

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2020-1429
Plaintiff-Appellee,	:	
	:	On Appeal from the Second
vs.	:	District Court of Appeals
	:	Case No. 2018 CA 00025
DONOVAN NICHOLAS,	:	
	:	
Defendant-Appellant.	:	

BRIEF OF AMICUS CURIAE CHILDREN’S LAW CENTER AND CUYAHOGA COUNTY PUBLIC DEFENDER, ET AL., IN SUPPORT OF APPELLANT

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INTEREST OF AMICI CURIAE

The Cuyahoga, Franklin, Hamilton, and Montgomery County Public Defender's Offices provide legal services to indigent adults and children charged with violations of the criminal code. These offices represent the vast majority of children accused of criminal offenses in the State of Ohio, both at bindover proceedings in juvenile court and in adult court once the children have been transferred. Accordingly, a large number of the Public Defenders' present and future clients will be directly impacted by the outcome of the present litigation.

Children's Law Center, Inc. (CLC) is a non-profit legal service center committed to protecting and enhancing the rights of children and youth in Ohio and Kentucky and improving the systems that serve them, ensuring youth successfully transition into adulthood. CLC provides individual legal advocacy to children and youth and public policy work, including training and education, impact litigation, and juvenile defender support services. For the past decade, CLC has worked on issues facing Ohio youth prosecuted in adult court, placed in adult facilities, and working towards systemic change to reduce the number of children in the adult system through various means including data collection, interviewing youth in adult court and their families as well as stakeholders, and issuing reports on this topic. The issues involved in and implications of this case are of particular concern to CLC, given the work CLC is engaged in to reduce unnecessary transfer of juveniles, including statewide policy reforms.

Disability Rights Ohio is a not-for-profit organization designated by the Ohio Governor as the protection and advocacy system under federal law for people with disabilities in Ohio. *See* 42 U.S.C. § 15001, et seq.; 42 U.S.C. § 10801, et seq.; R.C. 5123.60. The mission of Disability Rights Ohio is to advocate for the human, civil, and legal rights of people with disabilities in Ohio, including children. As the protection and advocacy system for Ohio, and using administrative, legal, and policy remedies, Disability Rights Ohio advocates for trauma-informed home- and community-based service systems for

kids with behavioral health needs as an alternative to institutionalization, incarceration, and other harmful outcomes, as well as for an adequately-funded, statewide system of appropriate and individualized special education services for children with disabilities. Disability Rights Ohio also investigates abuse, neglect, and rights violations affecting children with disabilities. Disability Rights Ohio has considerable experience and expertise in disability rights.

Juvenile Justice Coalition (JJC) is a non-profit organization whose mission is to work individually and in partnership with other organizations to ensure that Ohio's juvenile justice system – from prevention through involvement with the adult court – works effectively to increase positive outcomes for youth, families, and communities. JJC supports efforts to reduce youth's involvement with the juvenile justice system that are community-based, research informed, culturally appropriate, and to put all of Ohio's youth on a path to success. The treatment and punishment of youth, particularly younger juveniles, like Donovan Nicholas, in the adult criminal justice system is anathema to everything for which this organization stands.

The Justice for Children Project at The Ohio State University Moritz College of Law combines legal education with zealous advocacy for the rights of children across a variety of systems. A key part of the Project – the Justice for Children Clinic – provides law students with the opportunity to represent children in neglect and dependency proceedings, delinquency cases, immigration adjustments and educational issues. The students and faculty in the Clinic work to ensure that the expressed desires of their clients are heard, that juvenile rights are taken seriously, and that the juvenile system maintains its commitment to rehabilitating children and reunifying families. It is critically important to the due process rights of our youth and the credibility of the juvenile justice system that the inherent differences between youths and adults be given sufficient weight under the law.

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs,

policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values.

The National Association for Public Defense (NAPD) engages all public defense professionals into a clear and focused voice to address the systemic failure to provide the constitutional right to counsel, and to collaborate with diverse partners for solutions that bring meaningful access to justice for poor people. NAPD includes every professional who is critical to delivering the right to counsel: lawyers, social workers, case managers, investigators, sentencing advocates, paralegals, civil legal aid providers, education advocates, expert support, information technology gurus, teachers and trainers, financial professionals, researchers, legislative advocates, communications personnel, and administrative personnel. Our collective expertise represents state, county and local systems through full-time, contract, and assigned counsel delivery mechanisms; dedicated juvenile, capital and appellate offices; and through a diversity of traditional and holistic practice models.

STATEMENT OF THE CASE AND FACTS

Amici defers to the Statement of the Case and Facts contained in Appellant's brief.

ARGUMENT

Introduction

Your amici are professionals and stakeholders advocating at multiple levels and venues on behalf of children who become ensnared in the juvenile justice system or who have serious behavioral or mental health needs throughout the State of Ohio and elsewhere. The juvenile justice system was created with the well-founded understanding that children are different from adults. That system is intended to

operate in the youth's best interests to encourage rehabilitation based on his or her individual needs.¹ Accordingly, juvenile courts serve the necessary function of preventing youthful offenders from the destructive punishments of adult criminal courts.

Whether a child remains in juvenile court, to access appropriate treatment, or endures prosecution and punishment in the adult criminal system, will profoundly impact the child. The instant case dramatically, but not atypically, illustrates the erosion of the juvenile court's mission to rehabilitate children, resulting from a lack of standards and clarity. Fourteen-year-old Donovan Nicholas, with no prior court history, was transferred to the adult criminal system, even though all the experts agreed he was severely mentally ill at the time of the offense, and that he could receive treatment for that illness within the juvenile system. Following his conviction for aggravated murder, Donovan was sentenced to life in adult prison, with parole eligibility after 28 years. The record makes it clear that he needs and would benefit from specialized mental health treatment in a juvenile setting. Nevertheless, Donovan has been permanently consigned to a place that lacks the capacity to provide such treatment. For all intents and purposes, he has been thrown away.

Time and again, evidence shows that children prosecuted as adults suffer long-lasting, harmful outcomes. Treating children like adults is supposed to be rare—but the data reflects that adult transfer has become all too common.² This trend evidences that the guardrails put in place to keep children in juvenile court have been circumvented, if not broken down altogether. Yet, this Court has long acknowledged the significant liberty interest at stake in the transfer proceeding by encouraging courts below to invoke the adult transfer option only rarely.³

¹ <https://www.nap.edu/read/9747/chapter/7>

² See Children's Law Ctr. *Bindover Fact Sheet* FY19, available at: <https://static1.squarespace.com/static/571f750f4c2f858e510aa661/t/608c00ea2e6b175146653962/1619788010788/Bindover+Fact+Sheet+FY19.pdf>

³ Ohio Supreme Court Benchcards *Youth in Adult Court*, available at:

This brief provides context surrounding the implications of this case, and illustrates why Appellant's propositions of law are necessary to preserve the mission and integrity of juvenile court. In resolving the many issues this case presents, your amici ask this Court to underscore the importance of reaffirming a juvenile justice system that provides individual assessments of, and treatment for, the children it serves. As discussed further herein, this Court can preserve that system by adopting Appellant's propositions of law, and making clear that:

Ohio law presumes children remain in juvenile court. Such a presumption requires the prosecutor seeking adult transfer to present evidence affirmatively demonstrating that the child is not amenable to juvenile jurisdiction. In determining whether to order the transfer, the court may not use the child's severe mental illness against him.

I. History and Evolution of the Juvenile Court Underscore an Emphasis on Rehabilitation over Retribution.

I went from being a young teen with severe dysfunctional traits, to (* * *) play[ing] another part based on what I thought prison was and was going to be. Those events compiled such an emotional turmoil within me that it left me desperately confused as to who I was and what direction I wanted to take. * * * [Y]ou have the dysfunctional thinking of a teenager trying to match wits with a system that has been known for devouring mature adults. * * * As I look at these young men—they are children, and **as dysfunctional as they may be, they are still children**. Yes, there must be penalties and perhaps punishment for crimes. But I think we focus to (sic) much [on] *what* happened, and apply so little interest toward *why* it happened. Spending every awakened hour looking over your shoulder; looking through a window which offers limited scenery; and then being forced to sit in a cell, 6-feet by 9-feet for 20-23 hours a day, seven days a week. This is not corrections, *this is corrosion*. So ask yourself, is this the best lawmakers and judicial representatives can come up with?

– J.A.⁴

The differences between the juvenile and adult systems are stark, as are their respective missions.

www.supremecourt.ohio.gov/JCS/CFC/resources/juvenileBenchCards/juvenilebenchcards.pdf

⁴ This quotation was taken from the Children's Law Center's Bindover Storytelling Project *In Their Own Words*, collecting stories from youth who were bound over to adult court. These stories and others can be found at <http://ohiobindover.wordpress.com/>

The juvenile court's primary goal is to provide for the child's "care, protection, and mental and physical development" while also protecting "the public interest and safety" and holding the child accountable, restoring the victim, and rehabilitating the offender. R.C. 2152.01(A). In contrast, "[t]he purposes of felony sentencing . . . 'are to protect the public from future crime by the offender and others and to punish the offender.' R.C. 2929.11(A)." *State v. D.H.*, 120 Ohio St.3d 540, 549, 2009-Ohio-9, 901 N.E.2d 209.

The rehabilitative purpose underpinning the mission of juvenile courts distinguishes them from the adult criminal justice system. See Jeffrey Fagan, *Juvenile Crime and Criminal Justice: Resolving Border Disputes*, 18 FUTURE CHILD. 81, 81-83 (2008) (describing the "sharply contrasting ideas about adolescents who break the law" reflected in the purpose and structure of juvenile versus adult criminal courts). The seminal United States Supreme Court case *In re Gault*, recognizing juvenile due process protections, explained that "[t]he child was to be 'treated' and 'rehabilitated,' and the procedures . . . were to be 'clinical' rather than punitive." 387 U.S. 1, 15-16, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

Historically, the decision to transfer a child to the adult system was rare and rested primarily within the discretion of the juvenile court judge.⁵ Transfers occurred primarily for older youth who had a history of recidivism or who were accused of committing a limited offense (considered especially heinous).⁶ A drastic shift occurred in the 1990's with juvenile courts moving away from treatment and rehabilitation toward a more punishment-focused model. This move came in response to public concern over increasing crime rates and a growing distrust in the juvenile justice system's ability to ensure public

⁵ Edward P. Mulvey and Carol A. Schubert, *Transfer of Juveniles to Adult Court: Effects of a Broad Policy in One Court*, at 2, *Juvenile Justice Bulletin*, Office of Juvenile Justice and Delinquency Prevention, December 2012, available at: <https://www.ojjdp.gov/pubs/232932.pdf>.

⁶ See David S. Tanenhaus & Steven A. Drizin, "Owing to the Extreme Youth of the Accused": *The Changing Legal Response to Juvenile Homicide*, 92 J. CRIM. L. & CRIMINOLOGY 641, 665 (2002).

safety. During the late 1980's and early 1990's, a drastic increase in juvenile arrest rates was accompanied by a few highly publicized violent cases. Simultaneously, rhetoric – later determined to be unfounded – warned of child “super-predators,” who were remorseless and unresponsive to the juvenile justice system.⁷ This narrative became commonplace in the 1990's, and it promoted the liberal application of the punitive adult criminal system model on juveniles.⁸

Yet, as time passed, a portended increase in juvenile violence did not materialize. From 1995 to 2004, the national juvenile arrest rate for serious property and violent crimes declined 45 percent.⁹ During that same timeframe, homicide rates plummeted 70 percent.¹⁰ In fact, during the peak of increased juvenile crime in 1993, only around six percent of juvenile arrests were for violent offenses and, in stark contrast to the rhetoric, juvenile homicide arrests made up less than one-tenth of one percent.¹¹ Notwithstanding the actual data, by the end of the 1990's nearly every state had revised or rewritten their laws to broaden eligibility for transfer. These laws shifted bindover decision-making from judges to prosecutors and eviscerated individualized court discretion, in favor of automatic categorical approaches.¹² For example, in 1970, there were only eight states that had laws automatically excluding

⁷ PATRICIA TORBET ET AL., U.S. DEP'T OF JUSTICE, OFF. JUV. JUST. & DELINQ. PREVENTION, STATE RESPONSES TO SERIOUS AND VIOLENT JUVENILE CRIME 4, 6 (1996), available at: <http://www.ncjj.org/pdf/statresp.pdf> (describing statutory changes).

⁸ 92 J. CRIM. L. & CRIMINOLOGY 641 at 665; and Torbet et al.

⁹ Annie E. Casey Foundation: *A Road Map for Juvenile Justice Reform*, Kids Count Essay, June 2008, at 5, available at: <https://www.aecf.org/resources/a-road-map-for-juvenile-justice-reform>.

¹⁰ *Id.* (Annie E. Casey)

¹¹ James C. Howell, Barry C. Feld, Daniel P. Mears, David P. Farrington, Rolf Loeber, David Petechuk, *Bulletin 5: Young Offenders and an Effective Response in the Juvenile and Adult Justice Systems: What Happens, What Should Happen, and What We Need to Know (Study Group on the Transitions between Juvenile Delinquency and Adult Crime)*, 2013, at 4, available at: <https://www.ojp.gov/pdffiles1/nij/grants/242935.pdf>.

¹² Patrick Griffin, Sean Addie, Benjamin Adams, and Kathy Firestone, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, U.S. Department of Justice, Office of Juvenile Justice

certain children from juvenile court based on age and offense—today there are twenty-six.¹³

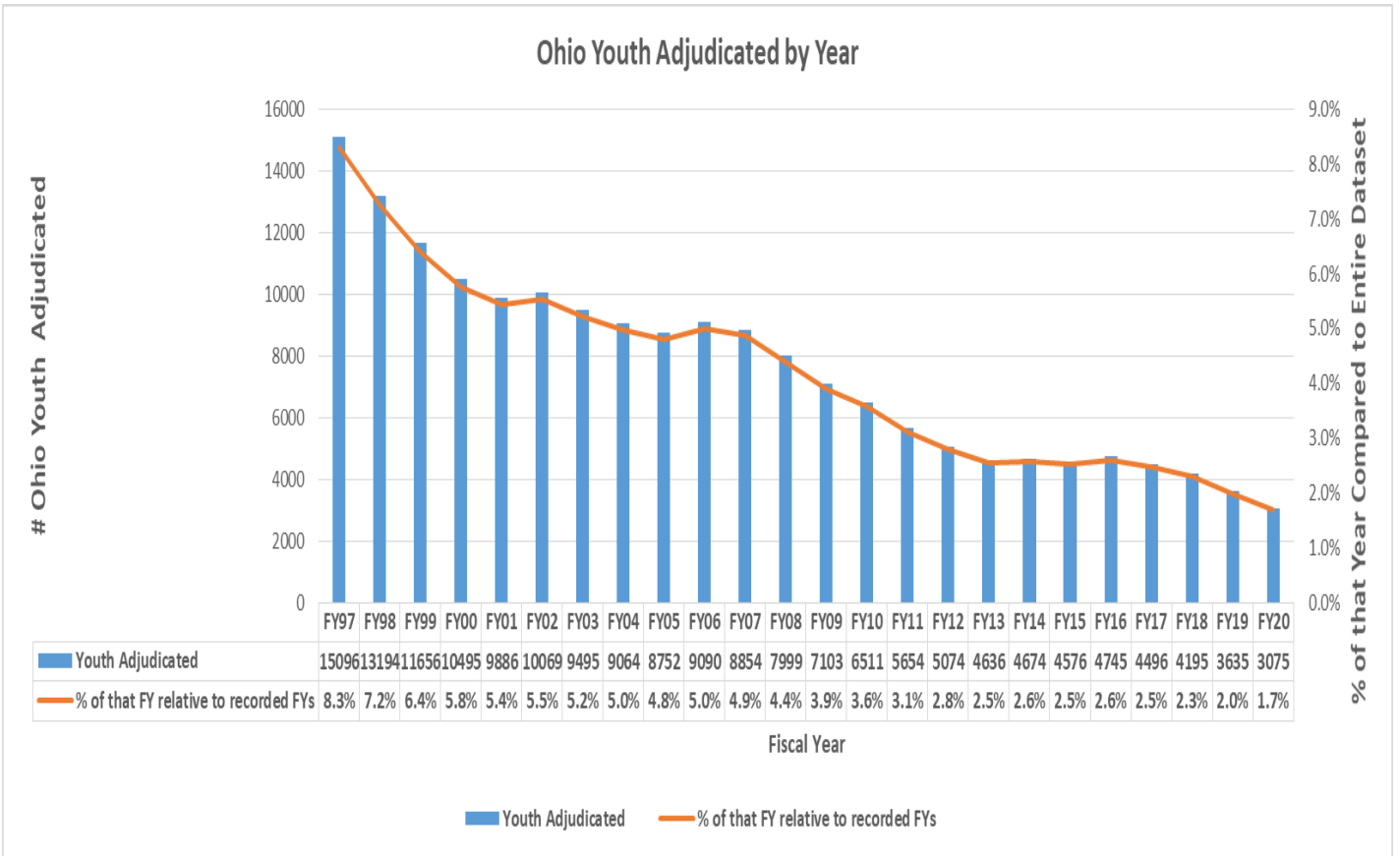
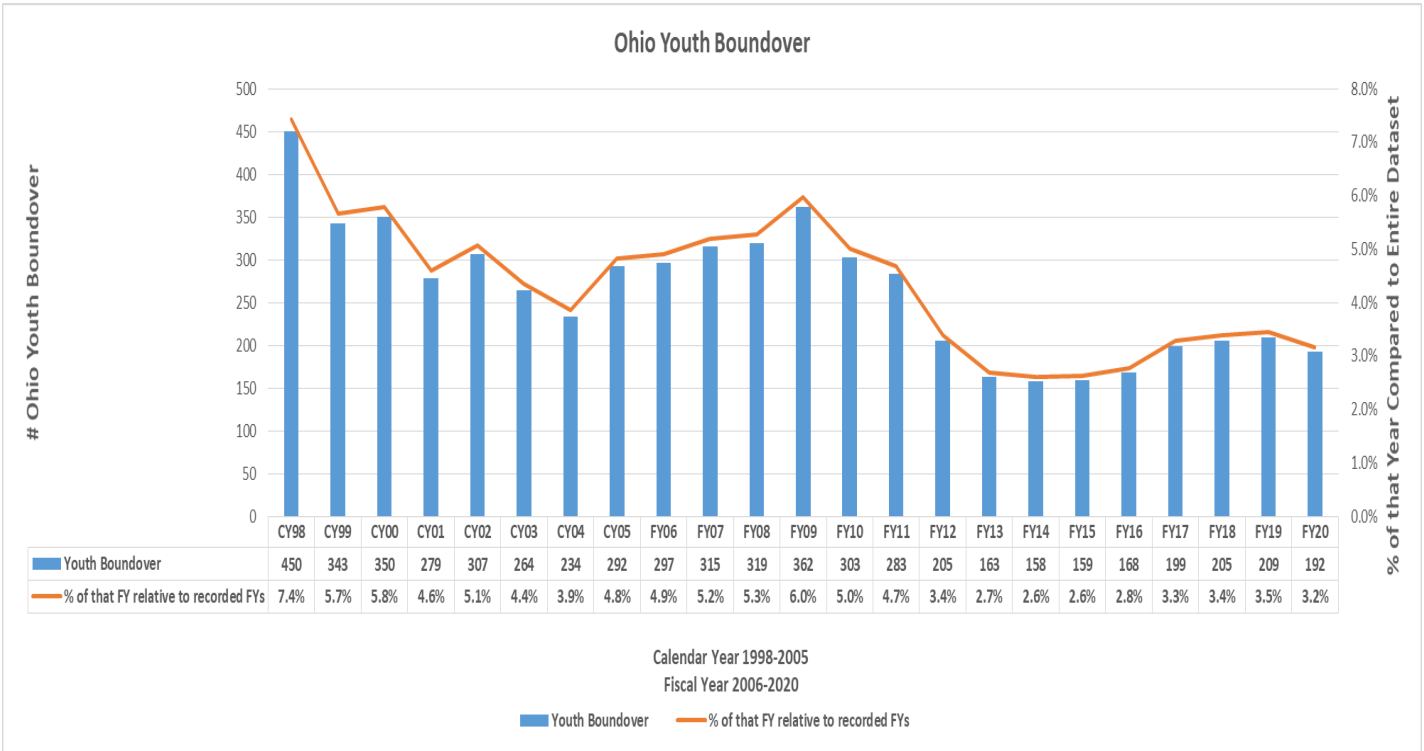
These statutory schemes remain in place, despite the continuing decline in juvenile crime. Transfer to adult court is no longer the rarity it once was, and Ohio is no exception. Ohio youths are increasingly being transferred with concerning regularity. The number of youths transferred to adult court in Ohio has increased steadily since 2016. This trend was a departure from the marked decline seen in the preceding years. Targeted statewide efforts towards reforms were implemented to address the spike in bindovers during the late 2000's, achieving a decline in Ohio's bindovers by 47 percent between 2010 and 2015 (from 235 to 124 youths transferred, respectively).¹⁴ Further, as demonstrated in the graphs that follow, the rise in Ohio bindovers contrasts with the consistent decline in juvenile felony adjudications.¹⁵

and Delinquency Prevention, at 9 (September 2011).

¹³ Brian Evans, *Winning the Campaign: State Trends in Fighting the Treatment of Children As Adults in the Criminal Justice System 2005-2020*, at 25, Washington, D.C.: Campaign for Youth Justice (2020).

¹⁴ Children's Law Ctr., *Bindover Fact Sheet FY19*, p.2, available at: <https://static1.squarespace.com/static/571f750f4c2f858e510aa661/t/608c00ea2e6b175146653962/1619788010788/Bindover+Fact+Sheet+FY19.pdf>

¹⁵ Ohio Dep't of Youth Servs., *Youth Transferred to Adult Court and Statewide Adjudication*, available at: <https://dys.ohio.gov/wps/portal/gov/dys/about-us/communications/reports/statewide-reports-maintained-by-dys>; Cuyahoga County illustrates this point: in 2008, there were 8,881 delinquency cases filed and only 85 resulted in bindovers, yet, in 2019, with 3,346 delinquency cases filed, the county granted 104 bindovers. Arguably demonstrating the increased reliance on transfer is a result of prosecutorial discretion, not an increase in crime. See Cuyahoga County Juvenile Court Annual Reports, available at: <http://juvenile.cuyahogacounty.us/en-US/AnnualReports.aspx>



This trend reflects an increasing reliance on transfer, and is particularly concerning given transfer rates continue to decline nationally and given that the U.S. hit a 50-year low for youth crime in 2017 (199 children were bound over in fiscal year 2017).¹⁶

Notwithstanding the shifts that started in the 1990s, virtually all states have maintained some statutory allegiance to the juvenile court's rehabilitative mission. But in the absence of clear guidance on the standard of proof, a requirement for the state to bear the burden of proof, and explicit enforcement of a presumption for juvenile court retention, we will continue to see far too many Ohio youths improperly sent to adult court. Without a requirement that courts must weigh all statutorily defined dispositional options, it will continue to be far too easy for prosecutors to simply request transfer and for the court to grant it. Without these standards, Ohio's amenability decisions will fail to accord these children the due process to which they are entitled.

II. Ohio's Presumption that Children Remain in Juvenile Court is not Uniformly Recognized, Eroding the Mission of the Court.

When a juvenile (sic) is bound over it means the juvenile system believes you can't change. That there is no hope for your future (* * * *). The juvenile system threw us away. Saw no hope for our lives. It so sad because I see many young adolescence, young teenagers here that have never been in the system before, have never ONCE been locked up before in their short lives and when they slipped and made a mistake, they were brought [to adult prison]. The world saw no future in our lives. The way I see BINDOVER is being a baby, a baby at home with his family still learning how to walk, and when he slips and falls he is taken,

¹⁶ Brian Evans, *Winning the Campaign: State Trends in Fighting the Treatment of Children As Adults in the Criminal Justice System 2005-2020*, at 6, Washington, D.C.: Campaign for Youth Justice (2020); Thomas, Jeree, & Wilson, Mel, *The Color of Youth Transferred to the Adult Criminal Justice System: Policy & Practice Recommendations*. Washington, DC: National Association of Social Workers, at 35-36 (2017).

taken from his love ones, taken from his family and thrown in a cell. That is how I see the bindover process.” – G.W.¹⁷

Law and science have long recognized that children are inherently less culpable for their misconduct than adults. Children also possess heightened capacity for change. Studies show that even the most serious youthful offenders report a decrease in criminal activity over time.¹⁸ The “age-crime curve,” wherein 40 to 60 percent of youth stop offending by early adulthood, is universal in Western populations.¹⁹ Because it is only “the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible,” the law presumes that youth remain in the juvenile system. *See Montgomery v. Louisiana*, 577 U.S. 190, 208, 136 S.Ct. 718, 193 L.Ed. 2d 599 (2016).

The Ohio General Assembly has codified this presumption by vesting the juvenile court with original jurisdiction over all cases where the alleged offense occurred when the individual was under the age of 18. *See* R.C. 2151.011 (B)(6); R.C. 2151.23(A); R.C. 2152.02 (C) (except as narrowly provided in divisions (2)-(8)); and R.C. 2152.03. This presumption applies even to the most serious offenders. The General Assembly recognized these youngsters could benefit from the rehabilitative opportunities available only in the juvenile

¹⁷ Children’s Law Center’s Bindover Storytelling Project *In Their Own Words*, available at: <http://ohiobindover.wordpress.com/>

¹⁸ Edward P. Mulvey, *Highlights From Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders*, Office of Juvenile Justice and Delinquency Prevention Juvenile Justice Fact Sheet, March 2011, available at: <https://www.ojp.gov/ncjrs/virtual-library/abstracts/highlights-pathways-desistance-longitudinal-study-serious>

¹⁹ National Institute of Justice, *From Juvenile Delinquency to Young Adult Offending* (March 2014) available at: <https://nij.ojp.gov/topics/articles/juvenile-delinquency-young-adult-offending>. Adolescent offending tends to increase from late childhood, peaks in teenage years of 15-19, and declines in early 20’s—studies agree that justice system processing may increase recidivism that would otherwise naturally desist in early adulthood.

system and created blended, or Serious Youthful Offender (SYO), sentences to address their needs. *See* R.C. 2152.13. The fact that the legislature established this additional mechanism underscores the intended presumption in favor of retaining children in juvenile court. By contrast, other states explicitly vest original or concurrent jurisdiction of certain children in the adult, rather than juvenile, court system.²⁰

Because the juvenile justice system was created to treat children in separate, specialized courts focused on rehabilitation, the legal standard defining the court's jurisdiction hinges on whether a child is "amenable" to said treatment. In *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966), the United States Supreme Court held that juvenile bindover proceedings were "critical" and implicated the child's right to due process in that context. In so finding, the high court acknowledged the "tremendous consequences" that attend the determination of whether to treat a child as an adult. *Id.* at 562.

In *Kent*, the Court underscored its belief in the origins and purpose of the juvenile-justice system. The Court also expounded on the importance of the juvenile system's use of individualized assessments, followed by the juvenile's rehabilitation and reintegration into society—versus a model involving standardized assessments focused only on the child's age and misconduct, with the ultimate goal of punishment. *Id.* at 554.

Specifically, the Court noted that proper consideration of the child's amenability to treatment is essential to the "critically important action" of deciding the issue of transfer. *Id.* at 556. The Court emphasized the monumental difference between remaining in the

²⁰ *See* Patrick Griffin, Sean Addie, Benjamin Adams, and Kathy Firestone, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (September 2011).

juvenile system versus being transferred to the adult court, characterizing this as the “difference between five years’ confinement and a death sentence.” *Id.* at 557. Indeed, Donovan’s sentence of life, with parole eligibility after 28 years, carries the distinct possibility that he will die in prison.

Ohio’s discretionary bindover statute codified the core principle that youth belong in juvenile court. *See* R.C. 2152.12(B)-(E). It includes detailed and meticulously crafted requirements that must be followed and only after a finding that the factors for transfer outweigh the factors against transfer, may the juvenile court relinquish jurisdiction. The statute, thereby, demonstrates that the legislature did not intend such transfers to be sought by the state or granted by the court with ease or regularity.²¹ The General Assembly intended the discretionary bindover analysis to be one that, while looking at the offense alleged, also delves into the child’s individualized history, circumstances, and provides broad discretion to consider additional factors relevant to a careful analysis of whether to take the grave step of granting transfer.

Once the state requests the juvenile court relinquish jurisdiction over a child, the ordinary pretrial process comes to a halt, and the focus turns to whether the child should be treated as an adult. In that context, the state shoulders the burden of proving that 1) probable cause exists for each of the offenses charged; and 2) the child is not amenable to rehabilitation in the juvenile court and that the safety of the community may require

²¹ This process is different from a mandatory bindover which simply requires the state prove probable cause, R.C. 2152.12(B)(3) requires for discretionary bindovers the court to: order an investigation into the child’s social history, education, family situation, and any other factor bearing on whether the child is amenable to juvenile rehabilitation, including a mental examination of the child; consider, in addition to any other relevant factors, the 9 enumerated factors in R.C. 2152.12(D) – and the 8 enumerated factors in R.C.2152.12(E) – and determine whether the factors for transfer *outweigh* the factors against transfer.

transfer. R.C. 2152.12(B). The burden of proof necessarily falls on the prosecution because it filed the motion requesting jurisdiction be transferred. *See, e.g., Schaffer v. Weast*, 546 U.S. 49, 56, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005) (“The burdens of pleading and proof with regard to most facts have and should be assigned to the plaintiff who generally seeks to change the present state of affairs and who therefore naturally should be expected to bear the risk of failure, or proof of persuasion.”).

Research has shown that transferring youth to adult court occasions harsh and lifelong consequences for that child. As further discussed below, transfer is also counterproductive for achieving community safety. This Court can minimize these harms by enforcing children’s due process rights throughout the bindover proceedings—reinforcing the guardrails the General Assembly enacted by explicitly clarifying that the state, in moving to transfer a child out of the juvenile system, has the burden of demonstrating that the child is not amenable to juvenile court jurisdiction. Such a burden requires the state to provide affirmative proof of non-amenable. Further, this Court should underscore that a meaningful decision addressing a child’s rehabilitative potential necessarily includes weighing all statutory dispositional options intended to broaden, not limit, a child’s access to appropriate treatment.

III. In Donovan’s case, the Juvenile Court Improperly Allocated the Burden and Shifted the Presumption in Favor of Transfer.

By failing to require the state to affirmatively prove that Donovan was not amenable, the juvenile court effectively shifted the burden to Donovan to prove that he was amenable—that the factors for remaining in juvenile court outweighed transfer. The standard imposed by the juvenile court disregarded the plain language of R.C. 2152.12.

This is evident, particularly considering that all the testimony was in fact favorable for Donovan. The standard the court applied here all but demanded that, to avoid transfer, Donovan had to prove he was certain to be rehabilitated. Without any substantive evidence presented by the state, the court granted transfer.

Such a shift implies that the presumption weighs in *favor* of transfer unless the child proves otherwise. Ohio is not a presumptive waiver state. States with presumptive waiver laws have created offense categories where transferring a juvenile to adult criminal court is presumed appropriate.²² While the decision to transfer still rests with the judge, the decision legally weighs in favor of transfer and, as such, the child must present evidence to rebut the presumption for transfer. Prosecutors already enjoy unfettered discretion in how to charge cases and whether to seek a discretionary bindover. Without clear guidance from this Court that the burden of proof with respect to transfer rests with the state, however, lower courts will be free to impose what is effectively a presumptive waiver standard. Such an outcome will make it too easy to transfer children to adult court. It will also deny children access to rehabilitation, which is the fundamental mission and purpose of juvenile court.

A. The Court Denied Donovan Access to the Juvenile Justice System Despite Overwhelming Evidence as to his Amenability.

When the state moves for discretionary transfer, it alleges there is reason to believe the child is not amenable and that community safety may require adult sanctions. In Donovan's case, the state presented no evidence to demonstrate either of those allegations during the amenability hearing. The state's cross examination was based on groundless

²² *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, at 4.

speculation and failed to provide any substantive evidence to rebut the opinions issued by both the child's Guardian ad Litem (GAL) and Juvenile Psychology expert witness that Donovan was amenable to rehabilitation. The state also failed to present any evidence to rebut the testimony of the Ohio Department of Youth Services' (ODYS) Chief of Behavioral Health Services that treatment for Donovan was available.²³ Notwithstanding clear evidence to the contrary, the court concluded ODYS could not offer Donovan treatment for his mental illness and, therefore, the juvenile court could not provide a reasonable assurance of public safety.

What the court did here was shift the burden to the child to demonstrate he was amenable to juvenile jurisdiction. Which, although it is not his burden to carry, Donovan did demonstrate—each witness and expert testified he should remain in the juvenile court, he would be responsive to treatment, and that treatment could be provided for his mental illness. Yet, the court decided that was still not enough. Such a shift will surely deny youths capable of rehabilitation access to the juvenile justice system and its unique treatment.

At its core, amenability to treatment requires an individualized assessment of the particular youth's *rehabilitative potential*. Importantly, the fact that a youth is amenable to treatment does not imply that an absence of available services renders a youth non-amenable. The state should not be able to deny a child access to the juvenile system by failing to offer necessary services. In recognizing that youth are entitled to fundamental due process protections, which extend to transfer proceedings, the United States Supreme Court envisioned precisely the opposite. *See In re Gault*, 387 U.S. at 27-29; *Kent*, 383 U.S. at 553-54. Courts have recognized that, where the record supports a finding that a child is

²³ *See, e.g.*, (Hrinko Amenability Eval., p. 27-28; 10/8/2017 GAL Report, p. 7; ODYS Test. Tr. 142-143)

amenable to treatment, as the record demonstrates in Donovan’s case, there is “no legal authority” to deny the child access to the juvenile system solely because the needed treatment is not currently available. *United States v. Tillman*, 374 F. Supp. 215, 223 (D.D.C. 1974); *see also In re Welfare of J.E.C. v. State*, 225 N.W.2d 245, 249 (Minn. 1975) (“The reasons assigned by the juvenile court for reference to adult prosecution fall short of the statutory requirement . . . The absence of rehabilitative facilities to treat appellant may not mean he is not amenable to treatment as a juvenile if such facilities were available.”)

Here, the court improperly conflated the purported unavailability of treatment with the child’s potential for rehabilitation: “In particular, the Court finds that because ODYS cannot offer the specific treatment necessary to rehabilitate the juvenile, the juvenile system cannot provide a reasonable assurance of public safety.” *State v. Nicholas*, 2nd Dist. Champaign No. 2018 CA 25, 2020 Ohio 3478, ¶ 43, 155 N.E.3d 304 (2020). The court reached this decision by mischaracterizing testimony from ODYS’ Chief of Behavioral Health, Ms. Book—by inaccurately concluding that treatment was not available and relying on that conclusion in finding Donovan not amenable. Even assuming the court had accurately determined treatment was not currently available, notwithstanding direct testimony from Ms. Book to the contrary, the court nevertheless lacked the legal authority to deny Donovan access to the juvenile system where testimony unequivocally established he was amenable.

It is the responsibility of the juvenile system to ensure the appropriate services and treatment are provided, and to seek out those services to comply with youths’ assessed treatment plans. An amenability hearing is not the proceeding where discussions of specific placement and treatment programs are properly held, rather those discussions are

to be fleshed out during a dispositional hearing.²⁴ It is true that amenability requires courts to consider generalized juvenile dispositional options, including SYO sentences, to evaluate whether the system can provide a reasonable assurance of public safety. But that analysis must not be confused with a requirement that the child present affirmative proof of available treatment for his particular needs in order to be found amenable. At amenability, the focus is, and should have been in this case, whether Donovan is *capable* of responding to care and rehabilitation within the six years the court would hold jurisdiction over him and whether that constitutes a reasonable assurance of public safety (notwithstanding a mandatory SYO sentence carrying the potential of life adult prison).

The onerous standard established by the juvenile court in this case is contrary to Ohio's statutory scheme. Without clear standards, courts across the state will continue to reach unpredictable and inconsistent transfer decisions. Worse yet, if the reasoning in Donovan's case holds, it uproots any presumption or preference for retaining children in juvenile court. It only makes sense, particularly given the grave implications of adult transfer, that the prosecution should uniformly be required to present evidence to prove that the child is not amenable. Shifting the burden onto the child will exacerbate what is already a well-documented over-reliance on transfer in Ohio.

B. The Juvenile Court Erroneously Considered Donovan's Mental Illness an Aggravating Factor.

²⁴ If a child remains in the juvenile system and is adjudicated, the court has options to order assessments, evaluations, and reports to be prepared for the dispositional hearing—at which time discussions would properly include a range of placement or commitment options to meet a youth's individual needs, including committing the child to a facility or institution in- or out-of-state that is qualified to meet child's treatment needs, and current availability for the child. *See* R.C. 2152.16, 2152.19.

Further concerning was the manner in which the court considered Donovan's mental illness in the amenability analysis. Rather than weighing Donovan's illness as a "factor *against* transfer" – as the statute requires – the record illustrates that the court improperly relied on Donovan's Dissociative Identity Disorder (D.I.D.) as a justification for transfer. R.C. 2152.12(E). (Emphasis added.) The court's ruling, therefore, literally, turns the law on its head. Such a precedent should not be permitted to stand.

By the time Donovan reached the juvenile justice system, he was suffering from a profound mental illness that – despite visible signs for many years – went ignored and untreated, then manifested into violence. The mental examination ordered for purposes of amenability unearthed his increasing struggle to battle D.I.D.²⁵ Having received no services or supports to help him address his illness previously, the court had the chance to remedy these systemic failures by finally providing Donovan with the treatment he needed. Moreover, the record reflects expert testimony that described the treatment that the juvenile system could have provided.

Regrettably, the court compounded the failures by denying Donovan access to the juvenile court's rehabilitative services. Evidence presented at the amenability hearing established that children who are committed to ODYS are assessed through a complex process that determines their individualized treatment needs, and that ODYS could provide the necessary support for Donovan. Testimony further established the success of D.I.D. treatment based on research studies and the likelihood Donovan could complete the treatment within his time in the juvenile system. While the court took issue with the credibility of Ms. Book's testimony, it is not unusual for ODYS to provide behavioral health

²⁵ See *e.g.*, Hrinko Competency Eval.

treatment to youth. In fact, such treatment is a routine component of ODYS's dispositional services, irrespective of the diagnosis. Monthly data reports show that the majority of children in ODYS's custody are maintained on the mental health caseload.²⁶

Children, like Donovan, with undiagnosed, thus untreated, mental illness are not unique in Ohio. Recognizing the immense gaps in the treatment options available to children with mental illness, the Governor's Office and Ohio Department of Medicaid is implementing a new program – to begin in early 2022 – aimed at ensuring the most vulnerable youth with serious behavioral health needs are provided the specialized services they require.²⁷

The need for such a shift is evident. Ohio's current service systems for kids with serious mental illness or emotional disorders and who have complex behavioral health needs are fragmented, broken, and underfunded, with little or no coordination among various systems. Kids experience harmful and traumatic outcomes as a result, including: inadequately-managed mental health diagnoses; regression in development and learning; institutionalization, often in out-of-state residential treatment programs; emergency hospitalization; juvenile justice involvement; custody relinquishment because families

²⁶ Ohio Dep't Youth Services, *Monthly Fact Sheets* available at: <https://dys.ohio.gov/wps/portal/gov/dys/about-us/communications/reports/monthly-fact-sheets>.

²⁷ OhioRISE (Resilience through Integrated Systems and Excellence), to be operated by a specialized managed care organization (Aetna Health), will create, expand, and coordinate community-based and other services for children with complex behavioral health or multi-system needs through specialized supports. OhioRISE will bring together local entities, schools, providers, health plans, and families as part of its approach to improve care for youth and will feature intensive care coordination as well as intensive home-based treatment and psychiatric residential treatment. *See* <https://managedcare.medicare.ohio.gov/wps/portal/gov/manc/managed-care/ohiorise/ohiorise>

cannot afford needed and costly treatment; suspensions and expulsions in school; and abuse and neglect.²⁸ In this case, a 14 year-old child was condemned to life in adult prison.

Donovan entered the juvenile justice system after being failed by the education system, medical system, and his community—although he exhibited signs of mental illness for many years, he received no assistance or intervention from these various systems. Nevertheless, fearing that 1) ODYS was not up to the task of treating Donovan; and 2) six years of such treatment might not be enough, the juvenile court transferred him to the adult criminal system, where he will not have access to appropriate treatment. This Court has the opportunity to provide Donovan with the services and supports he so desperately needs and deserves to treat his mental illness and remedy these systemic failures.

By and large, jurists are not credentialed in the area of mental health. Judges spend many years becoming experts in the law, just as psychologists and psychiatrists spend many years becoming experts in mental health. Fact-finders rely on the expertise of mental health professionals to assist them in reaching conclusions about court cases. The expert who conducted Donovan's mental health evaluation, Dr. Hrinko, testified uncontrovertibly in favor of retaining Donovan in the juvenile system based on his ability to access and respond to appropriate treatment. Dr. Hrinko acknowledged that untreated, Donovan could certainly pose a risk to the community but that Donovan could be successful in treatment. Dr. Hrinko rendered his opinions within a reasonable degree of psychological certainty. No other expert, or lay witness, provided evidence or testimony to the contrary.

Likewise, the juvenile court recognized Donovan's need for specific treatment to alleviate safety risk to the community. Yet, the juvenile court, on its own, determined

²⁸ This information derives from Disability Rights Ohio's experience working with youth throughout these various systems.

transfer to the adult criminal system was the appropriate treatment option for Donovan, notwithstanding the fact that the record lacks any mention as to what treatment would be available to him in the adult system.

On appeal, the Second District noted that courts are not bound by expert opinions and are free to disregard any part of the testimony and assign weight to the testimony as it wishes. *Nicholas*, 2nd Dist. Champaign No. 2018 CA 25, 2020 Ohio 3478 at ¶ 67, 155 N.E.3d 304. But as an expert in the law, the court was wholly unqualified to disregard the testimony of an expert in Juvenile Psychology in place of its own opinion. Here, the court not only disregarded Dr. Hrinko's opinion, it assigned more weight to its own opinion to the contrary. Of course, Dr. Hrinko could not state with *absolute certainty* that Donovan would be able to reintegrate into society. Absolute certainty is not an opinion that any expert can render. (Tr. 116, line 25). Notably, R.C. 2152.12(E) does not require a guarantee, it merely requires a reasonable assurance that the level of security in the juvenile system will ensure public safety.

There was absolutely no evidence presented that Donovan was a "lost cause," yet, the court opted to throw him away. The implications of the court's decision are frightening for youth with mental illness in the juvenile justice system. The court inserted its own opinion, with no medical basis, into a determination about the treatment of a child with mental illness. Experts in mental health, not experts in the law, should be given deference when making mental health treatment decisions about Ohio's youth. This Court has the opportunity to remedy this compounded failure, and ensure the guardrails are enforced to provide Donovan, and similarly-situated children, with access to the juvenile system's services designed to intervene and prevent future harm.

IV. Transfer Harms Children and Fails to Make Communities Safer.

I strongly feel that they took my childhood away from me. Don't get me wrong I did what I did and I understand that I got to pay, but to punish me like this is inhumane. – A.R.²⁹

Juvenile institutions strive to prepare us for freedom and the future by reforming us through rehabilitation while the adult institutions only seem to make us better criminals. This is my opinion. – E.C.³⁰

Children under 18 incarcerated in adult facilities often face brutal conditions. A 2011 report revealed that 66 percent of youth 16 and 17 years old who reported being sexually abused while in prison were victimized more than once.³¹ Because staff are ill-equipped to protect kids in adult facilities, youth often opt to assault staff so that they can be locked up in solitary confinement as a way to protect themselves from, or to escape, victimization. The impact of such isolation plays a role in the increased risk of suicide among youth in adult prisons. These increased risks spurred the United States Congress in 2018 to update the Juvenile Justice & Delinquency Prevention Act, calling for all youth – even those charged as adults – to be removed from adult jails by 2021.³²

As any “kid” in my situation would have been, I felt scared and isolated. I felt like a lost lamb who was being stalked by a pack of wolves whose jowls were dripping with saliva. They had their eyes set on me, their newfound prey. I was a “child” amongst career criminals, murderers, rapists, car thieves, and other serious offenders. At times, there are “lulls” in the “warfare” here. During these times I have taken to bettering myself, both

²⁹ Children’s Law Center’s Bindover Storytelling Project *In Their Own Words*, available at: <http://ohiobindover.wordpress.com/>

³⁰ *Id.*

³¹ *The Child Not the Charge: Transfer Laws Are Not Advancing Public Safety*, at 14, Washington, D.C.: Justice Policy Institute and Campaign for Youth Justice (2020)

³² *Id.*

physically and mentally. I have learned to better hide my ever-present fear from the vultures who feed on it. – M.P.³³

Youth in adult facilities, as compared to those in juvenile facilities, are five times more likely to be sexually assaulted, eight times more likely to commit suicide, and nearly twice as likely to be beaten by staff or attacked with a weapon by another inmate.³⁴ Upon release, the child faces crushing collateral consequences that accompany an adult conviction. As a convicted felon, he faces stifled employment options and loses civil rights, all of which hinder his ability to successfully reintegrate into society.

Indeed, adult prisons were not developed to meet the needs of children. Youth who are transferred often experience harmful developmental disruption. Prisons lack the academic, vocational, and social skill building education which adolescents need. Instead, adult prisons serve as a “school for crime” where children learn and see reinforced norms of domination, exploitation, and retaliation – all while their adolescent brains are forming and developing.³⁵ We know that “exposure to multiple or prolonged traumatic events increases the likelihood and severity of a reaction to the trauma” and, in children, trauma may cause them to “act in ‘survival mode,’ causing maladaptive coping behaviors * * *.”³⁶

³³ Children’s Law Center’s Bindover Storytelling Project *In Their Own Words*, available at: <http://ohiobindover.wordpress.com/>

³⁴ Richard Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, at 7 (June 2010).

³⁵ James C. Howell, Barry C. Feld, Daniel P. Mears, David P. Farrington, Rolf Loeber, David Petechuk, Bulletin 5: *Young Offenders and an Effective Response in the Juvenile and Adult Justice Systems: What Happens, What Should Happen, and What We Need to Know (Study Group on the Transitions between Juvenile Delinquency and Adult Crime)*, 2013, at 11, available at: <https://www.ojp.gov/pdffiles1/nij/grants/242935.pdf>

³⁶ Ohio Supreme Court Benchcards *Juvenile Court Trauma-Informed Practices*, available at: <https://www.supremecourt.ohio.gov/JCS/CFC/resources/traumaInformedCourt.pdf>

Children treated as adults also struggle mentally. One study found almost no difference in the prevalence of psychiatric disorders³⁷ between transferred and retained youth—66 percent and 68 percent, respectively.³⁸ However, the study did find that the prevalence of psychiatric disorders among youth who were transferred and subsequently detained (66 percent) is nearly *double* that of detained adults (35 percent).³⁹ Furthermore, transferred youth who received a prison sentence had significantly greater odds than those who received a less restrictive sentence to have a psychiatric disorder (74 percent and 57 percent, respectively).⁴⁰ These youth, on average, have more than one psychiatric disorder and 15 percent have all four major types of psychiatric disorders (affective, anxiety, disruptive behavior, and substance abuse).⁴¹

Proponents of transfer laws argue that such laws work to reduce children from committing future crime through deterrence.⁴² In reality, insofar as these laws are intended to deter juvenile crime generally, or future crime of the specific juvenile

³⁷ The study looked at four major categories of psychiatric disorders: affective disorders (major depression, dysthymia, mania, and hypomania); anxiety disorders (generalized anxiety, separation anxiety, obsessive-compulsive, over-anxious, and panic disorders); disruptive behavior disorders (conduct, attention-deficit/hyperactivity, and oppositional defiant disorders); and substance abuse disorders (alcohol, marijuana, and drug use disorders other than marijuana). *See Washburn, supra*, note 21, at 4.

³⁸ *Washburn, supra*, note 21, at 13.

³⁹ *Washburn*, at 6; Teplin, *Psychiatric and Substance Abuse Disorders Among Male Urban Jail Detainees*, 84 *Am. J. of Pub. Health* 290–293 (1994).

⁴⁰ *Washburn, supra*, note 21, at 15.

⁴¹ *Id.* at 6.

⁴² Brian Evans, *Winning the Campaign: State Trends in Fighting the Treatment of Children As Adults in the Criminal Justice System 2005-2020*, at 6, Washington, D.C.: Campaign for Youth Justice (2020).

transferred, research over several decades has failed to produce data to support a deterring effect. Nationally, no pattern exists between transfer laws and reductions in juvenile violent crime rates. There is not a full and comprehensive national picture due, in part, to a lack of data collection about children in adult systems and because transfer laws vary considerably by state. Notwithstanding, the data that is available fails to demonstrate any correlation between high transfer rates and a decline in crime rates.⁴³

In fact, some research suggests transfer itself may increase future reoffending.⁴⁴ Six large-scale studies funded by the Office of Juvenile Justice and Delinquency Prevention revealed a counter-deterrent effect.⁴⁵ The studies consistently showed higher recidivism rates for transferred youth compared to peers retained in the juvenile system. This finding is true even for transferred youth who were sentenced to adult probation.⁴⁶ Merely *processing* a child in the adult justice system can result in an increase in recidivism. For example, a report written by The U.S. Center for Disease Control and

⁴³ *The Child Not the Charge: Transfer Laws Are Not Advancing Public Safety*, at 12, Washington, D.C.: Justice Policy Institute and Campaign for Youth Justice (2020) a study compared Tennessee and Texas with vastly different transfer rates for violent offenses (54% and 80%, respectively), yet, these states experience nearly identical juvenile arrest rates for violent crimes (7.2% and 7.1%, respectively).

⁴⁴ Richard Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, at 6 (June 2010)

⁴⁵ *Id.* at 6: OJJDP funded studies to research the specific deterrent effects of transfer. The consistency in results are compelling given the varying methodologies (natural experiments across two jurisdictions, matched groups within the same jurisdictions, and statistical controls), sample sizes (between 494 and 5,476 participants), and across jurisdictions (Florida, New Jersey, New York, Minnesota, Pennsylvania) with varying types of transfer laws (automatic, prosecutorial, or judicial).

⁴⁶ *Id.* (Redding) at 6.

Prevention's Task Force on Community Preventive Services concluded that of the youth who did not experience any incarceration for their crimes, transferred youth were three percent more likely to be arrested again later for a violent offense than youth retained in the juvenile court system.⁴⁷ Transferred youth were generally found to recidivate sooner and more frequently than their juvenile counterparts.

Research has explored possible explanations for the increased recidivism rates in transferred youth. The explanations include both direct and indirect consequences of adult prosecution including: stigmatization; the sense of resentment and injustice kids feel when punished as adults; decreased focus on rehabilitation and family supports; loss of civil rights and privileges impacting a child's ability to reintegrate to society; and the conditions of living within a criminal culture that forces children to survive by accepting violence in daily life.⁴⁸

There is simply too much violence. Fighting is an everyday occurrence. There seems to be no way to avoid mental, verbal, or physical confrontation throughout one full day of incarceration. I have had teeth misplaced, bones broken, bloody wounds, bruises, and mental scars that will never heal and have inflicted my share of each upon others. – M.P. ⁴⁹

⁴⁷ Centers for Disease Control and Prevention, *Effects on Violence and Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services*, MMWR 2007; 56 (No. R-9) (2007), available at <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>, note 7, p.6.

⁴⁸ *Redding*, at 7.

⁴⁹ Children's Law Center's Bindover Storytelling Project *In Their Own Words*, available at: <http://ohiobindover.wordpress.com/>

One study found that children whose experience while incarcerated was worse than they expected and children who reported witnessing or experiencing violence while they were incarcerated “were less likely to say that their incarceration would deter them from committing crimes in the future. This finding raises the possibility that incarceration in adult facilities may have brutalizing effects on juveniles, which may partly account for their increased recidivism.”⁵⁰ A Florida research study which interviewed youth, found that the vast majority reported worse outcomes in adult prison because of the pain and degradation they suffered, while learning how to commit future crimes within the facilities. Conversely, youth reported juvenile dispositions, particularly deep-end interventions, as beneficial because the treatment provided was intensive and included long-term job skills training. The study’s findings “call into question the practice of [incarcerating juveniles in adult prison and] ‘skipping’ the deep-end juvenile programs when sentencing youth for serious crimes.”⁵¹

Considering whether the safety of the community requires the child be subjected to adult sanctions necessarily requires considering the outcomes in the juvenile versus adult system. In Donovan’s case, the court’s finding that, “because ODYS cannot offer the specific treatment necessary to rehabilitate the juvenile, the juvenile system cannot provide a reasonable assurance of public safety” is most concerning, because the court never appeared to consider the impact that placing Donovan in the adult criminal system will have on public safety. *Nicholas*, 2nd Dist. Champaign No. 2018 CA 25, 2020 Ohio 3478, ¶ 43, 155 N.E.3d 304 (2020). On average, children prosecuted as adults are 34 percent

⁵⁰ *Redding*, at 7.

⁵¹ *Redding*, at 5.

more likely to commit additional felony offenses than children retained in the juvenile system for similar offenses.⁵² In fact, transferred youth who were then incarcerated had the *highest* recidivism rates.⁵³

Research also reveals that 95 percent of youth sentenced as adults are released by their 25th birthday and 78 percent are released by their 21st birthday.⁵⁴ While Donovan's sentence far exceeds these statistics, this Court is asked to craft standards that will affect children facing bindover proceedings statewide. This data demonstrates that a vast majority of the youth transferred do not require a lengthy adult sentence for the sake of community safety and can serve their full sentence in the juvenile system, with access to rehabilitative services. This data further underscores the need for this Court to reinforce the guardrails to limit unnecessary transfer and to require juvenile courts to consider the implications of transfer during during amenability.

Transfer was intended to be a narrow exception, not the norm. This Court has the ability to breathe life back into the juvenile court's mission, which is to provide rehabilitation, even for those accused of the most heinous offenses, before condemning them as lost causes—this Court can do so by adopting Appellant's propositions of law.

Prosecutors already enjoy unfettered discretion in how to charge cases and whether to seek a discretionary bindover.

⁵² Centers for Disease Control and Prevention, *Effects on Violence and Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services*, MMWR 2007; 56 (No. R-9) (2007), available at <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>, p.6.

⁵³ *Redding*, at 4.

⁵⁴ *Redding* at 1-2.

CONCLUSION

In light of the foregoing, undersigned amici ask this Court to reverse the 2nd District Court of Appeals and fully adopt Appellant's Propositions of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of May, 2021, a true and correct copy of the foregoing BRIEF OF AMICUS CURIAE CHILDREN'S LAW CENTER AND CUYAHOGA COUNTY PUBLIC DEFENDER, ET AL., IN SUPPORT OF APPELLANT was served by email to Timothy Hackett, counsel for Appellant, Donovan Nicholas and by U.S. mail proper postage prepaid to Kevin Telebi, Assistant Prosecuting Attorney at the Champaign County Courthouse 200 North Main Street, #102, who represents Appellee, the State of Ohio in this matter.

Erika B. Cunliffe

ERIKA CUNLIFFE