a forensic

psychologist to testify on the contested issues of rehabilitation and best interests. (Child's Unopposed Mot. to Continue, p. 1; App. 15). K.C.'s counsel contacted—by e-mail, telephone, or both—a total of thirteen professionals with doctorate degrees in psychology and the specific expertise of conducting evaluations for juvenile waiver cases to inquire about their availability and interest in conducting such an evaluation for K.C. (Professional Statement in Supp. of the Child's Mot. to Continue his Waiver Hr'g, pp. 1-2; App. 32-33). Counsel's search included psychologists they had previously worked with, referrals from the State Public Defender's Office, and members of the American Board of Forensic Psychology who were licensed in Iowa and specialized in juvenile evaluations. (*Id.* at p. 2; App. 33). Three board-certified forensic psychologists responded to counsel's inquiries regarding their rates for juvenile waiver evaluations and indicated an estimated total cost of \$7,990.00, \$8,000.00, and \$10,000.00, respectively. (Suppl. Professional Statement in Supp. of the Child's Mot. for Expert Assistance, pp. 1-2; Aff. of Dr. Tracy Thomas in Supp. of the Child's Mot. for Expert Assistance, p. 1; App. 46-47, 51). Ultimately, K.C. hired Dr. Tracy Thomas, Ph.D., ABPP, to opine on the two disputed issues of rehabilitation and best interest. (Mot. for Expert Assistance at the State's Expense, p. 2; App. 18).

On September 8, 2022, K.C. filed a Motion for Expert Assistance at the State's Expense, asking the juvenile court for \$7,990.00 in the payment of Dr. Thomas to evaluate K.C., write a report, and provide testimony at his waiver hearing. (Mot. for Expert Assistance at the State's Expense, p. 2; App. 18). The motion was supported by the following documents: (1) Dr. Thomas' C.V.; (2) Dr. Thomas' Affidavit stating her hourly rate, the services she expected to perform, and her total estimated cost; (3) professional statements from K.C.'s counsel outlining the efforts of the Drake Legal Clinic to secure an expert; and (4) a Memorandum in Support of the Child's Motion for Expert Assistance outlining K.C.'s state and federal constitutional due process and equal protection arguments for expert assistance at the State's expense. (Child's Ex. A, Dr. Thomas' CV; Professional Statement in Supp. of the Child's Mot. to Continue his Waiver Hr'g; Memorandum in Supp. of the Child's Amended Mot. to Continue; Suppl. Professional Statement in Supp. of the Child's Mot. for Expert Assistance; Aff. of Dr. Tracy Thomas in Supp. of the Child's Mot. for Expert Assistance; App. 20, 32, 35, 46, 51). The State did not file a resistance to K.C.'s Motion for Expert Assistance. (*See generally* Ct. Docket for Case No. JVJV251169).

On September 11, 2022, K.C. amended his previous motion to continue asking the juvenile court to continue the waiver hearing to accommodate Dr.

Thomas' schedule as she could not complete all work for the case until late November of 2022 at the earliest. (Child's Amended Mot. to Continue, p. 2; App. 29). Neither the Assistant County Attorney nor the Juvenile Court Officer objected to a continuance. (*Id.* at p. 3; App. 30). The juvenile court granted K.C.'s Amended Motion to Continue and set the waiver hearing for December 5, 2022. (Order Granting Child's Amended Mot. to Continue, p. 1; App. 44).

In its September 12, 2022, Order granting the continuance, the juvenile court authorized fees for K.C.'s expert but noted it would issue a separate ruling as to the amount authorized. (*Id.*; App. 44). Shortly thereafter, K.C. filed a Memorandum in Support of the pending Motion for Expert Assistance which was accompanied by a supplemental professional statement providing information on the comparable rates of two other forensic psychologists and an affidavit from Dr. Thomas. (Professional Statement in Supp. of the Child's Mot. to Continue his Waiver Hr'g, p. 2; Memorandum in Supp. of the Child's Amended Mot. to Continue; Suppl. Professional Statement in Supp. of the Child's Mot. for Expert Assistance, p. 2; App. 33, 35, 47). On October 3, 2022, K.C.'s counsel e-mailed the juvenile court and all parties to inquire about the pending Motion for Expert Assistance and their intention to proceed with the psychological examination. (Mot. for Ruling on the Child's Pending

Mot. for Expert Assistance at the State's Expense, p. 1; App. 53). On October 6, 2022, Dr. Thomas drove to the Drake Legal Clinic to conduct K.C.'s psychological examination. (Invoice for Dr. Thomas dated 12/6/2022, p. 1; App. 155).

Having been without a ruling on his Motion for Expert Assistance at the State's Expense for over a month and aware that he needed to balance timely preparation for the waiver hearing and compliance with the administrative rules governing reimbursements, K.C. filed a Motion for Ruling on October 10, 2022. (Mot. for Ruling on the Child's Pending Mot. for Expert Assistance at the State's Expense, pp. 1-2; App. 53-54). The following day, the juvenile court issued an Order which stated that the parties could expect a ruling on expert fees in no more than thirty-one days. (Order Following Mot. for Ruling on Child's Request for Expert Fees, p. 1; App. 55).

On November 7, 2022, less than a month before K.C.'s waiver hearing and a full sixty days after K.C. first filed his Motion for Expert Assistance at the State's Expense, the juvenile court issued a ruling on the amount of expert fees. (Order Setting Expert Witness Fees, pp. 1-3; App. 58-60). The juvenile court recognized that K.C. had a constitutional right to expert assistance at the State's expense to defend against waiver. (*Id.* at p. 2; App. 59). However, the juvenile court found the requested expert compensation amount of up to

\$7,900.00 to be unreasonable, setting the cap for compensation at \$4,590.00 instead. (*Id.* at p. 3; App. 60). In its Order, the juvenile court listed the following four reasons as to why certain expenses were unreasonable: (1) unreasonable to charge for driving time for Dr. Thomas when she can appear remotely at the hearing; (2) unreasonable to charge for driving time for Dr. Thomas to interview K.C. in Des Moines at the Drake Legal Clinic when K.C. can drive to Ames to meet in person; (3) minimal records for Dr. Thomas to review; and (4) lack of information as to what tests Dr. Thomas needs to administer and score. (*Id.*; App. 60). The juvenile court's Order offered no explanation or calculation for how it arrived at \$4,590.00 as the reasonable amount of expert fees. (*See generally* Order Setting Expert Witness Fees; App. 58-61).

On November 20, 2022, K.C. filed a Motion for Additional Expert Fees, addressing each of the juvenile court's concerns from its Order Setting Expert Witness Fees and requested an Order authorizing expert assistance of Dr. Thomas at an amount not to exceed \$7,196.20. (Mot. for Additional Expert Fees, pp. 2-4; App. 63-65). The Motion argued the services and fees were reasonable when viewed from the lens of a child and when considering the constitutional rights at stake. (*Id.* at p. 3; App. 64). The Motion was accompanied by an invoice from Dr. Thomas indicating actual expenses and

estimated future charges. (Child's Ex. D, Dr. Thomas' Invoice, p. 1; App. 66). The State did not file a resistance to K.C.'s Motion for Additional Expert Fees. (*See generally* Ct. Docket for Case No. JVJV251169).

On November 28, 2022, K.C. filed the Psychological Waiver Evaluation from Dr. Thomas. (Child's Ex. V, Dr. Thomas's Waiver Evaluation; App. 102). The evaluation report was twenty-three pages long and included all the specific records Dr. Thomas reviewed to prepare her report and findings. (*Id.*; App. 102-24). Throughout the report, Dr. Thomas referenced and quoted specific records she reviewed. (*Id.* at pp. 2, 4-11; App. 103, 105-12). Dr. Thomas also listed each of the psychological tests she conducted on K.C. followed by a detailed description of the nature, utility, and results of each test. (*Id.* at pp. 12-20; App. 113-21).

K.C.'s waiver hearing began on December 5, 2022, and was continued to the following day due to delays in the hearing outside of the control of Dr. Thomas or the parties. (Order Rescheduling Hr'g, p. 1; App. 147). During the two-day hearing, Dr. Thomas testified in detail about the documents she reviewed to aid in her analysis and preparation of the waiver evaluation report. (Tr. v. I p. 66, Lines 1-25 to p. 67, Lines 1-24). Dr. Thomas provided extensive testimony about each of the six psychological tests she conducted on K.C. (Tr. v. I p. 71, Line 19 to p. 75, Line 14 (WASI-II), p. 75, Line 15 to p. 80, Line 2

(PAI), p. 80, Line 20 to p. 82, Line 4 (ACE), p. 82, Line 5 to p. 85, Line 8 (SAVRY), p. 85, Line 9 to p. 89, Line 15 (RSTI), p. 89, Line 16 to p. 93, Line 8 (PCL:YV)).

At the conclusion of the hearing on December 6, 2022, the juvenile court granted the State's Motion to Waive Jurisdiction. (Order Regarding Mot. for Waiver of Juvenile Court Jurisdiction, p. 3; App. 151; Tr. v. II p. 41, Lines 14-23). The next day, K.C. filed an Amended Motion for Additional Expert Fees requesting the actual expenses incurred by Dr. Thomas: \$7,791.20 — \$198.80 less than the amount initially requested. (Child's Amended Mot. for Additional Expert Fees, p. 1; Child's Mot. for Expert Assistance at the State's Expense, p. 2; App. 153, 18). The Amended Motion was supported by an invoice for all of Dr. Thomas' services now that her work on the case was complete. (Invoice for Dr. Thomas dated 12/06/2022, p. 1; App. 155).

The juvenile court denied the Amended Motion for Additional Expert Fees on December 9, 2022, and simply stated in its brief Order that "the prior ruling shall stand for the reasons previously noted in the original order setting fees." (Order Regarding Child's Mot. for Additional Expert Fees, p. 1; App. 157).

In response to this denial, K.C. timely filed a Motion to Reconsider, Enlarge, or Amend. (Child’s Mot. to Reconsider, Enlarge, or Amend the Court’s 12/9/2022 Order Regarding Child’s Mot. for Additional Expert Fees (Iowa R. Civ. P. 1.904); App. 159). The Motion asked for guidance from the juvenile court on “why the Court’s findings regarding reasonableness or compensation remain unchanged considering the additional information [counsel] furnished to the Court . . ., invoices from Dr. Thomas, Dr. Thomas’ Waiver Evaluation, and Dr. Thomas’ virtual testimony that addressed the issues and concerns raised in the Court’s original order.” (*Id.* at p. 3; App. 161). The Motion also requested guidance “on how [the juvenile court] determined \$4,590.00 was reasonable compensation for Dr. Thomas’ services.” (*Id.*; App. 161).

The juvenile court subsequently issued an Order denying K.C.’s Motion again “for the same reasons previously noted” and offering no additional guidance on its fee cap. (Order Denying Child’s Mot. to Reconsider, Enlarge, or Amend the Court’s 12/9/2022 Order, p. 1; App. 163).

On February 7, 2023, K.C. timely filed a petition for a writ of certiorari, which was granted by this Court.

ARGUMENT

The due process guarantees of fundamental fairness require the State to supply all indigent defendants — including youth accused of committing a delinquent act — with the “basic tools of an adequate defense.” *Ake v. Oklahoma*, 470 U.S. 68, 77 (1985) (quoting *Britt v. North Carolina*, 404 U.S. 226, 227 (1971)); *see also In re J.K.*, 873 N.W.2d 289, 294 (Iowa Ct. App. 2015) (citing *In re Gault*, 387 U.S. 1, 30 (1967) (affirming youth are entitled to due process protections in delinquency proceedings)). One such defense tool is expert assistance. *Ake*, 470 U.S. at 77 (citation omitted) (setting forth test to determine whether expert assistance at State expense is warranted under the due process clause); *State Pub. Def. v. Amaya*, 977 N.W.2d 22, 32 (Iowa 2022), as amended (June 30, 2022) (citations omitted) (recognizing the right to state-funded ancillary services.). Assistance from experts on germane issues such as rehabilitation and best interests are particularly important defense tools in the context of juvenile delinquency waiver hearings.

In the case below, the juvenile court affirmed K.C.’s constitutional right to expert assistance to aid in his defense against waiver to adult court. (Order Setting Expert Fees, p. 2; App. 59). Yet, it denied K.C.’s request for state-funded compensation that would cover the entire cost for the services of his expert — finding those fees to be unreasonable. (*Id.* at p. 3; App. 60). The

juvenile court erred. Not only did the juvenile court fail to apply the law correctly when assessing the reasonableness of the expert fees, the juvenile court's reasonableness findings were unsupported by the evidence.

Moreover, the words of the juvenile court's Order recognizing K.C.'s constitutional rights rang hollow. The juvenile court violated K.C.'s rights to due process and equal protection when it denied K.C. sufficient State funds to pay his expert, Dr. Thomas, for her assistance and capped compensation at an arbitrary amount thousands of dollars below the market rate. Consequently, this Court should reverse the juvenile court's order and direct authorization of State compensation for the entirety of Dr. Thomas' work as requested in K.C.'s Amended Motion for Additional Expert Fees.

I. The Juvenile Court Erred in Applying the Law and Assessing the Reasonableness of Dr. Thomas' Duly Earned Expert Fees Considering K.C.'s Uncontested Evidence Regarding the Expert's Qualifications, Scope of Work, Market Rates, Special Needs of Indigent Juveniles, and Expenses Incurred.

A. Error Preservation

K.C. preserved error on his claims that the juvenile court erred in applying the law and assessing reasonableness of his expert's compensation at the State's expense by filing motions and a memorandum of law on these issues and obtaining a ruling from the juvenile court addressing expert compensation at State expense. (Child's Mot. for Expert Assistance at State

Expense, pp. 1-2; Memorandum in Supp. of the Child's Mot. for Expert Assistance at the State's Expense, pp. 1-3; Order Setting Expert Witness Fees, pp. 1-3; Child's Mot. for Additional Expert Fees, pp. 2-3; Child's Amended Mot. for Additional Expert Fees, p. 1; Order Regarding the Child's Mot. for Additional Expert Fees, p. 1; Child's Mot. to Reconsider, Enlarge, or Amend the Court's 12/9/2022 Order Regarding the Child's Mot. for Additional Expert Fees (Iowa R. Civ. P. 1.904), pp. 3-4; Order Denying the Child's Mot. to Reconsider, Enlarge, or Amend the Court's 12/9/2022 Order, p. 1; App. 17-18, 48-50, 58-60, 63-64, 153, 157, 161-62, 163); *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.").

B. Standard of Review

"Under a writ of certiorari, [the Iowa Supreme Court's] review is for errors at law," but "[t]o the extent constitutional issues are involved, however, [the Court's] review is de novo." *Crowell v. State Pub. Def.*, 845 N.W.2d 676, 687 (Iowa 2014) (citing *Pfister v. Iowa Dist. Ct.*, 688 N.W.2d 790, 793-94 (Iowa 2004)).

In *Simmons v. State Public Defender*, a court appointed attorney appealed a denial of a claim for attorney's fees by the State Public Defender's

Office and raised both constitutional and statutory issues. 791 N.W.2d 69, 73 (Iowa 2010). In its ruling, the Iowa Supreme Court noted that the interpretation and application of the administrative rules governing attorney fees are intertwined with the constitutional right to counsel. *Id.* at 74. Consequently, review of the fee claims involving constitutional issues was de novo and not the standard correction of errors of law. *Id.* at 73. Just like in *Simmons*, this Court cannot overlook the “constitutional icebergs” of the case at bar. *Id.* at 74 (“Even though we prefer to decide cases on statutory rather than constitutional grounds, in this case we must have a firm understanding of the constitutional icebergs that must be avoided in order to guide us in our statutory interpretation.”). Given the inextricable link between K.C.’s constitutional right to expert assistance as an indigent juvenile defendant and the juvenile court’s assessment of the reasonableness of expert fees, de novo review is proper.

C. The Juvenile Court Did Not Properly Apply the Law, Imposing Instead a Higher Standard than Reasonableness and Failing to Engage with the Necessary Factors for the Reasonableness Analysis.

There is no dispute that K.C. was entitled to the expert assistance of Dr. Thomas to mount a defense at his waiver hearing. (Order Setting Expert Witness Fees, p. 2; App. 59). The only dispute is regarding Dr. Thomas’ state-funded compensation and whether the amount K.C. requested in his Motion

for Additional Expert Fees was reasonable. (*Id.* at p. 3; App. 60). The juvenile court failed to properly apply the law when determining the amount of compensation for K.C.’s expert.

i. The Pierce v. Nelson reasonableness test is instructive for analyzing reasonable expert compensation in the juvenile delinquency context.

Neither the Rules of Juvenile Procedure nor Iowa Code Chapter 232 provide any guidance on state-funded compensation of experts or other ancillary services in juvenile delinquency proceedings, including how the amount of compensation for said services should be determined. However, both Iowa Code of Criminal Procedure section 815.5 and Iowa Admin. Code rule 493-12.7 provide for “reasonable compensation” for expert witnesses at State expense for indigent persons to aid in mounting a defense. Specifically, section 815.5 directs reasonable compensation be awarded to expert witnesses for indigent persons, and rule 493-12.7 provides the process for court appointed attorneys to be reimbursed by the State for expert witnesses used.

The reasonableness of expert witness fees under these provisions appears to be one of first impression, as undersigned counsel is unaware of any statute, rule, or case law specifically addressing how “reasonableness” is defined in either the criminal or juvenile context. Therefore, it is necessary to look outside of the juvenile delinquency setting for guidance. *Sanford v.*

Fillenwarth, 863 N.W.2d 286, 289 (Iowa 2015) (citing *Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216, 223 (Iowa 2014)) (“When a word is not defined in the statute, we look to precedent, similar statutes, dictionaries, and common usage to define the term.”). As argued in K.C.’s Memorandum in Support of the Child’s Motion for Expert Assistance at the State’s Expense, the Iowa Supreme Court’s decision in *Pierce v. Nelson* provides such guidance. 509 N.W.2d 471, 474 (Iowa 1993); (Memorandum in Supp. of the Child’s Mot. for Expert Assistance at the State’s Expense, pp. 1-2; App. 48-49).

In *Pierce*, the Iowa Supreme Court granted interlocutory appeal of a district court order compelling a defendant in a personal injury case to pay expert fees for a surgeon’s deposition testimony. 509 N.W.2d at 472. To resolve the controversy regarding the expert fees and dearth of case law on how courts should measure the reasonableness of expert witness deposition compensation, the Iowa Supreme Court adopted and applied a framework for analyzing fee controversies used by their federal counterparts. *Id.* at 474 (citing *Jochims v. Isuzu Motors, Ltd.*, 141 F.R.D. 493, 495-96 (S.D. Iowa 1992)). Specifically, the Court in *Pierce* adopted and applied the following factors to determine reasonableness of fees for experts:

- (1) the witness’ area of expertise; (2) the education and training required to provide the expert insight which is sought; (3) the

prevailing rates of other comparably respected available experts; (4) the nature, quality, and complexity of the discovery responses provided; (5) the fee actually being charged to the party who retained the expert; (6) fees traditionally charged by the expert on related matters; and (7) any other factor likely to be of assistance to the court in balancing the interests implicated by rule 26.

509 N.W.2d at 474 (citing *Jochims*, 141 F.R.D. at 495-96); *see also* *GreatAmerica Leasing Corp. v. Cool Comfort Air Conditioning & Refrigeration, Inc.*, 691 N.W.2d 730, 733 (Iowa 2005) (quoting *Schaffer v. Frank Moyer Constr., Inc.*, 628 N.W.2d 11, 24 (Iowa 2001)) (outlining similar factors for consideration in assessing reasonableness of attorney fees).

In discussing the *Jochims* test, the Iowa Supreme Court directly responded to critiques that the test fails to account for the particular circumstances of the expert's profession. *Pierce*, 509 N.W.2d at 473 (citing *Jochims*, 141 F.R.D. at 495-96). The court recognized that "no test can provide for every factual contingency." *Id.* at 474. However, it explained that the "other factor" prong of the *Jochims* test is broad enough to allow pertinent evidence and to cover the unique circumstances of a particular expert fee request. *Id.*

Similarly, in the case at hand, Iowa courts lack direct guidance from case law and the Iowa Code to assess the reasonableness of expert fees in juvenile delinquency cases. The *Pierce* factors used in the civil context can

aid juvenile courts in determining the reasonableness of expert fees in the juvenile delinquency context. Specifically, when considering reasonableness of expert fees in juvenile delinquency cases, juvenile courts should consider: (1) the witness' area of expertise; (2) the expert's relevant education and training; (3) prevailing rates of other comparably respected available experts; (4) the nature, quality, and complexity of the expert's work; (5) the fees actually being charged; (6) the fees traditionally charged by the expert on related matters; and (7) *any other factor* that would be of assistance to the court in balancing the interests implicated by the case.

Both the constitutional rights implicated by expert assistance and the special nature of juvenile proceedings are factors that should be considered as part of the analysis under *Pierce*. As stated above, the seventh factor from *Pierce* is a catchall, asking the court to consider any other factor that is "pertinent to a reasonableness determination yet unique to the particular fee request." 509 N.W.2d at 474. In making a reasonableness determination, juvenile courts must be mindful of "constitutional icebergs," which include an indigent juvenile defendant's constitutional right to expert assistance to aid in their defense. *Simmons*, 791 N.W.2d at 74 (directing courts to understand and avoid constitutional icebergs when interpreting statutes or rules intertwined with constitutional rights). As discussed in greater detail below,

the reasonableness of expert expenses must also be viewed from the lens of a child or youth and in consideration of the special nature of juvenile cases.

ii. The juvenile court misinterpreted and misapplied the Hulse v. Wifvat test for reasonable attorney compensation when ruling on K.C.'s motions for state-funded expert compensation.

The juvenile court's November 7, 2022, Order Setting Expert Witness Fees cited the Iowa Supreme Court case *Hulse v. Wifvat* to support its limit on the compensation of K.C.'s expert. 306 N.W.2d 707 (Iowa 1981); (Order Setting Expert Witness Fees, p. 3; App. 60). Specifically, the juvenile court found it unreasonable under *Hulse* to charge for services when other cost saving options were available. (Order Setting Expert Witness Fees, p. 3; App. 60). However, a closer reading of *Hulse* supports, not hurts, K.C.'s request for full compensation of his expert witness.

In *Hulse*, the Iowa Supreme Court provided clarity on how the statute related to "reasonable compensation" for attorneys appointed to represent indigent defendants in criminal cases should be interpreted. 306 N.W.2d at 709. First, the Court made clear there are two elements to reasonable attorney fee standards: (1) reasonable necessity of the services and (2) reasonable valuation. *Id.* While a court "must exercise its independent judgment in determining the extent of necessary services", it must also "put itself in the position of a reasonable attorney at the time services were undertaken." *Id.* at

710. This necessarily requires recognition of both “the high standard of diligence and preparation” and the “relevant facts and circumstances in the individual case.” *Id.* The court recognized that reasonable valuation is plainly defined by the statute as “the ordinary and customary charges for like services in the community.” *Id.* at 711.

Importantly, the Court in *Hulse* held that under the statute, reasonable compensation was full compensation for reasonably necessary services. *Id.* at 712. In other words, no discount of compensation was required “based on an attorney’s duty to represent the poor.” *Id.* at 711. Likewise, and perhaps more importantly given the age and development of juvenile defendants, no discount of compensation for reasonably necessary services should be required in the juvenile delinquency context.

iii. The juvenile court should assess reasonableness through a youth-centered lens in juvenile delinquency cases.

The juvenile court should apply a youth-centered lens to any reasonableness analysis in juvenile delinquency proceedings. Both the U.S. and Iowa Supreme Courts recognize that children and youth are not just adults in miniature and must be treated differently as a result. *See, e.g., J.D.B. v. North Carolina*, 564 U.S. 261, 263 (2011) (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982)) (“Given a history ‘replete with laws and judicial recognition’ that children cannot be viewed simply as miniature adults . . .

there is no justification for taking a different course here.”); *State v. Lyle*, 854 N.W.2d 378, 388 (Iowa 2014), as amended (Sept. 30, 2014) (outlining various provisions of Iowa’s laws that “help[] illustrate a building consensus in this state to treat juveniles in our courts differently than adults.”). This recognition of the need for special treatment of juveniles is grounded in both our “commonsense understanding of youth” and “our emerging knowledge of adolescent neuroscience.” *Lyle*, 854 N.W.2d at 393 (citing *Thompson v. Oklahoma*, 487 U.S. 815, 836 (1988); *Eddings*, 455 U.S. at 115–16; *Miller v. Alabama*, 567 U.S. 460, 471 (2012); *Roper v. Simmons*, 543 U.S. 551, 569 (2005)). Specifically, both the United States and Iowa Supreme Courts, in their criminal and juvenile law decisions, have cited and applied findings from child developmental psychology and neuroscience research regarding juvenile immaturity as it relates to independent functioning, decision-making, emotional regulation, and cognitive processing. *Id.*

The Iowa legislature has recognized the necessity for the unique treatment of juveniles in a variety of different settings as well, including juvenile court proceedings. *E.g.*, Iowa Code § 595.2(2) (stating marriages for those under the age of eighteen are presumptively invalid unless certain requirements under § 595.2(4) are met); Iowa Rules of Civil Procedure 1.210 (stating civil actions cannot be filed directly by a minor but by their guardian

or next friend on their behalf); Iowa Code § 910.10(c)(a) (restitution lien cannot be filed against a juvenile offender until they turn 18); *id.* § 135.37(2) (prohibiting persons under eighteen from obtaining tattoos); *id.* § 321.180B (prohibiting persons under eighteen from obtaining a driver’s license or driving permit except under certain limited circumstances outlined in the statute); *id.* § 232.8 (granting the juvenile court exclusive original jurisdiction over persons under age 18 who have committed a delinquent act, unless otherwise provided by law). The special treatment of juveniles permeates the goals, procedures, and remedies of juvenile delinquency proceedings in Iowa. *See, e.g.*, Iowa Code § 232.1 (directing Chapter 232 to be liberally construed to ensure children receive the guidance, care, and control that will best serve their welfare); Iowa R. Juv. P. 8.41 (prohibiting the routine use of restraints on children in court proceedings); *State v. Stueve*, 150 N.W.2d 597, 600 (1967) (“Not only the purpose, but the procedure in the district and juvenile courts, is different.”); *In re J.A.L.*, 694 N.W.2d 748, 751 (Iowa 2005) (citations omitted) (“Delinquency proceedings are not criminal proceedings but are special proceedings that serve as an alternative to a criminal prosecution of the child with the best interest of the child as the objective.”).

Additionally, courts routinely apply a juvenile lens to a variety of different legal analyses. *See, e.g., Peterson v. Taylor*, 316 N.W.2d 869, 873

(Iowa 1982) (stating negligence cases involving children should apply a “reasonable child” standard of care); *J.D.B.*, 564 U.S. at 277 (holding the test for determining whether a child was in custody for purposes of Miranda rights must be evaluated through the lens of a “reasonable child”). Just as a person’s age factors into determinations ranging from the enforceability of contracts to the voluntariness of confessions, the reasonableness of expert witness services should be assessed from a juvenile lens. *See* Iowa Code §§ 599.2, 599.3 (outlining provisions governing contract disaffirmance involving minor children); *State v. Smith*, 546 N.W.2d 916, 923, 926 (Iowa 1996) (holding age is a factor in making a determination as to custody status and voluntariness of confessions). What might be an unreasonable service for an adult may be perfectly reasonable for a juvenile given their age, development, dependency on adults, and best interests.

Applying a juvenile specific analysis to requests for expert assistance at State expense aligns with the overarching goals and legislative intent of Chapter 232 and the special nature of juvenile delinquency proceedings. *In re A.K.*, 825 N.W.2d 46, 51 (Iowa 2013) (“The primary goal of juvenile proceedings is to further the best interests of the child—not to punish but instead to help and educate the child.”) (citing Iowa Code § 232.1; *In re Henderson*, 199 N.W.2d 111, 119 (Iowa 1972)). It also fits squarely within

the seventh *Pierce* reasonableness factor—any other factor likely to be of assistance to the court in balancing the interests implicated by state-funded expert assistance. Ultimately, the juvenile court should remain cognizant of the unique nature of juveniles, as compared to adults, and the emphasis on best interests and rehabilitation that are essential to juvenile proceedings when assessing the reasonableness of the expert fees at the crucial stage of a waiver hearing. Thus, the juvenile court erred when it failed to apply a juvenile lens to its analysis of K.C.’s request for state-funded expert assistance and the services requested therein.

iv. The juvenile court employed an incorrect legal standard when setting state-funded compensation for Dr. Thomas.

The juvenile court applied the law incorrectly when it held K.C.’s request for state-funded expert compensation to a standard higher than reasonableness. The juvenile court’s Order denying K.C.’s Amended Motion for Additional Expert Fees and subsequent Order denying his Motion to Reconsider, Enlarge, or Amend provide no direct citation to legal principals or the record to support its rulings. (Order Regarding Child’s Mot. for Additional Expert Fees, p. 1; Order Denying Child’s Mot. to Reconsider, Enlarge, or Amend the Court’s 12/9/22 Order, p. 1; App. 157, 163). Instead, the orders indicate the prior November 7, 2022, Order on K.C.’s initial Motion for Expert Fees “shall stand for the reasons previously noted in the original

order setting fees.” (Order Regarding Child’s Mot. for Additional Expert Fees, p. 1; Order Denying Child’s Mot. to Reconsider, Enlarge, or Amend the Court’s 12/9/22 Order, p. 1; App. 157, 163).

In the juvenile court’s November 7, 2022, Order, the court held K.C. had a right to state-funded expert assistance to mount an “effective defense” in his waiver hearing. (Order Setting Expert Witness Fees, p. 2; App. 59). The juvenile court then proceeded to consider the amount of compensation for K.C.’s expert, Dr. Thomas. (*Id.*; App. 59). The juvenile court used Iowa Code sections 815.4 and 815.5 to inform its analysis of the appropriate compensation for Dr. Thomas. (*Id.*; App. 59). The juvenile court acknowledged *reasonable* compensation was the appropriate standard for expert compensation under section 815.5 and emphasized that the court determines what is reasonable compensation. (*Id.*; App. 59). The juvenile court’s Order does not cite or engage with the *Pierce* reasonableness factors analyzed and applied by K.C. in his motions. (*See id.*; App. 59). Instead, the juvenile court’s Order cites the case of *Hulse v. Wifvat*, a case dealing with court appointed attorneys’ fees, in support of exercising its “independent judgment in determining the extent of reasonably necessary services.” 306 N.W.2d at 710; (Order Setting Expert Witness Fees, p. 3; App. 60).

K.C. does not dispute the juvenile court's role in determining reasonable compensation. However, while the juvenile court acknowledged reasonableness as the appropriate standard in its order, it applied a higher standard to K.C.'s request. (Order Setting Expert Witness Fees, p. 3; App. 60). The court's ruling of unreasonableness rested on a finding that "any expense[s] that are not needed to be expended by the expert" were unreasonable, rather than measuring the fees by a standard of reasonableness. (*Id.*; App. 60). The fact that alternatives to Dr. Thomas driving to Des Moines from Ames for K.C.'s evaluation and hearing exist do not in and of themselves make requests for such expenses unreasonable. *See, e.g., Churchill Truck Lines, Inc. v. Transp. Regulation Bd. of the Iowa Dep't of Transp.*, 274 N.W.2d 295, 300 (Iowa 1979) (citations omitted) ("'Unreasonable' has been said to mean action in the face of evidence as to which there is no room for difference of opinion among reasonable minds . . . or not based on substantial evidence.").

The correct analysis under *Hulse* is whether a service is *reasonably necessary*, not whether the service is needed. 306 N.W.2d at 709; *see also State v. Dahl*, 874 N.W.2d 348, 352 (Iowa 2016) ("Thus, for the court to grant an indigent defendant's application for appointment of a private investigator at state expense, the indigent defendant must inform the court of facts that

demonstrate a reasonable need for investigative services.”). The juvenile court’s standard of “needed” expenses misapplied the rule and unfairly constrained K.C. to state-funded expert fees which were minimally capable of aiding his defense as opposed to what was reasonable.

It should be noted that the State did not resist any of K.C.’s requests for expert assistance at State expense — and rightly so. The Iowa Supreme Court has acknowledged in the context of a different ancillary defense service, private investigators, that objections should be rare and only when they serve the interest of justice. *Dahl*, 874 N.W.2d at 353 (“Generally, the State should resist an application on the ground that granting the application will prejudice the administration of justice. . . . The State should not impede the right of an indigent defendant to fully investigate the case or develop a valid defense.”). No justice was served by denying K.C.’s Amended Motion for Additional Expert Fees.

Despite citing *Hulse* to support its ruling, the juvenile court failed to acknowledge the constraints that *Hulse* imposes on court determinations of reasonableness. 306 N.W.2d at 710. Those constraints on the juvenile court include “put[ting] itself in the position of a reasonable attorney at the time the services were undertaken,” and “recogniz[ing] the high standard of diligence

and preparation which is demanded of counsel in criminal cases and all of the relevant facts and circumstances in the individual case.” *Id.*

The juvenile court issued its November 7, 2022, ruling on K.C.’s initial requests for expert witness fees two months after that request was first made and less than a month before K.C.’s waiver hearing. (Child’s Mot. for Expert Assistance at the State’s Expense; Mot. for Ruling on the Child’s Pending Mot. for Expert Assistance at the State’s Expense, pp. 1-2; Order Setting Expert Fees; App. 17, 53-54, 58). K.C.’s counsel requested timely guidance from the court on the amount of expert compensation by informally e-mailing the juvenile court and then later motioning for a ruling. (Mot. for Ruling on the Child’s Pending Mot. for Expert Assistance at the State’s Expense, pp. 1-2; App. 53-54). The juvenile court declined such requests. (Order Following Mot. for Ruling on Child’s Request for Expert Fees, p. 1; App. 55). K.C. was then left with a Catch-22: proceed with expert assistance without the guarantee of payment by the State or forgo the assistance of an expert to aid in his defense. For a young person like K.C., the waiver decision has significant immediate and collateral consequences. (Child’s Ex. E, Updated Profile of Youth Charged in Adult Court, SFY 2015 to SFY 2021, pp. 3, 25-26 (“Research has generally shown that youth have worse outcomes when they are transferred to the adult justice system rather than being handled in the

juvenile court system.”); App. 72, 94-95; Child’s Ex. O, Collateral Consequences of Criminal Records, pp. 1-8 (“Collateral consequences of criminal records create social and economic barriers for individuals who are reentering society by denying or restricting rights and privileges that would otherwise be available to them.”)). Given the high stakes for mounting a defense against waiver, counsel’s efforts to obtain a timely decision from the juvenile court on expert fees, K.C.’s youth and history of trauma, and the impending hearing, the expert’s services and fees were reasonable.

Lastly, the juvenile court failed to apply the law correctly in valuation of Dr. Thomas’ services. The juvenile court’s valuation of compensation was arbitrary and not grounded by a reasonableness standard. *See Sec. State Bank, Hartley, Iowa v. Ziegeldorf*, 554 N.W.2d 884, 894 (Iowa 1996) (citations omitted) (defining arbitrary as “an unreasoned decision made without regard to law or facts.”). As explained above, *Hulse* lays out two elements for considering the reasonableness of attorneys’ fees: whether the services were reasonably necessary and whether the value was reasonable in amount. 306 N.W.2d at 709. This allows the court to consider the judgment of the expert to determine the work that needs to be done and the “ordinary and customary charges for like services in the community.” *Id.* at 711. The Court held in *Hulse* that reasonable compensation is *full compensation*. *Id.* at 712.

The juvenile court's ruling from November 7, 2022, found the valuation of Dr. Thomas' record review and test administration and scoring unreasonable. (Order Setting Expert Witness Fees, p. 3; App. 60). When issuing the December 9, 2022, Order affirming its prior valuation assessment, the juvenile court failed to consider the updated record evidencing the number of documents that Dr. Thomas reviewed, her years of expertise and training in this area, and the documents' value in informing her expert opinion. (*See* Order Regarding Child's Mot. for Additional Expert Fees, p. 1; App. 157). Rather than applying the law to the updated record, the juvenile court erred when it failed to consider customary charges and the volume, complexity, and necessity of Dr. Thomas' work when issuing its December 9, 2022, ruling.

Furthermore, the juvenile court's November 7, 2022, Order set "the maximum dollar amount for the child's expert witness not to exceed \$4,590.00." (Order Setting Expert Witness Fees, p. 3; App. 60). The Order did not acknowledge the professional statements submitted by K.C.'s counsel detailing the market rate for the services of comparable experts. (*See Id* at pp. 1-3; App. 58-60). The Order provided no indication of how the dollar amount of \$4,590.00 was reached. (*See Id.*; App. 58-60). K.C. explicitly requested guidance from the juvenile court on how it calculated the value of Dr. Thomas' services and the court declined to provide any guidance. (Child's

Mot. to Reconsider, Enlarge, or Amend the Court's 12/9/2022 Order Regarding Child's Mot. for Additional Expert Fees (Iowa R. Civ. P. 1.904), pp. 3-4; Order Denying Child's Mot. to Reconsider, Enlarge, or Amend the Court's 12/9/22 Order, p. 1; App. 161-62, 163). Thus, the juvenile court's ruling on the valuation of expert fees was arbitrary and capricious because it was set without regard to the law or facts of the case. *See, e.g., Dico, Inc. v. Iowa Emp. Appeal Bd.*, 576 N.W.2d 352, 355 (Iowa 1998) (citations omitted) (finding the terms arbitrary and capricious have established meanings: action is arbitrary and capricious when it is taken without regard to the law or facts of the case).

v. Dr. Thomas' fees are reasonable under the plain meaning of the word and factors outlined in Pierce v. Nelson and Hulse v. Wifvat.

The evidence before the juvenile court supported a finding of reasonableness for the requested expert fees under the proper analysis. First, Dr. Thomas' expert fees are reasonable under the *Pierce* test. 509 N.W.2d at 474. Specifically, each of the seven factors outlined in *Pierce* support a finding of reasonableness:

1) Witness' area of expertise:

Dr. Thomas is board-certified as a Forensic Psychologist by the American Board of Forensic Psychology and has specialized training and

extensive experience in conducting forensic evaluations in criminal, civil, and juvenile matters. (Aff. of Dr. Tracy Thomas in Supp. of the Child's Mot. to Continue, p. 1; App. 42). The depth of her experience and training specifically related to juvenile work in Iowa, including waiver evaluations, was detailed in her C.V. and court testimony. (See Child's Ex. A, Dr. Thomas' CV, pp. 1-8; (discussing Dr. Thomas' education, professional licensure, board certifications, and past and current work); App. 20-27; Tr. v. I p. 62, Line 4 to p. 64, Line 19). Neither the State nor the juvenile court raised any critique of Dr. Thomas' expertise at the waiver hearing. (Tr. v. II p. 5, Line 14 to p. 15, Line 11 (State's Cross Examination of Dr. Thomas); Tr. v. II p. 21, Line 1 to p. 23, Line 18 (State's Closing Argument); Tr. v. II p. 33, Line 14 to p. 42, Line 6 (Judge Seymour's Ruling)). Furthermore, the juvenile court did not indicate any concern regarding Dr. Thomas' expertise when authorizing K.C. to utilize her expert assistance. (See Order Setting Expert Witness Fees, pp. 2-3; App. 59-60).

2) Education and training required for expertise:

Dr. Thomas' education, credentials, and relevant training were also detailed in length before the juvenile court. (Aff. of Dr. Tracy Thomas in Supp. of the Child's Mot. to Continue, p. 1 (discussing Dr. Thomas' training as a forensic psychologist); Child's Ex. A, Dr. Thomas' CV, p. 1 (outlining

Dr. Thomas' education which includes a Ph. D in Clinical Psychology at West Virginia University, an M.A. in Clinical Psychology at Minnesota State University-Mankato, and a B.S. in Psychology and a B.A. in Spanish at Drake University); App. 42, 20; Tr. v. I p. 58, Line 7 to p. 61, Line 11). Neither the State nor the juvenile court raised any critique of Dr. Thomas' education or relevant training at the waiver hearing. (Tr. v. II p. 5, Line 14 to p. 15, Line 11 (State's Cross Examination of Dr. Thomas); Tr. v. II p. 21, Line 1 to p. 23, Line 18 (State's Closing Argument); Tr. v. II p. 33, Line 14 to p. 42, Line 6 (Judge Seymour's Ruling)).

3) Prevailing rates of other comparably respected available experts:

K.C. provided the juvenile court with the estimated fees for the juvenile waiver evaluation, report, and testimony of two comparable experts who estimated fees slightly or significantly above those of Dr. Thomas. (Suppl. Professional Statement in Supp. of the Child's Mot. for Expert Assistance, p. 2; App. 47 (detailing rates of two available board-certified forensic psychologists that estimated \$8,000 and \$10,000 in total funds to complete the required work required)).

4) Nature, quality, and complexity of the work:

Dr. Thomas spoke directly to the nature, quality, and complexity of her work in her affidavit supporting the original Motion for Expert Assistance saying:

Evaluations for juvenile waiver hearings do tend to be relatively time and labor intensive. This is because of the specific statutory questions at issue are wide-ranging and require significant research into the individual's past, an analysis of the criminal conduct in question, assessment for mental health and personality disorders, assessment related to IQ/cognitive functioning/maturity, testing related to risk for future violence, and an analysis of factors relevant to treatment amenability.

(Aff. of Dr. Tracy Thomas in Supp. of the Child's Mot. for Expert Assistance, p. 1; App. 51). At the time the juvenile court ruled on the Amended Motion for Additional Expert Fees on December 9, 2022, there was additional evidence in the record regarding the nature and complexity of the work Dr. Thomas conducted on K.C.'s behalf and its relevance and importance to the statutory considerations for waiver of jurisdiction. (Child's Ex. V, Dr. Thomas' Waiver Evaluation, pp. 12-23; App 113-24; Tr. v. I p. 62, Line 4 to p. 90, Line 6 (outlining the six psychological tests done on K.C. and Dr. Thomas' expert opinion on K.C.'s prospects of rehabilitation and best interest

based on the information learned, and recommendations going forward for K.C.)). The juvenile court's Order granting the State's Motion for Waiver of Jurisdiction recognized Dr. Thomas "completed a thorough review of records related to the child and psychological testing." (Order Regarding Mot. for Waiver of Juvenile Court Jurisdiction, p. 2; App. 150).

5) Fees actually charged by the expert:

K.C. filed Dr. Thomas' final invoice for her expert assistance with the juvenile court on December 7, 2022. (Invoice for Dr. Thomas dated 12/6/2022, p. 1; App. 155). She charged the same rate and approximately the same number of total hours she quoted at the outset when describing her standard fees for expert assistance in juvenile waiver cases. (Aff. of Dr. Tracy Thomas in Supp. of the Child's Mot. for Expert Assistance, p. 1; Invoice for Dr. Thomas dated 12/6/2022, p.1; App. 51, 155). The final invoice was detailed and listed the dates of service, a brief description of the services performed, hours of work performed at quarterly hour increments, the hourly rate for the services, and the total charges. (Invoice for Dr. Thomas dated 12/6/2022, p. 1; App. 155). As reflected in her final invoice, Dr. Thomas reviewed extensive records, conducted specific testing, and submitted a report and testified virtually — not in person — about the utility of record review and testing in evaluating K.C. (*Id.*; App. 155). The invoice of Dr. Thomas for

her work performed through November 16, 2022, and anticipated future charges was admitted as an exhibit at the waiver hearing without objection from the State. (Child's Ex. D, Dr. Thomas' Invoice, p.1; App. 66; Tr. v. I p. 52, Line 9 to p. 54, Line 2). The juvenile court raised no credibility concerns regarding Dr. Thomas or the work she performed at the waiver hearing. (Tr. v. II p. 33, Line 14 to p. 42, Line 6; *see also* Order Regarding Mot. for Waiver of Juvenile Court Jurisdiction; App. 149-52). Under the circumstances of the cases and absent objection from the State, Dr. Thomas' charges for these services were reasonable.

6) Fees traditionally charged by expert on related matters:

Dr. Thomas indicated at the outset, before completing any substantive work on the case, that she charges "an hourly rate of \$340.00 for all services" and anticipated it would take 23.5 hours to complete all work for the case. (Aff. of Dr. Tracy Thomas in Supp. of the Child's Mot. for Expert Assistance, p. 1; App. 51). The final invoice of Dr. Thomas filed with the juvenile court on December 7, 2022, indicated a total of 23.25 hours of work at a rate of \$340.00 for all services apart from a brief administrative communication that was charged at a rate of \$50.00. (Invoice for Dr. Thomas dated 12/6/2022, p. 1; App. 155). Neither the State nor the Juvenile Court objected to Dr. Thomas'

standard rate. (*See generally* Ct. Docket for Case No. JVJV251169; *see also* Order Setting Expert Witness Fees, pp. 2-3; App. 59-60).

7) Other factors relevant to balancing the interests of state-funded expert assistance:

Dr. Thomas' expert assistance was required to protect K.C.'s constitutional rights to defend himself against waiver of jurisdiction and criminal prosecution in adult court. (Memorandum in Supp. of the Child's Mot. for Expert Assistance at the State's Expense, p. 2; App. 49). Furthermore, K.C. was a child when his delinquency case was initiated and still under the jurisdiction of the juvenile court — a court that is not punitive in nature but instead focused on best interest and rehabilitation. (Delinquency Pet., p. 1; App. 7); *In Int. of M.M.C.*, 564 N.W.2d 9, 11 (Iowa 1997) (“We recognize the primary goal of juvenile justice in Iowa is rehabilitation, not punishment.”). Thus, a juvenile-centered lens should factor into the reasonableness analysis under the catchall provision of *Pierce*. 509 N.W.2d at 474. Accordingly, the juvenile court had ample evidence supporting the conclusion that Dr. Thomas' fees were reasonable for each of the seven *Pierce* factors, including constitutional considerations as part of the catchall factor.

Although the juvenile court cites *Hulse* in its Order Setting Expert Witness Fees, the court does not meaningfully discuss or apply the elements utilized in *Hulse* of whether the expert fees were reasonably necessary and

whether the valuation of expert services was reasonable in amount. 306 N.W.2d at 709. (Order Setting Expert Witness Fees, p. 3; App. 60).

First, as to the reasonably necessary element from *Hulse*, the juvenile court's November 7, 2022, Order suggests that Dr. Thomas' charges for in-person testimony and driving from Ames to Des Moines are not necessary. (*Id.*; App. 60). Whether in-person testimony would be reasonably necessary is not at issue because it is patently false to claim Dr. Thomas testified in person. (Invoice for Dr. Thomas dated 12/6/2022, p. 1; App. 155). Dr. Thomas testified virtually over the two-day waiver hearing. (Tr. v. I p. 56, Lines 11-3). Indeed, the juvenile court was aware of the plan for Dr. Thomas to testify virtually as the court's September 12, 2022, continuance Order permitted, by agreement of the parties, virtual testimony of Dr. Thomas. (Order Granting the Child's Amended Mot. to Continue, p. 1; App. 44). Despite this and the uncontroverted evidence before it that Dr. Thomas charged only for virtual testimony, the juvenile court's December 9, 2022, Order incorrectly maintained the same findings from its November 7, 2022, Order. (Order Regarding Child's Mot. for Additional Expert Fees, p. 1; Invoice for Dr. Thomas dated 12/6/2022, p. 1; App. 157, 155).

Additionally, the juvenile court's November 7, 2022, Order indicated that Dr. Thomas traveling from Ames to Des Moines to evaluate K.C. was

unnecessary. When assessing reasonableness, the juvenile court should have viewed the “reasonably necessary” element from *Hulse* in conjunction with the *Pierce* factors of the nature and complexity of the work being done during the interview and the special nature of juvenile proceedings. *Pierce*, 509 N.W.2d at 474; *Hulse*, 306 N.W.2d at 709. Dr. Thomas drove from Ames to Des Moines to evaluate K.C. at the Drake Legal Clinic to ensure K.C. was in a comfortable and familiar environment. (Child’s Mot. for Additional Expert Fees, p. 2; App. 63). Such an environment was reasonably necessary given the emotionally intensive and personal nature of the evaluations as well as K.C.’s youth.

Furthermore, K.C. could not drive to Ames himself being a youth without a car or driver's license. (*Id.*; App. 63). Given the difficulty K.C. would face in securing travel to Ames and Dr. Thomas’ need to evaluate K.C. in an environment where he would be comfortable, it was reasonably necessary for Dr. Thomas to drive from Ames to Des Moines to evaluate K.C. under the proper *Hulse* analysis. (*Id.*; App. 63).

Second, as to the *Hulse* element of the valuation of expert services being reasonable in amount, Dr. Thomas charged her typical rate of \$340.00 per hour which was equal to or less than similarly qualified forensic psychologists. (Aff. of Dr. Tracy Thomas in Supp. of the Child’s Mot. for

Expert Assistance, p. 1; Suppl. Professional Statement in Supp. of the Child's Mot. for Expert Assistance, pp. 1-2 (noting Dr. Thomas' rate of \$340.00 for an estimated total cost of \$7,990.00 compared to the total estimates of two other experts at \$8,000.00, and \$10,000.00); App. 51, 46-47). *Hulse* affirmed in unequivocal terms that reasonable compensation equates to the "ordinary and customary charges for like services in the community" and no discount is required for work for the poor. 306 N.W.2d at 711. Given the market rate for comparable experts and services, the valuation of Dr. Thomas' work was reasonable.

Finally, the requested compensation and fees for Dr. Thomas are reasonable under the plain meaning of the word. Since the word reasonable is not defined by Iowa Code section 815.5 or other parts of the statute, it is proper to turn to dictionary definitions and common usage. *State v. Romer*, 832 N.W.2d 169, 179 (Iowa 2013) (citation and internal quotation marks omitted). Black's Law Dictionary defines reasonable as "[f]air, proper, or moderate under the circumstances; sensible." REASONABLE, Black's Law Dictionary (11th ed. 2019). The requested compensation for Dr. Thomas is "fair, proper, or moderate under the circumstances" given the record before the court of Dr. Thomas' expertise, the market rate for comparable experts, the amount of time spent, and the utility of each expense to mounting an

adequate defense to waiver. (*See* Child’s Ex. A, Dr. Thomas’ CV; Suppl. Professional Statement in Supp. of the Child’s Mot. for Expert Assistance, p. 2; Invoice for Dr. Thomas dated 12/6/2022, p. 1; App. 20, 47, 155).

The requested compensation for Dr. Thomas is reasonable when applying the correct legal standard. Consequently, the juvenile court’s Order denying K.C.’s Amended Motion for Additional Expert Fees should be reversed and the requested state-funded compensation for Dr. Thomas should be approved in full.

D. The Juvenile Court’s Factual Findings Regarding the Unreasonableness of Certain Expert Fees Lacked Substantial Evidentiary Support.

The juvenile court’s December 9, 2022, Order denying K.C.’s Motion for Additional Expert Fees lacked substantial evidentiary support. Indeed, the uncontested evidence before the court supported full compensation for the work of Dr. Thomas. “Evidence is substantial if a reasonable person would find it adequate to reach the given conclusion, even if a reviewing court might draw a contrary inference.” *Burns v. Bd. of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993) (citation omitted).

The entirety of the body of the December 9, 2022, Order denying K.C. Motion for Additional Expert Fees reads as follows:

“COMES NOW, before the Court, the Child’s Motion for Additional Expert Fees. The Court, having reviewed Child’s

Motion and supporting argument, FINDS the prior ruling shall stand for the reasons previously noted in the original order setting fees. IT IS SO ORDERED on December 9, 2022.”

(Order Regarding Child’s Mot. for Additional Expert Fees, p. 1; App. 157).

However, substantial evidence did not exist at the time the juvenile court issued its Order on December 9, 2022, to support the findings of fact from which the juvenile court made its conclusions of law regarding Dr. Thomas’ expert witness compensation. The juvenile court’s original November 7, 2022, Order — the original Order referenced in the December 9, 2022, ruling — listed four grounds for why the court found certain expenses unreasonable. (Order Setting Expert Witness Fees, p. 3; App. 60). As outlined below, each of these four grounds were subsequently addressed or remedied *prior* to the juvenile court’s ruling on the Motion for Additional Expert Fees on December 9, 2022.

The juvenile court’s first finding supporting its decision to cap expert fees below the requested amount centered on the reasonableness of charging for court travel when the expert could testify remotely. (*Id.*; App. 60). At the waiver hearing, Dr. Thomas testified remotely and neither K.C.’s Motion for Additional Fees nor Dr. Thomas’ final invoice included a charge for travel to the courthouse. (*See* Child’s Amended Mot. for Additional Expert Fees, p. 1; Invoice for Dr. Thomas dated 12/06/22, p. 1; App. 153, 155). Thus, one of the

court's reasons for finding the fees requested unreasonable was patently inapplicable to this case.

Although the juvenile court does not itemize the deduction it made for in-person testimony in its initial November 7, 2022, Order, the court failed to properly retract any such deduction when issuing its December 9, 2022, Order in light of the uncontroverted evidence of virtual testimony by Dr. Thomas. (Order Regarding Child's Mot. for Additional Expert Fees, p. 1; App. 157). Similarly, the juvenile court's December 9, 2022, Order denying the request for additional fees fails to indicate why Dr. Thomas should not be compensated for the amount of court time that spanned two half days—beyond the original estimate of a single half day. (*Id.*; App. 157). This was due to court delays, which were not the fault of Dr. Thomas. (Child's Amended Mot. for Additional Expert Fees, p. 1; Child's Mot. to Reconsider, Enlarge, or Amend the Court's 12/9/2022 Order Regarding Child's Mot. for Additional Expert Fees (Iowa R. Civ. P. 1.904), p. 2; App. 153, 160; Tr. v. I p. 80, Lines 4-14). Despite this, the juvenile court's December 9, 2022, Order failed to permit compensation for her additional time or address whether the expert fees should be increased accordingly. (Order Regarding Child's Mot. for Additional Expert Fees, p. 1; App. 157).

The juvenile court's second reason for finding the full amount of requested expert fees to be unreasonable was Dr. Thomas' charge for driving time from Ames to the Drake Legal Clinic in Des Moines to interview K.C. instead of K.C. traveling to Ames. Substantial evidence does not support this finding. There is nothing in the record indicating the State lodged an objection or offered evidence to support the juvenile court's conclusion that Dr. Thomas' charge for travel from Ames to Des Moines was unreasonable. (*See generally* Ct. Docket for Case No. JVJV251169). However, K.C. did furnish information to the juvenile court on why holding the evaluation at the Drake Legal Clinic and charging for Dr. Thomas' travel was a reasonably necessary expense. Specifically, K.C.'s Motion for Additional Expert Fees explained the following:

- i. This expense was incurred nearly one-month prior to the court's order regarding expert fees where this issue was formally raised for the first time.
- ii. [K.C.] is indigent.
- iii. [K.C.] does not hold a driver's license and thus does not drive.
- iv. [K.C.]'s counsel is court-appointed and employed by a legal clinic that provides pro bono legal services.
- v. The Drake Legal Clinic is a familiar space for [K.C.] where he feels safe and comfortable, which is particularly important when applying a trauma-informed, child-centered lens to legal representation and interviewing.

(Child's Mot. for Additional Expert Fees, p. 2; App. 63). The juvenile court did not address or acknowledge this new information in its December 9, 2022,

ruling. (See Order Regarding Child’s Motion for Additional Expert Fees, p. 1; App. 157). The juvenile court should have addressed the new information, however, as it directly relates to the reasonableness of the expense.

Juvenile delinquency proceedings are special proceedings “with the best interest of the child as the objective.” *In re J.A.L.*, 694 N.W.2d at 751 (citations omitted). With this primary objective in mind, it was reasonable to conduct the interview at the Drake Legal Clinic and charge for travel time given the nature and circumstances of K.C.’s situation. (Child’s Mot. for Additional Expert Fees, p. 2; App. 63). The juvenile court should have given more deference to Dr. Thomas, as an expert in child psychology, and counsel with the Drake Legal Clinic, who were diligent to employ trauma-informed and child-centered representation, when the parties concluded the clinic was the best location for K.C. to undergo sensitive testing. (*Id.*; App. 63).

The juvenile court’s third reason for finding the expert compensation to be unreasonable was its finding that there were “minimum records to be reviewed.” (Order Setting Expert Witness Fees, p. 3; App. 60). Substantial evidence does not support this finding either. When the juvenile court issued its ruling on December 9, 2022, there was considerable documentation in the record evidencing Dr. Thomas’ extensive document review and the relevance of such review to her expert assistance.

For example, Dr. Thomas' Waiver Evaluation report specifically listed the records she reviewed, which included approximately nine years of school behavioral records, special education records, records in two separate juvenile court cases, an assessment report from a service provider, and school attendance and credit records. (Child's Ex. V, Dr. Thomas's Waiver Evaluation, p. 2; App. 103). Dr. Thomas' testimony on December 5 and 6 of 2022 also addressed the documents she reviewed and their impact on her expert opinion. (Tr. v. I p. 66, Line 1 to p. 67, Line 14). In addition, in the juvenile court's Waiver Order, the juvenile court acknowledged the "thorough review of records related to [K.C.]" completed by Dr. Thomas. (Order Regarding Mot. for Waiver of Juvenile Court Jurisdiction, p. 3; App. 151). Given both the updated record before the juvenile court and the juvenile court's own acknowledgement in a separate Order of Dr. Thomas' thorough record review, a reasonable person would not find substantial evidence supports the juvenile court's finding of "minimal" records and the unreasonableness of the charge for reviewing such records.

The juvenile court's fourth and final factual finding supporting the conclusion additional expert compensation was unreasonable was the alleged lack of information on the tests Dr. Thomas needed to administer and score. (Order Setting Expert Witness Fees, p. 3; App. 60). K.C.'s Motion for

Additional Expert Fees and the invoice that accompanied it directly addressed the types of testing for the waiver evaluation. (Child’s Mot. for Additional Expert Fees, p. 2; Invoice for Dr. Thomas dated 12/06/22, p. 1; App. 63, 155). The juvenile court also acknowledged the thorough psychological tests administered by Dr. Thomas in its Waiver Order. (Order Regarding Mot. for Waiver of Juvenile Court Jurisdiction, p. 2 (“[The juvenile court] does understand [Dr. Thomas] completed a thorough review of records related to the child and psychological testing.”); App. 150). Dr. Thomas’ Waiver Evaluation included an explanation and scoring of each of the following tests: Wechsler Abbreviated Scale of Intelligence – Second Edition (WASH-II), Adverse Childhood Experience (ACE) Questionnaire, Structured Assessment of Violence Risk in Youth (SAVRY), Risk-Sophistication-Treatment Inventory (RSTI), and Hare Psychopathy Checklist: Youth Version (PCL: YV). (Child’s Ex. V, Dr. Thomas’s Waiver Evaluation, pp. 12-20; App. 113-21). Dr. Thomas’ report and testimony described in detail the nature of each test and their relevancy to the waiver factors. (Child’s Ex. V, Dr. Thomas’s Waiver Evaluation, pp. 12-23; App. 113-24; Tr. v. I p. 71, Line 19 to p. 75, Line 14 (WASI-II), p. 75, Line 15 to p. 80, Line 2 (PAI), p. 80, Line 20 to p. 82, Line 4 (ACE), p. 82, Line 5 to p. 85, Line 8 (SAVRY), p. 85, Line 9 to p. 89, Line 15 (RSTI), p. 89, Line 16 to p. 93, Line 8 (PCL:YV)).

Consequently, when viewing the record before the juvenile court as a whole, substantial evidence did not support the juvenile court's finding that compensation for testing was unreasonable due to a lack of information regarding testing.

Despite having new documentation and testimony in the record (1) informing the juvenile court that expert testimony would no longer be in person, (2) outlining the reasons K.C. was evaluated at the Drake Legal Clinic, (3) describing the records reviewed, and (4) expounding upon the tests conducted, the juvenile court submitted an Order on December 9, 2022, denying the additional fees "for the reasons previously noted in the original Order setting fees." (Order Regarding Child's Mot. for Additional Expert Fees, p. 1; App. 157).

Neither the December 9, 2022, nor the November 7, 2022, orders from the juvenile court cite any factual findings or provide any guidance on how or why the juvenile court determined \$4,590.00 should be the maximum amount of Dr. Thomas' compensation. (*See* Order Regarding Child's Mot. for Additional Expert Fees, p. 1; Order Setting Expert Witness Fees, p. 3; App. 157, 60). Thus, any inferred finding that \$4,590.00 was reasonable is not substantially supported by the evidence, particularly given that the amount is substantially lower than the market rate for comparable expert forensic

psychologists. (Suppl. Professional Statement in Supp. of the Child’s Mot. for Additional Expert Assistance, p. 2; App. 47).

Following the December 9, 2022, Order denying the additional expert fees, K.C. filed a Motion to Reconsider, Enlarge, or Amend pursuant to Iowa R. Civ. P. 1.904. (Child’s Mot. to Reconsider, Enlarge, or Amend the Court’s 12/9/2022 Order Regarding Child’s Mot. for Additional Expert Fees (Iowa. R. Civ. Pro. 1.904); App. 159). The Motion specifically requested “expanded findings that provide guidance and clarity on why the [juvenile court’s] findings regarding reasonableness of compensation remain unchanged considering the additional information [K.C.] furnished to the [c]ourt” (*Id.* at p. 3; App. 161). The Motion also requested the juvenile court to clarify the basis for setting the fee cap at \$4,590.00. (*Id.*; App. 161).

The Motion was denied on January 6, 2023, “for the same reasons previously noted” even though the juvenile court had new substantial evidence to review which contradicted the reasons laid out in its initial Order. (Order Denying Child’s Mot. to Reconsider, Enlarge, or Amend the Court’s 12/09/22 Order, p. 1; App. 163). The juvenile court’s December 9, 2022, and January 6, 2023, orders simply do not engage with the additional evidence regarding reasonableness provided after the November 7, 2022, Order.

K.C. is an indigent youth and the Drake Legal Clinic is a non-profit organization. (Order of Appointment of Counsel for Child, p. 1; App. 9). Effectively forcing K.C. or his counsel to take responsibility for payment of the bill would be unduly burdensome on both parties. *See State v. Hancock*, 164 N.W.2d 330, 332 (Iowa 1969) (“[A] court appointed attorney should not be required to incur personal expenses in preparing and conducting a meaningful and conscientious defense for the accused.”). The lack of substantial evidence supporting the juvenile court’s ruling was directly brought to the juvenile court’s attention and the juvenile court declined to reconsider, enlarge, or amend their ruling. (Child’s Mot. to Reconsider, Enlarge, or Amend the Court’s 12/9/2022 Order Regarding Child’s Mot. for Additional Expert Fees (Iowa R. Civ. P. 1.904), pp. 2-3; Order Denying Child’s Mot. to Reconsider, Enlarge, or Amend the Court’s 12/9/2022 Order, p. 1; App. 160-61, 163). This Court should reverse the juvenile court's ruling and find the requested compensation was reasonable.

II. The Juvenile Court Violated K.C.’s Procedural Due Process and Equal Protection Rights Under Both the United States and Iowa Constitutions by Capping the Compensation of K.C.’s Expert Substantially Below Both the Amount Requested and the Market Rate for Comparable Experts.

Indigent juvenile defendants — like K.C. — are entitled as a matter of due process and equal protection to the basic tools for an adequate defense,

including expert assistance at State expense when necessary for a fair trial. *See Ake*, 470 U.S. at 76 (noting “justice cannot be equal where, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake”). The juvenile court’s decision to cap the compensation of Dr. Thomas thousands of dollars below the total amount of expenses incurred constituted a de facto denial of K.C.’s due process right to expert assistance *at State expense* under the United States and Iowa constitutions. K.C., an indigent juvenile, was also entitled to full compensation for the reasonably necessary services his expert performed to aid in his defense against waiver as a matter of equal protection of the laws, since a wealthy juvenile defendant could obtain expert assistance with their own funds. Consequently, this Court should reverse the juvenile court’s ruling and grant K.C.’s Amended Motion for Additional Expert Fees.

A. Error Preservation

K.C. preserved error for his claims that the juvenile court’s denial of his request for full expert compensation violated his due process and equal protection rights under both the United States and Iowa constitutions by raising these issues directly in his motions and memorandum of law before the juvenile court. (Child’s Mot. for Expert Assistance, pp. 1-2; Memorandum in Supp. of the Child’s Mot. for Expert Assistance at the State’s Expense, pp.

2-3; Order Setting Expert Witness Fees, pp. 1-2 (discussing an indigent juvenile's due process rights and alluding to equal process rights by discussing the difference between an indigent and wealthy defendant's entitlement to expert services); Amended Mot. for Additional Expert Fees, p. 3; Mot. to Reconsider, Enlarge, or Amend; App. 17-18, 49-50, 58-59, 155, 159); *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012) ("If the court's ruling indicates that the court considered the issue and necessarily ruled on it, even if the court's reasoning is 'incomplete or sparse,' the issue has been preserved.").

B. Standard of Review

Under a writ of certiorari, constitutional issues are reviewed de novo. *Crowell*, 845 N.W.2d at 687 (citing *Pfister*, 688 N.W.2d at 793-94); *In re N.N.E.*, 752 N.W.2d 1, 6 (Iowa 2008); see also *State v. Barker*, 564 N.W.2d 447, 450 (Iowa Ct. App. 1997) (citing *State v. Van Scoyoc*, 511 N.W.2d 628, 630 (Iowa 1993)) ("Additionally, to the extent the right of attaining expert witnesses falls within the sixth amendment, and to the extent Barker claims he was denied effective assistance, our review is de novo.").

C. The Juvenile Court’s Ruling on Expert Fees Violated K.C.’s Due Process Rights by Effectively Denying him Meaningful Access to Expert Assistance at the State’s Expense.

Juvenile defendants in delinquency proceedings are guaranteed due process rights under the 14th Amendment of the United States Constitution and Article 1, Section 9 of the Iowa Constitution. U.S. Const. Amend XIV, § 1 (“No State shall . . . deprive any person of life, liberty, or property, without due process of law.”); Iowa Const. art. I, § 9 (“[N]o person shall be deprived of life, liberty, or property, without due process of law.”). The Supreme Court of the United States first recognized that the constitutional right to due process extends beyond criminal defendants to juveniles in *In re Gault*. 387 U.S. 1, 13 (1967). Likewise, the Iowa Supreme Court has affirmed procedural due process protections extends to children in their delinquency proceedings. *In re Henderson*, 199 N.W.2d at 116 (citations omitted) (“Due process must be afforded in juvenile proceedings.”). The Iowa Supreme Court has previously noted in a juvenile delinquency case that it usually “deem[s] the federal and state due process . . . clauses to be identical in scope, import, and purpose.” *In the Interest of C.P.*, 569 N.W.2d 810, 811 (Iowa 1997) (citing *Exira Cmty. Sch. Dist. v. State*, 512 N.W.2d 787, 792-93 (Iowa 1994)).

The Supreme Court of the United States recognized in *Ake v. Oklahoma* that defendants have a constitutional right under the Due Process Clause of

the 14th Amendment of the U.S. Constitution to competent expert assistance in preparing their defense. 470 U.S. at 84. Furthermore, the due process right to ancillary services, such as experts, under the U.S. and Iowa constitutions was recently affirmed by the Iowa Supreme Court. *Amaya*, 977 N.W.2d at 32 (citations omitted) (“[A]n indigent defendant’s right to state-funded ancillary litigation services is grounded as well in fundamental fairness protected by due process.”).

K.C. requested expert assistance at the State’s expense pursuant to the due process balancing test outlined in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), and applied in *Ake v. Oklahoma*. 470 U.S. at 77-79. (Child’s Mot. for Expert Assistance at the State’s Expense, pp. 1-2; App. 17-18). The juvenile court recognized K.C.’s right to expert assistance and issued an order permitting him to retain the expert assistance of Dr. Thomas. (Order Setting Expert Witness Fees, p. 2; App. 59). However, the juvenile court’s order limited the amount of reimbursement to a maximum of \$4,590.00, an amount \$3,201.20 below what was ultimately expended and requested. (Order Setting Expert Witness Fees, p. 3; Invoice for Dr. Thomas dated 12/6/2022, p. 1; App. 60, 155). Furthermore, the juvenile court set fees at an amount inadequate to compensate similarly qualified experts, with estimates of \$8,000.00 and

\$10,000.00 for their work. (Suppl. Professional Statement in Supp. of the Child’s Mot. for Expert Assistance, p. 2; App. 47).

By capping expert assistance, the juvenile court failed to afford K.C. the resources necessary for an “adequate opportunity to present [his] claims fairly within the adversary system” as he was entitled to as an indigent juvenile defendant. *Ake*, 470 U.S. at 77 (quoting *Ross v. Moffitt*, 417 U.S. 600, 612 (1974)). It is true Iowa courts have been “unwilling to say an impecunious defendant is entitled to anything which a wealthy one could purchase.” *State v. Walters*, 426 N.W.2d 136, 140 (Iowa 1988) (quoting *State v. Campbell*, 215 N.W.2d 227, 229 (Iowa 1974)). However, when an expense is reasonably necessary to effectively mount a defense and the cost is reasonable, the law does not permit a de facto denial of expert assistance at the State’s expense by significantly capping compensation below what was expended. *See Hulse*, 306 N.W.2d at 711 (“No discount is now required based on an attorney’s duty to represent the poor.”). Denying K.C.’s Amended Motion for Additional Expert Fees was a de facto denial of expert assistance *at the State’s expense* as he was deprived of the financial means to effectuate that right. *See People v. Watson*, 221 N.E.2d 645, 648 (Ill. 1966) (“The court recognizes that there is a distinction between the right to call witnesses and the right to have these witnesses paid for by the government, but in certain instances involving

indigents, the lack of funds with which to pay for the witness will often preclude him from calling that witness and occasionally prevent him from offering a defense. Thus, although the defendant is afforded the shadow of the right to call witnesses, he is deprived of the substance.”).

Furthermore, by the time the juvenile court issued its first expert fee ruling (two months after K.C. filed his Motion for Expert Assistance), Dr. Thomas had already completed \$3,371.20 of work which included travel from Ames to Des Moines to interview and evaluate K.C., scoring two of the six tests, and reviewing records. (Child’s Ex. D, Dr. Thomas’ Invoice, p. 1; App. 66). With only \$1,218.80 left until hitting the juvenile court’s arbitrary fee cap and with Dr. Thomas still needing to score four tests, draft her entire report, and testify at the hearing, K.C. was faced with a Catch-22: proceed with expert assistance without the guarantee of payment by the State or forgo the assistance of an expert to aid in his defense. Ultimately, once Dr. Thomas completed her work, the juvenile court placed the burden on K.C. to pay the remaining balance of \$3,201.20, saddling him with a debt that he cannot afford to pay and should not have to.

By capping expert fees below the reasonably requested amount charged by Dr. Thomas, the juvenile court’s Order constituted a de facto denial of K.C.’s due process right to expert assistance at the State’s expense under the

United States and Iowa constitutions. Consequently, this Court should reverse the juvenile court's ruling and grant K.C.'s Amended Motion for Additional Expert Fees.

**D. The Juvenile Court Denied K.C.—an Indigent Juvenile—
Equal Protection Under the Laws When It Refused to Supply
the Necessary Funds to Compensate an Expert Witness.**

A denial of meaningful access to expert assistance at the State's expense also raises equal protection concerns under both the United States and Iowa constitutions because it treats indigent juvenile defendants, like K.C., who have court-appointed attorneys differently than those who are wealthy enough to pay for their own experts and those directly represented by the public defender's office who do not need to seek court orders for payment pursuant to Iowa Code of Criminal Procedure section 815.5 and Iowa Administrative Code rule 493-12.7.

The Equal Protection Clauses of the 14th Amendment of the U.S. Constitution and Article I, Section 6 of the Iowa Constitution require laws to have a uniform operation and prohibit the legislature from granting privileges or immunities to a citizen or class of citizens. U.S. Const. Amend XIV, § 1; Iowa Const. art. I, § 6; *See also Chicago & Nw. Ry. Co. v. Fachman*, 125 N.W.2d 210, 217-18 (Iowa 1963) (emphasizing the “importance in guarding against the segregation of society into classes, and in assuring to all citizens

that equality before the law which is essential to free government, cannot be overestimated.”).

Like due process, the Iowa Supreme Court usually treats the federal and state equal protection clauses as “identical in scope, import, and purpose.” *In the Interest of C.P.*, 569 N.W.2d at 811 (citing *Exira Cmty. Sch. Dist.*, 512 N.W.2d at 792-93). The two equal protection clauses amount to “essentially a direction that all persons similarly situated should be treated alike.” *Varnum v. Brien*, 763 N.W.2d 862, 878-79 (Iowa 2009) (quoting *Racing Ass’n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 7 (Iowa 2004) (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985))). In assessing equal protection claims, a “demonstration that people are similarly situated is a threshold test.” *State v. Kout*, 854 N.W.2d 706, 708 (Iowa 2014) (citing *Varnum*, 763 N.W.2d at 882).

In the juvenile delinquency context, these clauses guarantee an indigent juvenile defendant the same defensive resources that a nonindigent juvenile defendant could purchase and that are necessary “to assure . . . an adequate opportunity to present [their] claims fairly in the context of the State’s [delinquency] . . . process.” *Moffitt*, 417 U.S. at 616 (dictum); *see also Roberts v. LaVallee*, 389 U.S. 40, 42 (1967) (“Our decisions for more than a decade now have made clear that differences in access to the instruments needed to

vindicate legal rights, when based upon the financial situation of the defendant, are repugnant to the Constitution.”); *Griffin v. Illinois*, 351 U.S. 12, 19 (1956) (“There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”).

K.C. is similarly situated to other juvenile defendants who have been charged with delinquent acts. However, K.C. differs from wealthier juvenile defendants in that he is indigent. (Order of Appointment of Counsel for Child, pp 1-2; App. 9-10). K.C. also differs from juvenile defendants with similar wealth who are represented by the public defender’s office in that he must request a court order to secure stated-funded expert assistance. (*Id.*; App. 9-10); Iowa Code § 815.10A; *see also* Iowa Admin. Code. r. 493-12.7(1). The effect of the juvenile court’s denial of additional expert fees is that K.C. will face a disproportionate burden due to his indigency in utilizing expert assistance — placing him at significant disadvantage from his wealthier counterparts in mounting a defense against the juvenile court’s waiver of jurisdiction.

Lastly, K.C.’s access to expert assistance raises an important equal protection concern regarding the disproportionate minority impact of waiver hearings. K.C. was a seventeen-year-old Black child when his delinquency case began. (Delinquency Pet., p. 1; App. 7). Black youth like K.C. are vastly

overrepresented in those facing waiver to adult court for criminal prosecution in Iowa. (Child’s Ex. E, Updated Profile of Youth Charged in Adult Cases, pp. 11-13; App. 82-84). In fact, the Iowa Department of Human Rights published an Updated Profile of Youth Charged in Adult Court in April 2022 which found that, while Black youth make up only 7.3 percent of Iowa’s youth population, a staggering “31.6 [percent] of the waived youth were Black.” (*Id.* at p. 3; App. 74). The Court must ensure K.C. has equitable access to expert assistance, regardless of his age, race, or wealth and reverse the juvenile court’s ruling.

CONCLUSION

K.C. asks this Court to sustain his writ of certiorari, reverse the judgment of the juvenile court, and remand the case to the juvenile court with instructions to grant the full amount of the requested expert fees of \$7,791.20.

REQUEST FOR ORAL ARGUMENT

K.C. respectfully requests oral argument.

Respectfully Submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
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This brief complies with the typeface requirements and type volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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ATTORNEY'S COST CERTIFICATE

The undersigned hereby certifies that the true cost of producing the necessary copies of the foregoing Final Brief was \$0.00, and that amount has been paid in full by the Drake Legal Clinic.

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CERTIFICATE OF FILING AND SERVICE

I, Nickole Miller, hereby certify that on January 11, 2024, I filed this Final Brief and served it on counsel of record to this appeal via EDMS.

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