

ORIGINAL

In the  
**Supreme Court of Ohio**

STATE OF OHIO,	:	Case No. 2013-1591
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Summit County
v.	:	Court of Appeals,
	:	Ninth Appellate District
ALEXANDER QUARTERMAN,	:	
	:	Court of Appeals
Defendant-Appellant.	:	Case No. 26400
	:	

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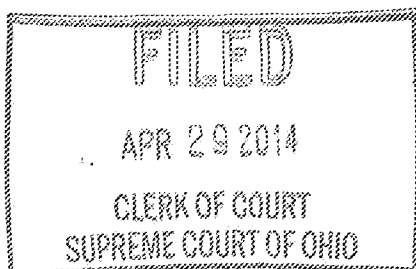
**MERIT BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL  
MICHAEL DEWINE IN SUPPORT OF APPELLEE STATE OF OHIO**

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## INTRODUCTION

Alexander Quarterman robbed some of his friends at gunpoint when he was sixteen. Pursuant to Ohio's mandatory bindover statutes, R.C. 2152.10 and 2152.12, the juvenile court transferred him to the court of common pleas, where he pleaded guilty and received a sentence of four years' imprisonment. Today, Quarterman presses three arguments that none of the lower courts have considered on the merits: He claims his mandatory transfer to the court of common pleas violated (1) due process, (2) equal protection and (3) the prohibition on cruel and unusual punishment under both the U.S. and Ohio Constitutions. The Court should reject all of these claims, for several reasons.

*First*, Quarterman waived all of these claims twice over. He failed to raise them at the trial level and instead pleaded guilty, which the Ninth District correctly held to constitute a waiver of Quarterman's constitutional claims. Then, with the Ninth District's adverse waiver decision in hand, Quarterman raised three propositions of law with this Court, none of which addressed waiver. In other words, he appealed the Ninth District's decision without arguing that it was wrong. So, Quarterman has again waived his constitutional claims by failing to develop them in this Court, and, as a result, the Court should dismiss his case as improvidently allowed.

*Second*, if the Court reaches the merits of Quarterman's claims, he still cannot prevail. Ohio's mandatory-bindover provisions afford juveniles a hearing, the effective assistance of counsel, and a statement of reasons justifying a transfer to adult proceedings, which is consistent with the state and federal requirements of due process. The mandatory-bindover provisions do not violate equal protection because they are rationally related to Ohio's twin goals of protecting the public and redressing juvenile crimes. And since Quarterman cannot show that juveniles are a suspect class or that the amenability hearing he requests is a fundamental right, no heightened scrutiny is required. Finally, mandatory bindover for serious juvenile offenses does not



constitute a cruel and unusual punishment since it is not a punishment at all, but merely a finding of probable cause that justifies adult charges. Even considering the sentence that Quarterman ultimately received, four years' imprisonment simply is not cruel and unusual, and is not analogous to the death sentences, life-without-parole sentences, or lifelong-reporting sentences that this Court and the U.S. Supreme Court have previously found to be cruel and unusual.

The Court should dismiss Quarterman's case as improvidently allowed, or in the alternative, it should reject all of his constitutional claims.

### **STATEMENT OF *AMICUS* INTERESTS**

The Attorney General has several interests in this case. First, the Attorney General has an interest in carrying out his duty to defend legislation duly enacted by the General Assembly. Quarterman challenges an Ohio statutory scheme on constitutional grounds. As "the chief law officer for the state and all of its departments," the Attorney General has an interest in defending Ohio law. R.C. 109.02. Second, the Attorney General has an interest in supporting courts throughout the State as they process juvenile offenders according to state law in an effort to protect the community and rehabilitate youth. Third, the Attorney General sometimes serves as special counsel in cases of significant importance, including cases that involve juveniles. In those contexts, the Attorney General is directly involved in the application of Ohio's mandatory and discretionary bindover statutes. Because of these interests, both direct and indirect, the Attorney General submits this *amicus* brief for the Court's consideration.

### **STATEMENT OF THE CASE AND FACTS**

The facts of the case are simple. When Alexander Quarterman was sixteen-years old, he robbed his friends at gunpoint while they were playing cards. Appellant's Appx. at A-4. Three circumstances of that crime resulted in his mandatory bindover to adult court under Ohio law: (1) he was sixteen, (2) he committed a category two offense (which includes aggravated robbery



and seven other serious felonies like rape and voluntary manslaughter, *see* R.C. 2152.02(CC)), (3) and he used a firearm in committing that offense. *See* R.C. 2152.10(A)(2). The juvenile court held a hearing at which it determined that probable cause existed to believe Quarterman had committed the alleged offense in the manner outlined by the three points above. *See* R.C. 2152.12(A)(1)(b). Quarterman was transferred to adult court, where he was charged with three counts of aggravated robbery with firearm specifications. He pleaded guilty pursuant to a plea agreement on only one count of aggravated robbery with a firearm specification. Appellant's Appx. at A-12.

Quarterman appealed, raising his constitutional claims for the first time and arguing that his trial counsel was ineffective for failing to object to his mandatory transfer to adult court. *Id.* at A-5. The Ninth District held that Quarterman had waived his constitutional claims, and that he had waived his ineffective-assistance argument by not explaining how the alleged ineffective assistance of counsel had resulted in a guilty plea that was not "knowing, intelligent, and voluntary." *Id.* at A-7.

Quarterman appealed, without challenging the Ninth District's decisions on waiver, and this Court granted jurisdiction.

### **ARGUMENT**

As the Ninth District held, Quarterman waived all of the claims he raises here by failing to object to his mandatory transfer when he was in juvenile court and by entering a guilty plea in adult court. Then, on appeal to this Court, Quarterman waived these claims again when he failed to make *any* argument as to why the Ninth District's waiver holding was incorrect. In light of this double-waiver, the Court should dismiss Quarterman's case as improvidently allowed.

Even if the Court considers the merits of Quarterman's arguments, he cannot prevail. He and his *amici* argue that due process, equal protection, and the prohibition on cruel and unusual



punishment require juvenile courts in Ohio to determine a juvenile's amenability to rehabilitation before transferring the juvenile to adult court. But those claims have no foundation in this Court's precedent or in the precedent of the U.S. Supreme Court. Because Quarterman's arguments depend solely on policy considerations reserved for the General Assembly, this Court should dismiss his claims.

**Amicus Curiae Ohio Attorney General's Proposition of Law I:**

*A criminal defendant waives any constitutional claims concerning mandatory bindover to adult court by pleading guilty to the charged offense and by failing to challenge a lower court's waiver finding on appeal.*

Quarterman has waived his constitutional claims twice—first, by failing to raise them in the trial court and instead pleading guilty; and, second, by failing in this Court to contest the Ninth District's holding that he waived all of his constitutional claims. Because no lower court has ever considered Quarterman's arguments on the merits—and because he makes no argument as to why the lower courts erred in not doing so—the Court should dismiss this case as improvidently allowed.

Quarterman should have raised his constitutional claims at the trial level to allow the trial court to consider them in the first instance and to preserve the issues for appeal. *See, e.g., State v. Kelly*, No. 14-98-26, 1998 WL 812238 at \*3 (3d Dist. Sept. 11, 1998) (juvenile did not waive claim that mandatory bindover was unconstitutional because he contested it in juvenile court, which is a division of the court of common pleas). But, by his own admission, Quarterman's trial counsel did not object in the juvenile court to his mandatory transfer to adult court. Appellant's Appx. at A-5 (arguing in fourth assignment of error that his trial counsel was ineffective for failing to object to his mandatory transfer). Then, in adult proceedings at the court of common pleas, Quarterman did not contest the constitutionality of his transfer, but instead pleaded guilty to aggravated robbery and a firearm specification. *Id.* at A-4.



This course of events resulted in two problems for Quarterman's case. First, Quarterman deprived the trial court of the opportunity to decide his constitutional claims in the first instance, according to the ordinary procedure of Ohio's courts. So, having failed to raise his constitutional claims at the trial level, Quarterman could not require the Ninth District to hear them for the first time. *State v. Awan*, 22 Ohio St. 3d 120, syl. (1986) (constitutional issue "did not need to be heard for the first time on appeal" after defendant failed to raise it at trial). Second, by entering a guilty plea, Quarterman relinquished his right to appeal any constitutional violations he alleged to have occurred before he pleaded guilty. Entering a guilty plea in Ohio "waive[s] any complaint as to claims of constitutional violations not related to the entry of the guilty plea." *State v. Ketterer*, 111 Ohio St. 3d 70, 2006-Ohio-5283 ¶ 105; *see also State v. Fitzpatrick*, 102 Ohio St. 3d 321, 2004-Ohio-3167 ¶ 78 (defendant who enters a guilty plea may not appeal alleged constitutional violations "that occurred prior to the entry of the guilty plea"). Quarterman's constitutional claims do not relate to the entry of his guilty plea, so he has waived them.

The Ninth District correctly concluded that Quarterman had waived his constitutional claims, so the court declined to "address the merits of his arguments." Appellant's Appx. at A-6. But when Quarterman appealed to this Court, he raised no proposition of law related to the waiver issue. Then, in his merits brief, Quarterman developed no arguments as to why the Ninth District incorrectly concluded that he waived his constitutional claims. *See* Appellant's Br. 2-28. Essentially, Quarterman is here requesting relief from the Ninth District's opinion without making any argument as to why that opinion was wrong. He should have raised a proposition of law to this Court arguing that the Ninth District's waiver decision was in error, and, if this Court agreed, it could have remanded for the Ninth District to consider Quarterman's constitutional



claims in the first instance. Instead, Quarterman asks this Court to reward his lack of diligence and decide three constitutional questions that have never been developed in the courts below.

In short, Quarterman asks this Court to hold that significant criminal laws enacted by the General Assembly are unconstitutional, but he does so without having raised *any* of his constitutional claims at the trial level, without *any* lower court having considered them, and without *ever* discussing the actual grounds for the decisions below. Other juveniles have raised claims like Quarterman's in the past, and it was no secret that Quarterman should have raised them sooner if he wanted a court to consider them. *See, e.g., Kelly*, 1998 WL 812238 at \*3 (raising constitutionality of mandatory bindover); *State v. Lee*, 97-L-091, 1998 WL 637583 at \*1 (11th Dist. Sept. 11, 1998) (same). Thus, the Court should dismiss Quarterman's case as improvidently allowed. Surely the “the cardinal principle of judicial restraint—if it is not necessary to decide more, it is necessary not to decide more”—is at its apex in appeals, such as this one, that raise significant constitutional questions but can be resolved on garden-variety, non-constitutional grounds. *State v. Chappell*, 127 Ohio St. 3d 376, 2010-Ohio-5991 ¶ 1 n.1 (citation omitted).

**Amicus Curiae Ohio Attorney General's Proposition of Law II:**

*The Ohio General Assembly's decision to require mandatory bindover to adult court for youth charged with certain serious offenses does not violate due process, equal protection, or the ban on cruel and unusual punishment.*

**A. Ohio's mandatory bindover of certain juveniles to adult court does not violate the Due Process Clause of either the United States or Ohio Constitution.**

A legislative decision to forego amenability determinations for mandatory transfer does not violate the due-process guarantees of the United States and Ohio Constitutions, in either their procedural or substantive components.



Ohio's mandatory bindover provisions at R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b) provide juveniles with notice, counsel, a hearing, and a meaningful opportunity to be heard before being transferred to adult court. Further, the statutes' restrictions advance Ohio's legitimate goals of protecting public safety and punishing criminal conduct. They comport with due process and should be upheld.

**1. In juvenile transfers, procedural due process requires that the juvenile be given a hearing, assistance of counsel, and a statement of reasons.**

Procedural due process under both the Ohio and United States Constitutions constrains governmental decisions that deprive individuals of liberty or property. At a minimum, it requires "an opportunity to be heard when the state seeks to infringe a protected liberty or property right." *State v. Cowan*, 103 Ohio St. 3d 144, 2004-Ohio-4777 ¶ 8, citing *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971). Thus, when a state creates a statutory right for juveniles to be subject to juvenile court jurisdiction, deprivations of that right "must measure up to the essentials of due process and fair treatment." *Kent v. United States*, 383 U.S. 541, 562 (1966). In the context of a juvenile being transferred to adult proceedings, procedural due process requires that the juvenile be given a hearing, assistance of counsel, and a statement of the reasons for the transfer before it takes place. *Id.* at 554.

Ohio law extends to juveniles not only these protections, but many additional procedural safeguards that exceed what the state and federal Due Process Clauses constitutionally require. Under R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b), when a juvenile uses a firearm to carry out some of Ohio's most dangerous and violent crimes—rape, kidnapping, voluntary or involuntary manslaughter, aggravated robbery, and aggravated burglary, which are the listed category two offenses—the General Assembly has required the juvenile court to transfer the juvenile offender to adult criminal court. *See* R.C. 2151.02(CC). But before any transfer can



occur, the juvenile court must conduct a probable-cause hearing at which the State must prove that the alleged offender was sixteen or older at the time of the offense and that probable cause exists to believe the juvenile committed the alleged offense. *See* R.C. 2152.12(A)(1)(b). The juvenile has a right to counsel at the transfer hearing, and that right cannot be waived. *See* Ohio Rules of Juvenile Procedure, Rule 3 and 30. Additionally, and going beyond the basic constitutional requirements, the probable-cause hearing includes a number of procedural safeguards: the right to remain silent, to present evidence, to cross-examine witnesses, to inspect exhibits prior to their introduction, and to receive proper notice and service prior to the hearing. Ohio Rules of Juvenile Procedure, Rule 29. In effect, Ohio law provides most of the procedural safeguards afforded in criminal trials, which are otherwise not constitutionally required in juvenile proceedings. *See Kent*, 383 U.S. at 555-56 (juvenile proceedings considered civil in nature and court “does not . . . rule that constitutional guaranties which would be applicable to adults . . . must be applied in juvenile court proceedings”).

Ohio’s transfer process and its procedural safeguards were at work in Quarterman’s case. Accordingly, his mandatory transfer to adult court did not violate either the federal or state constitution.

**2. Neither the U.S. nor the Ohio Constitution establishes a right to an amenability determination before a juvenile is transferred to adult court.**

Quarterman and his *amici* claim that juvenile courts in Ohio must determine a juvenile’s amenity to adult punishment before transferring the juvenile to adult proceedings, but the U.S. Supreme Court case they rely on for that proposition says nothing of the sort. That decision, *Kent*, primarily interprets a federal statute that governed juvenile transfers in the federal jurisdiction of the District of Columbia. And to the extent that it set forth constitutional requirements for juvenile transfers, they were requirements with which Ohio law complies.



*Kent* dealt with a statutory scheme that vested “original and exclusive jurisdiction” in the juvenile court, *id.* at 556, and permitted the juvenile court to waive jurisdiction only after a “full investigation,” *id.* at 547. The discretionary juvenile-transfer statute provided no standards or processes for transfer, and the juvenile judge in the particular case provided little if any procedure before the transfer. The judge “did not rule on [the juvenile’s] motions” raising psychiatric concerns and requesting access to records. *Id.* at 545-46. The judge “did not confer with petitioner or petitioner’s parents [as the statute required] or petitioner’s counsel.” *Id.* at 546. The judge “made no findings” and “did not recite any reason for the waiver [of juvenile jurisdiction].” *Id.* Rather, the judge merely “entered an order reciting that after ‘full investigation, I do hereby waive’ jurisdiction of petitioner” and transferred him to the U.S. District Court for the District of Columbia. *Id.*

The Supreme Court held that “there is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons.” *Id.* at 554. Since the statute failed to set out specific standards to govern the juvenile court’s determination of whether to transfer a minor to adult proceedings, the Court read “the statute . . . in the context of constitutional principles relating to due process and the assistance of counsel.” *Id.* at 557. Having done so, the Court concluded that the juvenile was “entitled to a hearing, including access by his counsel to [relevant records], and to a statement of reasons for the Juvenile Court’s decision.” *Id.* These requirements were essential to “[m]eaningful review” of the transfer question. *Id.* at 561. That was because a judge might consider a variety of factors in any given case, and disparity in the weight accorded those factors would lead to arbitrary deprivations of the juvenile’s statutorily-based liberty interest. *See id.* at 553.



*Kent*, then, “simply stands for the proposition that if a statute vests a juvenile with the right to juvenile status, then that right constitutes a liberty interest, of which the juvenile may not be deprived without due process, i.e., notice and a hearing.” *State v. Angel C.*, 715 A.2d 652, 661 (Conn. 1998). It does not, as Quarterman claims, “require[ ] a juvenile court to consider [the] eight factors” appended to the *Kent* opinion before transferring a juvenile to adult proceedings. See Appellant’s Br. 5-6. The eight factors that Quarterman references appear in an appendix to *Kent* titled *Policy Memorandum No. 7, November 30, 1959*. See *Kent*, 383 U.S. at 565-68. That policy memorandum was, as the Court explained, a memo drafted by the only juvenile judge in D.C. at that time, and it was written to govern the transfer process as a prudential matter, although it had been rescinded by the time of the *Kent* decision. *Id.* at 546 n.4. The Court never incorporated those eight factors into either the statutory or the constitutional requirements for juvenile transfers in D.C. or anywhere else. It is simply mistaken to assert that they are a binding standard that should govern Ohio’s law.

All of this is confirmed by the Supreme Court’s clarification of *Kent* in *Breed v. Jones*, 421 U.S. 519, 537-38 (1975), where the Court explained that, even after *Kent*, States are free to choose the appropriate criteria to consider before a transfer:

[T]he Court has never attempted to prescribe criteria for, or the nature and quantum of evidence that must support, a decision to transfer a juvenile for trial in adult court. We require only that, whatever the relevant criteria, and whatever the evidence demanded, a State determine whether it wants to treat a juvenile within the juvenile-court system before entering upon a proceeding that may result in an adjudication that he has violated a criminal law . . . .

*Id.* Accordingly, there is no constitutional requirement that state courts consider the eight factors that Quarterman incorrectly considers to be a holding of *Kent*. As for the persuasive effect of those eight factors, Ohio incorporates an even more extensive list into the statutory standards that govern discretionary juvenile transfers (applicable to juveniles fourteen and older who commit



offenses that would be felonies if committed by adults and are not otherwise addressed in the mandatory transfer provisions). *See* R.C. 2152.12(B)-(E). Here, however, unlike in *Kent*, Quarterman was subject to mandatory transfer and not discretionary transfer because of his age and the seriousness of his crimes, which included the use of a firearm. *Kent* does not address mandatory transfers and requires only that a juvenile receive a hearing with effective counsel and a statement of reasons before being transferred to adult court. Quarterman received all of those things here, and that is all that was constitutionally required.

Nor does Quarterman have a statutory right to an amenability determination before his transfer, as would be the case in the discretionary-transfer context. Ohio's statutory scheme operates differently than the District of Columbia system at issue in *Kent*. Ohio does not vest "original and exclusive jurisdiction" in the juvenile court as was the case in *Kent*. Instead, the juvenile court's jurisdiction is expressly limited by R.C. 2152.12(A)(1)(b)'s mandatory-transfer provisions: if the court finds probable cause to believe the juvenile used a firearm in the commission of a category two offense, there is no juvenile court jurisdiction—period. Further, R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b) lay out the specific factors upon which transfer depends. Thus, the risk of arbitrariness *Kent* seeks to avoid is nonexistent under Ohio law. *See Kelly*, 1998 WL 812238 at \*7 (factors considered in amenability determination "were intended to address the problem of arbitrary decision making and disparate treatment in discretionary bindover determinations, due process does not require their use when the legislature has statutorily eliminated such determinations").

In holding that due process does not require an amenability hearing, this Court would join the overwhelming majority of courts that have addressed this issue. A review of state and federal decisions reveals that statutes providing, under stated circumstances, for mandatory adult



adjudication of offenders of otherwise juvenile age have been routinely upheld against due-process challenges based on *Kent*. See, e.g., *Woodard v. Wainwright*, 556 F.2d 781, 783-84 (5th Cir. 1977); *United States v. Bland*, 472 F.2d 1329, 1336-37 n.26 (D.C. Cir. 1972); *People v. Thorpe*, 641 P.2d 935, 939-40 (Colo. 1982); *Angel C.*, 715 A.2d at 663; *Lane v. Jones*, 257 S.E.2d 525, 527 (Ga. 1979); *People v. P.H.*, 582 N.E.2d 700, 712 (Ill. 1991); *State v. Perique*, 439 So. 2d 1060, 1063-64 (La. 1983); *In re Wood*, 768 P.2d 1370, 1372-73 (Mont. 1989); *Vega v. Bell*, 393 N.E.2d 450, 459 (N.Y. 1979); *Jones v. State*, 654 P.2d 1080, 1084 nn.2-3 (Okla. Crim. App. 1982); *Jahnke v. State*, 692 P.2d 911, 927-29 (Wyo.1984).

The Court would also affirm a majority of Ohio appellate courts that have addressed the issue. See, e.g., *Lee*, 1998 WL 637583 at \*5; *Kelly*, 1998 WL 812238 at \*7-8; *State v. Agee*, 133 Ohio App. 3d 441, 448-49 (2d Dist. 1999); *State v. Ramey*, No. 16442, 1998 WL 310741 at \*1, 3 (2d Dist. May 22, 1998); *State v. Collins*, No. 97CA006845, 1998 WL 289390 at \*2 (9th Dist. June 3, 1998).

**3. Mandatory bindover does not create an unconstitutional irrebuttable presumption in violation of due-process requirements.**

Ohio's mandatory-bindover provisions do not create an irrebuttable presumption that certain juvenile offenders are identically situated to adult offenders.

Some of Quarterman's *amici* argue that Ohio's mandatory bindover for certain juvenile offenders "unconstitutionally create[s] an irrebuttable presumption that all youth of a certain age charged with a certain offense are identical to their adult counterparts with respect to culpability and their lack of capacity to change or reform." Brief of *Amici Curiae* Juvenile Law Center, et. al. at 8. But, in fact, the mandatory-bindover provisions do not interfere at all with a juvenile's ability to assert mitigating factors, including youth, at sentencing if the juvenile is convicted in adult court. The courts of common pleas are required to consider the "purposes of felony



sentencing,” which include “using the minimum sanctions” necessary to protect the public and punish the offender. R.C. 2929.11. If juvenile offenders are more receptive to rehabilitation, then “the minimum sanctions” necessary will often be less than those typically ordered for their adult counterparts, even though both the juveniles and adult offenders are being tried in adult court. Courts of common pleas are also required to consider the need for deterring and rehabilitating the offender, *id.*, which are both considerations in which the *amici* argue youth plays an important role. If so, juvenile offenders may argue accordingly to the court of common pleas to receive a more lenient sentence or a sentence otherwise tailored to their best interests. Additionally, courts of common pleas consider other mitigating circumstances outlined in R.C. 2929.12, including a catch-all section for “substantial grounds [that] mitigate the offender’s conduct,” which could include youth and other particular circumstances of a juvenile offender.

**4. An amenability hearing is not a fundamental right protected by substantive due process.**

To the extent that Quarterman is also arguing that not receiving an amenability hearing violated his right to substantive due process, that argument fails because the mandatory bindover provisions do not violate any fundamental right and, in any event, they advance Ohio’s legitimate government purpose of protecting the community and redressing juvenile crimes.

Substantive due process protects “fundamental rights,” which are those rights that are “objectively, ‘deeply rooted in this Nation’s history and tradition,’ and ‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice would exist if they were sacrificed.’” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citation omitted). “‘As a general matter, the Court has always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this uncharted area are scarce and open-ended.’” *Dist. Attorney’s Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 72 (2009)



(citation omitted). That is particularly so in the criminal context. “[B]ecause the States have considerable expertise in matters of criminal procedure and the criminal process is grounded in centuries of common-law tradition, it is appropriate to exercise substantial deference to legislative judgments in this area.” *Medina v. California*, 505 U.S. 437, 445-46 (1992).

Here, a “careful description,” *Glucksberg*, 521 U.S. at 721, of the right Quarterman seeks this Court to recognize reveals a very specific request: Quarterman does not seek a guarantee of counsel, or of a hearing, or of a statement of reasons before being transferred to adult court, but specifically an amenability determination to weigh his suitability for adult punishment on an individualized basis. No such right could plausibly be considered part of our Nation’s history and tradition, especially considering that the U.S. Supreme Court in *Kent* specifically addressed juvenile transfers to adult court and did not hold that an amenability determination was a constitutional requirement. Rather, as previously discussed, *Kent* required a hearing, effective counsel, and a list of reasons justifying a juvenile’s transfer. Ohio’s mandatory-bindover provisions provide all of those protections in addition to other procedural safeguards. They do not violate the constitutional guarantee of substantive due process.

**B. The mandatory-bindover provisions do not violate equal-protection guarantees because an amenability determination is not a fundamental right and the mandatory-bindover provisions advance Ohio’s legitimate interests.**

Quarterman’s equal-protection arguments fail because juvenile offenders who use firearms to commit serious crimes do not constitute a protected class deserving of heightened scrutiny and the mandatory-bindover provisions are rationally related to Ohio’s legitimate interests in protecting the public and redressing serious juvenile crimes.

The constitutional guarantee of equal protection “is essentially a direction that all persons similarly situated should be treated alike.” *City of Clebourne v. Clebourne Living Center*, 473 U.S. 432, 439 (1985). Generally, courts presume legislation to be valid in the face of an equal-



protection challenge so long as the “classification drawn by the statute is rationally related to a legitimate state interest.” *Id*; see *Wargetz v. Villa Sancta Anna Home for the Aged*, 11 Ohio St. 3d 15, 17 (1984) (no equal-protection violation if statute “bears a rational relationship to a permissible government objective”). Heightened scrutiny applies where a statute classifies individuals based on a suspect class or in violation of a fundamental right.

As explained above, a juvenile does not have a fundamental right to an amenability hearing. Neither the U.S. Supreme Court nor this Court has ever found such a right. And in Ohio, “juveniles do not constitute a suspect class in the context of equal protection law.” *State v. Fortson*, 11th Dist. Portage No. 2011-P-0031, 2012-Ohio-3118 at ¶41; see also *In re Vaughn*, CA89-11-162, 1990 WL 116936 at \*5 (12th Dist. Aug. 13, 1990) (“juveniles have never been treated as a suspect class and legislation aimed at juveniles has never been subjected to the test of strict scrutiny”). The U.S. Supreme Court has not considered juveniles to be a suspect class either, but has only distinguished juveniles from adults under the Eighth Amendment rather than the Equal Protection Clause. See *Roper v. Simmons*, 543 U.S. 551, 568-69 (2005); *Graham v. Florida*, 560 U.S. 48, 60-61 (2010); *Miller v. Alabama*, 132 S. Ct. 2455, 2460 (2012). Accordingly, Ohio’s mandatory-bindover provisions need only bear a rational relationship to a legitimate government interest to pass equal-protection review.

Here, the rational relationship to a legitimate government interest is obvious. The mandatory-bindover statute expressly states two purposes: 1) to “protect the public interest and safety” and 2) to “hold the offender accountable for the offender’s actions.” R.C. 2152.01(A). And the statute is rationally related to those interests because it transfers mandatorily only those juvenile offenders who commit the most serious offenses when they are nearly adults or when they have previously committed serious crimes. Both circumstances implicate serious risks to



public safety, as older juvenile offenders are more likely to possess the violent capabilities of adults and juveniles with records of serious offenses have likely already demonstrated an inability to be rehabilitated using only the resources of the juvenile court. And both circumstances rationally relate to the legitimate goal of holding juvenile offenders accountable for their crimes because mandatory bindover applies only to the most serious crimes that juveniles can commit, which the General Assembly could reasonably have believed would warrant adjudication in the adult criminal system.

Accordingly, Appellant's equal-protection claim should be denied.

**C. Ohio's mandatory-bindover provisions do not constitute cruel and unusual punishment on juveniles.**

Sixteen-year-old Quarterman robbed his friends at gunpoint, and for that offense he faced adult proceedings and received a relatively short sentence of four years' imprisonment—by his own admission, a time period one year *less than* what he could have been expected to serve as the result of juvenile proceedings. *See* Appellant's Br. 8. But now Quarterman claims that his four-year sentence was a cruel and unusual punishment. Because neither federal nor state constitutional law supports his claim, this Court should reject it.

*First*, Ohio's mandatory-bindover provisions are not themselves a punishment of any kind. They merely require a juvenile court to determine whether probable cause exists to believe the juvenile committed the serious crime alleged. Nothing about the mandatory-transfer provisions guarantees a conviction, so at the time of a transfer, any punishment is speculative at best. The prohibition on cruel and unusual *punishments* does not apply merely to the *possibility* of punishment. That is because “the State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt . . . .” *Ingraham v. Wright*, 430 U.S. 651, 671 n.40 (1977).



*Second*, trying a juvenile in adult proceedings is not similar to the punishments the U.S. Supreme Court or this Court has considered to be cruel and unusual when applied to juveniles. The U.S. Supreme Court has held that juveniles may not be subject to the death penalty, *Roper*, 543 U.S. at 578, to life without parole for non-homicide offenses, *Graham*, 560 U.S. at 82, or to mandatory life without parole, *Miller*, 132 S. Ct. at 2475. Quarterman's four-year sentence for aggravated robbery is simply not comparable to these serious punishments. The U.S. Supreme Court's analysis in those cases relied on the fact that juveniles were being exposed to some of "the harshest sentences [for] juvenile offenders." *Id.* at 2465. By comparison, Quarterman's mere transfer to adult court (and even the four-year sentence he later received) is hardly the kind of "excessive sanction[ ]" that the Eighth Amendment prohibits. *Roper*, 543 U.S. at 560.

Nor is Quarterman's situation comparable to the lifelong registration and notification requirements for juveniles that this Court struck down in *In re C.P.*, 131 Ohio St. 3d 513 (2012). There, juvenile sex offenders faced lifetime registration and notification requirements, which would literally never permit them to outrun their juvenile offenses that had not even been tried in adult court. *Id.* at 517-19. Here, Quarterman challenges a state law that merely exposed him to adult proceedings, rather than automatically punishing him, and the punishment he later received was limited to four years' imprisonment followed by supervised release. The sentence had no lifelong impairment of his liberty, and to the extent it created an adult record, it did so only after convicting him in adult proceedings, where he enjoyed all of the constitutional protections of adults. Quarterman was charged as an adult and sentenced as an adult for what the General Assembly considered to be an adult crime. That can hardly be thought to "shock the sense of justice of the community." *Id.* at 531.



The Court should hold that Ohio's mandatory-conviction provisions do not constitute cruel and unusual punishment under either the state or federal constitution.

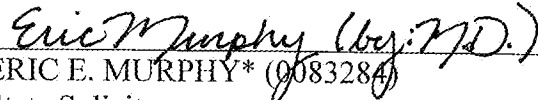


## CONCLUSION

For these reasons, the Court should affirm the judgment of the Ninth District.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

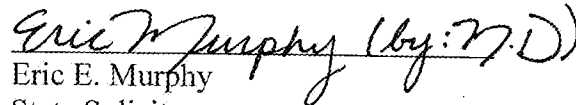
I hereby certify that a copy of the foregoing Merit Brief of *Amicus Curiae* Ohio Attorney General Michael DeWine in Support of Appellee State of Ohio was served on April 29, 2014, by U.S. mail on the following:

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