

STATEMENT REGARDING ORAL ARGUMENT

Come now appellate counsel of record for B.T.D., Appellee/Cross-Appellant, and respectfully request oral argument in this case. The instant matter involves issues of first impression for the appellate courts of Alabama regarding the constitutionality of the *Alabama Juvenile Justice Act's* automatic transfer provision, §12-15-204 Ala. Code 1975, both in general and, in particular with respect to §12-15-204(a)(4).

This is the first opportunity for the Alabama appellate courts to consider the concept of automatic transfer, in light of jurisprudence developed in this century by the United States Supreme Court in a landmark series of cases that emphasize that the fundamental differences between adult criminals and juvenile offenders require greater protections and special treatment for children. *See, Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *J.D.B. v. North Carolina*, 564 U.S. 261 (2011); *Miller v. Alabama*, 567 U.S. 460 (2012); *Montgomery v. Louisiana*, 577 U.S. ____, 136 S. Ct. 718 (2016). Even Justice Thomas in his dissent in *Graham* acknowledged "that juveniles can sometimes act with

the same culpability as adults," but only in "rare and unfortunate cases." *Graham*, 560 U.S. at 109 (Thomas, J. dissenting).

The Supreme Court has repeatedly emphasized the importance of the hallmark features of adolescence to our laws of criminal procedure, and it has demanded individualized consideration of those features before children can be exposed to the harshest consequences of the adult criminal justice system.

The relevant facts in B.T.D.'s case are straightforward. The legal concepts involved in this appeal are complicated. Oral argument will assist the Court of Criminal Appeals in its deliberations.

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SUMMARY OF THE ARGUMENT

Section 12-15-204 of the Alabama Code, allowing for the automatic transfer of 16- and 17-year-old children to the adult criminal justice system, violates B.T.D.'s constitutional rights to due process and equal protection under the law.

B.D.T., along with other Alabama youth, have a significant and protectable interest in prosecution and disposition in the Alabama juvenile justice system. The United States Supreme Court has held that young people are developmentally different from adults—they are less mature, more susceptible to peer pressure, and more amenable to rehabilitation. Because children are developmentally and neurologically less mature than adults, they require the developmentally appropriate structure of the juvenile justice system. Young people like B.T.D. also have a significant interest in protection from the harms of adult court prosecution. Section 12-15-204 removes B.T.D. from the juvenile justice system without any procedural protections in violation of the Due Process Clause of the United States Constitution.

Section 12-15-204(a)(4) also violates the Due Process Clause because it is vague and overbroad. The section removes 16 and 17-year-old children from juvenile court supervision if they are alleged to have committed "[a] felony which has as an element thereof the causing of death or serious physical injury," but does not adequately define what constitutes a "serious physical injury."

Finally, Section 12-15-204 violates B.D.T.'s rights to equal protection. Under Alabama law, all 14- and 15-year-old children, regardless of the crimes they are charged with, are afforded a hearing to determine the propriety of prosecuting them in the adult criminal justice system. Older teenagers are not afforded the same protections. However, since the United States Supreme Court has held all young people under eighteen are categorically developmentally different from adults and must be afforded additional protections in the justice system, differentiating between older and younger teenagers is not rationally related to any legitimate state interests.

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B.T.D. was only seventeen years old at the time of the incident that gives rise to his adult court prosecution. Although Alabama law recognizes that B.T.D. is still a child, see § 12-15-102(3), Ala. Code 1975 (defining child as an individual under the age of 18 years), it did not allow him to be treated as one in its justice system. See § 12-15-204, Ala. Code 1975. Alabama's automatic treatment of B.T.D. as an adult in the criminal justice system unconstitutionally infringes upon his rights to due process and equal protection under the law.

Alabama's juvenile justice system is grounded in the principles of providing "care, protection, and discipline" to children to ensure that they can become "responsible, productive member[s] of society." See § 12-15-101 Ala. Code 1975. Section 12-15-204 of the Alabama Code removes juvenile court jurisdiction for a subset of young people—youth ages 16 and 17 who are alleged to have committed certain offenses—creating an unconstitutional and overbroad exception to the juvenile justice system. This removal of juvenile jurisdiction relegates young people like B.T.D. to the harsh consequences of the adult

criminal justice system without a hearing or any procedural protections to determine whether jurisdiction in the adult criminal court is appropriate. The trial court below correctly recognized that the developmental differences between children and adults warrant additional procedures before young people are prosecuted in the adult court. While the trial court applied this reasoning to correctly overturn Section (a)(4)¹, the same analysis now requires this court to hold § 12-15-204 unconstitutional in its entirety.

I. SECTION 12-15-204 OF THE ALABAMA CODE VIOLATES THE DUE PROCESS PROTECTIONS GUARANTEED BY THE UNITED STATES CONSTITUTION BY AUTOMATICALLY TREATING CHILDREN AS ADULTS IN THE JUSTICE SYSTEM.

Section 12-15-204 unjustly curtails B.D.T's constitutional right to due process protections before prosecution in adult court. The lower court correctly reasoned that a series of juvenile sentencing cases decided by the United States Supreme Court protect B.T.D. from automatically being treated like an adult in the justice system. Children are developmentally and

¹ Section 12-15-204(a)(4) of the Alabama Code applies to "[a] felony which has as an element thereof the causing of death or serious physical injury."

neurologically less mature than adults, and therefore require the developmentally appropriate structure of the juvenile justice system. Additionally, due process requires a set of protections prior to the removal of a private interest—in this case B.T.D.'s interest in prosecution and disposition in the juvenile court system. *Mathews v. Eldridge*, 424 U.S. 319, 321 (1976). Taken together, the United States Supreme Court's rulings setting forth a standard for juvenile jurisprudence and due process uphold the principle that states may only exercise adult criminal court jurisdiction over young people when appropriate procedural protections are in place. Alabama's law permitting the mandatory and automatic removal of juvenile court jurisdiction unconstitutionally impedes B.T.D.'s, and all children's rights under the Due Process Clause because it provides no procedures or consideration before jurisdiction is conferred upon the adult criminal court.

Under *Mathews*, to determine whether the procedural protections in place are sufficient, the court must review (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous

deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 US. at 335.

A. Children Have A Significant Interest In Remaining In The Juvenile Justice System.

B.T.D. has an interest in both the rehabilitative resources of the juvenile justice system and protection from the harsh consequences associated with adult criminal court prosecution. Removal of juvenile court jurisdiction results in B.T.D. suffering the "grievous loss" of both these interests, which triggers due process protections. *See Goldberg v. Kelly*, 397 U.S. 254, 263 (1970).

1. Children are developmentally different from adults.

Young people like B.T.D. have a significant interest in remaining in the juvenile justice system because their unique developmental needs are better served in the rehabilitative atmosphere of juvenile courts and facilities.

B.T.D. is seventeen years old. His "youth is more than a chronological fact;" it is a "time and condition of life" marked by particular behaviors, perceptions, and vulnerabilities. *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982). The Trial Court expressly relied upon the United States Supreme Court cases that held that youth are developmentally different from adults. (C. 1241-43.) Because of these differences, the law must be calibrated to adjust for youth status. See, e.g., *Roper v. Simmons*, 543 U.S. 551, 578 (2005) (holding that imposing the death penalty on individuals convicted as juveniles violates the Eighth Amendment's prohibition against cruel and unusual punishment); *Graham v. Florida*, 560 U.S. 48, 82 (2010) (holding that imposing life without parole sentences on juveniles convicted of non-homicide offenses is unconstitutional); *J.D.B. v. North Carolina*, 564 U.S. 261, 271-72 (2011) (holding that a child's age must be taken into account for the purposes of the *Miranda* custody test); and *Miller v. Alabama*, 567 U.S. 460, 465 (2012) (holding that a mandatory life without parole sentence for a juvenile convicted of homicide is unconstitutional).

The United States Supreme Court has articulated three developmental distinctions between youth and adults. First, "children have a 'lack of maturity and an underdeveloped sense of responsibility,'" which makes them more reckless, impulsive, and likely to engage in heedless risk-taking. See *Montgomery v. Louisiana*, __ U.S. __, 136 S. Ct. 718, 733 (2016) (quoting *Miller*, 567 U.S. at 471). Second, youth are more susceptible to pressure from their peers, families, and other external influences; they have "limited 'contro[l] over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings." *Miller*, 567 U.S. at 471, (alteration in original) (quoting *Roper*, 543 U.S. at 569). Finally, young people have a greater capacity for reform and rehabilitation than their adult counterparts because their character and traits are not as "well formed," are "less fixed" and less likely to be "evidence of irretrievabl[e] deprav[ity]". *Id.* (quoting *Roper*, 543 U.S. at 570).

The adult criminal justice system is not designed or suited to serve these unique developmental characteristics or needs of youth. By removing young people from the

juvenile justice system, Section 12-14-204(a) trounces their interest in remaining in a developmentally appropriate justice system.

2. The juvenile justice system provides necessary protections for young people.

The Alabama juvenile justice system is better equipped to handle the unique needs of youth than the adult criminal justice system. The express goals of the Alabama juvenile court system include treatment, rehabilitation, and helping youth become more "responsible, productive member[s] of society." See §12-15-101(b)(4), Ala. Code 1975. In its adjudicative function, the juvenile courts are to consider the "age, education, mental and physical condition, and background of the child" in holding children accountable for their actions, §12-15-101(b)(7), implicating youth's developmental maturity and susceptibility to peer pressure.

Even more importantly, maintaining jurisdiction in the juvenile court system protects young people from the harsh realities of adult prosecution. When young people are prosecuted in the adult court system, numerous negative consequences attach. Not only are young people

subject to longer sentences in adult court, adult criminal records can only be expunged in very limited circumstances. See §15-27-2, Ala. Code 1975. Trying youth in the adult system also increases the risk of reoffending, thus jeopardizing public safety. Youth transferred to the adult system "reoffend more quickly and are more likely to engage in violent crimes after release than youths processed in the juvenile justice system." 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). This increase in recidivism may result from a lack of age-appropriate treatment, programming and education in adult facilities, as adult corrections personnel do not have specialized training to meet the educational and mental health needs of young people, and adult facilities fail 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* 7 (2007). Youth incarcerated in adult jails and prisons are also 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 JUSTICE 18-20 (P. Puritz, A. Capozello & W. Shang eds., 2002). One study showed that 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. Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, JUVENILE JUSTICE BULLETIN, June 2010, at 7.

Adult prosecution places B.T.D. at risk of physical harm, a harsh adult sentence, and a punitive records law that will likely limit his educational and employment opportunities. Considering these numerous negative consequences, B.T.D. has a significant interest in remaining in the rehabilitative and protective atmosphere of the juvenile justice system.

B. In The Absence Of Procedural Protections, Section 12-15-204 Creates A Substantial Risk Of The Erroneous Deprivation Of A Youth's Interest In Remaining In The Juvenile Justice System.

B.T.D. did not receive a single procedural protection or consideration before he lost the protections of the juvenile court. Section 12-15-204 prevented the court from considering his background, maturity, rehabilitation

potential, or the circumstances around his alleged actions. B.T.D. was prosecuted in the adult justice system solely because of his age and alleged offense.

This total lack of process is clearly problematic under the second prong of the *Mathews* test which requires that courts review the "fairness and reliability" of the existing procedures in place to determine whether additional safeguards are necessary. *Mathews*, 424 U.S. at 343. In B.T.D.'s case, it is readily apparent that not only are existing procedures not fair and not reliable, they are nonexistent.

An essential procedure required before deprivation of a significant interest is "notice and opportunity for hearing appropriate to the nature of the case." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). See also *Alabama Republican Party v. McGinley*, 893 So. 2d 337, 344 (Ala. 2004) (explaining that "[t]he hallmarks of procedural due process are notice and 'the opportunity to be heard at a meaningful time and in a meaningful manner.'" (quoting *Mathews*, 424 U.S. at 333)).

The Supreme Court's more recent juvenile jurisprudence reinforces that young people cannot automatically be treated like adults in the justice system. In *J.D.B. v. North Carolina*, the Supreme Court relied on developmental research regarding the immaturity and vulnerability of children to hold that a child's age must be considered in determining whether they were in custody for purposes of the administration of *Miranda* warnings. 564 U.S. at 272-74. In reviewing the adequacy of *Miranda* warnings, courts must give special consideration to the differences between adults and children. In regard to sentencing, in *Miller*, the Court specifically noted six characteristics that should be considered during sentencing in light of the differences between children and adults: (1) the youth's chronological age related to "immaturity, impetuosity, and failure to appreciate risks and consequences;" (2) the juvenile's "family and home environment that surrounds him;" (3) the circumstances of the offense, including extent of participation in the criminal conduct; (4) the impact of familial and peer pressures; (5) the effect of the offender's youth on his ability to navigate the criminal

justice process; and (6) the possibility of rehabilitation. 567 U.S. at 477-78. None of these factors—indeed, no factors at all—were considered to determine whether B.T.D.’s background or circumstances justified treating him like an adult.

In *Kent*, the Supreme Court set forth factors that must be considered before the “critically important” step of transferring a juvenile to the criminal court, including: (1) the seriousness of the offense and whether the protection of the community requires waiver; (2) “[w]hether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;” (3) whether the offense was against persons or property; (4) “[t]he prosecutive merit of the complaint;” (5) the desirability of trial and disposition in one court if there are adult associates of the crime; (6) “[t]he sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living;” (7) “[t]he record and previous history of the juvenile;” and (8) “[t]he prospects for adequate protection of the public and the likelihood of reasonable rehabilitation.” *Kent v.*

United States, 383 U.S. 541, 565-67, app. (1966). Section 12-15-204 prevents the court from considering the *Miller* and *Kent* factors to the detriment of young people like B.T.D.

Throughout its due process and juvenile justice jurisprudence, the United States Supreme Court has repeatedly emphasized the necessity of procedural protections for young people, especially those protections that precede considerations of their maturity and rehabilitative capacity. These procedures allow the courts to ensure young people are only transferred to the adult justice system if they cannot be served by the juvenile justice system. By denying young people any procedural protections under Section 12-15-204, the risk of erroneously removing a child to the adult justice system is manifest.

C. No Government Interests Are Unduly Burdened In Providing A Hearing Before Removing Juvenile Jurisdiction.

Finally, *Mathews* requires the court to consider what government and public interests are implicated by the additional procedures, including the burdens and costs associated with more hearings. 424 U.S. at 347. Providing

individualized hearings prior to removal of juvenile jurisdiction not only improves public safety by reducing recidivism, see Section IA2, *supra*, but also places minimal burden on the state.

Alabama law already provides for hearings in some cases where juvenile jurisdiction is removed. § 12-15-203, Ala. Code 1975. Pursuant to Section 12-15-203, a prosecutor can seek to remove juvenile jurisdiction for children over 14 years of age, *id.*, but before the transfer, the court must conduct a hearing and consider the maturity of the child, their delinquency history, their demeanor, and the interests of the community. *Id.* Providing similar hearings to **all** youth subject to adult court jurisdiction imposes a limited additional burden on the state. Universal transfer hearings ensure that before children are subject to the lingering or life-long consequences of the adult justice system, there has been sufficient consideration of whether adult prosecution is necessary and advances the interests of the child and the community.

B.T.D. has a significant interest in remaining in the Alabama juvenile justice system which more readily serves

the unique developmental needs of children like himself. Because Section 12-15-204 allows Alabama to take away this interest from young people without any procedural protections, it is unconstitutional under the Due Process Clause of the Constitution.

II. SECTION 12-15-204(A)(4) VIOLATES THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION BECAUSE IT IS VAGUE AND OVERBROAD.

Section 12-15-204 (a)(4) removes 16- and 17-year-old children from juvenile court jurisdiction if they are alleged to have committed "a felony which has as an element thereof the causing of death or serious physical injury." The section is overbroad and vague in violation of B.T.D.'s right to due process.

The prohibition of vagueness in criminal statutes is an essential element of due process, required by both "ordinary notions of fair play and the settled rules of law." *Johnson v. United States*, 135 S. Ct. 2551, 2556-57 (2015), (quoting *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926)). The void-for-vagueness doctrine guards against arbitrary or discriminatory law enforcement by insisting that a statute provide standards to govern the actions of police officers and prosecutors. *See, Kolender*

v. Lawson, 461 U.S. 352, 357-58 (1983). In that sense, the doctrine is a corollary of the separation of powers—requiring that [the legislature], rather than the executive or judicial branch, define what conduct is sanctionable and what is not. *Sessions v. Dimaya*, 584 U.S. ____, 138 S. Ct. 1204, 1212 (2018) (plurality opinion) (citing *Kolender*, 461 U.S. at 358, n.7).

As Supreme Court Justice Gorsuch explained:

Vague laws invite arbitrary power. . . . Today's **vague laws** may not be as invidious, but they can **invite the exercise of arbitrary power** all the same—by leaving the people in the dark about what the law demands and **allowing prosecutors and courts to make it up.**

. . . .

Although today's vagueness doctrine owes much to the guarantee of fair notice embodied in the Due Process Clause, it would be a mistake to overlook the doctrine's equal debt to the separation of powers.

. . . Vague laws also threaten to transfer legislative power to police and prosecutors, leaving to them the job of shaping a vague statute's contours through their enforcement decisions. See *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972) ("A **vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis.**").

Id. at 1223-24, 1227-28 (Gorsuch, J., concurring).

The language of 12-15-204 invites arbitrary decisions by the "cop on the beat" and prosecution. This is particularly true with respect to the inclusion of: "(a)(4) [a] felony which has as an element thereof the causing of . . . serious physical injury," the subsection under which B.T.D. was charged, thereby requiring his removal from juvenile jurisdiction.

"Serious physical injury" is defined in §13A-1-2(14), Ala. Code 1975 as a physical injury which "creates a substantial risk of death, or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ." Alabama courts have struggled to establish clear parameters for prosecution, based on this definition; as illustrated below, the definition provides little guidance and results in a quagmire subject to the whim of the district attorney's office. The statute has been construed to **not** include:

1. A gunshot wound to the chest. *Cowan v. State*, 540 So. 2d 99, 100-01 (Ala. Crim. App. 1988).
2. A gunshot wound to the arm. *Vo v. State*, 612 So. 2d 1323, 1325-26 (Ala. Crim. App. 1992).
3. A gunshot wound to the shoulder. *M.T.R. v. State*, 620 So. 2d 753 (Ala. Crim. App. 1993).

4. A gunshot wound to the abdomen. *Westbrook v. State*, 722 So. 2d 788, 790 (Ala. Crim. App. 1998).
5. A gunshot wound to the leg. *Lee v. State*, 727 So. 2d 887, 888 (Ala. Crim. App. 1998).
6. Separate gunshot wounds to the hand and the arm. *Davis v. State*, 467 So. 2d 265, 266 (Ala. Crim. App. 1985).
7. Fractured sinus and facial wounds requiring plastic surgery. *Wilson v. State*, 695 So. 2d 195, 196-97 (Ala. Crim. App. 1996).

In B.T.D.'s case, the allegations involve a Sunday afternoon fight in the parking lot of the Northport Walmart during which the alleged victim sustained a broken leg. Considering this Court's precedent that injuries involving gunshots and knife wounds are not serious bodily injuries, it is nonsensical that a broken leg would meet the definition. A broken leg likely does not cause the same risk of death, disfigurement, or protracted impairment of health that would be expected from a gunshot or knife wound.

Section 12-15-204(a)(4) conditions the removal of B.T.D. from the protections of the juvenile justice system on how a prosecutor chooses to interpret "serious physical injury." Without a clear definition of what constitutes

serious physical injuries, Section 12-15-204(a)(4)violates B.T.D.'s due process rights.

III. SECTION 12-15-204 VIOLATES THE EQUAL PROTECTION CLAUSE BY DENYING THE SAME PROCEDURES TO 16- AND 17-YEAR-OLD YOUTH BEFORE TRANSFER THAT ARE PROVIDED TO SIMILARLY SITUATED 14- AND 15-YEAR-OLD YOUTH.

Section 12-15-204 violates B.T.D's right to equal protection under the law by treating him differently from 14- and 15-year-old children who receive a hearing before being removed from juvenile court jurisdiction. See §12-15-203, Ala. Code. The State has no rational basis for this distinction as the United States Supreme Court has clearly articulated that all young people under eighteen share the same developmental characteristics that warrant special treatment and protections in the justice system. See Sections IA1 and IB, *supra*.

The Equal Protection Clause of the Fourteenth Amendment mandates that "all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). The threshold question of any equal protection challenge is whether the persons allegedly subjected to disparate treatment are in fact similarly situated. *Ex Parte Upshaw*, 141 So. 3d 70, 75 (Ala. 2013). When no suspect class or fundamental right

is at issue, a governmental classification must pass rational basis review to satisfy equal protection; the classification must be rationally related to a legitimate legislative purpose. *San Antonio Indep. Sch. Dist. V. Rodriguez*, 411 U.S. 1, 67 (1973); *Reed v. Brunson*, 527 So. 2d 102, 118, (Ala. 1988).

A. Youth Ages 14 to 15-Years Old Who Are Charged With Serious Offenses Are Similarly Situated To Youth 16 to 17-Years Old Charged With Serious Offenses.

Alabama law does not treat similarly situated children alike; 16- and 17-year-old children like B.T.D. are afforded fewer rights than their 14- and 15-year-old peers charged with the same offenses. Under §12-15-203, 14- and 15-year-old children may only be transferred to the adult court after a hearing that considers factors such as the nature of the offense, the prior delinquency record of the child, the past treatment efforts and response, the child's demeanor and physical and mental maturity and the interest of the community. §12-15-203. These factors are considered regardless of the child's alleged offense. A 14- or 15-year-old child that commits one or more of the same offenses delineated in Section 12-15-204 receives a transfer hearing that would be denied to

a child who may be only months, weeks or days older. Under such a statutory scheme, two youth who engage in the same conduct and share similar developmental characteristics might be subject to entirely different legal outcomes; the one who receives the benefit of the individualized standard in §12-15-203 might be rehabilitated through the juvenile system, while the youth who fell within §12-15-204 would be transferred and subject to the harsh penalties and conditions of the adult criminal justice system, in violation of the Equal Protection Clause.

B. There Is No Rational Basis For Distinguishing Between Youth Ages 14 to 15 and Youth Ages 16 To 17 When Conferring Jurisdiction.

Where no suspect class or fundamental right is at issue, a governmental classification must pass rational basis review to satisfy equal protection. *Romer v. Evans*, 517 U.S. 620, 631 (1996). Alabama's distinction between similarly situated 14- to 15-year-old children and 16- to 17-year-olds is inconsistent with scientific research and not rationally related to any legitimate state interest.

States have a legitimate interest in public safety. *State v. Blake*, 642 So. 2d. 959, 968 (Ala. 1994). In order

to ensure public safety, criminal procedure laws sometimes differentiate between classes of people based on offense. Removing juvenile court jurisdiction from 16- and 17-year-old youth when younger teenagers charged with the same offense are afforded the protections of juvenile court jurisdiction is not rationally related to ensuring public safety. In fact, prosecuting 16- to 17-year-olds in the adult justice system leads to more recidivism and is therefore inapposite to public safety goals. See Section IA2, *supra*. See also CAMPAIGN FOR YOUTH JUSTICE, THE CONSEQUENCES AREN'T MINOR, *supra*, at 14-15. Ninety-five percent of incarcerated youth will return to their communities before their 25th birthday. JEREE THOMAS, CAMPAIGN FOR YOUTH JUSTICE, YOUTH TRANSFER: THE IMPORTANCE OF INDIVIDUALIZED FACTOR REVIEW 5 (2018),

http://www.campaignforyouthjustice.org/images/20180314_CFYJ_Youth_Transfer_Brief.pdf. Alabama can best ensure public safety by providing all young people with the developmentally appropriate rehabilitative resources of the juvenile justice system, so they are equipped to become reformed, productive members of their communities upon return. Prosecuting more youth in the adult justice

system, which leads to increased recidivism, is not rationally related to the legitimate state interest of public safety, and therefore cannot be a basis for differentiating between older and younger teenagers.

1. The classification system set forth in Section 12-15-204 is inconsistent with scientific research.

Further, as *Price v. State*, 683 So. 2d 44 (Ala. Crim. App. 1996), was decided before the United States Supreme Court's decisions in *Roper*, *Graham*, and its progeny, it does not appropriately consider the developmental characteristics of young people in assessing whether the state has a legitimate state interest in unequal transfer laws. Psychological and neurobiological research, which has been endorsed and relied upon by the United States Supreme Court, demonstrates that all children under eighteen years of age have similar developmental characteristics. See Section I(A)(1). Based on this research, the Supreme Court has held that young people under eighteen have diminished culpability and their conduct is "not as morally reprehensible as that of an adult." *Roper*, 543 U.S. at 570 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988) (plurality opinion)).

The research does not distinguish between or among adolescents; the Court views all children under 18 the same for constitutional purposes. Importantly, the U.S. Supreme Court explicitly overturned its prior ruling in *Stanford v. Kentucky*, 492 U.S. 361 (1989), in which it had drawn a legal distinction between older and younger teenagers. *Roper*, 543 U.S. at 574-75. The *Roper* Court explained that the developmental characteristics of juveniles that they had relied on to prohibit the imposition of the death penalty on young people under 16 in *Thompson v. Oklahoma* also applied to young people 16 and 17 years of age. *Id.* at 574. The developmental similarities between older and younger teenagers indicates that a state's interest in public safety, deterrence, and retribution are not served by treating young people under 18 differently based on their age.

2. The automatic removal of juvenile court jurisdiction for 16- to 17-year-old youth is not rationally related to the State's interest in retribution and deterrence for serious crimes.

In *Price v. State*, this Court upheld a previous iteration of Section 12-15-204 on equal protection grounds, explaining that the unequal treatment of older

and younger teenagers was rationally related to the state's interest in seeking retribution for serious crimes and deterring future crimes. *Price v. State*, 683 So. 2d 44, 45 (Ala. Crim. App. 1996). The Court, however, failed to provide any analysis as to why retribution and deterrence were justifications for the distinction.

The U.S. Supreme Court has recognized that "the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Miller*, 567 U.S. at 472. The well-established characteristics that are inherent to youth, such as immaturity, impetuosity, vulnerability to "negative influences and outside pressures," and a greater capacity for change and rehabilitation, *Roper*, 543 U.S. at 569-70, weaken these justifications and this Court's rationale in *Price*. Specifically, the U.S. Supreme Court has found that "[w]hether viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as with an adult." *Id.* at 571. Moreover, "the same characteristics that render juveniles

less culpable than adults suggest as well that juveniles will be less susceptible to deterrence." *Id.* As the Supreme Court recognized, "[b]ecause juveniles' 'lack of maturity and an underdeveloped sense of responsibility . . . often result in impetuous and ill-considered actions and decisions,' they are less likely to take a possible punishment into consideration when making decisions." *Graham*, 560 U.S. at 72 (citation omitted).

Alabama law does not automatically confer adult court jurisdiction upon all individuals charged with the most serious offenses outlined in Section 12-15-204. Before 14- to 15-year-old children are denied juvenile court jurisdiction, they are entitled a hearing to determine the necessity of such a harsh consequence. Children ages 16 and 17, charged with the same offense, are denied such process. This distinction is unsupported by developmental science and is not rationally related to state interests of retribution and deterrence for serious crimes.

CONCLUSION

Section 12-15-204 violates the rights of young people like B.T.D. under the Due Process and Equal Protection Clauses of the United States Constitution. This Court

should uphold the lower court's finding that Section 12-15-204(a)(4) is unconstitutional and extend its rationale to strike down all provisions of Section 12-15-204.

Respectfully Submitted,

s/ Gary L. Blume_____
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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2019, I electronically filed a copy of the foregoing with the clerk of the Court and served a copy of the foregoing on counsel of record for the State of Alabama by emailing the same to the e-mail address shown below.

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