

IN THE SUPREME COURT OF OHIO

State of Ohio	:	Case No. 2015-0677
Appellee,	:	
vs.	:	On Appeal from the
Matthew Aalim	:	Montgomery County
Appellant.	:	Court of Appeals, Second
		Appellate District

MERIT BRIEF OF APPELLEE, THE STATE OF OHIO

Mathias H. Heck, Jr.
Prosecuting Attorney

Andrew T. French (COUNSEL OF RECORD)
Reg. No. 0069384
Assistant Prosecuting Attorney
Montgomery County Prosecutor's Office
P.O. Box 972
301 W. Third Street, 5th Floor
Dayton, Ohio 45422
(937) 225-4117
(937) 225-3470 (Fax)
frencha@mcohio.org

Counsel for Appellee,
The State of Ohio

Office of the Ohio Public Defender

Amanda J. Powell
Reg. No. 0076418
Assistant State Public Defender
250 East Broad Street
Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 (Fax)
amanda.powell@opd.ohio.gov

Counsel for Appellant,
Matthew Aalim

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii-iv
STATEMENT OF THE CASE AND FACTS	1-2
ARGUMENT	
<u>Appellee’s Proposition of Law:</u>	
The statutory provisions set out in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), which require juvenile courts, in certain cases, to transfer jurisdiction over juvenile offenders to the general division for trial as an adult do not violate a juvenile’s right to due process or equal protection.	
	2-16
CONCLUSION	16
CERTIFICATE OF SERVICE	17-18
APPENDIX A	<u>Appendix Page</u>
List of states that have mandatory juvenile transfer statutes similar to Ohio	1-3
List of states that provide for a rebuttable presumption in favor of transfer	3-4
List of states that provide for discretionary transfer only	4

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page</u>
<i>Armstrong v. Manzo</i> , 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965)	7
<i>Arnold v. Cleveland</i> , 67 Ohio St.3d 35, 616 N.E.2d 163 (1993)	3
<i>Breed v. Jones</i> , 421 U.S. 519, 95 S.Ct. 1779, 44 L.Ed.2d 346 (1975)	11
<i>Caldwell v. Commonwealth</i> , 133 S.W.3d 445 (Ky.2004)	6
<i>Graham v. Florida</i> , 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010)	12
<i>Gregory v. Ashcroft</i> , 501 U.S. 452, 111 S.Ct. 452, 115 L.Ed.2d 410 (1991)	14
<i>In re A.J.S.</i> , 120 Ohio St.3d 185, 2008-Ohio-5307, 897 N.E.2d 629	5
<i>In re C.P.</i> , 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729	11
<i>In re D.W.</i> , 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894	3
<i>In re M.P.</i> , 124 Ohio St.3d 445, 2010-Ohio-599, 923 N.E.2d 584	3, 5
<i>In re Vaughn</i> , 12th Dist. Butler No. CA89-11-162, 1990 WL 116936 (Aug. 13, 1990)	14
<i>Kent v. United States</i> , 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966)	9, 10, 11
<i>Klein v. Leis</i> , 99 Ohio St.3d 537, 2003-Ohio-4779, 795 N.E.2d 633	3
<i>Manduley v. Superior Court</i> , 27 Cal.4th 537, 41 P.3d 3 (2002)	6
<i>Matthews v. Eldridge</i> , 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)	7
<i>Michael H. v. Gerald D.</i> , 491 U.S. 110, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989)	8
<i>Miller v. Alabama</i> , ___ U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012)	11, 12
<i>Morris v. Savoy</i> , 61 Ohio St.3d 684, 576 N.E.2d 765 (1991)	13
<i>People v. Patterson</i> , 2014 IL 11512, 25 N.E.3d 526	6
<i>Roper v. Simmons</i> , 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005)	12
<i>State v. Adams</i> , 10th Dist. Franklin No. 12AP-83, 2012-Ohio-5088	6

CASES (Cont'd)

<i>State v. Anderson</i> , 2nd Dist. Montgomery No. 25689, 2014-Ohio-4245	5, 10
<i>State v. Angel C</i> , 245 Conn. 93, 715 A.2d 652 (1998)	6
<i>State v. Burnett</i> , 93 Ohio St.3d 419, 755 N.E.2d 857 (2001)	7
<i>State v. Cain</i> , 381 So.2d 1361 (Fla.1980)	6
<i>State v. Collins</i> , 9th Dist. Lorain No. 97CA00684, 1998 WL 289390 (June 3, 1998)	5, 6, 9, 15
<i>State v. Fortson</i> , 11th Dist. Portage No. 2011-P-0031, 2012-Ohio-3118	14
<i>State v. Hanning</i> , 89 Ohio St.3d 86, 728 N.E.2d 1059 (2000)	3, 12, 14, 15
<i>State v. J.T.S.</i> , 10th Dist. Franklin No. 14AP-516, 2015-Ohio-1103	6, 15
<i>State v. Kelly</i> , 3rd Dist. Union No. 14-98-26, 1998 WL 812238 (Nov. 18, 1998)	5, 10, 14, 15
<i>State v. Lane</i> , 11th Dist. Geauga No. 2013-G-3144, 2014-Ohio-2101	6, 10, 14
<i>State v. Lee</i> , 11th Dist. Lake No. 97-L-091, 1998 WL 637583 (Sept. 11, 1998)	8
<i>State v. Lowe</i> , 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 212	3
<i>State v. Mays</i> , 8th Dist. Cuyahoga No. 100265, 2015-Ohio-3815	5
<i>State v. McKinney</i> , 1st Dist. Hamilton Nos. C-140743, C-14074, 2015-Ohio-4398	5, 6, 10, 14
<i>State v. Ramey</i> , 2nd Dist. Montgomery No. 16442, 1998 WL 310741 (May 22, 1998)	15
<i>State v. Simon</i> , 12th Dist. Butler No. CA2014-06-139, 2015-Ohio-970	6
<i>State v. Tyler</i> , 286 Kan. 1087, 191 P.3d 306 (2008)	6
<i>State v. Thompkins</i> , 75 Ohio St.3d 558, 664 N.E.2d 926 (1996)	3, 8, 13
<i>State v. Walls</i> , 96 Ohio St.3d 437, 2002-Ohio-5059, 775 N.E.2d 829	6
<i>State v. Washington</i> , 2nd Dist. Montgomery No. 20226, 2005-Ohio-6546	6, 14
<i>State v. Weitbrecht</i> , 86 Ohio St.3d 368, 715 N.E.2d 368 (1999)	3
<i>State ex rel. Keefe v. Eyrich</i> , 22 Ohio St.3d 164, 489 N.E.2d 259 (1986)	14

CASES (Cont'd)

<i>Toledo v. Tellings</i> , 114 Ohio St.3d 278, 2007-Ohio-3724, 871 N.E.2d 1152	8
<i>Vega v. Bell</i> , 47 N.Y.2d 543, 393 N.E.2d 450 (1979)	6

STATUTES

R.C. 2151.23(A)(1)	5
R.C. 2151.26 (amended and renumbered in 2002)	3, 12
R.C. 2152.02(BB)	4
R.C. 2152.02(CC)	4
R.C. 2152.10	2, 3, 4, 8, 12, 13, 16
R.C. 2152.10(A)	5
R.C. 2152.10(A)(1)	4, 13
R.C. 2152.10(A)(2)(a)	4
R.C. 2152.10(A)(2)(b)	1, 2, 4, 13
R.C. 2152.10(A)(3)	4
R.C. 2152.12	2, 3, 4, 8, 12, 13, 16
R.C. 2152.12(A)(1)	5
R.C. 2152.12(A)(1)(a)	4, 13
R.C. 2152.12(A)(1)(b)	1, 2, 4
R.C. 2152.12(A)(2)(a)	4
R.C. 2152.12(A)(2)(b)	4

RULES

Juv.R. 30	5
-----------	---

STATEMENT OF THE CASE AND FACTS

Matthew Aalim was born on July 27, 1997. On December 3, 2013, a complaint was filed against him in the Montgomery County Juvenile Court alleging that he was delinquent for having committed aggravated robbery with a firearm. (See Summary of Docket and Journal Entries (hereinafter “Dkt.”) at No. 1) The complaint related to a November 14, 2013 incident where Aalim approached two women, pointed a loaded gun at their heads, and robbed them of money and a cell phone. (Dkt. No. 28; Tr. 34-35) The prosecutor later filed a motion with the juvenile court pursuant to R.C. 2152.10(A)(2)(b), asking that Aalim’s case be transferred to the general division so that he could be tried as an adult. (Dkt. No. 1)

On January 10, 2014, the juvenile court held a probable cause hearing relating to the prosecutor’s motion to transfer, after which it made three findings: that Aalim was 16 years old at the time of the offense; that there was probable cause to believe that Aalim had committed the offense charged; and that during the offense Aalim brandished a firearm. (Dkt No. 1) Based on these findings, the juvenile court relinquished jurisdiction and transferred the case to the general division of the common pleas court, pursuant to R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), so that Aalim could be tried as an adult. (*Id.*)

On February 10, 2014, Aalim was indicted by the Montgomery County Grand Jury on two counts of aggravated robbery with attendant firearm specifications. (Dkt No. 3) He moved to dismiss the indictment, arguing that Ohio’s mandatory-transfer provisions were unconstitutional. (Dkt No. 14, 20; Tr. 2-23) The trial court overruled the motion, after which Aalim pleaded no contest to both counts of aggravated robbery, in exchange for a dismissal of both firearm specifications. (Dkt No. 26; Tr. 24) The trial court accepted Aalim’s plea and, on May 7, 2014, sentenced him to concurrent four-year prison terms. (Dkt No. 32; Tr. 35-36)

Aalim appealed to the Second District Court of Appeals for Montgomery County, challenging the constitutionality of Ohio's mandatory transfer laws. The court of appeals affirmed, citing as authority the decision of several courts of appeals that have all found that the mandatory transfer provisions of R.C. 2152.10 and 2152.12 do not violate a juvenile's constitutional rights to due process and equal protection under the law. *State v. Aalim*, 2nd Dist. Montgomery No. 26249, 2015-Ohio-892, ¶6-8.

Aalim filed his notice of appeal with this Court on April 27, 2015. On October 28, 2015, this Court granted jurisdiction to hear his case. This appeal followed.

ARGUMENT

Appellee's Proposition of Law:

The statutory provisions set out in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), which require juvenile courts, in certain cases, to transfer jurisdiction over juvenile offenders to the general division for trial as an adult do not violate a juvenile's right to due process or equal protection.

Aalim contends that the statutory provisions set out in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), which required the juvenile court to transfer jurisdiction over his case to the general division where he was then tried as an adult, violate his right to due process by failing to require a hearing where his amenability (or lack thereof) to care or rehabilitation within the juvenile system was considered, and by failing to incorporate procedural safeguards that take into consideration his youth as mitigating against transfer. He further contends that Ohio's mandatory transfer provisions violate his right to equal protection by treating his "class" of offenders – 16 and 17-year-olds who commit serious felonies with a firearm – differently from other juvenile offenders based solely upon their age and the nature of their offenses. His claims, however, have no merit.

A. Standard of Review

Analysis of any statute begins with the presumption that all legislative enactments are constitutional. *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 512, ¶ 17, citing *Klein v. Leis*, 99 Ohio St.3d 537, 2003-Ohio-4779, 795 N.E.2d 633, ¶ 4. “Any reasonable doubt regarding the constitutionality of a statute must be resolved in favor of the legislature’s power to enact the law.” *State v. Weitbrecht*, 86 Ohio St.3d 368, 370, 715 N.E.2d 368 (1999). Consequently, in order for a statute to be deemed unconstitutional, the challenger must establish that it is unconstitutional beyond a reasonable doubt. *Arnold v. Cleveland*, 67 Ohio St.3d 35, 38, 616 N.E.2d 163 (1993); *State v. Thompkins*, 75 Ohio St.3d 558, 560, 664 N.E.2d 926 (1996).

B. Juvenile Court Jurisdiction

“Juvenile courts possess exclusive jurisdiction over children alleged to be delinquent for committing acts that would constitute a crime if committed by an adult.” *In re M.P.*, 124 Ohio St.3d 445, 2010-Ohio-599, 923 N.E.2d 584, ¶ 11. “But in response to a rise in rates and severity of juvenile crime and the belief that not all juveniles can be rehabilitated, * * * the Ohio General Assembly enacted a statutory scheme that provides for some juveniles to be removed from the juvenile court’s authority.” *In re D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894, ¶ 9. One of the hallmarks of Ohio’s “get tough” approach to addressing rising juvenile crime was the enactment of R.C. 2152.10 and 2152.12 (formerly R.C. 2151.26), which provide for the mandatory transfer of older and violent children age fourteen and older under certain circumstances. *State v. Hanning*, 89 Ohio St.3d 86, 89-90, 728 N.E.2d 1059 (2000).

C. Mandatory Transfer

R.C. 2152.10 and 2152.12 provide that when a child is alleged to be a delinquent child, the juvenile court shall transfer the juvenile's case to adult court, without the need for an amenability hearing, in any of the following circumstances:

- **Prior transfer and conviction.** The child, regardless of his or her age, has previously been transferred from juvenile court to adult court and was subsequently convicted of a felony. R.C. 2152.10(A)(3) and 2152.12(A)(2)(a).
- **Out-of-state domiciliary.** The child, regardless of his or her age, is domiciled in another state and the laws of that state would have subjected the child to transfer without an amenability hearing. R.C. 2152.10(A)(3) and 2152.12(A)(2)(b).
- **Category one offense.** The child is accused of a category one offense,¹ there is probable cause to believe that the child committed the offense, and the child is either (a) sixteen or seventeen years of age; or (b) fourteen or fifteen years of age and has previously been adjudicated a delinquent child for committing a category one or category two offense² for which he or she was committed to the Department of Youth Services. R.C. 2152.10(A)(1) and 2152.12(A)(1)(a).
- **Category two offense.** The child is accused of a category two offense other than kidnapping, there is probable cause to believe the child committed the offense, the child is sixteen or seventeen years of age, and has either (a) previously been adjudicated a delinquent child for committing a category one or category two offense for which he or she was committed to the Department of Youth Services; or (b) is alleged to have had a firearm on or about his or her person while committing the offense and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the offense charged. R.C. 2152.10(A)(2)(a) and (b); 2152.12(A)(1)(b).

¹ "Category one offenses" include aggravated murder, murder, attempted aggravated murder, or attempted murder. R.C. 2152.02(BB).

² "Category two offenses" include voluntary manslaughter, kidnapping, rape, aggravated arson, aggravated robbery, aggravated burglary, involuntary manslaughter where the underlying predicate offense is a felony, and the former offense of felonious sexual penetration. R.C. 2152.02(CC).

When a prosecutor requests a mandatory transfer of a juvenile’s case for trial as an adult under R.C. 2152.10(A) and 2152.12(A)(1), the juvenile court must hold a hearing to determine whether the child is eligible for mandatory transfer “according to the child’s age, the nature of the act, and other circumstances, and whether probable cause exists to believe that the juvenile committed the act charged.” *In re M.P.*, 124 Ohio St.3d 445, 2010-Ohio-599 at ¶ 11, citing Juv.R. 30(A). “If the child is eligible for mandatory bindover and if probable cause exists to believe that the juvenile did commit the acts charged, the only procedural step remaining is for the court to enter the order of transfer.” *Id.*, citing Juv.R. 30(B). “Thus, despite the general rule that the juvenile court has exclusive jurisdiction over any child alleged to be delinquent (see R.C. 2151.23(A)(1)), the court has a duty to transfer a case when it determines that the elements of the transfer statute are met * * *.” *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, 897 N.E.2d 629, ¶ 22. *See also In re M.P.* at ¶ 11 (recognizing that when any of the criteria set out in R.C. 2152.10(A) and 2152.12(A)(1) are satisfied, “the juvenile court has the duty to transfer a case, or bind a juvenile over, to the adult criminal system.”).

D. Due Process

1. Relevant Law: Aalim attacks the constitutionality of Ohio’s mandatory transfer provisions by first arguing that the provisions violate his right to due process. But every appellate court that has previously considered the issue has rejected the same due-process challenge to the mandatory transfer provisions that is now being advanced by Aalim. *See, e.g., State v. McKinney*, 1st Dist. Hamilton Nos. C-140743, C-14074, 2015-Ohio-4398, ¶ 11-25; *State v. Anderson*, 2nd Dist. Montgomery No. 25689, 2014-Ohio-4245, ¶ 66-76; *State v. Kelly*, 3rd Dist. Union No. 14-98-26, 1998 WL 812238 (Nov. 18, 1998), *8, *10; *State v. Mays*, 8th Dist. Cuyahoga No. 100265, 2015-Ohio-3815, ¶ 42-45; *State v. Collins*, 9th Dist. Lorain No.

97CA00684, 1998 WL 289390 (June 3, 1998), *2; *State v. J.T.S.*, 10th Dist. Franklin No. 14AP-516, 2015-Ohio-1103, ¶ 39-45; *State v. Lane*, 11th Dist. Geauga No. 2013-G-3144, 2014-Ohio-2101, ¶ 51-68; *State v. Simon*, 12th Dist. Butler No. CA2014-06-139, 2015-Ohio-970, ¶ 15-16.

Mandatory transfer laws in other states have likewise withstood due-process attacks. *See, e.g., State v. Angel C*, 245 Conn. 93, 108-109, 715 A.2d 652 (1998); *Vega v. Bell*, 47 N.Y.2d 543, 550-551, 393 N.E.2d 450 (1979); *People v. Patterson*, 2014 IL 11512, 25 N.E.3d 526, ¶ 93-98; *Manduley v. Superior Court*, 27 Cal.4th 537, 546, 41 P.3d 3 (2002); *State v. Tyler*, 286 Kan. 1087, 1097, 191 P.3d 306 (2008); *State v. Cain*, 381 So.2d 1361, 1363-1365 (Fla.1980); *Caldwell v. Commonwealth*, 133 S.W.3d 445, 452-453 (Ky.2004).

The mandatory transfer provisions do not violate due process, in part, because “[t]here is no constitutional right to be tried as a juvenile.” *State v. Washington*, 2nd Dist. Montgomery No. 20226, 2005-Ohio-6546, ¶ 25. Likewise, due process concerns typically come into play only in situations where the actions of the government seek to deprive an individual of life, liberty or property - none of which are impacted by transferring a juvenile’s case from juvenile court to adult court because all that is effected by the transfer is the eventual forum where the case will be heard. *See McKinney*, 1st Dist. Hamilton Nos. C-140743, C-140744, 2015-Ohio-4398 at ¶ 13 (questioning whether the transfer of jurisdiction implicates the Due Process Clause at all since the transfer does not deprive the juvenile of his liberty and the transfer proceeding “simply changed the forum in which [the juvenile’s] guilt or innocence was to be determined.”). Ohio’s transfer procedures, therefore, are merely “procedural prerequisites” rather than substantive or fundamental rights. *State v. Adams*, 10th Dist. Franklin No. 12AP-83, 2012-Ohio-5088, ¶ 20, citing *State v. Walls*, 96 Ohio St.3d 437, 2002-Ohio-5059, 775 N.E.2d 829, ¶ 17 (wherein this Court held that retroactive application of the 1997 changes in the juvenile transfer procedures,

from all transfers being discretionary to some transfers being mandatory, was permissible because the changes in the law “merely removed the procedural prerequisite of a juvenile-court proceeding”).

Moreover, “[t]he fundamental requirement of due process is an opportunity to be heard ‘at a meaningful time and in a meaningful manner.’ ” *Matthews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965). Aalim has never claimed that he was denied these rights, nor has he contested the fact that all other procedural due process protections recognized as constitutional requirements for bindover proceedings - including the right to notice, the right to counsel, the right to confront and cross-examine witnesses, the right to introduce evidence on his own behalf, the privilege against self-incrimination, and the protection against double jeopardy - were afforded to him in this case.

Aalim nevertheless argues that the mandatory transfer of a juvenile’s case for trial as an adult violates due process because all juveniles have a fundamental right to have an individualized determination of their amenability to treatment in the juvenile system before their case can be transferred for trial as an adult. But he fails to cite to a single case in which a court has found that an amenability hearing is a constitutional requirement to transfer in situations where a state legislature has enacted a mandatory transfer statute, perhaps because no such case exists.

The question then becomes whether the unenumerated right to an amenability hearing that Aalim insists he was entitled to has become “so rooted in the traditions and conscience of our people as to be ranked fundamental,” so that a deprivation of that right amounts to a denial of substantive due process. *State v. Burnett*, 93 Ohio St.3d 419, 426-27, 755 N.E.2d 857 (2001),

quoting *Michael H. v. Gerald D.*, 491 U.S. 110, 122, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989). The answer to that question is no.

Twenty-six other states and the federal government have mandatory juvenile transfer statutes similar to Ohio's. (See Appendix A) Four states and the District of Columbia provide for a rebuttable presumption in favor of transfer. (*Id.*) Nineteen other states provide for only the discretionary transfer of juveniles, but they do so because their state legislatures chose to enact discretionary-transfer statutes only, not because mandatory transfer was deemed unconstitutional. (*Id.*) It is evident, therefore, that the requirement of an amenability hearing before a juvenile may be transferred for trial as an adult is not "so rooted in the traditions and conscience of our people" that an amenability hearing should be deemed a fundamental right.

Additionally, even assuming that the right to an amenability hearing before transfer exists to some limited extent, statutes limiting that right are not unconstitutional if they are rationally related to a legitimate goal of government. See *Toledo v. Tellings*, 114 Ohio St.3d 278, 2007-Ohio-3724, 871 N.E.2d 1152, ¶ 33 ("Laws limiting rights, other than fundamental rights, are constitutional with respect to substantive due process and equal protection if the laws are rationally related to a legitimate goal of government."); *Thompkins*, 75 Ohio St.3d 558 at 560-561 (finding that, while mandatory driver's license suspensions for all defendants convicted of felony drug offenses implicates matters of due process, the laws are rationally related to a legitimate governmental goal and are a valid exercise of the General Assembly's police powers).

Here, R.C. 2152.10 and 2152.12 are rationally related to a legitimate government interest "in protecting its citizens from serious, potentially violent offenders and in reducing violent offenses committed by juveniles." *State v. Lee*, 11th Dist. Lake No. 97-L-091, 1998 WL 637583 (Sept. 11, 1998), *5. "Singling out the most dangerous and violent juvenile offenders, those [like

Aalim] who use firearms, for adult treatment is rationally related to this legitimate governmental purpose.” *Collins*, 9th Dist. Lorain No. 97CA006845, 1998 WL 289390 at *2.

2. **Kent v. U.S. is not applicable:** Despite the lack of any direct legal support for his position, Aalim cites to *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966), in arguing that an amenability hearing is an additional due process protection that he was entitled to before his case could be transferred. But *Kent* does not support Aalim’s position.

In *Kent*, the Supreme Court was confronted with a District of Columbia statute providing that the juvenile court judge may, but was not required to, waive jurisdiction over a juvenile following a “full investigation.” *Id.* at 547-548. The problem with the D.C. statute, however, was that no definitive procedures were provided for how the judge was to determine whether a transfer should be made. *Id.* at 547-549. As a result, the Supreme Court reversed Kent’s conviction following the transfer of his case for trial as an adult on the grounds that the Due Process Clause required more procedure than was provided to juveniles under D.C.’s statute because the relinquishment of jurisdiction over a juvenile is “critically important.” *Id.* at 556. In considering what process was due during transfer proceedings, the Supreme Court concluded that a juvenile is “entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the Juvenile Court’s decision.” *Id.* at 557.

But what the U.S. Supreme Court never said in *Kent*, either directly or indirectly, was that due process required an amenability hearing in every instance before a transfer from juvenile court can be made. Rather, the process outlined in *Kent* involved *discretionary* transfers provided for by statute, not mandatory transfers. The Court, in fact, noted that the juvenile “was *by statute* entitled to certain procedures and benefits as a consequence of his *statutory right* to the

‘exclusive’ jurisdiction of the Juvenile Court,” and that the procedural rights recognized in the case were “*required by the statute * * **.” (Emphasis added.) *Kent* at 557. *See also Kent* at 568 (Stewart, J., dissenting) (“This case involves the construction of a statute applicable only to the District of Columbia.”).

It is for this reason that several courts have found that “because the *Kent* factors were intended to address the problem of arbitrary decision-making and disparate treatment in discretionary bindover determinations, due process does not require use of these factors when the legislature has statutorily eliminated discretionary bindover determinations.” *Lane*, 11th Dist. Geauga No. 2013-G-3144 at ¶ 57, citing *Kelly*, 3rd Dist. Union No. 14-98-26, 1998 WL 812238, at *6. *See also Anderson*, 2nd Dist. Montgomery No. 25689, 2014-Ohio-4245 at ¶ 67; *McKinney*, 1st Dist. Hamilton Nos. C-140743, C-140744, 2015-Ohio-4398 at ¶ 16 (“*Kent* is best read as standing for the simple proposition that when the legislature has established a right to an individualized determination prior to a discretionary transfer, the procedures employed must comport with due process.”).

Kent likewise does not require, as Aalim mistakenly contends, “a juvenile court to consider [the] eight factors” that the *Kent* opinion included in the appendix before transferring a juvenile for trial as an adult. (See Appellant’s Brief at pp. 11-12) Those factors were mentioned as part of a “policy memorandum” that was drafted by a D.C. juvenile court judge as a prudent means of governing the transfer process, but which was later rescinded. *Kent* at 546 fn4, 565-568. And while they are contained in the appendix, these factors were never adopted by the Supreme Court as either statutory or constitutional requirements for the transfer of juveniles; they are not even referenced in the opinion itself.

It is wrong to insinuate, then, that the “*Kent* factors” that Aalim places such emphasis on have any binding authority or that they should govern Ohio law. This was essentially confirmed by the Supreme Court in *Breed v. Jones*, 421 U.S. 519, 537-538, 95 S.Ct. 1779, 44 L.Ed.2d 346 (1975), when it explained that, even after *Kent*, states remain free to determine for themselves the appropriate criteria for when to allow juvenile transfers:

In *Kent v. United States*, 383 U.S., at 562, 86 S.Ct. at 1057, the Court held that hearings under the statute there involved “must measure up to the essentials of due process and fair treatment.” However, the 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 * * *.

Breed at 537-38.

3. In re C.P. does not support Aalim’s position: Aalim’s additional reliance on *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, as support for his argument is also misplaced. In that case, this Court emphasized that Ohio’s system for juveniles assumes that “children are not as culpable for their acts as adults.” *Id.* at ¶ 39. While true, there is nothing in this Court’s jurisprudence that suggests that the *process* by which the cases of older juveniles are handled is unconstitutional, or that transferring such cases to adult court impermissibly holds such juveniles to unreasonably high standards of culpability - particularly when mandatory transfer is limited only to older juveniles who commit murder, who commit violent felonies with firearms, or who repeatedly commit violent felonies, and particularly when the juvenile’s age continues to serve as a necessary mitigating factor when imposing sentence.

4. Aalim’s reliance on Eighth Amendment cases is misplaced: Finally, Aalim points this Court to a number of recent United States Supreme Court decisions that have taken up the constitutionality of *punishing* juveniles similarly to adults. *See, e.g., Miller v. Alabama*, ___ U.S.

___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) (holding that a mandatory sentence of life in prison without parole, when imposed upon juvenile offenders, is cruel and unusual punishment); *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) (holding that the Eighth Amendment prohibits imposition of a life sentence on a juvenile offender who commits a non-homicide offense); *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (holding that the Eighth Amendment forbids the imposition of the death penalty on juvenile offenders). None of these cases, however, address the only question at issue here: are mandatory transfer provisions for juveniles of a certain age who commit certain serious offenses unconstitutional? *See Miller* at 2464 (Emphasis added.) (recognizing that “*Roper* and *Graham* establish that children are constitutionally different from adults for *purposes of sentencing*.”) In fact, in each case, the juveniles were charged and tried as adults and the Supreme Court never suggested that doing so was improper. *See Miller* at 2461-2462; *Roper* at 557; *Graham* at 53.

5. Conclusion: Here, the only process that Aalim was due was the process codified in R.C. 2152.10 and 2152.12. In the twenty years that Ohio law has provided for the mandatory transfer of certain juvenile cases for trial as an adult in non-homicide cases, this process has never been found unjust. Rather, this Court has instead inferred that R.C. 2152.12 (formerly R.C. 2151.26, Am.Sub.H.B. No. 320, 133 Ohio Laws, Part III, 2040, 2049-2050) is a permissible “special measure” for the mandatory transfer of certain juveniles to adult court based upon the age of the offender and the nature and circumstances of his or her offense. *Hanning*, 89 Ohio St.3d 86 at 89-90. Accordingly, because R.C. 2152.10 and 2152.12 do not infringe upon a juvenile’s right to due process, and because Aalim’s arguments to the contrary are without merit, the decision below by the Second District Court of Appeals should be affirmed.

E. Equal Protection

The second attack Aalim makes to the constitutionality of Ohio's mandatory transfer provisions is his contention that application of R.C. 2152.10 and 2152.12 violates his right to equal protection under the law because he is being treated differently than other juveniles based solely on his age. To begin with, the basis of Aalim's argument - that age is all that matters - is fundamentally flawed because the determination of whether to transfer a juvenile's case to adult court, under both the mandatory and the discretionary provisions, is not dependent simply upon the juvenile's age; it is based on a combination of the juvenile's age, the nature of the offense alleged, the circumstances of the offense (i.e. was a firearm involved) and the juvenile's history of prior adjudications.³ Moreover, Aalim fails to cite to any case, in any state, holding that mandatory transfer statutes violate the Equal Protection Clause. This is because every court that has considered the issue has held that age-based differences in the treatment of older juveniles as compared to younger juveniles do not offend principles of equal protection.

Where a statute does not implicate or interfere with a fundamental right, nor operate to the particular disadvantage of a suspect class, the statute will withstand constitutional scrutiny under the Equal Protection Clause if it is rationally related to a legitimate government interest. *Thompkins*, 75 Ohio St.3d 558 at 561. Under the rational-basis test, a statute must be upheld "if there exists any conceivable set of facts under which the classification rationally furthered a legitimate legislative purpose." *Morris v. Savoy*, 61 Ohio St.3d 684, 689, 576 N.E.2d 765 (1991).

³ For example, a fourteen year old who is accused of murder and who has previously been adjudicated delinquent for having committed a violent felony and sent to D.Y.S. is subject to mandatory transfer the same as a sixteen year old who, like Aalim, is accused of aggravated robbery with a firearm. See R.C. 2152.10(A)(1)(b) and (A)(2)(b); R.C. 2152.12(A)(1)(a)(ii) and (A)(1)(b)(ii).

As explained above, there is no fundamental right to be tried as a juvenile. *Kelly*, 3rd Dist. Union No. 14-98-26, 1998 WL 812238, at *7 (finding that an amenability determination before transfer is not a fundamental right); *Washington*, 2nd Dist. Montgomery No. 20226, 2005-Ohio-6546, at ¶ 25 (“There is no constitutional right to be tried as a juvenile.”); *McKinney*, 1st Dist. Hamilton Nos. C-140743, C-140744, 2015-Ohio-4398 at ¶ 27 (“[T]here is no fundamental right to be tried in juvenile court.”); *Lane*, 11th Dist. Geauga No. 2013-G-3144, 2014-Ohio-2010 at ¶ 64 (“The bindover statutes do not affect * * * a fundamental right.”). Instead, the mandatory transfer of certain juveniles to adult court based upon the age of the offender and the nature and circumstances of his or her offense is a legitimate “special measure” undertaken by the General Assembly for dealing with older and violent offenders. *Hanning*, 89 Ohio St.3d at 89-90.

In addition, “age is not a suspect classification under the Equal Protection Clause.” *Gregory v. Ashcroft*, 501 U.S. 452, 470, 111 S.Ct. 452, 115 L.Ed.2d 410 (1991); *State ex rel. Keefe v. Eyrich*, 22 Ohio St.3d 164, 176, 489 N.E.2d 259 (1986). See also *State v. Fortson*, 11th Dist. Portage No. 2011-P-0031, 2012-Ohio-3118, ¶ 41 (“Ohio courts have consistently held that juveniles do not constitute a suspect class in the context of equal protection law.”); *In re Vaughn*, 12th Dist. Butler No. CA89-11-162, 1990 WL 116936 (Aug. 13, 1990), *5 (“[J]uveniles have never been treated as a suspect class and legislation aimed at juveniles has never been subjected to the test of strict scrutiny.”).

Moreover, treating the class of juveniles who, like Aalim, are 16 years of age or older and commit category two offenses with a firearm differently than other juveniles “bears a reasonable relationship to a legitimate governmental objective, which is to punish violent juvenile offenders more harshly by denying them the prospect of more lenient treatment in the juvenile system. Such distinctions may be made between different types of offenders, adult or juvenile, without

denying persons involved the equal protection of law.” *State v. Ramey*, 2nd Dist. Montgomery No. 16442, 1998 WL 310741 (May 22, 1998), *3. “[T]he legislature's decision to treat juvenile gun offenders differently than other offenders is a classification that is rationally related to the legitimate government interest of deterring violent juvenile crime.” *Kelly*, 3rd Dist. Union No. 14-98-26, 1998 WL 812238, at *10. *See also Collins*, 9th Dist. Lorain No. 97CA006845, 1998 WL 289390, at *2 (“The obvious purpose of [mandatory juvenile transfer] legislation is to protect society and reduce violent crime by juveniles. Singling out the most dangerous and violent juvenile offenders, those who use firearms, for adult treatment is rationally related to this legitimate governmental purpose.”); *J.T.S.*, 10th Dist. Franklin No. 14AP-516, 2015-Ohio-1103, at ¶ 45 (“[T]he General Assembly’s decision to single out older juvenile homicide offenders, who are potentially more streetwise, hardened, dangerous, and violent, is rationally related to [the] legitimate governmental purpose of protecting society and reducing violent crimes by juveniles.”). And this Court has likewise recognized the legitimacy of these statutes when it described the mandatory transfer of juveniles as “part of Ohio’s response to rising juvenile crime,” and as “one of the hallmarks of [a] ‘get tough’ approach.” *Hanning*, 89 Ohio St.3d at 89, 728 N.E.2d 1059.

Aalim nevertheless contends that treating 16 and 17-year-olds who are accused of violent crimes differently than 14 and 15-year-olds accused of the same crimes should be deemed impermissible because, in his mind, there is no difference between juveniles simply because of their age. In other words, Aalim seems to believe that a juvenile is a juvenile, regardless of age, and that all juveniles should be treated the same in all circumstances.⁴

⁴ Aalim’s argument ignores, of course, the fact that there is actually a third class of juveniles that he never talks about: Those under the age of fourteen who, regardless of how heinous their conduct might be, are never subject to transfer for trial as an adult.

But there is no support in law or science for Aalim’s apparent belief that the physical or mental development of 16 and 17-year-olds is similar to that of younger juveniles, or that the culpability of older juveniles should be reduced to the same level of children much younger. None of the studies, journal articles, and reports cited to by Aalim and the *amici* parties say or support that notion. And while it may be true that mandatory transfer statutes have been highly criticized as unjust and unwise, the penological grounds for enacting such statutes are still accepted (and have never been found unconstitutional) in a majority of states. (See Appendix A) The “fix” in the law that Aalim seeks, therefore, should come from the legislature through repeal or amendment of R.C. 2152.10 and 2152.12, and not from this Court declaring the statutes unconstitutional.

Because the mandatory transfer provisions in R.C. 2152.10 and 2152.12 do not infringe upon substantive rights, do not adversely affect a suspect class, and are rationally-related to a legitimate government interest, they do not offend a juvenile’s right to equal protection of the law. The statutes are constitutional. The decision below by the Second District Court of Appeals, therefore, should be affirmed.

CONCLUSION

For the reasons set forth above, the State of Ohio respectfully requests that this Court find that the statutory provisions set out in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), which require juvenile courts, in certain cases, to transfer jurisdiction over juvenile offenders to the general division for trial as an adult do not violate a juvenile’s right to due process or equal protection. The court of appeals’ decision below, therefore, must be affirmed.

Respectfully submitted,

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

By: /s/ Andrew T. French

ANDREW T. FRENCH
(Counsel of Record)
Reg. No. 0069384
Assistant Prosecuting Attorney
Montgomery County Prosecutor's Office
P.O. Box 972
301 West Third St.
Dayton, OH 45422
937-225-4117

Attorney for the State of Ohio,
Plaintiff-Appellee

Certificate of Service

I hereby certify that on March 1, 2016, a copy of the foregoing *Brief of Appellee* was served by first class mail, postage-prepaid, on the following:

Amanda J. Powell
Office of the Ohio Public Defender
250 East Broad Street, Suite 1400
Columbus, OH 43215

Counsel for Appellant
Matthew Aalim

Marsha L. Levick
Juvenile Law Center
1315 Walnut Street, Suite 400
Philadelphia PA 19107

Counsel for Amicus Curiae
Juvenile law Center

Nadia N. Seeratan
National Juvenile Defender Center
1350 Connecticut Ave., N.W., Suite 304
Washington, D.C. 20036

Counsel for Amicus Curiae
National Juvenile Defender Center

Rickell Howard
Children's Law Center, Inc.
1002 Russell Street
Covington, KY 41011

Counsel for Amicus Curiae
Children's Law Center, Inc.

Kimberly P. Jordan
 Director, Justice for Children Project
 Moritz College of Law Clinical Programs
 Drinko Hall, 55 West 12th Ave.
 Columbus, OH 43210

*Counsel for Amicus Curiae
 Justice for Children Project*

Maritza S. Nelson
 Law Office of Maritza S. Nelson, LLC
 81 Mill Street, Suite 300
 Gahanna, OH 43230

*Counsel for Amicus Curiae
 Juvenile Justice Coalition
 League of Women Voters of Ohio
 Ohio Association of Child Caring Agencies*

D.K. (Rudy) Wehner
 Law Office of the Public Defender
 117 South Main Street, Suite 400
 Dayton, OH 45422

*Counsel for Amicus Curiae
 Montgomery County Public Defender*

David L. Strait
 Assistant Franklin Co. Public Defender
 373 South High Street, 12th Floor
 Columbus, OH 43215

*Counsel for Amicus Curiae
 Franklin County Public Defender*

Michele Temmel
 Office of the Hamilton Co. Public Defender
 125 East Court Street, 9th Floor
 Cincinnati, OH 45202

*Counsel for Amicus Curiae
 Hamilton County Public Defender*

Melissa Lindsey
 Family & Youth Law Center
 Capital University School of Law
 303 East Broad Street
 Columbus, OH 43215

*Counsel for Amicus Curiae
 Family and Youth Law Center*

Beatrice Jessie Hill
 Case Western Reserve Univ. School of Law
 11075 East Blvd.
 Cleveland, OH 44106

*Counsel for Amicus Curiae
 Schubert Center for Child Studies*

Dorianne Mason
 Ohio Justice & Policy Center
 215 East Ninth Street, Suite 601
 Cincinnati, OH 45202

*Counsel for Amicus Curiae
 Ohio Justice and Policy Center*

/s/ Andrew T. French
 Andrew T. French, Reg. No. 0069384
 Assistant Prosecuting Attorney

APPENDIX A**STATES THAT HAVE MANDATORY JUVENILE TRANSFER STATUTES
SIMILAR TO OHIO**

Alabama	Ala.Code § 12-15-204 (Mandatory transfer for juveniles 16 years of age or older accused of committing certain serious offenses)
Arizona	Ariz.Rev.Stat. Ann. § 13-501 (Mandatory transfer of juveniles 15 years of age or older accused of committing certain serious offenses)
Arkansas	Ark.Code § 9-27-318 (Allows, at the prosecutor's discretion, the direct filing of criminal charges in adult court against juveniles 16 years of age or older who are accused of committing any felony, and against juveniles 14 or 15 years of age who are accused of committing certain serious offenses)
California	Cal.Welf. & Inst. Code § 602 and 707 (Mandatory prosecution in criminal court of juveniles 14 years of age or older who are accused of committing murder and most sex offenses; allows, at the prosecutor's discretion, the direct filing of criminal charges in adult court against juveniles 16 years of age or older who are accused of committing certain serious offenses, and against juveniles 14 years of age or older who are accused of using a firearm during the commission of any felony or who have prior adjudications)
Connecticut	Comm. Gen.Stat. § 46b-127 (Mandatory transfer of juveniles 14 years of age or older accused of committing a class A or B felony)
Florida	Fla. State § 985.557(2) (Mandatory transfer of juveniles 16 years of age or older who commit certain serious offenses with a firearm)
Georgia	Georgia Code Ann. § 15-11-560 (Exclusive original jurisdiction in Adult felony court for juveniles 13 years of age or older who are accused of committing certain serious felonies)
Illinois	Ill. Comp. Stat. Ch 705, § 405/5-130 (Mandatory prosecution in criminal court of juveniles 15 years of age or older who commit certain serious offenses)
Indiana	Ind.Code § 31-30-1-4 (Juvenile court lacks jurisdiction over individuals charged with committing certain serious offenses, and charges must be brought in adult court regardless of the offender's age)
Kentucky	Ky.Rev.Stat. Ann. § 635.020(4) (Mandatory transfer of juveniles 14 years of age or older who commit murder or other serious offenses, or who commit any felony while in possession of a firearm)

Louisiana	La. Child. Code Art. 305 (Allows, at the prosecutor's discretion, the direct filing of criminal charges in adult court against juveniles 15 years of age or older who are accused of committing certain serious offenses)
Maryland	Md. Cts. & Jud. Proc.Code § 3-8A-03(d)(4) (Original jurisdiction in adult court over any juvenile 16 years of age or older who is accused of committing certain serious offenses)
Michigan	Mich. Comp. Laws § 712A.2d (Prosecutor given discretion in whether to charge juvenile, of any age, as an adult if accused of committing a felony)
Minnesota	Minn.Stat. § 260B.125 (Rebuttable presumption that juveniles 16 years of age or older who are accused of committing certain serious offenses, or accused of committing any felony while in possession of a firearm, shall be tried as an adult)
Nevada	Nev.Rev.Stat. § 62B.330 (Juvenile must be tried in district court if he or she was 16 years of age or older, committed a category A or B felony or any offenses involving the use or threatened use of a firearm arm, and juvenile has previously been adjudicated delinquent for an act that would be a felony if committed by an adult)
New Jersey	N.J.Stat.Ann. § 2A:4A-26 (Mandatory transfer of jurisdiction to Superior Court for trial as an adult of any juvenile 14 years of age or older if there is probable cause to believe that the juvenile has committed certain serious offenses)
New York	N.Y. Penal Law § 180.75 (Mandatory transfer to Superior Court of any juvenile fourteen years of age or older (or, if accused of murder or a sexually-motivated felony, 13 years of age) who is accused of certain serious offenses)
North Carolina	N.C. Gen.Stat.Ann § 7B-2200 (Mandatory transfer to superior court for trial as an adult of juveniles 13 years of age or older if there is probable cause to believe the juvenile has committed a Class A felony)
North Dakota	N.D. Cent.Code.Ann. § 27-20-34 (Mandatory transfer for trial as an adult of juvenile 14 years of age or older who is accused of committing certain serious offenses)
Oklahoma	Okla. State Tit. 10A §§ 2-5-204, 2-5-206 (Juveniles 15 years of age or older who are accused of certain serious offenses shall be charged and prosecuted as if an adult)
Oregon	Ore.Rev.Stat. § 137.707 (Juveniles 15 years of age or older shall be prosecuted as adults if accused of committing certain serious offenses)

Pennsylvania	42 Pa.C.S.A. § 6355 (Mandatory transfer for trial as an adult of any juvenile accused of murder and juveniles 15 years of age or older who are accused of committing certain serious offenses with a firearm or with a prior adjudication)
Utah	Utah Code § 78A-6-701 (Mandatory transfer of juveniles 16 years of age or older who are accused of murder, or of any felony and having previously been committed to a secure facility)
Virginia	Va.CodeAnn. § 16.1-269.1 (Mandatory transfer for trial as an adult on probable cause to believe a juvenile 14 years of age or older has committed certain serious offenses)
West Virginia	W.Va.Code.Ann. § 49-4-710 (Mandatory transfer for trial as an adult on probable cause to believe a juvenile 14 years of age or older has committed certain serious offenses, sometime with and sometime without a prior adjudication)
Wyoming	Wyo. Stat.Ann. § 14-6-203(f) (At prosecutor's discretion, charges may be brought in either juvenile court or in district court against juveniles 14 years of age or older who are accused of committing certain serious offenses)
Federal	18 U.S.C. § 5032 (Juveniles 16 years of age or older who are accused of committing certain serious offenses, and have a prior felony adjudication, shall be tried in district court)

**STATES THAT PROVIDE FOR A REBUTTABLE PRESUMPTION
IN FAVOR OF TRANSFER**

D.C.	D.C. Code § 16-2307(e-2) (Rebuttable presumption that juveniles 15 years of age or older who are accused of committing certain serious offenses should be tried as an adult)
Kansas	Kan. Stat. § 38-2347(a)(2) (Rebuttable presumption that a juvenile 14 years of age or older is an "adult," and should be tried as an adult, if accused of committing certain serious offenses)
Nebraska	Neb.Rev.Stat. § 43-247 and 43-276 (Concurrent original jurisdiction granted to district court and juvenile court over any juvenile, regardless of age, that has committed a felony; discretion granted to prosecutor on where to file but, if filed in district court, juvenile granted right to rebut presumption that he or she should be tried as an adult)
New Hampshire	N.H.Rev.Stat. § 169-B:24(IV) (Rebuttable presumption that juveniles 15 years of age or older and who are accused of certain serious offenses shall be tried as an adult)

South Dakota S.D. Codified Laws § 26-11-3.1 (Rebuttable presumption that juveniles 16 years of age or older who are accused of committing a Class A, Class B, Class C, Class 1 or Class 2 felony shall be tried in circuit court as an adult)

STATES THAT PROVIDE FOR DISCRETIONARY JUVENILE TRANSFER ONLY

Alaska	Alaska Stat. § 12-15-203
Colorado	Colo.Rev.Stat. § 19-2-601
Delaware	Del.Code Tit. 10 § 1011
Idaho	Idaho Code § 20-508
Iowa	Iowa Code § 232.45
Maine	Me.Rev.Stat. § 3101
Massachusetts	Mass Gen. Laws ch. 119 § 58 (Only murder)
Mississippi	Miss.Code § 43-21-157
Missouri	Mo.Rev.Stat. § 211.071
Montana	Mont.Code § 211.071
New Hampshire	N.H.Rev.Stat. § 169-B:24
New Mexico	N.M. Stat. § 32A-1-8 and 32A-2-20
South Carolina	S.C.Code § 63-19-1210
Rhode Island	R.I. Gen. Laws §§ 14-1-7., 14-1-7.1
Tennessee	Tenn.Code § 37-1-134
Washington	Wash. Rev. Code § 13.40.110
Wisconsin	Wis. Stat. § 38.18
Texas	Tex. Family Code § 51.02(2)
Vermont	Vt. Stat. Tit. 33 § 5204