ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. 2013-1591
v.	:	ON APPEAL FROM THE SUMMIT COUNTY COURT OF APPEALS, NINTH APPELLATE DISTRICT, CASE NO. 026400
ALEXANDER QUARTERMAN,	:	
Defendant-Appellant.	:	

BRIEF OF AMICI CURIAE JUVENILE LAW CENTER, NATIONAL JUVENILE DEFENDER CENTER, AND THE OHIO CHAPTER OF THE AMERICAN ACADEMY OF PEDIATRICS ON BEHALF OF APPELLANT ALEXANDER QUARTERMAN

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STATEMENT OF INTEREST

Amici Curiae Juvenile Law Center, National Juvenile Defender Center, and the Ohio Chapter of the American Academy of Pediatrics serve vulnerable youth. *Amici* have a particular interest and expertise in the interplay between minors' constitutional rights and the social science and neuroscientific research on adolescent development, especially with regard to youth involved in the justice systems. *Amici* recognize, as does the United States Supreme Court, that juveniles are different from adults and that individual youth develop and mature at different rates. Consequently, courts must take into account each youth's age, as well as other attributes of the individual youth including level of maturity, decision-making ability, and capacity for rehabilitation, to ensure that each youth is provided with the same level of constitutional protection provided to adults.

Juvenile Law Center, founded in 1975, is the oldest multi-issue public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Recognizing the critical developmental differences between youth and adults, Juvenile Law Center works to ensure that the child welfare, juvenile justice, and other public systems provide vulnerable children with the protection and services they need to become healthy and productive adults. Juvenile Law Center advocates for the protection of children's due process rights at all stages of juvenile court proceedings, from arrest through disposition and from post-disposition through appeal. Juvenile Law Center works to align juvenile justice policy and practice, including state laws on transfer with modern understandings of adolescent development and time-honored constitutional principles of fundamental fairness. Accordingly, Juvenile Law Center participates as *amicus curiae* in state and federal courts

throughout the country, including the United States Supreme Court, in cases addressing the rights and interests of children.

The National Juvenile Defender Center was created to ensure excellence in juvenile defense and promote justice for all children. The National Juvenile Defender Center responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. The National Juvenile Defender Center gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. The National Juvenile Defender Center has participated as *amicus curiae* before the United States Supreme Court, as well as federal and state courts across the country in support of this position.

The Ohio Chapter of the American Academy of Pediatrics ("OAAP") promotes the health, safety, and well-being of Ohio children and adolescents so they may reach their full potential. Comprised of 22,000 pediatricians and pediatricians in training, the OAAP uses its scientific expertise and medical experience to advocate on behalf of children, educate policymakers and the public about juvenile health issues, conduct cutting-edge research on child development, and otherwise advance the health and well being of children and adolescents. As doctors and scientists, OAAP brings a critical perspective to the issue of mandatory juvenile bindover. Well-documented scientific studies demonstrate that adolescence is a critical time of development for youth, and that each young person develops at a different rate. Science, accordingly demonstrates not only that youth are less culpable than adults, but that some are more mature than others, making blanket, mandatory rules about whether juveniles can be

adjudicated in the adult system improper. OAAP submits this brief to highlight how this expertise bears on the Court's due process jurisprudence.

STATEMENT OF FACTS

Amici adopts the Statement of Facts as articulated in the brief of Appellant Alexander Quarterman. *Amici* highlight that Alexander had a probable cause hearing in Juvenile Court and was subsequently transferred to adult court.

ARGUMENT

PROPOSITION OF LAW: OHIO'S MANDATORY BINDOVER STATUTES ARE UNCONSTITUTIONAL UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT BECAUSE THEY DO NOT ALLOW FOR INDIVIDUALIZED DETERMINATIONS REGARDING THE PROPRIETY OF PROSECUTING CERTAIN MINORS IN ADULT CRIMINAL COURT RATHER THAN JUVENILE COURT.

Ohio Revised Code sections 152.10(A)(2)(b) and 2152.12(A)(1)(b) violate the Due Process Clauses of the Fifth and Fourteenth Amendments by mandating that 16- and 17-year old youth be transferred to adult court for prosecution if there is probable cause to support that the youth has committed a category two offense with a firearm. Following this probable cause determination, which takes place in juvenile court, the transfer scheme requires adult prosecution for all such youth, based solely on the crime with which they have been charged and their age at the time the crime was allegedly committed. By depriving youth of any individualized determination of amenability, this scheme denies young people their due process rights. *See* U.S. Const., XIV Amend. It runs afoul of general due process principles, the Supreme Court's determination in *Kent v. United States*, 383 U.S. 541 (1966), that youth are entitled to particularly strong due process protections when their cases are transferred from juvenile to adult court, and the Supreme Court's precedents recognizing that juveniles possess unique characteristics that make adult sentences often inappropriate.

While procedural due process is a flexible notion which calls for such protections as demanded by the individual situation, the essential requirements are notice and an opportunity to be heard. *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 542 (1985) ("An essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing....") (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). Moreover, due process requires not just "any" hearing, but rather an "appropriate" hearing:

> The hearing required by the Due Process Clause must be 'meaningful,' and 'appropriate to the nature of the case.' It is a proposition which hardly seems to need explication that a hearing which excludes consideration of an element essential to the decision ...does not meet this standard.

Bell v. Burson, 402 U.S. 535, 541-42 (1971) (citations omitted). Indeed, the United States Supreme Court has made clear that "[t]he extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.'" *Goldberg v. Kelly*, 397 U.S. 254, 262-263 (1970).

I. Ohio's Bindover Scheme Violates the Due Process Protections Guaranteed by *Kent v. United States*

Over four decades ago, the United States Supreme Court held that the transfer from juvenile court to adult criminal court imposes a significant deprivation of liberty and therefore warrants protection under the Due Process Clause of the Fourteenth Amendment. *Kent v. United States*, 383 U.S. 541, 546 (1966) (finding that transfer is a "'critically important' action determining vitally important statutory rights of the juvenile"). *Kent* made clear that transfer to adult court must provide due process protections commensurate with the critical nature of the proceedings, as "there is no place in our system of law for reaching a result [waiver of juvenile court jurisdiction] of such tremendous consequences without ceremony – without hearing,

without effective assistance of counsel, without a statement of reasons." *Id* at 554. Because Alexander's case originated in juvenile court, and his mandatory bindover followed a finding of probable cause there, he had a liberty interest in his status as a juvenile and all its consequential benefits. The vital nature of the liberty interest at issue in a transfer proceeding calls for heightened procedural protections.

To ensure that the youths' interests in juvenile status and freedom from confinement are adequately protected, the hearing which precedes bindover must allow the court to conduct an individualized inquiry. *Kent* made this clear:

> What is required before a waiver is, as we have said, 'full investigation.' . . . It prevents the waiver of jurisdiction as a matter of routine for the purpose of easing the docket. It prevents routine waiver in certain classes of alleged crimes. It requires a judgment in each case based on an inquiry not only into the facts of the alleged offense but also into the question whether the *parens patriae* plan of procedure is desirable and proper in the particular case.

Id. at 553 n. 15 (internal quotation marks and citations omitted). In this case, there was no investigation or inquiry into the facts, the youth's needs, or the youth's amenability to treatment. Indeed, the bindover statute prohibited the judge from making such a determination. The transfer statute thus violates the core requirements of *Kent*.[1]

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[1]As the *Kent* Court noted in the appendix to its opinion, factors a judge should consider when determining whether a juvenile should be transferred to adult court include: 1) "the sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living" (culpability) and 2) "the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile...." (amenability to rehabilitation). *Kent,* 383 U.S. at 567.

II. Ohio's Bindover Scheme Violates Due Process by Putting in Place an Unconstitutional Irrebuttable Presumption

Ohio's automatic bindover scheme also violates the Supreme Court's jurisprudence on irrebuttable presumptions. A legislative choice based on a categorical determination, such as that embedded in Ohio, violates due process when it creates "a non-rebuttable presumption that the juvenile who committed the crime is equally morally culpable as an adult who committed the same act." Martin Guggenheim, *Graham v. Florida and A Juvenile's Right to Age-Appropriate Sentencing*, 47 HARV. C.R.-C.L. L. REV. 457, 490-91 (2012). The Supreme Court has instead stated that while "[a] juvenile is not absolved of responsibility for his actions ... his transgression is not as morally reprehensible as that of an adult" *Graham v. Florida*, 560 U.S. 48, 68 (2010) (internal quotation marks omitted), and therefore individualized consideration is necessary before determining whether adjudication within the adult penal system comports with due process. While Alexander and other similarly situated youth are entitled to a probable cause hearing, that hearing does not allow for any consideration of the propriety of trying and sentencing Alexander as an adult, as is required by Supreme Court precedents.

The United States Supreme Court has struck down statutes creating such irrebuttable presumptions as they "have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments." *Vlandis v. Kline*, 412 U.S. 441, 446 (1973). For example, in *Stanley v. Illinois*, the United States Supreme Court held unconstitutional an Illinois law that authorized the removal of children from the custody of their unwed fathers without requiring any showing of the father's unfitness. 405 U.S. 645, 649 (1972). The statute was "constitutionally repugnant" as it relied on the non-rebuttable presumption that unwed fathers were unfit. *Id.* at 649. "[A]s a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him." *Id.* at 649. Similarly, in *Carrington v. Rash*, the United

States Supreme Court overturned a Texas statute that presumed that all service people stationed there were not residents and therefore could not vote. 380 U.S. 89, 96 (1965). Key to the holding was the Court's finding that "'the presumption here created is . . . definitely conclusive—incapable of being overcome by proof of the most positive character.'" *Id.* (quoting *Heiner v. Donnan*, 285 U.S. 312, 324 (1932)). "'By forbidding a soldier ever to controvert the presumption of nonresidence,' the State . . . unjustifiably effected a substantial deprivation." *Stanley*, 405 U.S. at 655 (quoting in part *Carrington*, 380 U.S. at 96) (emphasis added). The irrebuttable presumption *"viewed people one-dimensionally (as servicemen) when a finer perception could readily have been achieved by assessing a serviceman's claim to residency on an individualized basis*." (Emphasis added.) *Id.* (quoting *Carrington*, 380 U.S. at 96).

Likewise, in *Cleveland Board of Education v. LaFleur*, the Court held that school board maternity leave policies that required pregnant female teachers to terminate employment at the fourth or fifth month violated due process. 414 U.S. 632, 644 (1974). As the Court found,

> the provisions amount to a conclusive presumption that every pregnant teacher who reaches the fifth or sixth month of pregnancy is physically incapable of continuing. *There is no individualized determination* by the teacher's doctor -- or the school board's -- as to any particular teacher's ability to continue at her job. *The rules contain an irrebuttable presumption of physical incompetency, and that presumption applies even when the medical evidence as to an individual woman's physical status might be wholly to the contrary.*

(Emphasis added.) *Id. See also Vlandis*, 412 U.S. at 452 (due process forbids a state to deny an individual the resident tuition rate at a state university "on the basis of a permanent and irrebuttable presumption of nonresidence, *when that presumption is not necessarily or universally true, in fact, and when the State has reasonable alternative means of making the crucial determination*." (Emphasis added.)).

Ohio's automatic transfer statutes unconstitutionally create an irrebuttable presumption that all youth of a certain age charged with a certain offense are identical to their adult counterparts with respect to culpability and their lack of capacity to change or reform, thus warranting their prosecution and sentencing as adults without further inquiry. The statutes thus ignore the key attributes of youth which the United States Supreme Court instructs must inform all criminal laws, i.e., that youth individually possess different levels of maturity, decision-making ability, culpability, and capacity for change and growth. "[T]he presumption here created"—that the youth is as culpable as an adult and is not amenable to rehabilitation "is . . . definitely conclusive—incapable of being overcome by proof of the most positive character," *Carrington,* 380 U.S. at 96, "even when the ...evidence ... might be wholly to the contrary." *Cleveland Bd. of Educ.,* 414 U.S. at 644.

Based on these cases, "as a matter of due process of law," Alexander was entitled to a hearing to rebut the presumption that, despite his age, he is no different from a culpability standpoint than adults who are charged with similar crimes. *Stanley,* 405 U.S. at 649. That "presumption is not necessarily or universally true ... [and the] State has reasonable alternative means of making the crucial determination." *Vlandis,* 412 U.S. at 452. Indeed, by forbidding Alexander "'ever to controvert the presumption," *see Carrington*, 380 U.S. at 96, of an adult level of culpability, the State "unjustifiably effected a substantial deprivation." *Stanley*, 405 U.S. at 655. It viewed Alexander "one-dimensionally" as an adult, when a "finer perception could readily have been achieved by assessing [his] claim ... on an individualized basis." *Stanley*, 405 U.S. at 655 (quoting in part *Carrington*, 380 U.S. at 96).

"This statutory framework in which there is no individualized determination impermissibly allows the state to forgo having to prove material facts—the propriety of

punishing a juvenile based on the same combination of deterrence, incapacitation and retribution which is appropriate for an adult." *Guggenheim,* at 491-492. When a youth is transferred to adult court, the legislative classification exposes the youth to the full force of criminal court prosecution, including adult sentencing. Additionally, the youth also loses many benefits of the juvenile system, described *infra.* A determination with such a critical impact requires individualized consideration.

III. The Lack of Individualized Sentencing and the Irrebuttable Presumption Violate the Constitutional Requirement of Recognizing the Unique Characteristics of Youth

The Supreme Court has repeatedly recognized that the distinctions between teenagers and adults must be taken into account in applying constitutional principles. As the Supreme Court has explained, a youth's age "is far more than a chronological fact"; "[i]t is a fact that generates commonsense conclusions about behavior and perception" that are "self-evident to anyone who was a child once himself...." *J.D.B. v. North Carolina,* 131 S. Ct. 2394, 2403 (2011). These distinctions are "what any parent knows—indeed, what any person knows—about children generally." *Id.* (citations and internal quotations omitted). These distinctions are also supported by a significant body of developmental research and neuroscience demonstrating significant psychological and physiological differences between youth and adults. *See, e.g., Graham v. Florida,* 560 U.S. 48, 68 (2011) ("developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds").

In the last eight years, the Court has issued four decisions that reinforce the primacy of this principle in decisions about the culpability of youth and the legal processes due to them. *See Miller v. Alabama,* 132 S. Ct. 2455, 2470 (2012) (holding that mandatory sentence of life without possibility of parole for minors violates the Eighth Amendment); *Graham,* 130 S. Ct. at 2022 (ruling that imposition of life without possibility of parole for non-homicide crimes violates

the Eighth Amendment); *J.D.B. v. North Carolina*, 131 S.Ct. at 2403 (holding that age is a significant factor in determining whether a youth is "in custody" for *Miranda* purposes); *Roper v. Simmons*, 543 U.S. 551, 575 (2005) (holding that imposition of the death penalty on minors violates the Eighth Amendment).

In all of these decisions, the Court has relied on three categorical distinctions between youth and adults to explain why children must be treated differently than adults under the law. These distinctions are supported by neuroscience and developmental psychology. "First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking." *Miller*, 132 S. Ct. at 2464 (internal citations, quotation marks, and brackets omitted). *Accord Graham* 560 U.S. at 67; *Roper*, 543 U.S. at 569. Research demonstrates that adolescents, as compared to adults, are less capable of making reasoned decisions, particularly in stressful situations. Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 15, 20 (2008) ("Considerable evidence supports the conclusion that children and adolescents are less capable decision makers than adults in ways that are relevant to their criminal choices."). Adolescent decision-making is characterized by sensation- and reward- seeking behavior. Laurence Steinberg, *A Dual Systems Model of Adolescent Risk-Taking*, 52 DEVELOPMENTAL PSYCHOBIOLOGY 216, 217 (2010) (hereinafter "Steinberg, *A Dual Systems Model*"). Greater levels of impulsivity during adolescence may stem from adolescents' weak future orientation and their related failure to anticipate the consequences of decisions. Laurence Steinberg *et al.*, *Age Differences in Future Orientation and Delay Discou*nting, 80 CHILD. DEV. 28, 29-30 (2009). Richard J. Bonnie *et al.*, eds. REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH at 91, 97 (2013).

Advances in neuroscience confirm the weaker decision-making capacities of youth as compared to adults. The parts of the brain controlling higher-order functions— such as reasoning, judgment, inhibitory control—develop after other parts of the brain controlling more basic functions (*e.g.*, vision, movement), and do not fully develop until individuals are in their early- to mid-20s. Specifically, the prefrontal cortex—the brain's "CEO" that controls important decision making processes—is the last to develop. *Nitin Gogtay et al., Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROCEEDINGS NAT'L ACAD. SCI. 8174, 8177 (2004); Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind* 23, 24, 141 (2001); *see also B.J. Casey et al., Structural and Functional Brain Development and its Relation to Cognitive Development,* 54 BIOLOGICAL PSYCHOL. 243-246 (2000).

Because the prefrontal cortex governs so many aspects of complex reasoning and decision making, it is possible that adolescents' undesirable behavior—risk-taking, impulsivity, and poor judgment—may be significantly influenced by their incomplete brain development. Steinberg, *A Dual Systems Model* at 216-217. Indeed,

> the latest studies suggest that much of what distinguishes adolescents from children and adults is an *imbalance among developing brain syste*ms. This imbalance model implies dual systems: one that is involved in cognitive and behavioral control and one that is involved in socioemotional processes. Accordingly, adolescents lack mature capacity for self-regulation because the brain system that influences pleasure-seeking and emotional reactivity develops more rapidly than the brain system that supports self-control.

(Emphasis added.) Bonnie, REFORMING JUVENILE JUSTICE, 97 (2013) (citations omitted).

Second, the Supreme Court recognized that youth are distinct from adults in constitutionally relevant ways because of their susceptibility to outside pressures. As the Court explained, "children are more vulnerable . . . to negative influences and outside pressures,

including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings." *Miller*, 132 S. Ct. at 2464. *Accord Graham*, 560 U.S. 48 at 67; *Roper*, 543 U.S. at 569. That teenagers are more susceptible to peer pressure is widely confirmed in the social science literature. Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1012 (2003) (hereinafter "Steinberg & Scott, *Less Guilty by Reason of Adolescence*"); Bonnie, REFORMING JUVENILE JUSTICE at 91 ("[A]dolescents have a heightened sensitivity to proximal external influences, such as peer pressure and immediate incentives, relative to adults." (citations omitted)). As scientists explain:

> [I]nfluence affects adolescent judgment both directly and indirectly. In some contexts, adolescents make choices in response to direct peer pressure to act in certain ways. More indirectly, adolescents' desire for peer approval -- and fear of rejection -- affect their choices, even without direct coercion."

Steinberg & Scott, Less Guilty by Reason of Adolescence, at 1012.

Recent brain imaging findings further support the observation that adolescent behavior is greatly affected by peer influences. For example, researchers using brain imaging techniques to study risky driving decisions by teenagers have identified that when peers are present, teenagers, unlike adults, show heightened activity in the parts of the brain associated with rewards:

> Adolescents, but not adults, showed heightened activity in reward-related circuitry, including the ventral striatum, in the presence of peers. Not only are peers influential but also positive exchanges with others may be powerful motivators. Asynchronous development of brain systems appears to correspond with a shift from thinking about self to thinking about others from early adolescence to young adulthood. *Together these studies suggest that in the heat of the moment, as in the presence of peers or rewards, functionally mature reward centers of the brain may hijack less mature control systems in adolescents.*

(Emphasis added.) Bonnie, REFORMING JUVENILE JUSTICE, at 98 (citations omitted).

Finally, the Supreme Court has recognized that children are different from adults because adolescence is a transitional phase. "[A] child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity].'" *Miller*, 132 S. Ct. at 2464 (quoting *Roper*, 545 U.S. at 570). Indeed, "[t]he personality traits of juveniles are more transitory, less fixed." *Roper*, 543 U.S. at 570. Youth "are more capable of change than are adults, and their actions are less likely to be evidence of 'irretrievably depraved character' than are the actions of adults." *Graham*, 130 S Ct. at 2026 (citing *Roper*, 545 U.S. at 570). As a result, "a greater possibility exists that a minor's character deficiencies will be reformed." *Id.*

Developmental research reaches the same conclusions. It is well known that "[adolescence] is transitional because it is marked by rapid and dramatic change within the individual in the realms of biology, cognition, emotion, and interpersonal relationships." Elizabeth S. Scott & Laurence Steinberg, RETHINKING JUVENILE JUSTICE, 31 (2008) (hereinafter "Scott & Steinberg, RETHINKING JUVENILE JUSTICE"). The research confirms that "many of the factors associated with antisocial, risky, or criminal behavior lose their intensity as individuals become more developmentally mature." Marsha Levick *et al.*, *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment Through The Lens of Childhood and Adolescence*, 15 U. PA. J. L. & SOC. CHANGE 285, 297 (2012) (citations omitted). "[T]he period of risky experimentation does not extend beyond adolescence, ceasing as identity becomes settled with maturity. Only a small percentage of youth who engage in risky experimentation persist in their problem behavior into adulthood." Bonnie, REFORMING JUVENILE JUSTICE at 90 (citations omitted). *See also* Scott & Steinberg, RETHINKING JUVENILE JUSTICE at 53 (2008) (explaining

that "[m]ost teenagers desist from criminal behavior . . . [as they] develop a stable sense of identity, a stake in their future, and mature judgment.").

As a consequence of these unique developmental attributes, the United States Constitution requires that youth receive procedural protections appropriate for their developmental status. *See, e.g., Miller*, 132 S. Ct. at 2467 (striking as unconstitutional mandatory life without parole sentences for juveniles because "[s]uch mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it."); *J.D.B.,* 131 S. Ct. at 2402-2403 (holding that age is relevant for the *Miranda* custody decision because "a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go."). Thus, an individualized approach is particularly vital in the case of young people. Failing to consider the youth's individual situation unconstitutionally

> precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.

Miller, 132 U.S. at 2468 (holding mandatory life sentences for juveniles unconstitutional because they do not allow for individualized consideration) (citations omitted).

By denying Alexander an individualized determination based on evidence of his age, developmental status, and degree of culpability, the statutory scheme runs afoul of the due

process requirements to provide all individuals—and especially youth—the opportunity to be heard.[2]

IV. Individualized Transfer Proceedings Are Constitutionally Required Because Transfer to Adult Court Places Youth at Risk of Devastating Consequences

a. Transfer to Adult Court Increases the Risk of Recidivism

Relevant to the due process inquiry is both the harm to the individual youth and the interests of the state that are implicated in the lack of process awarded. *See Loudermill*, 470 U.S. at 543. As to the State's interest, it is important to recognize that the instant transfer policies do not reduce recidivism. Specifically, this Court's consideration of Ohio's mandatory waiver statute takes place against the backdrop of the well-documented flaws in American transfer laws and policies, where the research suggests that mandatory waiver of juvenile court jurisdiction has failed to reduce, and may actually increase, recidivism.

The juvenile court was created to rehabilitate and treat juveniles who commit offenses. Historically, and to the present day, juvenile courts across the country cater to the individualized needs of children under the age of majority (typically juveniles under eighteen). The court's rehabilitative purpose is derived from the premise that if children are protected from the harmful features of the criminal justice system, they can outgrow their criminal behavior and be rehabilitated regardless of the crime committed. *See* Franklin E. Zimring, AMERICAN JUVENILE JUSTICE 35-39 (2005); *see also* David S. Tanenhaus, *The Evolution of Juvenile Courts in the Early Twentieth Century: Beyond the Myth of Immaculate Conception* in A CENTURY OF JUVENILE JUSTICE 42-69 (Rosenheim, Zimring, Tanenhaus, & Dohrn, eds., 2002).

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[2]At least one commentator has suggested there also may be a *substantive* due process right not to be treated the same as an adult for sentencing purposes. *Guggenheim*, at 492.

Research shows that young people are developmentally capable of change and further demonstrates that, when given a chance, youth become productive and law abiding citizens, even without any interventions.[3] These findings are primarily grounded in behavioral research, and also are consistent with recent findings in neuroscience. As described above, brain imaging techniques show that areas of the brain associated with impulse control, judgment, and the rational integration of cognitive, social, and emotional information do not fully mature until early adulthood. *See* Scott & Steinberg, RETHINKING JUVENILE JUSTICE at 46-49. Importantly, keeping youth in the juvenile justice system spares them exposure to the harsh features of the adult criminal justice system and taps into their unique capacity for rehabilitation.

In the 1990's, before the emergence of the current developmental research, legislatures across the country enacted new waiver laws that significantly expanded the prosecution of juveniles in adult criminal courts. *See* Patrick Griffin *et al.*, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting,* Sept. 2011, 9 Juvenile Justice Bulletin, Washington, D.C., Office of Juvenile Justice and Delinquency Prevention, (hereinafter referred to as "OJJDP Report"). This reaction was fueled in part by "news reports in the 1980s and 1990s

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[3] As youth develop, they become less likely to engage in antisocial activities, an attribute that can be dramatically enhanced with appropriate treatment. "Contemporary psychologists universally view adolescence as a period of development distinct from either childhood or adulthood with unique and characteristic features." Scott & Steinberg, RETHINKING JUVENILE JUSTICE, at 31. *See also* Laurence Steinberg *et al., Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model,* 44 DEV. PSYCH. 1764, 1764 (2008) (noting that rates of impulsivity are high during adolescence and early adulthood and decline thereafter). As youth grow, so do their self-management skills, long-term planning, judgment and decision-making, regulation of emotion, and evaluation of risk and reward. *See* Steinberg & Scott, *Less Guilty by Reason of Adolescence* at 1011. As a result, "[f]or most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled." *Id.* at 1014.

pronouncing an imminent tidal wave of teen 'super-predators.'"[4] Patricia Soung, *Social and Biological Constructions of Youth: Implications for Juvenile Justice and Racial Equity*, 6 NW J. L. & SOC. POL'Y 428, 431 (2011). During a 10-year period, 44 states (including Ohio) and the District of Columbia passed legislation expanding transfer of juveniles. Donna M. Bishop, *Juvenile Offenders in the Adult Criminal Justice System*, 27 Crime & Just. 81, 84 (2000). *See also* Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, June 2010, 1, Juvenile Justice Bulletin, Washington, D.C., Office of Juvenile Justice and Delinquency Prevention (hereinafter "Redding, *Juvenile Transfer Laws*") (documenting the expansion of laws that increased the types of offenses for which youth could be transferred to adult court and lowering the age at which youth could be eligible for transfer). As a result, the number of juvenile inmates in adult prisons more than doubled between the mid-1980s and the mid-1990s. K. Strom, *Bureau of Justice Statistics Report: Profile of State Prisoners Under Age 18, 1985-97* (2000).

Studies have shown that while the enactment of transfer laws may have been well-intentioned, such laws are ultimately misguided and ineffective at curbing juvenile crime. *See* OJJDP Report at 26 ("[I]nsofar as these laws are intended to deter youth crime generally, or to deter or reduce further criminal behavior on the part of youth subjected to transfer, research over several decades has generally failed to establish their effectiveness"). Research shows that youth

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[4] "A 1996 Newsweek headline story proposed that drastic measures be taken to contain these 'vicious' youth. In testimony before the Senate, academic and current director of the Partnership for Research on Religion and At-Risk Youth, John J. Dilulio, Jr., focused on two solutions to an alleged rise in youth violence—churches and prisons—and advocated for the construction of more juvenile prisons to contain these 'superpredators,' who are 'born of abject 'moral poverty.'" *Id.* at 431 n.19 (citations omitted). Dilulio subsequently retracted his predictions about a coming generation of superpredator youth. *See* Elizabeth Becker, *As Ex-Theorist on Young 'Super-predators,' Bush Aide Has Regrets*, N.Y. Times A19 (February 9, 2001).

whose cases are transferred to adult court are 34% more likely to recidivate than youth with similar offenses whose cases remained in juvenile court. *Falling Through the Cracks: A New Look at Ohio Youth in the Adult Criminal Justice System*, Children's Law Center, Inc., 1 (2012) (hereinafter "*Falling Through the Cracks, 2012*"); *see also* Jason J. Washburn *et al.*, *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59 Psychiatric Services, 965, 972 (2008) ("Available evidence indicates that transferred youths reoffend more quickly and are more likely to engage in violent crimes after release than youths processed in the juvenile justice system" (internal citations omitted)).

b. Transferring Youth to Adult Court Subjects Them to Sentencing Options That Deprive Them of Age-Appropriate Rehabilitative Treatment, Education, and Protection

Sentencing juveniles as adults not only fails to reduce recidivism, it also fails to provide youth with age-appropriate treatment and education that will allow them to lead productive lives post-incarceration. Adult corrections personnel lack the specialized training to meet the educational and mental health needs of young people, and adult facilities cannot provide the necessary programs, classes or activities to address their rehabilitative potential. Campaign for Youth Justice, *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform* 6-7 (2007) (hereinafter "*The Consequences Aren't Minor*"). *See also* Redding, *Juvenile Transfer Laws*, at 7. A 2012 Ohio survey found that youth in adult facilities are "less likely" to have access to "age-appropriate mental health services." *Falling Through the Cracks, 2012*, at 2. The survey also found that Ohio school districts are failing to provide legally mandated education services for youth in jails, including youth with disabilities. *Id.* Well over half (68%) of the 53 school districts who responded to the survey did not provide any educational services—including GED classes—to youth in adult jails. *Id.*

In addition to being deprived of treatment and education, youth incarcerated in adult prisons are extraordinarily vulnerable to victimization. *See* Marty Beyer, *Experts for Juveniles At Risk of Adult Sentences* in MORE THAN MEETS THE EYE: RETHINKING ASSESSMENT COMPETENCY AND SENTENCING FOR A HARSHER ERA OF JUVENILE JUSTICES (P. Puritz, A. Capozello & W. Shang eds., 2002). Often the youngest members of the prison population face physical and sexual abuse and even death. *See The Consequences Aren't Minor*, at 7. Youth in adult facilities were five times more likely to be sexually assaulted while incarcerated and two times more likely to be assaulted with a weapon than were youth in the juvenile justice system. Redding, *Juvenile Transfer Laws*, at 7. Also, adolescents are more likely to be psychologically affected by the confinement and restrictions imposed than their adult counterparts, and are thus more likely to commit suicide. According to one report, youth in adult facilities were eight times more likely to commit suicide than those held in the juvenile justice system. *Id.*

c. Transferring Youth to Adult Court Subjects Them to Adult Criminal Convictions With More Numerous and Severe Collateral Consequences

Although juvenile adjudications can create many barriers for youth as they grow into adulthood, an adult criminal conviction imposes greater and more severe barriers to success and self-sufficiency. First, the stigma and barriers that a child must face when tried as an adult will last well into his adulthood, regardless of how he might change his behavior. Second, individuals with criminal records face numerous collateral consequences. Under Ohio law, Alexander's adult conviction for aggravated robbery triggers more than 500 collateral consequences. *See* Chart of Collateral Consequences of an R.C. 2911.01 Conviction, found on Ohio's CIVICC website at http://opd.ohio.gov/CIVICC. Consequences include numerous limitations on civic and political participation, employment, government contract participation,

housing, licensing, professional, and business opportunities, motor vehicle licensing, and other privileges. *Id.*

In contrast, had Alexander been adjudicated in juvenile court, he would have faced only 15 comparatively minor civil impacts associated with a juvenile adjudication. *See id.* They include seven limitations on carrying a weapon, two limitations on civil protective orders, and four limitations on licensing and running a day care out of one's home. *Id.*

Finally, while every state provides for juvenile record expungement, even for more serious offenses, states rarely permit adult criminal record expungement for anything but the most minor offenses.[5] Because Alexander was convicted in adult court of a firearm specification that carried a mandatory prison term, he is not eligible to have his convictions sealed. R.C. 2953.36. In sum, subsequent to adult prosecution Alexander will face collateral consequences that will affect his ability to function as a productive member of society for the rest of his life.

d. Public Policy And Public Opinion Overwhelmingly Oppose The Automatic Transfer Of Juveniles To Adult Court

In recent years, more than 20 states have changed or are considering changes to their policies governing the prosecution and sentencing of youth as adults. *See* Neelum Arya, State Trends: Legislative Changes from 2005 to 2010 Removing Youth from the Adult Criminal Justice System, (2011) Washington, DC: Campaign for Youth Justice. The Report found that from 2005-2010, 15 states changed their state policies and an additional nine had active policy reform efforts underway. *Id.* [6]

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[5]Because Alexander was convicted in adult court of a firearm specification that carried a mandatory prison term, he is not eligible to have his convictions sealed. *See* R.C. 2953.31-2953.35.

[6] Available at http://www.campaignforyouthjustice.org/documents/CFYJ_State_Trends_Report.pdf.

Recent polling also demonstrates that the public overwhelmingly opposes automatically trying youth as adults in favor of judges taking a case-by-case approach that takes into account various individual facts and circumstances. GBA Strategies, *Campaign for Youth Justice Youth Justice System Survey* (October 11, 2011).[7] This measured approach to transfer finds support among various national and state-based organizations and policymakers as well. Campaign for Youth Justice, a national advocacy group dedicated to ending the practice of trying, sentencing and incarcerating youth under eighteen in the criminal system, adopted a National Resolution against mandatory bindover with the support of more than 200 national or state-based organizations, including correctional organizations, professional associations, policy organizations, faith-based organizations, mental health associations, and human rights organizations. *Id.*

In a resolution adopted in 2002, the American Bar Association concluded that judges "should consider the individual characteristics of the youth during sentencing; and. . . [t]hat the ABA opposes, in principle, the trend toward processing more and younger youth as adults in the criminal justice system." ABA Standards 101(D) (Criminal Justice, Litigation) Approved as submitted (2002).[8]

Other legal organizations have adopted similar principles. The National Council of Juvenile and Family Court Judges affirms "that waiver and transfer decisions should only be made on an individual, case-by-case basis, and not on the basis of the statute allegedly violated; and affirms that the decision should be made by the juvenile delinquency court judge. ...that

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[7] Available at http://www.campaignforyouthjustice.org/documents/FR_GBA_Poll_1011.pdf

[8] Available at http://www.campaignforyouthjustice.org/documents/ABA%20-%20Resolution%20on%20Youth%20in%20the%20Criminal%20Justice%20System%20101D.pdf.

juvenile delinquency court jurisdiction should be in effect until a youth's 18th birthday.... that waiver and transfer of juveniles to adult court should be rare and only after a thorough considered process." National Council of Juvenile and Family Court Judges and Office of Juvenile Justice and Delinquency Prevention, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES, Chapter V: Motions to Waive Jurisdiction and Transfer to Criminal Court (2005) at 102.[9]

Numerous correctional and governmental organizations also oppose automatic transfer. The National Association of Counties found that:

> research confirms that the portion of the brain that controls and suppresses impulses, and is critical to good judgment and decision-making, is not fully developed in youth under age 18. Youth have difficulty thinking of consequences under stress and managing powerful impulses without adult help. Therefore, they should not be viewed as acting with the level of moral culpability that characterizes adult criminal conduct.... In light of these facts, NACo opposes trying and sentencing youth in adult criminal court, except in the case of a chronic and violent offender, and then only at the discretion of a juvenile court judge.

National Association of Counties, *Policies: Justice and Public Safety.*[10] The Council of Juvenile Correctional Administrators supports this view and finds that the juvenile system is the most appropriate place to hold youth accountable and where they can receive effective treatment and rehabilitation. Council of Juvenile Correction Administrators, *Position Statement: Waiver and Transfer of Youths to the Adult System* (Oct. 2, 2009).[11] And just last year, the U.S. Attorney

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[9] Available at http://www.ncjfcj.org/sites/default/files/juveniledelinquencyguidelinescompressed[1].pdf.

[10] Available at http://www.naco.org/legislation/policies/Documents/Justice%20and%20Public%20Safety/JPS12-13.pdf.

[11] Available at http://cjca.net/index.php/component/content/article?id=65:a-collection-of-position-papers-covering-a-range-of-issues-critical-to-cjca-and-its-programs.

General assembled a Task Force on Children Exposed to Violence. In its final report, the Task Force recommended that:

> [w]henever possible, prosecute young offenders in the juvenile justice system instead of transferring their cases to adult courts. No juvenile offender should be viewed or treated as an adult. Laws and regulations prosecuting them as adults in adult courts, incarcerating them as adults, and sentencing them to harsh punishments that ignore and diminish their capacity to grow must be replaced or abandoned.

Office of Juvenile Justice and Delinquency Prevention, Report of the Attorney General's National Task Force on Children Exposed to Violence (December 12, 2012).[12]

The American Academy of Pediatrics, whose Ohio Chapter is *amicus* here, recommends that:

> [t]ransfer to adult court should not be automatic or a presumption in the handling of juvenile cases. While further study is necessary, current research indicates that automatic transfer does not achieve the desired goals and may be potentially harmful to the community and the involved youth. Any transfer to criminal court should consider the individual case and the community, and not be based solely on the type of offense.

American Academy of Child and Adolescent Psychiatry Committee on Juvenile Justice Reform, Eds. Louis J. Kraus, M.D. & William Arroyo, M.D., *Recommendations For Juvenile Justice Reform Second Edition* (October 2005).[13] The American Public Health Association's policy statement urges Congress and the states to repeal mandatory sentences for juveniles. American Public Health Association, *Encourage Healthy Behavior by Adolescents*, Policy Database

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[12]Available at http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf.

[13]Available at http://www.campaignforyouthjustice.org/documents/natlres/AACAP%20Recommendations%20for%20Juvenile%20Justice%20Reform.pdf

(January 2000).[14] The Association of Black Psychologists, Inc. calls into question the use of automatic waiver on developmentally immature youth. Association of Black Psychologists, Inc., *Justice for All; Not Just Us: African American Youth and the Criminal Justice System.*[15] Finally, the Parent Teacher Association and United States Conference of Catholic Bishops call for the prohibition of youth being tried in the adult criminal system. Parent Teacher Association, *Position Statement: Child Safety and Protection* (asking for a prohibition on transfer without opportunity for a hearing or appeal);[16] *see also* United States Conference of Catholic Bishops, *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice* (Nov. 2000) (opposing policies that treat young offenders as adults).[17]

CONCLUSION

Ohio's mandatory bindover statutes are unconstitutional under the Due Process Clause because they do not allow for individualized determinations regarding the propriety of prosecuting certain minors in adult criminal court rather than juvenile court, and subject these youth to the same mandatory sentencing scheme as adults. Therefore, *amici* ask this Court to hold R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b) unconstitutional.

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[14] Available at http://www.apha.org/advocacy/policy/policysearch/default.htm?id=234

[15] Available at http://www.abpsi.org/pdf/juvenilejustice.pdf

[16] Available at http://www.pta.org/about/content.cfm?ItemNumber=986

[17] Available at http://old.usccb.org/sdwp/criminal.shtml#introduction

Respectfully submitted this 10th day of March, 2014.

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CERTIFICATE OF SERVICE

I, Marsha Levick, do hereby certify that a true and correct copy of the foregoing Brief of Amici Curiae of Juvenile Law Center, National Juvenile Defender Center, and the Ohio Chapter of the American Academy of Pediatrics on Behalf of Appellant Alexander Quarterman was served upon counsel of record on this date by first-class mail, postage prepaid, addressed as follows:

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