

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO, )  
)  
Plaintiff-Appellee, )  
)  
vs. ) Case No. 2017-0087  
)  
) On Appeal from the Hamilton County Court  
ANTHONY CARNES, ) of Appeals, First Appellate District, Case  
) No. C-150752  
Defendant-Appellant. )  
)

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**BRIEF OF AMICI CURIAE JUVENILE LAW CENTER AND NATIONAL JUVENILE DEFENDER CENTER IN SUPPORT OF APPELLANT**

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Marsha L. Levick (PHV 1729-2017)  
JUVENILE LAW CENTER  
1315 Walnut Street, 4<sup>th</sup> Floor  
Philadelphia, PA 19107  
(215) 625-0551; (215) 625-2808 (fax)  
mlevick@jlc.org  
*Counsel for Amici Curiae  
Juvenile Law Center*

Scott Matthew Heenan #0075734  
Joseph T. Deters #0012084  
Hamilton County Prosecutor's Office  
230 E. 9<sup>th</sup> St., Ste. 4000  
Cincinnati, OH 45202  
(513) 946-3227

*Counsel for Plaintiff-Appellee*

Samuel S. Park (PHV 18765-2017)  
John E. Drosick (PHV 18773-2017)  
WINSTON & STRAWN LLP  
35 W. Wacker Drive  
Chicago, IL 60601  
(312) 558-7931; (312) 558-5700 (fax)  
spark@winston.com  
jdrosick@winston.com  
*Pro-Bono Counsel for Amici Curiae  
Juvenile Law Center*

Peter Brian Galyardt #0085439  
Office of the Ohio Public Defender  
250 East Broad St., Ste. 1400  
Columbus, OH 43215  
(614) 728-0171  
Peter.Galyardt@opd.ohio.gov

*Counsel for Defendant-Appellant*

Nadia Seeratan (PHV 1749-2017)  
NATIONAL JUVENILE DEFENDER CENTER  
1350 Connecticut Avenue NW, Suite 304  
Washington, DC 20036  
*Counsel for Amici Curiae  
National Juvenile Defender Center*

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## INTEREST AND IDENTITY OF AMICUS CURIAE

**Juvenile Law Center**, founded in 1975, is the oldest public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Recognizing the critical developmental differences between youth and adults, Juvenile Law Center works to ensure that the child welfare, justice, and other public systems provide vulnerable children with the protection and services they need to become healthy and productive adults. Above all, Juvenile Law Center works to align justice policy and practice, including state sentencing laws, with modern understandings of adolescent development and time-honored constitutional principles of fundamental fairness.

Juvenile Law Center participates as *amicus curiae* in state and federal courts throughout the country, including the United States Supreme Court, in cases addressing the rights and interests of children. In this case, Juvenile Law Center writes to express our concern that the use of juvenile adjudications as the sole element of a crime violates the Constitution, and undermines the rehabilitative focus of the juvenile courts.

**The National Juvenile Defender Center** is a non-profit, non-partisan organization dedicated to promoting justice for all children by ensuring excellence in juvenile defense. The National Juvenile Defender Center responds to the critical need to build the capacity of the juvenile defense bar and to improve access to counsel and quality of representation for children in the justice system. The National Juvenile Defender Center gives juvenile defense attorneys a permanent and enhanced capacity to address practice issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. The National Juvenile Defender Center provides support to public defenders, appointed counsel, law school clinical programs, and non-profit law centers to ensure quality representation in urban,

suburban, rural, and tribal areas. The National Juvenile Defender Center also offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination. The National Juvenile Defender Center has participated as Amicus Curiae before the United States Supreme Court, as well as federal and state courts across the country.

## SUMMARY OF ARGUMENT

Over a century ago, the Ohio General Assembly recognized the fundamental differences between juveniles and adults when it established the juvenile justice system. *See In re Anderson*, 92 Ohio St. 3d 63, 69, 748 N.E.2d 67 (2001). *See also Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005); *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L.Ed. 2d 825 (2010); *J.D.B. v. North Carolina*, 564 U.S. 261, 131 S. Ct. 2384, 180 L.Ed.2d 310 (2011); *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012); *Montgomery v. Louisiana*, 136 S. Ct. 718, 193 L.Ed.2d 599 (2016). In view of these differences, the juvenile court system focuses on rehabilitation and reformation, not retribution. *In re C.L.*, 8th Dist. Cuyahoga No. 104661, 2017-Ohio-7253, 2017 WL 3531470, ¶ 15. The Ohio courts have long identified rehabilitation as a main principle underlying the juvenile justice system, and a juvenile’s ability to reintegrate with society after an adjudicated delinquency is integral to rehabilitation and the goals of the juvenile court. *In re C.L.*, at ¶ 15 (“Recognizing the legislative intent of R.C. 2151.356, the Ohio Supreme Court has explained that R.C. 2151356 ‘promotes [the] goals of rehabilitation and reintegration into society by permitting rehabilitated offenders to apply to have their records sealed so they can leave their youthful offenses in the past.’”). It is for this very reason that an adult’s prior juvenile delinquency finding cannot be used to enhance his or her sentencing as an adult, *State v. Hand*, 149 Ohio St. 3d 94, 2016-Ohio-5504, 73 N.E.3d 448, and that there exists a mechanism for an individual to seal and expunge an adjudicated delinquency record. *In re CL* at ¶ 15. This purpose and structure of the juvenile system is in direct conflict with R.C. 2923.13, which makes the possession of a firearm—which otherwise would be *legal*—illegal solely because of an adult’s prior adjudication as a delinquent juvenile.

Supported by scientific research surrounding adolescent brain development, Ohio law has long recognized a juvenile’s actions as less culpable than comparable actions committed by an



adult. *State v. Joiner*, 28 Ohio Dec. 199, 201, 20 Ohio N.P. (N.S.) 313 (1917) (“The juvenile court act which provides for the care of delinquent children does not declare delinquency a crime and such statutes are corrective and not criminal.”). While the average juvenile reaches the intellectual maturity of an adult by 16, the psychosocial maturity of a juvenile lags, creating a substantial gap in maturity between adults and juveniles. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, *Development and Criminal Blameworthiness*, [https://www.unc.edu/~fbaum/teaching/POLI203\\_Sp16/slides/AdolescentDevelopmentandCriminalBlameworthiness.pdf](https://www.unc.edu/~fbaum/teaching/POLI203_Sp16/slides/AdolescentDevelopmentandCriminalBlameworthiness.pdf) (accessed Nov. 16, 2017). A juvenile possesses less self-control, less resistance to peer pressure, and less risk awareness than an adult. *Id.* This delayed development in psychosocial skills lessens a juvenile’s culpability for his or her delinquent behavior. *Id.* The statute, R.C. 2923.13, obstructs this science by treating a juvenile adjudication as a permanent record like an adult conviction.

## **ARGUMENT**

### **I. USING A JUVENILE ADJUDICATION AS A SOLE ELEMENT OF AN ADULT FELONY CONTRADICTS THE REHABILITATIVE PURPOSE OF OHIO’S JUVENILE JUSTICE SYSTEM**

#### **A. R.C. 2923.13 Is Inconsistent With Ohio’s Special Protection Of Juveniles Because It Imposes Felony Liability Based Solely On The Existence Of A Juvenile Adjudication**

R. C. 2923.13 makes the possession of a firearm illegal while under a disability. The statute enumerates a variety of disabilities, including a disability for an adult with a prior juvenile adjudication that would have been a felony offense of violence if it was committed as an adult. R.C. 2923.13(2). This means the juvenile delinquency transforms an otherwise *legal* act, the possession of a firearm by an adult, into an *illegal* act. In short, the statute creates a felony with only one element — the adult’s prior finding as a delinquent juvenile.

Yet, the Ohio Supreme Court has repeatedly limited the use of juvenile adjudications in adult prosecutions. *State v. Bode*, 144 Ohio St.3d 155, 2015-Ohio-1519, 41 N.E. 3d 1156; *see also Hand*, 149 Ohio St.3d 94, 2016-Ohio-5504, 73 N.E.3d 448. In *Hand*, the Court held a juvenile adjudication may not be used to enhance the degree or sentence of a subsequent adult offense. *Id.* at paragraph one of the syllabus. If a juvenile adjudication cannot enhance an adult sentence, then surely the juvenile adjudication cannot serve as the sole element of a felony offense. This use of a juvenile adjudication as the sole basis of an adult felony contradicts this Court’s prior limitations on the use of juvenile adjudications in adult prosecutions.

**B. United States Supreme Court And Ohio Jurisprudence Firmly Establish That Youth Informs A Child’s Legal Status**

The juvenile justice system was premised on “[t]he idea that because of their young age, children were either less culpable for their wayward actions or not culpable at all.” Thill, *Prior “Convictions” Under Apprendi: Why Juvenile Adjudications May Not Be Used to Increase an Offender’s Sentence Exposure If They Have Not First Been Proven to a Jury Beyond A Reasonable Doubt*, 87 Marq. L. Rev 573, 583 (2004). The Supreme Court of the United States affirmed juveniles’ conduct is often less blameworthy than adults. *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (“A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”) (quoting *Johnson v. Texas*, 509 U.S. 350, 367, 113 S. Ct. 2658, 125 L. Ed. 2d 290 (1993)); *Thompson v. Oklahoma*, 487 U.S. 815, 834, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (“There is also broad agreement on the proposition that adolescents as a class are less mature and responsible than adults.”). Ohio courts recognize this proposition as well. *In re Agler*, 19 Ohio St. 2d 70, 71, 249 N.E.2d 808 (1969) (“The Juvenile Court stands as a monument to the enlightened conviction that

wayward boys many become good men and that society should make every effort to avoid their being attained as criminal before growing to the full measure of adult responsibility.”).

The consensus emerging from recent research on the adolescent brain is that teenagers are not as mature as adults in either brain structure or function. Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 50 Ct. Rev. 70, 70 (2014). A juvenile’s prefrontal cortex is not fully mature, which may lead to bad decisions or a reflective inability to adequately consider options and appreciate consequences. Gruber & Yurgelun-Todd, *Neurobiology and the Law: A Role in Juvenile Justice?*, 3 Ohio St. J. Crim. L. 321, 330 (2006). For instance, youth have limitations in regulating emotions and taking account of long-term consequences. See MacArthur Foundation, *Development and Criminal Blameworthiness* at 9. While these adolescent psychosocial skills lag behind those of an adult, a young person’s intellectual maturity reaches an adult level around 16, creating an immaturity gap. *Id.* at 29. The immaturity gap shows juveniles lack the capacity to be fully blameworthy for their actions. Therefore, a separate juvenile court system focuses on therapeutic methods to rehabilitate juvenile offenders. *In re Anderson* at 66.

### **C. Rehabilitation Is The Central Purpose Of The Ohio Juvenile Justice System**

Consistent with the research on adolescent development, the juvenile justice system has a unique place in Ohio’s legal system. *In re C.S.*, 115 Ohio St. 3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, ¶ 65. The juvenile justice system seeks to provide “care, protection, and mental and physical development of children....” R.C. 2152.01(A). The goal is “to rehabilitate errant children and bring them back to productive citizenship;” punishment is used only as is necessary to direct the child towards rehabilitation. *State v. Hand*, 2nd Dist. Montgomery No. 25840, 2014-Ohio-3838, 2014 WL 4384131, ¶ 19 (Donovan, J., dissenting). Conversely, the adult criminal justice system centers on retribution—adult criminals are held accountable for their actions through punitive

measures. *Id.* at ¶ 14. Indeed, a “juvenile adjudication differs from criminal sentencing – one is civil and rehabilitative, the other is criminal and punitive.” *Id.* This different treatment of juvenile offenders allows minor children the chance to learn from their mistakes to become productive, adult citizens. *In re CS*, 115 Ohio St. 3d 267, 274, 2007-Ohio-4919, 874 N.E.2d 1177 (“Considered ‘a monument to the enlightened conviction that wayward boys may become good men,’ juvenile courts were lauded as ‘one of the most significant advances in the administration of justice since the Magna Carta.’”).

The Ohio legislature intentionally created two distinct systems for juvenile and adult offenses with different goals and types of offenders. *In re Anderson*, 92 Ohio St. 3d 63, 65, 748 N.E.2d 67.

The structure of the juvenile justice system differs substantially from the criminal justice system. Juvenile proceedings are civil actions, not criminal actions. *In re C.S.* at ¶¶ 66–67. Juvenile court records are generally confidential, while adult criminal records are publicly available. *Anderson* at 65. The results of juvenile court proceedings lead to a juvenile being adjudged “delinquent,” not “guilty.” *State v. Hanning*, 89 Ohio St. 3d 86, 89, 728 N.E.2d 1059 (2000). And many records of juvenile adjudications are automatically sealed. *In re C.L.*, 2017-Ohio-7253, 2017 WL 3531470, ¶15. Moreover, consistent with the goals of rehabilitation, along with sealing of juvenile records, a “delinquent” juvenile can petition the court for expungement.

Contrary to the criminal justice system, the juvenile system has no jury trials. Drizin & Luloff, *Are Juvenile Courts a Breeding Ground For Wrongful Convictions?*, 34 N. Ky. L. Rev. 257, 289 (2007). The juvenile system also has an infrequent use of motion practice and an abundance of plea bargains. *Id.* at 69. The lack of an adversarial process produces a system where most juveniles who enter do not reoffend. *Id.* at 331. But, in the mid-1990s, the juvenile

justice system was altered, and juveniles who committed the most egregious crimes were no longer allowed to participate in this rehabilitative setting because they were transferred to adult court. R.C. 2151.10. The Ohio legislature enacted provisions to require mandatory transfer of certain individuals to the adult criminal justice system, as well as provisions to permit prosecutorial discretion to transfer cases to the adult system. *Id.*

Due to bindover and discretionary transfer laws, youth already face the possibility of their conduct becoming a permanent disability due to a forced adult court prosecution and conviction. Likewise, this statute imposes a permanent disability on the juveniles who are not transferred into the adult system. This diminishes the avenues where youthful transgressions are treated differently than adult transgressions, as the statute places additional collateral consequences, usually reserved only for adult adjudications, on youth who remain in the juvenile system.

These differences between the juvenile and adult justice systems help spare youth the stigma of a criminal conviction. *In re Gault*, 387 U.S. 1, 24, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967) (“[I]t is the law’s policy ‘to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past.’”); *Joiner*, 28 Ohio Dec. 199, 202, 20 Ohio N.P. (N.S.) 313 (1917) (“Delinquency has not been declared a crime in Ohio, and the Ohio juvenile act is neither criminal nor penal in nature, but is an administrative police regulation of corrective machinery of juvenile court....”). See also, *In re Richardson*, 7th Dist. Mahoning No. 01 CA 78, 2002-Ohio-6709, 2002 WL 31743108, ¶ 4 (quoting R.C. 2151.357) (a “judgment rendered against a juvenile in a juvenile court [does] not impose the same civil disabilities on an adult convicted of a crime.” . Yet, as shown in R.C. 2923.13, a juvenile adjudication can still impose major collateral consequences as an adult.

#### **D. The Process For Removing A Disability Under R.C. 2923.13 Does Not Apply To Individuals With Juvenile Adjudications**

Ohio law creates a process for removing a disability. R.C. 2923.14. The person with the disability must apply to the court of common pleas for relief and the court will consider factors such as whether “the applicant has led law-abiding life since discharge or release, and appears likely to continue to do so.” R.C. 2923.14(D)(b)(2). The application for relief of disability will automatically be denied for an individual who was adjudicated delinquent for an offense as a juvenile that would have been a felony act of violence as an adult. R.C. 2923.14(F)(4). This automatic denial mirrors the imposition of the disability itself. R.C. 2923.13. Moreover, it denies the juvenile the opportunity to demonstrate his or her rehabilitation since the offense. This means that an individual, adjudicated delinquent for a felony offense at age 15 will forever have that disability attached under R.C. 2923.13, regardless of his “law-abiding life since discharge.” This thwarts the rehabilitative purpose of the juvenile justice system. *See Joiner*, 28 Ohio Dec. 199, 20 Ohio N.P. (N.S.) 313 (1917).

A recent amendment of the statute potentially opens up another avenue of relief. R.C. 2923.13(A). Until 2014, the law clearly limited the pathway to removing a disability through the procedure outlined in R.C. 2923.14, but this limitation was removed. *Compare* R.C. 2923.13(A) *with* former R.C. 2923.13(A), 2014 Ohio Laws File 165. Now, the statute states a disability can be relieved “under operation of law or legal process....” R.C. 2923.13(A). This might permit an individual to expunge his or her juvenile record to be relieved of the disability; however, because the change is so recent, the interpretation of the statute is still uncertain.

#### **E. Expungement Is An Ineffective Means Of Removing This Disability**

Expungement of a record is the “process of erasing the legal event of conviction or adjudication and thereby restoring to the regenerate offender his status quo ante.” Gough, *The*

*Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status*, 1966 Wash. U. L. Q. 147, 149 (1966). When records are expunged, the documents are physically deleted or destroyed. This differs from sealing a record, which is when the documents are removed from a main file but secured in a separate file accessible only to the juvenile court. R.C. 2151.355(B) and 2151.358(B). In Ohio, a juvenile's ability to expunge his or her record is broader than that of an adult offender. *In re C.L.*, 2017-Ohio-7253, 2017 WL 3531470 at ¶ 16.

Even if the statute allows an individual to expunge his or her juvenile record to relieve the disability, the court should still strike down the use of a juvenile delinquency as an element of a crime. The legislature's enactment of juvenile record expungement confirms its recognition that juvenile adjudications should not be a permanent disability. Yet, the disability is nevertheless imposed. This leads to an inherent contradiction where the legislature endorses a juvenile's ability to not be burdened by the collateral consequences of a delinquency adjudication by allowing expungement, yet simultaneously imposing a collateral consequence for delinquency by making a juvenile adjudication the sole element of a criminal offense.

Moreover, the process of expunging a juvenile record is burdensome and inaccessible to the majority of individuals with juvenile records. The problem is two-fold: "the reformed offender must be aware of the remedy (otherwise, its incentive value is lost), and he must be able to invoke it with minimum difficulty." Gough, *The Expungement* at 184. The only notice of the availability of expungement required by Ohio law occurs at the conclusion of a juvenile hearing. Juv. R. 34. This notice is under-inclusive, as a majority of juvenile cases are resolved by plea bargain, not by hearings. National Juvenile Defender Center, *Justice Cut Short: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Ohio* (Mar. 2003), <http://njdc.info/wp-content/uploads/2013/11/Final-Ohio-Assessment-Report.pdf> (accessed Nov.

16, 2017). Also, the notice is not timely: the individual must wait to apply for expungement two years after the termination of a juvenile court order. R.C. 2151.358. For example, if a young person was placed on probation for one year, then information about his or her ability to apply for expungement was given three years in advance of the juvenile's eligibility to apply for expungement.

Then, the individual must take multiple steps to invoke expungement. First, to be eligible for expungement, the young person's records must be sealed. *Id.* Second, the youth must file an application for expungement. *Id.* The procedures differ by county, but in every county, the application requires proactive steps by the juvenile. Juvenile Law Center, *State Fact Sheet: Ohio* (2014), <http://juvenilerecords.jlc.org/juvenilerecords/#!/state/ohio> (accessed Nov. 16, 2017). The requirement to go through this process to expunge a record to avoid future criminal act flies in the face of a juvenile justice system that imposes sanctions for therapeutic and rehabilitative purposes, not retribution.

The differences between the juvenile justice system and the adult justice system exemplify the General Assembly's endorsement that penalties associated with the juvenile justice system are for rehabilitation purposes only, yet R.C. 2923.13 defies this purpose by creating criminal conduct solely based on a juvenile penalty.



## CONCLUSION

For the foregoing reasons, *Amicus Curiae* Juvenile Law Center respectfully requests this Court overturn Defendant's conviction because a juvenile adjudication should not be used as the sole element of criminal conduct.

RESPECTFULLY SUBMITTED

By: /s/ Marsha L. Levick  
Marsha L. Levick (PHV 1729-2017)  
(pro hac vice pending)  
Juvenile Law Center  
1315 Walnut Street, Suite 400  
Philadelphia, PA 19107  
(215) 625-0551  
mlevick@jlc.org

Samuel S. Park, Esq.  
John Drosick, Esq.  
Winston & Strawn LLP  
35 W. Wacker Dr.  
Chicago, IL 60601  
(312) 558-5600

Nadia Seeratan, Esq.  
National Juvenile Defender Center  
1350 Connecticut Avenue NW, Suite 304  
Washington, DC 20036

Dated: November 28, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28th day of November, 2017, I caused copies of the foregoing Brief of Amici Curiae Juvenile Law Center et al. on Behalf of Appellant and Motions of Attorney Marsha L. Levick, Samuel S. Park, John E. Drosick and Nadia Seeratan for Permission to Appear Pro Hac Vice to be served via First Class U.S. Mail or electronic mail on:

Scott Matthew Heenan #0075734  
Joseph T. Deters #0012084  
Hamilton County Prosecutor's Office  
230 E. 9<sup>th</sup> St., Ste. 4000  
Cincinnati, OH 45202  
(513) 946-3227

*Counsel for Plaintiff-Appellee*

Peter Brian Galyardt #0085439  
Office of the Ohio Public Defender  
250 East Broad St., Ste. 1400  
Columbus, OH 43215  
(614) 728-0171  
Peter.Galyardt@opd.ohio.gov

*Counsel for Defendant-Appellant*

/s/ Marsha Levick  
Marsha Levick\* (PHV-1729-2017)  
(*pro hac vice pending*)  
\*Counsel of Record  
Juvenile Law Center  
1315 Walnut Street, 4th Floor  
Philadelphia, PA 19107  
(215) 625-0551  
(215) 625-2808 (Fax)  
mlevick@jlc.org