

SUPREME COURT OF NEW JERSEY
DOCKET NO. 068707

State of New Jersey in the
Interest of V.A.

: Civil Action
:
: ON APPEAL FROM THE
: SUPERIOR COURT OF NEW JERSEY
: APPELLATE DIVISION
: DOCKET NO.: A-1407-10
:
: Sat Below: PAYNE, BAXTER and
: KOBLITZ, JJ.A.D.

BRIEF OF AMICI CURIAE

THE AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY FOUNDATION, THE ADVOCATES FOR CHILDREN OF NEW JERSEY, THE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS OF NEW JERSEY, THE W. HAYWOOD BURNS INSTITUTE, THE CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH, THE CAMPAIGN FOR YOUTH JUSTICE, THE CENTER FOR CHILDREN'S LAW AND POLICY, THE CENTER FOR THE PROMOTION OF MENTAL HEALTH IN JUVENILE JUSTICE, DEAN TODD CLEAR, DEAN JOHN J. FARMER, JR., DEAN ROBERT L. JOHNSON, THE JUVENILE LAW CENTER, THE LATINO LEADERSHIP ALLIANCE OF NEW JERSEY, THE NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN, THE NATIONAL ASSOCIATION OF SOCIAL WORKERS, THE NATIONAL ASSOCIATION OF SOCIAL WORKERS-NEW JERSEY CHAPTER, THE NATIONAL CENTER FOR YOUTH LAW, THE NATIONAL JUVENILE DEFENDER CENTER, THE NEW JERSEY INSTITUTE FOR SOCIAL JUSTICE, THE NEW JERSEY STATE CONFERENCE OF NAACP, THE NORTHEAST JUVENILE DEFENDER CENTER, THE RUTGERS SCHOOL OF LAW - CAMDEN CHILDREN'S JUSTICE CLINIC, THE RUTGERS URBAN LEGAL CLINIC, RUTGERS SCHOOL OF LAW - NEWARK, AND THE YOUTH LAW CENTER

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STATEMENTS OF INTEREST OF AMICI CURIAE

Amici curiae are organizations and individuals with significant experience and expertise regarding juvenile justice and youth development.

The participation of *amici curiae* is particularly appropriate in cases with "broad implications," *Taxpayers Ass'n. of Weymouth Twp. v. Weymouth Twp.*, 80 N.J. 6, 17 (1976), cert. denied, 430 U.S. 977 (1977), or in cases of "general public interest." *Casey v. Male*, 63 N.J. Super. 255, 259 (Co. Ct. 1960) (history and parameters of *amicus curiae* participation). This is such a case, as it raises far-reaching questions about the authority of prosecutors to waive juveniles to the adult criminal system and the enduring stigma and adverse ramifications associated with that decision. The appendix to this brief contains the statements of interest for each *amicus curiae*.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amici rely on the facts and procedural history contained in the July 12, 2011 Letter Brief in Support of V.A.'s Motion for Leave to Appeal.

On January 9, 2012, *amici* herein filed a Motion for Leave to Appear as *Amici Curiae* simultaneously with this brief.

R. 1:13-9.

SUMMARY OF ARGUMENT

Young people who are prosecuted as adults face debilitating and life-altering consequences. Youth incarcerated in adult prisons suffer substantially higher rates of victimization and suicide and have higher rates of recidivism than those prosecuted in the juvenile system. They also suffer the permanent and often devastating after-effects of criminal convictions, including barriers to employment, higher education, public housing, among others, which prohibit them from becoming productive adults.

In New Jersey and elsewhere, furthermore, there are significant inequities in the application of the waiver laws. Minority youth are waived to the adult system disproportionately and, so, suffer disparate rates of incarceration and collateral consequences of conviction. Nevertheless, and in spite of recent United States Supreme Court jurisprudence demanding differential treatment of youth due to their developmental status, state legislatures across the country, including New Jersey, have enacted laws that expose increasing numbers of young people to adult prosecution and imprisonment.

This appeal challenges the Appellate Division's interpretation and application of the 1999 amendments to N.J.S.A. § 2A:4A-26, which permit transfer of 16- and 17-year-old youth to the adult system upon motion of the prosecutor and

a mere showing of probable cause, and the Attorney General Waiver Guidelines, which govern prosecutorial decisions to seek waiver. Specifically, it raises three significant questions: Did the Appellate Division err, below and in *State v. R.C.*, 351 N.J. Super. 248 (App. Div. 2002), in adopting the "patent and gross abuse of discretion" standard for judicial review of prosecutorial waiver motions? As applied, did N.J.S.A. 2A:4A-26, to the extent that it deprived appellants of the individualized consideration mandated by *Kent v. United States*, 383 U.S. 541 (1966), violate their right to due process under the United States and New Jersey Constitutions? Finally, does N.J.S.A. 2A:4A-26, as applied, violate the separation of powers clause of the New Jersey State Constitution? *Amici* answer each of these questions in the affirmative and, so, urge this Court to reverse the judgment of the Appellate Division and remand the matters to the juvenile court for re-hearings consistent with the Court's ruling.

ARGUMENT

I. THE APPELLATE DIVISION ERRED IN APPLYING THE "PATENT AND GROSS ABUSE OF DISCRETION" STANDARD OF REVIEW TO THE PROSECUTOR'S MOTIONS FOR WAIVER.

As the Appellate Division recognized below, "the decision whether to grant the State's waiver application is 'the single most serious act that the juvenile court can perform.'" *State in the Interest of V.A.*, 420 N.J. Super. 302, 314 (App. Div.

2011), *certif. granted*, 208 N.J. 334, (2011) (internal citations omitted). Embedded in this recognition are several key principles: (1) although the 1999 amendments to the State's waiver law allocated increased authority regarding the waiver determination to the county prosecutors, the statute nevertheless continues to mandate judicial review of prosecutorial motions; (2) the extraordinarily serious consequences of the waiver decision render it a "critical stage" in the prosecution of a juvenile, compelling heightened procedural protections; and (3) consequently, judicial review must be meaningful and not merely a "rubber stamp" of the prosecutor's decision. See *State v. J.M.*, 182 N.J. 402 (2005); *State v. R.G.D.*, 108 N.J. 1 (1987).

In reversing the juvenile court's denial of the Middlesex County Prosecutor's motion for waiver, the Appellate Division employed the "patent and gross abuse of discretion" standard of review. Given the profound consequences of the waiver decision, and the court's own acknowledgement of its weight, this standard is excessively deferential and therefore improper in the juvenile transfer context.

Although the court employed the "patent and gross abuse of discretion" standard in several earlier waiver decisions (see, e.g., *State v. Read*, 397 N.J. Super. 598 (App. Div. 2003) and *State v. R.C.*, *supra*, 351 N.J. Super. 248, its adoption does not

appear to have been challenged directly in those cases and this Court has never ruled on its propriety. *Amici* thus urge the Court to hold that juvenile courts must review waiver motions under the less stringent abuse of discretion standard. Although still according great deference to prosecutorial waiver determinations, this standard would help ensure that older youth charged with Chart I offenses are afforded the procedural protections required in such proceedings.

A. The Increased Prosecution of Young People in the Adult System Has Had Devastating Consequences for Our Nation's Youth, with Little or No Improvement in Public Safety

This Court's consideration of the prosecutorial waiver statute takes place against the backdrop of the well-documented flaws in and devastating consequences of American transfer laws and policies. The juvenile court was created to rehabilitate and treat juveniles who commit offenses. Historically, and to the present day, juvenile courts across the country cater to the individualized needs of children under the age of majority (typically juveniles under eighteen). The court's rehabilitative purpose derived from the premise that if children are protected from the harmful features of the criminal justice system that would inhibit their development, they can "outgrow their criminal behavior" and be rehabilitated regardless of the crime committed. See Franklin E. Zimring, *American Juvenile*

Justice 35-38, 62-64 (Oxford University Press 2005); see also, DAVID S. Tanenhaus, *The Evolution of Juvenile Courts, A Century of Juvenile Justice* 42-69 (Rosenheim, Zimring, Tanenhaus, & Dohrn, eds., 2002).

Research shows that young people are developmentally capable of change and further demonstrates that, when given a chance, even youth with histories of violent crime can and do become productive and law abiding citizens, even without any interventions.¹ These findings are primarily grounded in behavioral research, and also are consistent with recent findings in developmental neuroscience. Brain imaging techniques show that areas of the brain associated with impulse control, judgment, and the rational integration of cognitive,

¹ As youth develop, they become less likely to engage in antisocial activities, an attribute that can be dramatically enhanced with appropriate treatment. "Contemporary psychologists universally view adolescence as a period of development distinct from either childhood or adulthood with unique and characteristic features." Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 31 (2008). See also Steinberg, Cauffman, Banich & Graham, *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 *Dev. Psych.* 1764 (2008) (noting that rates of impulsivity are high during adolescence and early adulthood and decline thereafter). As youth grow, so do their self-management skills, long-term planning, judgment and decision-making, regulation of emotion, and evaluation of risk and reward. See Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psych.* 1009, 1011 (2003). As a result, "[f]or most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled." *Id.* at 1014.

social, and emotional information do not fully mature until early adulthood. See Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 46-68 (2008). It thus has long been recognized that maintaining children in the juvenile justice system spares them from the exposure to the harsh features of the adult criminal justice system that disrupts their development and diminishes their capacity for rehabilitation. See *id.*

In response to a temporary increase in juvenile crime during the late 1980s and early 1990s, however, legislatures across the country enacted new waiver laws that significantly expanded the prosecution of juveniles in adult criminal courts. See Patrick Griffin, et al, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, Sept. 2011, 1, 8 *Juvenile Justice Bulletin*, Washington, D.C., Office of Juvenile Justice and Delinquency Prevention, (hereinafter referred to as "OJJDP Report"). This reaction was fueled in part by "news reports in the 1980s and 1990s pronouncing an imminent tidal wave of teen 'super-predators.'"² Patricia Soung, *Social and*

² "A 1996 Newsweek headline story proposed that drastic measures be taken to contain these 'vicious' youth. Peter Annin, 'Superpredators' Arrive, Newsweek, Jan. 22, 1996, at 57. In testimony before the Senate, academic and current director of the Partnership for Research on Religion and At-Risk Youth, John J. Dilulio, Jr., focused on two solutions to an alleged rise in youth violence--churches and prisons--and advocated for the construction of more juvenile prisons to contain these

Biological Constructions of Youth: Implications for Juvenile Justice and Racial Equity, 6 NW J. L. & Soc. Pol'y 428, 431 (2011). During a 10-year period, 44 states (including New Jersey) and the District of Columbia passed legislation expanding transfer of juveniles. Donna M. Bishop, *Juvenile Offenders in the Adult Criminal Justice System*, 27 Crime & Just. 81, 84 (2000). See also Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, June 2010, 1, *Juvenile Justice Bulletin*, Washington, D.C., Office of Juvenile Justice and Delinquency Prevention; Patrick Griffin, National Center for Juvenile Justice, *Different from Adults: An Updated Analysis of Juvenile Transfer and Blended Sentencing Laws, With Recommendations for Reform* 5 (2008); Human Rights Watch, et al., *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States* 14 (2005) (documenting the expansion of laws that increased the types of offenses for which youth could be transferred to adult court and lowering the age

'superpredators,' who are 'born of abject 'moral poverty.'" *The Changing Nature of Youth Violence: Hearing Before the Subcomm. on Youth Violence of the S. Comm. on the Judiciary*, 104th Cong. 23, 24 (1996) (prepared statement of John J. Dilulio, Jr., *Fill Churches, Not Jails: Youth Crime and Superpredators*); see also Dia N. Brannen et al., *Transfer to Adult Court: A National Study of How Juvenile Court Judges Weigh Pertinent Kent Criteria*, 12 Psychol. Pub. Pol'y & L. 332, 333 (2006). *Id.* at n.19. Dilulio subsequently retracted his predictions about a coming generation of superpredator youth. See Elizabeth Becker, *As Ex-Theorist on Young 'Super-predators,' Bush Aide Has Regrets*, N.Y. Times A19 (February 9, 2001).

at which youth could be eligible for transfer). As a result, the number of juvenile inmates in adult prisons more than doubled between the mid-1980s and the mid-1990s. See Daniel C. Murrie, et al, *Psychiatric Symptoms Among Juveniles Incarcerated in Adult Prison*, *Psychiatric Services*, vol. 60, no. 8, pp. 1093 (2009) (internal citations omitted).

Studies have shown that while the enactment of transfer laws may have been well-intentioned, such laws are ultimately misguided and ineffective at curbing juvenile crime. See OJJDP Report at 26 ("[I]nsofar as these laws are intended to deter youth crime generally, or to deter or reduce further criminal behavior on the part of youth subjected to transfer, research over several decades has generally failed to establish their effectiveness"). One study found youth who were detained in New York's adult system were 85 percent more likely to be re-arrested for violent offenses, and 44 percent more likely to be arrested for property crimes, than were youth committing similar offenses in the New York metropolitan area but detained within New York's juvenile justice system. See Jeffrey Fagan, *The Comparative Advantages of Juvenile Versus Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders*, *Law and Policy*, 18 (1 & 2), 77-113 (1996); see also Jason J. Washburn et al., *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile and Adult Criminal*

Court, Psychiatric Services, vol. 59, no.9, p. 972 (2008)
(internal citations omitted) ("Available evidence indicates that transferred youths reoffend more quickly and are more likely to engage in violent crimes after release than youths processed in the juvenile justice system").

In spite of evidence that recidivism rates do not decline when juveniles are sentenced as adults, "[m]ore youths are processed in adult criminal court than ever before." Washburn, *supra*, at 965. See also OJJDP Report at 2 ("[A]ll states have transfer laws that allow or require criminal prosecution of some young offenders, even though they fall on the juvenile side of the jurisdictional age line"); Jennifer L. Woolard et al., *Juveniles within Adult Correctional Settings: Legal Pathways and Developmental Considerations*, *Int'l J. of Forensic Mental Health*, vol. 4, no. 1, p.3 (2005) ("Legally, the trend is toward expanding the eligibility for adult criminal sanctions - either through prosecution in the criminal system or blended sentencing schemes that are imposed in juvenile court"); Patricia Torbert et al., *State Responses to Serious and Violent Juvenile Crime*, Washington, D.C., Office of Juvenile Justice and Delinquency Prevention (1996).

Sentencing juveniles as adults not only fails to reduce recidivism, but it also fails to provide youth with age-appropriate rehabilitative treatment that will allow them to

lead productive lives post-incarceration. Adult corrections personnel lack the specialized training to meet the educational and mental health needs of young people and cannot provide the necessary programs, classes or activities to address their rehabilitative potential. Campaign for Youth Justice, *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform* 6-7 (2007). See also Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, *Juvenile Justice Bulletin* (Office of Juvenile Justice and Delinquency Prevention) (June 2010) 7.

In addition to being deprived of treatment and rehabilitation, youth incarcerated in adult prisons are extraordinarily vulnerable to victimization. See Beyer, M., *Experts for Juveniles At Risk of Adult Sentences* (P. Puritz, A. Capozello & W. Shang eds.); *More Than Meets The Eye: Rethinking Assessment Competency And Sentencing For A Harsher Era Of Juvenile Justices* (Washington, D.C.: American Bar Association Juvenile Justice Center) (1997). Often the most inexperienced members of the prison population face physical and sexual abuse and even death. Campaign for Youth Justice, *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform* 7 (2007). A recent study by the federal Office of Juvenile Justice and Delinquency Prevention found youth in adult facilities were 500 times more likely to be

sexually assaulted while incarcerated and 200 times more likely to be physically assaulted by facility staff than were youth in the juvenile justice system. Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, *Juvenile Justice Bulletin* (Office of Juvenile Justice and Delinquency Prevention) (June 2010) at 7. Adolescents also are far more likely to be psychologically affected by the confinement and restrictions imposed than their adult counterparts and are thus far more likely to commit suicide; according to one report, youth in adult facilities were eight times more likely to commit suicide than those held in the juvenile justice system. See Beyer, M., *Experts for Juveniles At Risk of Adult Sentences*, in P. Puritz, A. Capozello, & W. Shang (Eds.), *More Than Meets The Eye: Rethinking Assessment Competency And Sentencing For A Harsher Era Of Juvenile Justices* (Washington, DC: American Bar Association Juvenile Justice Center) (1997); see Campaign for Youth Justice, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America* 10 (2007) [citing Mumola, C.J., *Suicide and Homicide in State Prisons and Local Jails* (2005: Washington, D.C: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics) (internal citations omitted)].

Although juvenile adjudications can create many barriers for youth as they grow into adulthood, furthermore, an adult

criminal conviction imposes greater and more severe consequences for success and self-sufficiency. The stigma and barriers that a child must face when tried as an adult will last well into his adulthood regardless of how he might change his behavior. Individuals with criminal records face numerous collateral consequences; in fact, a study funded by the National Institute of Justice and undertaken by the American Bar Association's Criminal Justice Section identified over 38,000 statutes imposing collateral consequences on individuals with a criminal record. American Bar Association, *Adult Criminal Consequences Statute Demonstration Site*, available at <http://isrweb.isr.temple.edu/projects/accproject/index.cfm> (last visited Jan. 6, 2012). Equally disturbing, a recent report on these legal barriers by state determined that New Jersey had more statutes creating collateral consequences than all but six other states. Legal Action Center, *After Prison: Roadblocks to Reentry a Report on State Legal Barriers Facing People with Criminal Records* (2004). These limitations have the unintended consequence of increasing the risk of recidivism by narrowing the opportunities for people trying to reenter society.³

³ The New Jersey Institute for Social Justice ("NJISJ") recently handled a particularly egregious case illustrative to the harm caused by these provisions. A 60-year-old African-American man was barred from managing contracts with schools because of a 40-year-old disorderly persons conviction for possessing five pills without a prescription. He had led an

In almost every state, adult criminal convictions, as distinguished from juvenile adjudications, bar individuals from employment in certain jobs, including the military, and from accessing certain public benefits, including something as basic as public housing. See Michael Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Conviction and Reentry Issues Faced by Formerly Incarcerated Individuals*, 86 B.U.L. Rev. 623 (2006). Almost every employment and higher education application asks about criminal convictions, and students with certain types of convictions cannot obtain federal financial aid. *Id.*; see Jeremy Travis, *But They All Come Back: Facing the Challenges of Prisoner Re-Entry* (2005).⁴ In addition, a juvenile tried as an adult may be

otherwise exemplary life. NJISJ was only able to secure the client's job by obtaining a gubernatorial pardon. This is not a realistic solution for the countless others who are also barred from lawful employment.

⁴ The statistics are staggering. "[E]x-offenders lower overall employment rates as much as 0.8 to 0.9 percentage points; male employment rates, as much as 1.5 to 1.7 percentage points; and those of less-educated men as much as 6.1 to 6.9 percentage points [T]hese employment losses cost the country \$57 to \$65 billion per year." John Schmitt & Kris Warner, Ctr. for Econ. & Policy Research, *Ex-Offenders and the Labor Market* 14 (2010), available at <http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf> (last visited Jan. 6, 2012). Furthermore, "[E]ach male prisoner can expect to see his earnings reduced by approximately \$100,000 throughout his prime-earning years, following his period of incarceration." Meredith Kleykamp, Jake Rosenfeld & Roseanne Scotti, *Wasting Money, Wasting Lives: Calculating the Hidden Costs of Incarceration in New Jersey* 9 (2008) (citing

disenfranchised, causing some to lose the right to vote before ever having had a chance to vote at all. Ashley Nellis, *Addressing the Collateral Consequences of Convictions for Young Offenders*, 35 *Champion* 20, 21 (August 2011). Youth may also face the penalty of deportation as the result of a criminal conviction, and confront restrictions in obtaining or maintaining driver's licenses, volunteering, or, later in life, adopting children. *Id.*

The consequences of a conviction, furthermore, last for a young person's whole life; while every state provides for juvenile record expungement, even for more serious offenses, adult criminal record expungement is rarely permitted for anything but the most minor offenses.⁵ *Id.*

Importantly, even as an increasing number of youth have been exposed to the harms of adult prosecution, the United States Supreme Court has consistently recognized in recent years that developmental differences of youth as compared to adults mandate treatment consistent with those differences. In *Roper v. Simmons*, 543 *U.S.* 551, 573 (2005) (prohibiting the death penalty for juveniles); *Graham v. Florida*, 130 *S.Ct.* 2011, 2026

Bruce Western, *Punishment and Inequality in America* tbl.5.3 (2006)).

⁵ See *N.J.S.A.* § 2C:52-1 et seq. In New Jersey, even juvenile adjudications for certain serious offenses may not be expunged. *N.J.S.A.* § 2C:52-4.1.

(2010) (prohibiting sentences of life without parole for juveniles convicted of crimes other than homicide); and *J.D.B. v. North Carolina*, 131 S.Ct. 502 (2010) (holding that age is a significant factor in determining whether a youth is "in custody" for *Miranda* purposes), the Court has carved out a separate jurisprudence with respect to children, differentiating them from adults based on their lessened culpability and greater amenability to rehabilitation, even for youth who have committed violent crimes. Implicit in these decisions is the recognition that the underlying brain chemistry of youth does not change because the youth has committed a certain crime and these actions in fact may be explained by the differing brain chemistry. The Court's framing of these developmental differences necessitates that courts exercise enhanced scrutiny to ensure procedural protections for youth during the transfer process.

B. In Light of These Consequences, and Because Waiver Is a "Critical Stage" in Juvenile Delinquency Proceedings, It Commands Heightened Procedural Protections.

The profound and life-altering consequences that attach to the waiver decision have led this Court, consistent with the United States Supreme Court's landmark decision in *Kent v. United States*, *supra*, 383 U.S. at 546, to recognize that "[a]ll agree that 'the waiver of jurisdiction [by the Family Part] is a

'critically important' action determining vitally important statutory rights of the juvenile.'" *State in the Interest of R.G.D.*, 108 N.J. 1, 4 (1987), quoting *State in the Interest of R.L.*, 202 N.J. Super. 410, 412 (App. Div. 1985), certif. denied, 102 N.J. 357 (1985) (quoting *Kent*, supra, 383 U.S. at 556); see *State v. J.M.*, 182 N.J. 402, 410 (2005). Indeed, "in the opinion of one commentator, 'waiver to the adult court is the single most serious act that the juvenile court can perform.'" *State in the Interest of R.G.D.*, supra, 108 N.J. at 4-5, quoting P. Hahn, *The Juvenile Offender and the Law* 180 (3rd ed. 1984). This is because, as Justice O'Hern acknowledged in *R.G.D.*, youth waived to the adult system lose the opportunity for rehabilitation and the chance to avoid long-term stigmatization that are still available to them in the juvenile court. *Id.* at 5.

As discussed in § II(A), *infra*, there is an obvious liberty interest at stake in waiver hearings. "So important is the [waiver] decision," furthermore, "that [it] requires 'procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness, as well as compliance with the statutory requirement[s].'" *Id.* at 5, quoting *Kent v. United States*, supra, 383 U.S. at 553, 86 S.Ct. at 1053, 16 L.Ed. at 93.

New Jersey courts have adhered to the mandate of *Kent* and accorded youth facing waiver heightened procedural protections, both before and after the 1999 amendments to *N.J.S.A. 2A: 4A-26*. [As the Appellate Division has noted, although the Juvenile Code now accords the goal of punishment greater weight, "the Legislature did not jettison the juveniles' due process rights in the amendments' wake."] *State in the Interest of J.M.*, 364 *N.J. Super.* 486, 492 (App. Div. 2003), *aff'd in part and remanded*, 182 *N.J.* 402 (2005). Thus, although Rule 3:4-3 does not expressly afford adult criminal defendants the right to testify at probable cause hearings, this Court, in *State v. J.M.*, concluded that young people facing waiver enjoy that right: "[T]he heightened importance to the juvenile justifies treating juveniles differently from adults at the probable cause hearing." 182 *N.J.* at 415. In *J.M.*, furthermore, the Court took the extraordinary step of announcing a court rule amendment codifying its ruling. *Id.* at 416. This unusual exercise of the Court's rule-making authority highlights the importance it attached to ensuring procedural protections for youth facing waiver. See *State v. R.G.D.*, *supra*, 108 *N.J.* 1 (pre-1999 amendment case holding that juvenile has right to testify at rehabilitation stage of waiver hearing).

The fundamental nature of the waiver decision has led to heightened vigilance regarding other procedural protections as

well, most notably the right to counsel. In *State v. Ferguson*, 255 N.J. Super. 530, 535-537 (App. Div. 1992), *opinion after remand* 273 N.J. Super. 486 (App. Div. 1994), for example, the Appellate Division held that, because the waiver hearing is "a very critical stage . . . perhaps the most critical stage in many cases," young people not only have the right to testify but, also, "the correlative right to know this." *Id.* at 539. Thus, because defense counsel did not advise the juvenile of "the benefits inherent in exercising that right and the consequences inherent in waiving it", the case was reversed on ineffective assistance grounds. *Id.*; see also *State v. Bryant*, 237 N.J. Super. 102 (App. Div. 1988), *reversed on other grounds*, 117 N.J. 495 (1989); *State v. N.G.*, 305 N.J. Super. 132 (where counsel for a juvenile who consented to a voluntary waiver had failed to advise him and his mother of the risks inherent in that decision, the youth had been denied his right to counsel); *cf. State v. V.M.*, 363 N.J. Super. 529 (App. Div. 2003) (because adjudicatory hearing in juvenile delinquency case was a "critical stage," the Juvenile Court erred in sequestering youth's mother, who was a potential witness; protective function of mother's presence overcame general rule requiring witness sequestration).

C. Because the Waiver Determination is of "Critical Importance," Demanding Heightened Procedural Protections, the Appellate Division Erroneously Analogized it to Pre-Trial Intervention Decisions

In holding that prosecutorial waiver motions are reviewable only under the extraordinarily deferential and rarely applied "patent and gross abuse of discretion" standard, the Appellate Division drew a flawed analogy between waiver determinations and decisions regarding an adult defendant's eligibility for the pre-trial intervention program ("PTI"). See *State in the Interest of R.C.*, *supra*, 351 N.J. Super. at 256-59, *certif. denied*, 196 N.J. 85 (2008), *cited approvingly in State ex rel V.A.*, *supra*, 420 N.J. Super. 302 and *State v. Read*, *supra*, 397 N.J. Super. 598. This comparison fails to recognize fundamental differences in the nature and consequences of the two decisions and fails to take into account this Court's longstanding recognition of the "critical importance" of waiver. Consequently, the Appellate Division's reliance on PTI precedents as a basis for ascertaining the appropriate standard of review in waiver matters is inapt and should be rejected by this Court.

The PTI program is a diversion option available to adult, usually first-time, defendants. From its inception, in the 1970's, it has been viewed as an alternative to prosecution. Completion of the program affords substantial benefits to the

successful participant; not only might he or she receive counseling, drug treatment, or other supportive services through the program, but can also avoid a record of conviction. PTI further serves systemic goals of easing court congestion and backlogs, decreasing disposition times, enhancing judicial economy, and creating greater flexibility in prosecutions. See *State v. Leonardis*, 71 N.J. 85, 97 (1976) ("Leonardis I"). Decisions to admit or deny prospective participants are governed by both court rule and guidelines promulgated by the Attorney General.⁶ See *Guidelines for Operation of Pretrial Intervention in New Jersey*, available at <http://www.judiciary.state.nj.us/rules/r3-28.htm> (last visited Jan. 6, 2011).

Defendants enjoy no entitlement or right to participate in PTI. Because the program is closely related to the State's charging authority, R. 3:28 accords county prosecutors what is essentially veto power over applicants, and New Jersey courts repeatedly have upheld broad prosecutorial discretion with regard to program admission. See, e.g., *State v. Wallace*, 146 N.J. 576, 582 (1996) (PTI admission closely related to State's charging and, by extension, law enforcement responsibility). As an early law review article observed,

⁶ That both PTI and waiver decisions are made pursuant to guideline criteria is perhaps the greatest similarity between them and certainly not a basis for employing the same standard of review.

The key figure in pretrial diversion is the prosecutor. His influence over intake and disposition largely determines the character and effectiveness of a program.

Since a prosecutor is considered to have almost unfettered discretion to prosecute, it is widely assumed that he has almost unfettered discretion to divert as an incidence of that power. Any suggestion of limiting that discretion is denounced by prosecutors as an improper subversion of their traditional authority.

Note, *Pretrial Diversion from the Criminal Process*, 83 Yale L.J. 827, 838-839 (1974).

Nevertheless, because PTI is "a procedural alternative to the traditional system of prosecuting and incarcerating criminal suspects," it falls within the judiciary's rule-making authority and, in fact, was created by court rule. *Leonardis I, supra*, at 92; See R. 3:28. Moreover, unlike people who are arrested but ultimately not charged, participants in the PTI program are subject to a degree, albeit minimal, of court intervention and oversight. *State v. Leonardis*, 73 N.J. 360, 381 (1977) ("*Leonardis II*").

Consistent with the separation of powers doctrine, then, decisions by prosecutors to accept or reject applicants to PTI are reviewable, but are accorded great deference by the courts. Hence, in *Leonardis II*, this Court announced that the PTI guidelines "should be interpreted to require that the defendant clearly and convincingly establish that the prosecutor's refusal

to sanction admission into the program was based on a *patent and gross abuse of his discretion.*" *Id.* at 382 (emphasis added); see *State v. Nwobu*, 139 N.J. 236 (1995), *State v. Dalglish*, 86 N.J. 503 (1981). This extraordinarily deferential standard of review is employed in few other contexts and, in criminal law, only to decisions that fall within the traditional reach of prosecutorial discretion. See, e.g., *State v. Brooks*, 175 N.J. 215 (2002) (admission to drug court; noting, however, that "patent and gross abuse of discretion" standard is codified in the controlling statute, N.J.S.A. § 2C:35-14); *State v. Brimage*, 153 N.J. 1 (1988) (prosecutor's authority to waive period of parole ineligibility in drug cases); cf. *State v. Lagares*, 127 N.J. 20, at 26-33 (1992) and *State v. Vasquez*, 129 N.J. 189 (1992) (prosecutorial decisions regarding waiver of parole ineligibility reviewable under "arbitrary and capricious" standard).

In *State v. R.C.*, *supra*, 351 N.J. Super. 248, *certif. denied*, 196 N.J. 85, the Appellate Division applied the "patent and gross abuse of discretion" standard to judicial review of juvenile waiver decisions, finding that waiver, like a PTI referral, is "closely related" to the State's charging authority. *Id.* at 260. This analogy was, however, misplaced. Unlike the PTI determination, the decision to waive a young person to the adult criminal justice system neither confers a

benefit on the juvenile, nor enhances prosecutorial flexibility, nor serves the ends of judicial economy. To the contrary, it exposes youth to longer sentences and the substantial and irreversible harms discussed in § I(A), *supra*; thrusts the case into the generally inflexible realm of criminal prosecution; and tends to increase, rather than decrease, both the complexity and the length of the prosecution.⁷

The juvenile court, moreover, has an ongoing obligation to protect the due process rights of the children who come before it, see *In re Gault*, 387 U.S. 1 (1967), and "to provide for the care, protection, and wholesome mental and physical development of juveniles . . . [and when a] child is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents." N.J.S.A. 2A:4A-21. Furthermore, although N.J.S.A. 2A: 4A-26 creates a presumption in favor of waiver, 16- and 17-year-olds charged with chart 1 offenses are not exempted from the traditional protections of the juvenile court unless and until they are waived. See § II(A), *infra*.

⁷ Other procedural differences distinguish PTI and waiver determinations. For example, courts will review a denial of PTI only upon motion of the defense. In each and every waiver case, however, the prosecution must file a motion with the juvenile court, attach the statement of reasons for waiver, and obtain a court order directing the transfer of jurisdiction. This statutory scheme strongly suggests that court review of a waiver application must be more than a "rubber stamp."

Thus, judges considering waiver motions - - even motions that, like those at issue in this case, rest upon a showing of probable cause alone - - engage in a function that stands at the very heart of the authority historically allocated to the judiciary. They have a constitutional mandate to accord due process and a statutory mandate to protect as well as to punish. Embedded in these twin responsibilities is an obligation to ensure that prosecutors seeking waiver have complied with their statutory and regulatory responsibilities. The aberrational "patent and gross abuse of discretion" standard, which may be appropriate in the PTI context, does not permit the court to engage in meaningful review of the decisional criteria considered by the State.

D. "Abuse of Discretion" Is the Appropriate Standard for Judicial Review of Waiver Motions

Because the decision to transfer a youth to the adult system does not fall within the prosecution's law enforcement role but, instead, implicates questions and responsibilities traditionally delegated to the judiciary, the Appellate Division's adoption of the "patent and gross abuse of discretion" standard of review for waiver motions was erroneous. Rather, consistent with this Court's reasoning in *Flagg v. Essex County Prosecutor*, 171 N.J. 561 (2002), the appropriate standard is simple abuse of discretion.

Flagg involved forfeiture of public employment following the appellant's conviction of a disorderly person's offense. *Id.* at 565. Although forfeiture generally is mandatory in such circumstances, see *N.J.S.A. 2C:51-2*, the statute permits the court to waive it "upon application of the county prosecutor or Attorney General and for good cause shown." *N.J.S.A. 2C:51-2(e)*. The local prosecutor refused to request a waiver independently and the trial court granted it over her objection. The Appellate Division reversed, holding that the prosecutor's failure to request the waiver was not a "patent and gross abuse of discretion." The court followed its own reasoning in *State v. Lazarchick*, 314 *N.J. Super.* 500, 530-33 (App. Div. 1998), *certif. denied*, 157 *N.J.* 546 (1998), where it rejected the ordinary abuse of discretion standard. Employment forfeiture, the court noted, is "'a collateral consequence' of conviction" and, therefore, outside the traditional realm of judicial oversight. *Id.* at 530-31 (quoting *State v. Heitzman*, 209 *N.J. Super.* 617, 622, 508 *A.2d* 1161 (App. Div. 1986), *aff'd*, 107 *N.J.* 603 (1987)).

On appeal, the Supreme Court expressly "disapproved" of this reasoning and rejected the "patent and gross abuse of discretion" standard. In doing so, it disavowed the simplistic analogy between waiver of forfeiture and PTI determinations drawn by the Appellate Division:

Given that the discretionary decision whether or not to seek a waiver is dissimilar to those determinations typically made by prosecutors in their law enforcement capacity, and is more akin to prosecutorial discretion in sentencing-related determinations, an abuse of discretion would be the more appropriate standard Unlike PTI matters, forfeiture of future public employment is not a typical prosecutorial decision but rather a consequence of certain convictions. Therefore, *applying the heightened-deferential standard of patent and gross abuse of discretion is unnecessary and inappropriate.*

Flagg, 171 N.J. *supra* at 570-572 (emphasis added).

The Court further examined the operative differences between the "ordinary" and "patent and gross" abuse of discretion standards. "Ordinarily, an abuse of discretion will be manifest if defendant can show that a prosecutorial veto (a) was not premised upon a consideration of all relevant factors, (b) was based upon a consideration of irrelevant or inappropriate factors, or (c) amounted to a clear error in judgment.'" *Id.* at 571, quoting *State v. Baynes*, 148 N.J. 434, 444, 690 A.2d 594 (1997) (internal citations omitted). "In contrast, 'patent and gross abuse of discretion' is more than just an abuse of discretion as traditionally conceived; it is a prosecutorial decision that 'has gone so wide of the mark sought to be accomplished . . . that fundamental fairness and justice require judicial intervention'". *Flagg*, *supra* at 572, quoting *State v. Wallace*, *supra*, 146 N.J. at 582-83, 684 A.2d 1355

(internal citations omitted) (emphasis added). In other words, a court reviewing a waiver application under the patent and gross abuse of discretion standard must grant the motion unless it finds that the prosecutor either simply did not do her job (i.e., failed to comply with the procedures set forth by the waiver statute or to apply the Guideline factors) or, alternatively, based her decision to seek waiver on irrelevant or inappropriate considerations.

The abuse of discretion standard, in contrast, accords great deference to the original decision-maker but permits a somewhat more substantive review of the exercise of discretion. The choice of standard, then, may be outcome-determinative in certain cases and, so, is of critical import. In *Flagg*, for example, the Court's review under the abuse of discretion standard led to reversal.⁸

For the reasons discussed above, the decision to waive a young person to the adult system is of significantly greater

⁸ This is not to suggest, however, that review under the "patent and gross" standard does not compel reversal in certain instances. As the trial court determined below, and appellants argue, the prosecutor's failure to consider required factors, or misapplication of those factors, may well rise to this level of abuse of discretion. See, e.g. *State v. Watkins*, 193 N.J. 507 (2008) (prosecutor's denial of PTI application was patent and gross abuse of discretion where prosecutor misinterpreted a guideline factor); *State v. Baynes*, 148 N.J. 434 (1997) (PTI denial was patent and gross abuse of discretion because prosecutor's statement of reasons merely parroted statutory language); *State v. Burger*, 222 N.J. Super. 336 (App. Div. 1988) (PTI denial reversed).

import than forfeiture of public employment. Like forfeiture, however, it is less related to a prosecutor's law enforcement role than to the exercise of prosecutorial discretion in sentencing-related determinations. It further triggers consequences and embodies concerns that fall within the traditional borders of judicial discretion. Consequently, as it did in *Flagg*, this Court should reject the reasoning of the Appellate Division in *State v. R.C.*, *supra*, 351 N.J. Super. 248, and adopt the ordinary abuse of discretion standard for judicial review of prosecutorial waiver motions.⁹

E. The Abuse of Discretion Standard Is Consistent with Legislative Intent

In *R.C.*, the State argued that judicial review of prosecutorial waiver motions was inconsistent with the legislative intent of the 2000 amendments to the waiver statute. *Id.* at 258. The Appellate Division rejected this argument, recognizing that the legislative goal of reducing the length of waiver hearings was achieved through elimination of the

⁹ Affirmation of the "patent and gross abuse of discretion" standard would lead to an additional, irrational result. As the Appellate Division noted below, the trial court's denial of the State's waiver motion was reviewable under the simple "abuse of discretion" standard. *State in the Interest of V.A.*, *supra*, 420 N.J. Super. at 318. If this Court were to adopt the more stringent standard for judicial review of prosecutorial waiver applications, *a fortiori*, prosecutors would be accorded greater deference than the juvenile court with regard to decisions that traditionally and appropriately fall within the realm of judicial discretion.

rehabilitation hearing and not compromised by a non-evidentiary inquiry into prosecutorial compliance with the Guidelines. *Id.*

Similarly, adoption of the simple abuse of discretion standard of review is entirely consistent with the goals of the waiver statute. The Sponsors' Statement to the original bill articulated a unitary aim: "This bill is intended to enhance public safety by shortening the process by which the cases of juvenile offenders charged with the most serious offenses may be waived from the jurisdiction of the Family Court." Sponsors' Statement to Senate Bill 860 (1999), available at http://law.njstatelib.org/law_files/njlh/lh1999/ch373.htm (last visited January 6, 2012) (emphasis added). Neither the bill nor any of its supporting documents states that the goal was to re-allocate decisional authority entirely to the prosecutor; rather, the intent was to increase the likelihood of waiver and speed the process by eliminating the amenability hearing for certain categories of youth.

As the Appellate Division implicitly acknowledged in *State in the Interest of R.C.*, *supra*, 351 N.J. Super. 248, had the Legislature wished to divest the juvenile court of review authority, it could have created a "direct file" or "exclusion" scheme; in fact, numerous other states had taken such actions during the "juvenile justice reformation" of previous decade. See, e.g., OJJDP Report, *supra*, at 1. Instead, the amended

N.J.S.A. 2A:4A-26 preserved the basic framework of original jurisdiction in the juvenile court and mandated that, even in cases involving older youth charged with Chart 1 offenses, the State must establish probable cause, consider certain factors, and submit documentation of its consideration to the court for review before waiver can occur.

If judicial review is compelled by statute, that review must be meaningful. *Cf. Leonardis II, supra*, 73 N.J. at 378 ("though the Legislature is not obligated to pass a particular piece of legislation, once it acts it is bound by the constitutional prescription against arbitrariness."). Adoption of the somewhat less deferential abuse of discretion standard would permit more meaningful review but, at the same time, would neither re-inject the question of rehabilitation into waiver proceedings nor slow the process by requiring an evidentiary hearing. To the contrary, the actions required of both prosecutor and judge, and the time needed to undertake them, would not change. Thus, the "abuse of discretion" standard is consistent with legislative intent.

II. AS APPLIED, N.J.S.A. 2A:4a-26 VIOLATES APPELLANTS' RIGHTS UNDER THE DUE PROCESS CLAUSES OF THE UNITED STATES AND NEW JERSEY CONSTITUTIONS

A. Due Process Requires Compliance With *Kent v. United States* Where The Juvenile Court Is Provided Jurisdiction Unless And Until The Court Grants the Prosecutor's Motion for Transfer.

In addition to the improper standard of review, N.J.S.A. 2a:4A-26 denies young people facing waiver the due process of law to which they are entitled under the federal and state constitutions. U.S. Const., XIV Amend.; N.J. Const., Art. 1, para. 1. Over four decades ago, the Supreme Court held that the transfer from juvenile court to adult criminal court imposes a significant deprivation of liberty and therefore warrants protection under the Due Process Clause of the Fourteenth Amendment. *Kent v. United States*, *supra*, 383 U.S. at 546 (finding that transfer is a "critically important" action determining vitally important statutory rights of the juvenile"). *Kent* made clear that transfer to adult court must provide due process protections commensurate with the critical nature of the proceedings, as "there is no place in our system of law for reaching a result [waiver of juvenile court jurisdiction] of such tremendous consequences without ceremony - without hearing, without effective assistance of counsel, without a statement of reasons." *Kent*, 383 U.S. at 554. In the instant appeal, the youth also had a liberty interest in the

individualized treatment available in juvenile court that cannot be denied without the due process protections required by *Kent*. These protections were not provided.

The prosecutorial waiver provision at issue in this case does not mandate transfer to adult court; rather, transfer is triggered "on motion of the prosecutor" for enumerated offenses for children who are age 16 and older. *N.J.S.A. 2A:4A-26(a)*. On its face, the statute provides that unless and until the prosecutor moves to transfer the juvenile, juvenile court has exclusive jurisdiction. Under these circumstances, the full protections of *Kent v. United States* apply. *See id.* at 557 (the child is "by statute entitled to certain procedures and benefits as a consequence of his statutory right to the 'exclusive' jurisdiction of the Juvenile Court."); *see also State v. Fernandes*, 300 Conn. 104, 126-27 (2011) ("In the case of discretionary transfer statutes, however, a juvenile does have a right to avail himself of juvenile court jurisdiction because his case is presumptively a juvenile case; while that right is alienable under [Connecticut's discretionary transfer provision] it is nevertheless protected by due process.").

Because the prosecutorial waiver provision is discretionary, the child subject to prosecutorial waiver has a liberty interest in his status as a juvenile and all its consequential benefits. As in *Fernandes*, cases involving

juveniles are 'presumptively' juvenile cases. Thus, transfer proceedings under New Jersey's prosecutorial waiver provision must provide due process protections commensurate with the critical nature of the proceedings and the vesting of jurisdiction with the juvenile court. At a minimum, the process due includes a meaningful opportunity to be heard on the matter at issue at a "hearing appropriate to the nature of the case." *Goss v. Lopez*, 419 U.S. 565, 579 (1975) (internal citations omitted, emphasis added). The vital nature of the liberty interest at issue in a transfer proceeding calls for heightened procedural protections. Indeed, the United States Supreme Court has made clear that "[t]he extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.'" *Goldberg v. Kelly*, 397 U.S. 254, 262-263 (1970).

As *Kent* recognized, waiver to adult court is an action of "tremendous consequence." *Kent*, 383 U.S. at 554. Here, the consequences of waiver are stark. In criminal court, appellants face a prison sentence of up to 45 years; in juvenile court, they would face a maximum ten year sentence of confinement. See *In the Interest of V.A.*, *supra*, 420 N.J. Super. at 308. The United States Supreme Court has itself characterized freedom from confinement as "the most elemental of liberty interests-- the interest in being free from physical detention by one's own

government." *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), quoting *Foucha v. Louisiana*, 504 U.S. 71, 80, 118 L.Ed. 2d 437, 112 S.Ct. 1780 (1992). To ensure that the youths' interests in juvenile status and freedom from confinement are adequately protected, the hearing cannot occur "without the participation or any representation of the child." *Kent*, at 553. It cannot be pro forma precisely because of the importance of the interests at stake. The *Kent* court made this clear:

'What is required before a waiver is, as we have said, 'full investigation.' . . . It prevents the waiver of jurisdiction as a matter of routine for the purpose of easing the docket. It prevents routine waiver in certain classes of alleged crimes. It requires a judgment in each case based on 'an inquiry not only into the facts of the alleged offense but also into the question whether the *parens patriae* plan of procedure is desirable and proper in the particular case.' (internal citations omitted).

Kent, 383 U.S. at 553 n. 5.

As applied to the youth in this case, the prosecutorial waiver provision provided no meaningful transfer hearing in compliance with *Kent*. Instead, the prosecutor submitted a statement of reasons based on the Guidelines developed by the Attorney General and a hearing on probable cause was held. Although the trial court sought to engage in a meaningful review of the statement of reasons, the Appellate Division was adamant in interpreting the statute as precluding any such inquiry.

What was left was nothing more than a hearing on probable cause¹⁰: "Simply stated, when a sixteen-year old or above is charged with an enumerated offense, the prosecutor need only establish probable cause for the court to waive the juvenile to adult court." *State v. J.M.*, 182 N.J. 402, 412 (2005). Yet, without the participation of charged youth, effective assistance of counsel, and a substantive inquiry into the reasons for the transfer, a transfer hearing does not provide the full protections required by *Kent*.¹¹

¹⁰ This Court's decision in *State v. J.M.*, 182 N.J. 402 (2005) suggests some concern about how the probable cause hearing is actually conducted in juvenile transfer proceedings. In *J.M.*, the Court held that, by court rule, it would provide youth the right to present evidence at the probable cause hearing—a right not provided to adults. The court explained that "Given our conclusion that the probable cause portion of the waiver hearing for a juvenile sixteen years of age or older charged with an enumerated offense is such a meaningful and critical stage of the proceedings, we find that considerations of fairness require that we modify our rules to permit the juvenile to present evidence at the probable cause hearing. In the context of that limited juvenile proceeding, the juvenile should have the chance to do so to enhance the possibility that the trial court will not find probable cause that he or she committed an enumerated offense." *Id.* at 416.

¹¹ As the *Kent* Court noted in the appendix to its opinion, factors a judge should consider when determining whether a juvenile should be transferred to adult court include: 1) "the sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living" (culpability) and 2) "the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile...." (amenability to rehabilitation). *Kent*, *supra*, 383 U.S. at 566-67.

In addition to the requirements of *Kent*, recent Supreme Court jurisprudence requires courts to consider a youth's individual characteristics, including his age, to comply with due process. See *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 130 S.Ct. 2011 (2010); and *J.D.B. v. North Carolina*, 131 S.Ct. 2394, 2403 (2011). Because such considerations were not taken into account in the application of the prosecutorial waiver provisions to the youth in this case, due process was violated.

As the Supreme Court recognized in *Roper*, "the age of 18 is the point where society draws the line for many purposes between childhood and adulthood." *Roper*, 543 U.S. at 574. The Court's recognition of that line has significance for transfer proceedings, where the main issue is precisely whether a minor will be treated like an adult for the purposes of adjudication and punishment. Transfer proceedings which ascribe adult status without regard for a youth's individual characteristics, as the prosecutorial waiver provision at issue here does, cannot withstand constitutional scrutiny.¹²

¹² The Supreme Court has long recognized that juvenile status is legally relevant in a variety of constitutional contexts, including assessing juvenile culpability and ensuring due process. See *Graham v. Florida*, 130 S.Ct. 2011, 2027 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005); *In re Gault*, 387 U.S. 1 (1967); *Bellotti v. Baird*, 443 U.S. 622, 635 (1979). The Court has recognized, and adolescent development research confirms, that a central difference between adolescents and adults is

B. As Interpreted and Applied by the Appellate Division, N.J.S.A. 2A:4A-26 and the Attorney General Waiver Guidelines Deprived Appellants of Due Process.

The Appellate Division's interpretation of the transfer scheme set forth by *N.J.S.A. 2A:4A-26*, as well as its

their still-developing capacity to make decisions, based in part in their high levels of impulsivity and susceptibility to pressure. *Graham*, 130 S.Ct. at 2026; *Roper*, 543 U.S. at 569-70.

While *Roper* and *Graham* involved the constitutionality of the system's harshest sentences, the death penalty and life without parole, the Supreme Court has made clear that the distinction between adolescents and adults is constitutionally relevant in a variety of contexts. In *J.D.B. v. North Carolina*, the Supreme Court explained:

Time and again, this Court has drawn these commonsense conclusions for itself. We have observed that children "generally are less mature and responsible than adults," *Eddings*, 455 U.S. at 115-116; that they "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them," *Bellotti v. Baird*, 443 U.S. 622, 635, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979) (plurality opinion); that they "are more vulnerable or susceptible to ... outside pressures" than adults, *Roper*, 543 U.S. at 569; and so on. See *Graham v. Florida*, 130 S.Ct. 2011, 2026 (finding no reason to "reconsider" these observations about the common "nature of juveniles"). Describing no one child in particular, these observations restate what "any parent knows"—indeed, what any person knows—about children generally. *Roper*, 543 U.S. at 569.

J.D.B. v. North Carolina, 131 S.Ct. 2394, 2403 (2011) (holding that age is relevant to the *Miranda* custody determination). Transferring a youth to adult court, especially one who has a liberty interest in treatment as a juvenile, as occurred in this case without considering youth or immaturity is no longer permissible given current federal law.

interpretation and application of the Attorney General Guidelines, further violated the dictates of *Kent*, *Roper*, and *Graham*. Although the juvenile court judge attempted, within the confines of the statute and the Guidelines, to engage in some measure of individualized consideration, he was soundly rebuffed by the Appellate Division: "V.A., C.T. and M.R., who were age sixteen, should have been waived to the Law Division because probable cause existed for second-degree aggravated assault, one of the offenses for which waiver is automatic when the juvenile is sixteen years of age at the time of the offense" *V.A.*, *supra*, 420 N.J. Super. at 317 (emphasis added). The appellate court also rejected outright the juvenile court's review of the Guidelines statements submitted by the prosecution and his findings regarding their shortcomings. *Id.* at 317-319. This exclusive focus on the offenses alone - without regard to the individual's youth or other individual characteristics - violated the fundamental principles of *Roper* and *Graham*.

As this case illustrates, rather than ameliorate the constitutional infirmities of the transfer statute, the Guidelines adopted by the Attorney General, as applied below, only underscore the legislation's failings. Promulgation of the Guidelines was required by the 1999 statutory changes which removed from consideration the potential for rehabilitation of youth sixteen and older who are charged with enumerated

offenses. *Attorney General's Juvenile Waiver Guidelines* 3 (March 14, 2000), located at <http://www.state.nj.us/lps/dcj/agguide/pdfs/AG-Juvenile-Waiver-Guidelines.pdf> (hereinafter "Waiver Guidelines") (last visited January 6, 2012); see also *N.J.S.A. 2A:4A-26(e)* (requiring promulgation). In light of the longstanding (and ongoing) disparities in waiver determinations, the Guidelines purportedly were promulgated to safeguard against the arbitrary use of discretion in prosecutorial waiver. *In the Interest of RC*, 351 *N.J. Super.* at 256-57.

Pursuant to the Guidelines, in determining whether a waiver is appropriate, the prosecutor must consider seven substantive factors: (1) nature of the offense; (2) deterrence; (3) effect on co-defendants; (4) maximum sentence and length of time served; (5) prior record; (6) trial considerations; and (7) victim's input. *Waiver Guidelines* at 5-6. Interpretive case law prohibits prosecutors from considering non-enumerated factors. See, e.g., *V.A.*, *supra*, 420 *N.J. Super.* at 317. Assistant prosecutors seeking waiver must present written statements of reasons applying these factors to the county prosecutor for review; once approved, the statements are then submitted to the court along with the waiver motion. *Waiver Guidelines* at 7. In contrast to the evidentiary hearing required when rehabilitation is at issue, "a trial court's review of a prosecutor's statement of reasons to waive a

juvenile complaint to adult court may be made summarily based on the court's review of the written statement and other pertinent documentary materials." *In the Interest of RC*, 351 N.J. Super. at 258.

The Appellate Division's restrictive interpretation of the prosecution's evaluative responsibilities under the Guidelines rendered them unconstitutional as applied. Although the introduction to the Guidelines asserts that the decision to seek transfer rests "primarily on objective factors, such as the nature of the offense, rather than subjective factors, such as the juvenile's individual characteristics," *Waiver Guidelines* 4, several of the factors in fact require individualized consideration. See, e.g., Factor 1.3 (role of the juvenile in the offense); Factor 2 (the need for deterring *the juvenile*) (emphasis added); and Factor 5 (prior record). As noted above, these factors do not afford young people facing transfer the nature or level of individual evaluation demanded by *Kent* and its progeny. They do, however, compel both the prosecutor and the reviewing court to evaluate certain aspects of the specific youth before them.

Here, the Middlesex County Prosecutor failed to engage in that evaluation. With the exception of Factor 5 (prior records), the Statements of Reasons for Waiver Motion submitted for the four youths were identical. With regard to

"Deterrence," the statement is both general and conclusory: "[T]he 'need to deter the juvenile and others from engaging in this sort of activity is abundantly clear.'" Describing the "Effect on Co-Defendants," the statement is again conclusory, asserting that "in the interest of judicial efficacy and parity in sentencing," the four "co-defendants should be tried together in the Superior Court Criminal Division." The forms contained similarly general, conclusory, and non-specific statements with regard to the "Maximum Sentence," "Trial Consideration," and "Victim Impact" factors. *State in the Interest of V.A., supra*, 420 N.J. Super. at 308-309.

Even under the limited scope of inquiry contemplated by the Guidelines, these statements were inadequate. Regarding "Deterrence," for example, the Guidelines require the prosecutor to consider "the need for *detering the juvenile*" from further delinquent activity.¹³ Waiver Guidelines at 5 (Emphasis added). As numerous courts and commentators have made clear, the question of specific deterrence is highly individualized and must be determined on a case-by-case basis. This Court, in particular, considered the issue at length in *State in the*

¹³ Further compromising the constitutional validity of this scheme is its inaccurate assumption that adult prosecution has deterrent value. To the contrary, as made clear in § I(A), *supra*, numerous studies have documented that transfer has little or no specific or general deterrence effect on youth and, in fact, that incarceration of youth with adults increases recidivism.

Interest of C. A. H. and B. A. R., 89 N.J. 326 (1981), a pre-Guidelines case, in which the Supreme Court reversed a denial of waiver where the juvenile court had not adequately considered the then-relevant factors. Although the case turned on the question of general deterrence, the Court also wrote:

The deterrence doctrine, as a penal tool, is both *flexible and relative*. Its usefulness will vary in both its individual and societal applications in relation to the crime and the criminal involved in the particular circumstances.

Id. at 325 (emphases added).

In other words, consideration of the need for deterrence and the efficacy of punishment as a deterrent is inherently individualized, rendering inadequate the prosecutor's statement of reasons in this case. See *Read, supra*, at 638 ("We do not foreclose the possibility that a juvenile's psychological impairments could be relevant, in exceptional circumstances, to a prosecutor's consideration of the factors set forth in the Attorney General's Guidelines. For example, if a juvenile charged with a Chart 1 offense suffered from a severe developmental disability, a prosecutor could consider this circumstance in determining whether waiver to adult court would promote the policy of 'individual deterrence-that punishment will dissuade the [juvenile] from repeating his criminal acts'") (citations omitted); see also *State v. Brandecker*, 2006 WL

664290, at *5 (N.J. App. Div. March 17, 2006), *rev'd on other grounds*, 187 N.J. 488 (2006) (where statement of reasons merely indicated "applicable" or "inapplicable" and juvenile court failed to consider factors, waiver decision reversed).

Similarly, the prosecution's statement regarding Factor 3, "Effect on Co-Defendants," bordered on disingenuous. Assuming *arguendo* that the prosecutor was correct in her determination that the four youths should be tried together, this was equally likely to occur in the juvenile system since one, T.H., was under 16 and entitled to a rehabilitation hearing. In addition, as the juvenile court noted, transfer of all four youths to the adult court may well have necessitated separate trials and separate juries, due to *Bruton* issues.

In sum, the Appellate Division's interpretation of the Guidelines and their appropriate application prohibited any meaningful judicial review of the prosecutor's waiver motion. It was, therefore, a denial of due process as required by *Kent*, *Roper*, *Graham*, and *J.D.B.*

III. NJSA 2A:4A-26 VIOLATES THE SEPARATION OF POWERS CLAUSE OF THE NEW JERSEY STATE CONSTITUTION

Like every state, New Jersey maintains a separate juvenile court for the prosecution and sentencing of young offenders below the age of 18. New Jersey has also provided for exceptions to juvenile court jurisdiction. Under the New Jersey

Juvenile Code, the Family Court has exclusive jurisdiction over minors unless it waives its own jurisdiction. *N.J.S.A. 2C:4-11*. In accordance with this statute, the prosecutor is afforded discretion to decide whether youth should be prosecuted in the juvenile or adult criminal justice system. While it is well established that the legislature can give the prosecutor discretion over certain decisions in the justice system, this grant of discretion must comport with Constitutional separation of powers mandates and other Constitutional constraints such as due process. See *U.S. v. Armstrong*, 517 U.S. 456, 464 (1996) ("Of course, a prosecutor's discretion is 'subject to constitutional constraints'") (internal citations omitted). As applied in this case, *N.J.S.A. 2A:4a-26* (hereinafter "prosecutorial waiver provision") violates both the separation of powers doctrine and due process.

Consistent with the separation of powers doctrine, prosecutors, as part of the executive branch, have historically been accorded wide discretion to make 'charging decisions' - i.e., who to charge and for what crime. See e.g., Wayne R LaFave, *et al.*, 4 *Criminal Procedure* § 13.2(a), 10 (2d ed. 1999) ("The notion that the prosecuting attorney is vested with a broad range of discretion in deciding when to prosecute and when not to is firmly entrenched in American law."). The prosecutorial waiver provision at issue here violates the

separation of powers doctrine because it extends discretion to the prosecutor that exceeds this traditional, protected function related to charging. Under this provision, prosecutors decide not only who and what to charge, but also in which court the charges will be filed. Because the provision extends to prosecutors, the discretion to determine both the jurisdictional boundaries of juvenile and criminal court, as well as what constitutes a 'crime', is beyond the scope of protected prosecutorial conduct.

The prosecutor's discretion to determine what charges shall be brought against a defendant flows from the doctrine of the separation of powers implicitly embedded within the federal Constitution and explicitly mandated by the New Jersey Constitution. N.J. Const. Art. III, ¶ 1 ("The powers of government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution."). The rationale behind this doctrine is fundamental to our system of government. Powers are separated among the branches so that each branch may act as a check on the exercise of the powers of the co-extensive branches of government - commonly known as our system of "checks and balances." See *Marbury v. Madison*, 5 U.S. 137, 176 (1803);

Springer v. Government of Philippine Islands, 277 U.S. 189 (1928). "The separation of powers doctrine is premised on the theory that government works best when each branch of government acts independently and within its designated sphere, and does not attempt to gain dominance over another branch." *In the Matter of P.L. 2001, Chapter 362*, 186 N.J. 368, 378 (2006). "[N]o deviation from the ... separation of powers [doctrine] will be tolerated which impairs the essential integrity of one of the [three] branches of government." *Masset Bldg. Co. v. Bennett*, 4 N.J. 53, 57 (1950). This does not, however, mean that the branches will have no contact or interrelationship. "On the contrary, the doctrine necessarily assumes the branches will coordinate to the end that government will fulfill its mission." *Brown v. Heymann*, 62 N.J. 1, 11 (1972).

Prosecutors are accorded broad discretion under federal and state Constitutions with respect to their *charging* function -- that is, *whether* to file criminal charges, *what* charges to file and *against whom*. In *Wayte v. United States*, 470 U.S. 598, 607 (1985), the Supreme Court explained that "[i]n our criminal justice system, the Government retains 'broad discretion' as to whom to prosecute" (internal citations omitted). The Court explained, "[s]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what

charge to file . . . generally rests entirely in his discretion.'" *Id.* (internal citations omitted). The Court noted, however, that even within this sphere of general permissiveness there are constitutional limitations, as "the decision to prosecute may not be 'deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification.'" *Id.* at 608. (internal citations omitted).

The U.S. Supreme Court has articulated two primary rationales for prosecutorial discretion. First, the Court should not "unnecessarily impair the performance of a core executive constitutional function." *U.S. v. Armstrong*, 517 U.S. 465 (1996). But forum selection, unlike determinations regarding whether, what, and whom to charge, is not a core executive function. Rather, the responsibility for deciding jurisdictional and forum-related matters has historically been delegated to the legislative or judicial branch. Second, the Court found the prosecutors' charging function supported by "an assessment of the relative competence of prosecutors and courts." *Id.* Similarly, courts and legislatures routinely make jurisdictional determinations; a relative-competence assessment does not point to greater competence on the part of prosecutors to make such jurisdictional choices.

The court in *State of Utah v. Mohi* clarified the distinction between the protected prosecutorial function of charging versus the determination of the forum in which the matter will be adjudicated:

Selecting a charge to fit the circumstances of a defendant and his or her alleged acts is a necessary step in the chain of any prosecution. It requires a legal determination on the part of the prosecutor as to which elements of an offense can likely be proved at trial. Moreover, such discretion is also beneficial to the public; it allows prosecutors to plea-bargain with offenders in some cases, saving the public the expense of criminal prosecutions. However, none of these benefits accompany the discretion to choose which juveniles to prosecute in adult rather than in juvenile court. The elements of the offense are determined by the *charging* decision, and it is only the charging decision that is protected by traditional notions of prosecutor discretion.

901 P.2d 991, 1003 (1995) (emphases added).

As applied here, the prosecutorial waiver provision is invalid because it upsets the balance between the coordinate branches of government. This Court has acknowledged that the intent of the Legislature was indeed to tip the scales: "Thus, the Legislature vested the prosecutor's office with the primary responsibility for juvenile waiver decisions when the juvenile is sixteen years or older and charged with a designated offense. *The intent was to increase prosecutorial discretion and to make waiver more likely in the case of those juveniles.*" *State v.*

J.M., 182 N.J. 402, 412 (2005) (emphasis added). While determining jurisdiction is not solely within the province of the judiciary, diminishing the judiciary's role to nothing more than a rubber stamp on the prosecutor's decision unconstitutionally intrudes upon the role of the judiciary, tipping the balance too far in favor of the prosecution. Moreover, vesting the prosecutor with near unfettered discretion to choose adult or juvenile prosecution invades not only the jurisdictional authority of the court or the legislature, it also invades the court's traditional sentencing authority. By designating juvenile or adult prosecution, the prosecutor also dictates the court's disposition or sentencing options. In general, the sentencing function has historically been assigned to the judicial or legislative branches. See *State v. Warren*, 115 N.J. 433, 449 (1989), citing *State v. Roth*, 95 N.J. 334, 365 (1984) ("we cannot overstress the significance of the judicial responsibility in imposing sentence. '[P]ronouncement of judgment of sentence is among the most solemn and serious responsibilities of a trial court. * * * Our new Code reflects a delicate balance between discretion and fixed sentencing. An independent judiciary is its fulcrum.'")

In *State v. Robert K. McL.*, 201 W.Va. 317 (1997), the West Virginia Supreme Court confronted a statute similar to the transfer provision here. *W.Va.Code*, 49-5-10 (1995) requires the

court to transfer a case to adult court upon the motion of the prosecutor for youth of a certain age who are charged with enumerated offenses, *McL.*, 201 *W.Va.* at 318, all that is required for transfer is establishment of probable cause for one or more of the enumerated offenses. *Id.* at 320. "Exclusive authority" is vested with the prosecutor and is shifted "from the circuit court--where interested parties compete for justice under established rules of an adversarial system . . ." *Id.* at 321. Such a shift was deemed impermissible because it deprived the court of its traditional ability to "consider and weigh personal factors." *Id.* at 322. The statute was saved, however, because of a provision which allows the court to return the child to juvenile court jurisdiction and found that this "safety valve" provision assures that the challenged provisions "do not unconstitutionally divest and deprive a circuit court of its ability to meaningfully consider and weigh personal factors going to the suitability and amenability of a juvenile for the rehabilitative purposes of the court's juvenile jurisdiction." *Id.* at 323.

Unlike *McL.*, the statutory scheme challenged here contains no such safety valve; as applied, the New Jersey provision does indeed shift the transfer decision for all practical purposes "from the circuit court--where interested parties compete for justice under established rules of an adversarial system. . .".

to the prosecutor alone. Moreover, as demonstrated above, the expectation that the development of guidelines and the purported availability of judicial review would avoid a collision with the separation of powers doctrine has proven false. In *State v. R.C.*, *supra*, 351 N.J. Super. at 257, the court was explicit in its view that the requirement that prosecutors comply with those guidelines or directives and that a juvenile is entitled to judicial review to ensure such compliance . . . avoids the serious separation of powers issues that would be raised if the 1999 amendment of the Juvenile Code were construed to give a county prosecutor unreviewable authority to decide whether to waive serious charges against a juvenile over sixteen to adult court." As the record shows, the prosecutor has unquestionably exercised 'unreviewable authority' over the transfer decision here. N.J.S.A. § 2A: 4A-26(e) thus violates the separation of powers clause and cannot be upheld.

IV. NEW JERSEY'S WAIVER STATUTE HAS HAD A DISPARATE IMPACT ACROSS RACIAL, ETHNIC, AND GEOGRAPHIC LINES

In addition to the myriad adverse consequences discussed in § I(A), *supra*, recent studies demonstrate that the State's waiver laws (and, in particular, the 1999 amendments to N.J.S.A. §2A:4:A-26), disproportionately impact minority youth, while white youth continue to benefit from the counseling and rehabilitative services available in the juvenile court. Public

Catalyst Group et al., *Recommendations For Reform Of New Jersey's Juvenile Waiver Laws* 15-17 (2011), available at http://www.njisj.org/equal_justice/documents/RecommendationsfortheReformofNewJerseyJuvenileWaiverLaws.pdf. Despite the stated intent of the Waiver Guidelines to promote uniformity in application of the transfer statute, their implementation has resulted in disparities across geographic and racial lines.

There is significant geographic disparity in the application of the juvenile waiver law. In practice, there is little correlation between violent crime rates and waiver requests. *Id.* at 18. Youth in counties with the same number of arrests for violent crime have varying rates of exposure to waiver. For example, Cape May County had 43 arrests for violent crimes in 2008, and 29 waiver requests to adult court in that same time span, a 68% waiver rate. *Id.* Conversely, Ocean County had 42 arrests for violent crimes in 2008 and 5 waiver requests in the same time span, a 5% waiver rate. *Id.* This data suggests that the waiver decision is driven by the county in which the arrest takes place. Such disparities are inconsistent with the legislative objective to "ensure the uniform application of [N.J.S.A. 2A:4A-26] throughout the state." N.J.S.A. 2A:4A-26(f).

Equally disturbing is the statute's disparate impact on youth of color. Public Catalyst Group et al., *supra*, at 15.

Between July 2008 and October 2009, requests for waiver to adult court were disproportionately high for black male youth. While black youth were 18% of New Jersey's overall youth population, they comprised 36% of juveniles arrested and 61% of those arrested for violent crime, but fully 72% of waiver requests and 77% of waivers granted were for black youth. *Id.*

These statistics cannot be explained by the nature of crimes committed by black youth, as prosecutors charged white youth with the same class of offenses. *Id.* at 16. While this racial disparity does not necessarily mean that there is intentional discrimination at the local level, it illustrates the unintended inequitable consequences of the waiver scheme. Such an outcome runs counter to the legislative objective to "ensure the uniform application of [N.J.S.A. 2A:4A-26] throughout the state." *N.J.S.A. 2A:4A-26(f)*.

This unequal distribution of criminal court exposure, and the criminal records that result from it, exposes youth of color to greater collateral consequences. In addition to the devastating consequences discussed in § (I)(A), *supra*, for example, "[t]he impact [of criminal records on employment] was biggest for African-American men, lowering employment rates between 2.3 and 5.3 percentage points." Michelle Natividad Rodriguez & Maurice Emsellem, National Employment Law Project, *65 Million Need Not Apply: The Case for Reforming Criminal*

Background Checks for Employment (2011), available at http://www.nelp.org/page/-/SCLP/2011/65_Million_Need_Not_Apply.pdf?nocdn=1. In addition, even prior to the current recession, "[o]nce prison inmates are added to the jobless statistics, total joblessness among black men has remained around 40% through recessions and economic recoveries." Bruce Western & Katherine Beckett, *How Unregulated Is the U.S. Labor Market? The Penal System as a Labor Market Institution*, 104 Am. J. Soc. 1030, 1044 (1999).¹⁴

Affirming the Appellate Division's decision would further increase the risk of juveniles entering the adult criminal justice system and the resulting collateral consequences, and will potentially aggravate the disparate impact on people of color. Countless New Jerseyans will continue to be

¹⁴ The Federal Government has sought to address this injustice through national employment policy. The U.S. Equal Employment Opportunity Commission has held that "an employer's policy or practice of excluding individuals from employment on the basis of their conviction records has an adverse impact on Blacks and Hispanics in light of statistics showing that they are convicted at a rate disproportionately greater than their representation in the population." The U.S. Equal Employment Opportunity Commission, Policy Statement on the Issue of Conviction Records under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (1982), Feb. 4, 1987. As the economic recovery continues to falter, furthermore, individuals with criminal records face even more severe disadvantages in today's tight labor market. See Michael L. Foreman, Statement to Equal Employment Opportunity Commission, *Employment Discrimination Faced by Individuals with Arrest and Conviction Records*, Nov. 20, 2008, available at <http://www.eeoc.gov/eeoc/meetings/11-20-08/foreman.cfm>. This impacts the national unemployment rate, community and family stability, and racial inequality.

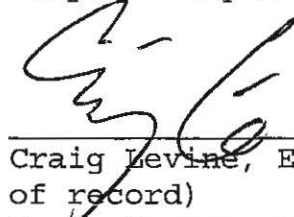
unnecessarily barred from working, thereby increasing the risk of recidivism and undermining the public interest. Faced with these realities, it is imperative that waiver laws be construed, whenever possible, to avoid sending juveniles to adult criminal court and its devastating, life-long consequences.

CONCLUSION

For the reasons set forth above, this Court should reverse the decision of the Appellate Division and remand the matter to the juvenile court for a new waiver hearing, to be conducted in a manner consistent with the Court's opinion.

Dated: January 9, 2012

Respectfully submitted,



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STATEMENTS OF INTEREST OF AMICI CURIAE

Amici curiae are organizations and individuals with significant experience and expertise regarding juvenile justice and youth development.

The American Civil Liberties Union of New Jersey Foundation ("ACLU-NJ") is a private, non-profit, non-partisan membership organization dedicated to the principle of individual liberty embodied in the Constitution. Founded in 1960, the ACLU-NJ has approximately 15,000 members and supporters in New Jersey.

The ACLU-NJ is a strong supporter and protector of the due process rights of individuals in the criminal and juvenile justice systems and the rights of juveniles generally. In addition to litigation on behalf of juveniles generally (see, e.g., *State v. Best*, 201 N.J. 100 (2010) (establishing standard of suspicion necessary to search a student's car in a school parking lot); *State in the Interest of P.M.P.*, 200 N.J. 166 (2009) (establishing time at which juvenile cannot waive *Miranda* rights without an attorney); (*Joye v. Hunterdon Central Regional High Sch. Bd. of Educ.*, 176 N.J. 568 (2003) (challenging random student drug testing); see also *Betancourt v. West New York*, 338 N.J. Super. 415 (App. Div. 2001) (challenging juvenile curfew ordinance)), the ACLU-NJ takes an active role in juvenile justice, visiting juvenile detention centers throughout the state, conducting "know your rights" workshops for young people,

and actively challenging policies and practices in public schools that channel children out of schools and into the juvenile and criminal justice systems.

The ACLU-NJ is also the local affiliate of the national American Civil Liberties Union ("ACLU"), which was founded in 1920 and is composed of nearly 500,000 members and supporters nationwide. The ACLU brought the case *In Re Gault*, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), before the U.S. Supreme Court, leading to the landmark victory which secured, *inter alia*, the right to counsel for children facing the equivalent of criminal charges.

Advocates for Children of New Jersey (formerly Association for Children of New Jersey), is a statewide non-profit child research and advocacy organization, dedicated to improving programs and policies for New Jersey's children and families. ACNJ maintains its principal place of business in Newark, New Jersey.

Administered by a thirty member Board of Trustees, ACNJ gives a voice to the needs of children by educating and engaging state leaders and educating the public through research, policy and legal analysis and strategic communications. Its Board of Trustees, membership and professional staff represent a broad cross-section of individuals and organizations strongly committed to the rights and welfare of children.

Juvenile justice joined child welfare as one of two issues which brought ACNJ into existence in 1978. One of ACNJ's earliest research efforts was to examine the characteristics of children placed in detention facilities and shelters, providing descriptive information and analysis of the programs, policies and budgets of these "temporary" residences. The results were published in a 1979 report entitled Children in Detention and Shelter Care: Surveying the System in New Jersey. In 1983, ACNJ was asked assist the Assembly Law and Public Safety Committee in drafting a separate Juvenile Code for New Jersey, which was signed into law in 1984. In 1986, ACNJ undertook an evaluation of the new law, releasing its findings in a 1988 report entitled Out of Balance: New Jersey's Juvenile-Family Crisis Intervention System. This report revealed "severe contradictions between the 1984 Juvenile Code and its implementation."

ACNJ helped to develop the legislative reforms to the juvenile justice system in 1995 resulting in the formation of a new Juvenile Justice Commission (JJC). Most recently ACNJ has participated as co-chair on a sub-committee of the NJ Council on Juvenile Justice Systems Improvement examining the issue of juvenile waivers in New Jersey. The sub-committee has reviewed the literature and collected data on the number of juveniles waived, the charges against these youth and other relevant statistics.

The Association of Criminal Defense Lawyers of New Jersey ("ACDL-NJ") is comprised of over 400 members of the criminal defense bar of this State. Members of the Association include attorneys in private practice and public defenders.

The ACDL-NJ has participated as *amicus curiae* in numerous matters before this Court. See, e.g., *State v. Henderson*, 208 N.J. 208 (2011); *State v. Rose*, 206 N.J. 141 (2011); *State v. Schmidt*, 206 N.J. 71 (2011); *State v. W.B.*, 205 N.J. 588 (2011); *State v. Rivera*, 205 N.J. 472 (2011); *State v. Hupka*, 203 N.J. 222 (2010); *State v. Marquez*, 202 N.J. 485 (2010); *State v. J.G.*, 201 N.J. 369 (2010); *State ex rel. P.M.P.*, 200 N.J. 166 (2009); *State v. Nunez-Valdez*, 200 N.J. 129 (2009); *State v. Osorio*, 199 N.J. 486 (2009); *State v. Byrd*, 198 N.J. 319 (2009); *State v. Nyhammer*, 197 N.J. 383 (2009); *State v. Sweet*, 195 N.J. 357 (2008); *State ex rel. J.A.*, 195 N.J. 324 (2008); *State v. Buda*, 195 N.J. 278 (2008); *State v. Cottle*, 194 N.J. 449 (2008); *State v. Reid*, 194 N.J. 386 (2008); *State v. Chun*, 194 N.J. 54 (2008); *State v. Burns*, 192 N.J. 312 (2007); *State v. Moore*, 188 N.J. 182 (2006); *State v. Delgado*, 188 N.J. 48 (2006); *State v. Morrison*, 188 N.J. 2 (2006); *State v. Castagna*, 187 N.J. 292 (2006); *State v. Franklin*, 184 N.J. 516 (2005); *State v. Natale*, 184 N.J. 458 (2005); *State v. Feaster*, 184 N.J. 235 (2005); *State v. McAllister*, 184 N.J. 17 (2005); *State v. Reiner*, 180 N.J. 307 (2004); *In re Seelig*, 180 N.J. 234 (2004); *State v.*

Frankel, 179 N.J. 586 (2004); *State v. Cook*, 179 N.J. 533 (2004); *State v. A.G.D.*, 178 N.J. 56 (2003); *State v. Rivera*, 175 N.J. 612 (2003); *State ex rel. S.G.*, 175 N.J. 132 (2003); *State v. Goodwin*, 173 N.J. 583 (2003); *State v. Hernandez*, 170 N.J. 106 (2001); *In re Proportionality Review Project (II)*, 165 N.J. 206 (2000); *State v. Collier*, 162 N.J. 27 (1999); *In re Proportionality Review Project*, 161 N.J. 71 (1999); *State v. Noel*, 157 N.J. 141 (1999); *State v. Branch*, 155 N.J. 317 (1998); *State v. Loftin*, 157 N.J. 253 (1997); *State v. Baynes*, 148 N.J. 434 (1997); *State v. Martini*, 144 N.J. 603 (1996); *State v. DiFrisco*, 142 N.J. 148 (1995); *State v. Bey*, 137 N.J. 334 (1994); *State v. Alexander*, 136 N.J. 563 (1994); *State v. Szemple*, 135 N.J. 406 (1994); *State v. Zenquis*, 131 N.J. 84 (1993); *State v. Marshall*, 130 N.J. 109 (1992); *State v. Cannon*, 128 N.J. 546 (1992); *State v. D.R.H.*, 127 N.J. 249 (1992); and *State v. Hamm*, 121 N.J. 109 (1990). In addition, the ACDL-NJ has been requested by this Court to articulate positions on ethical matters and on proposed changes in rules and policies relating to the criminal justice system. The Association has also participated in many matters before the Superior Courts of New Jersey which have resulted in published opinions. Members of the Association have appeared before the New Jersey State Legislature on matters of significance to the criminal defense bar and have lobbied for lawmakers to adopt or reject certain

legislation. Members of the Association also sit on United States District Court and New Jersey Supreme Court committees and have participated in discussions to modify the Rules of Criminal Procedure and various state administrative rules. The Association has been privileged to have had serving on its Board and in officer positions some of the most highly respected members of the bar of the State of New Jersey.

The W. Haywood Burns Institute ("BI") is a San Francisco-based national nonprofit organization with a mission to protect and improve the lives of youth of color and poor youth, and the well-being of their communities, by reducing the adverse impacts of public and private youth-serving systems to ensure fairness and equity throughout the juvenile justice system. BI works with local juvenile justice systems to reduce racial and ethnic disparities in the juvenile justice system. Using a data driven, consensus based approach, BI works in sites across the country to bring officials from law enforcement, legal systems and child welfare together with community leaders, parents and children to change policies, procedures and practices that result in the disproportionate and inappropriate detention of low-offending youth of color and poor youth. In addition, through the Community Justice Network for Youth, BI supports organizations to build their capacity to hold local juvenile justice systems accountable, reduce the overuse of detention,

and promote the use of community alternatives to detention. BI's Community Justice Network for Youth ("CJNY") works in 28 states, including in Atlantic, Monmouth and Camden Counties in New Jersey. BI has worked in more than 40 jurisdictions nationally and achieved significant results in reducing racial and ethnic disparities, including work with the Camden Disproportionate Minority Contact Committee to reduce bench warrants issued for failures to appear.

The Campaign for the Fair Sentencing of Youth ("CFSY") is a national coalition and clearinghouse that coordinates, develops and supports efforts to implement just alternatives to the extreme sentencing of America's youth with a focus on abolishing life without parole sentences for all youth. Its vision is to help create a society that respects the dignity and human rights of all children through a justice system that operates with consideration of the child's age, provides youth with opportunities to return to community, and bars the imposition of life without parole for people under age eighteen. It includes advocates, lawyers, religious groups, mental health experts, victims, law enforcement, doctors, teachers, families, and people directly impacted by this sentence, who believe that young people deserve the opportunity to give evidence of their remorse and rehabilitation. Founded in February 2009, the CFSY uses a multi-pronged approach, which includes coalition-

building, public education, strategic advocacy and collaboration with impact litigators, on both state and national levels, to accomplish its goals.

The Campaign for Youth Justice ("CFYJ") is a national organization created to provide a voice for youth prosecuted in the adult criminal justice system. The organization is dedicated to ending the practice of trying, sentencing, and incarcerating youthful offenders under the age of 18 in the adult criminal justice system, and is working to improve conditions within the juvenile justice system. CFYJ raises awareness of the negative impact of prosecuting youth in the adult criminal justice system and of incarcerating youth in adult jails and prisons and promotes researched-based, developmentally-appropriate rehabilitative programs and services for youth as an alternative. CFYJ also provides research, training and technical assistance to juvenile and criminal justice system stakeholders, policymakers, researchers, nonprofit organizations, and family members interested in addressing the unique needs of youth prosecuted in the adult system.

The Center for Children's Law and Policy ("CCLP") is a public interest law and policy organization that works in states throughout the country on reform of juvenile justice and other systems that affect troubled and at-risk children, and protection of the rights of children in such systems. The

Center's work covers a range of activities including research, writing, public education, media advocacy, training, technical assistance, administrative and legislative advocacy, and litigation. CCLP works to reduce racial and ethnic disparities in juvenile justice systems, reduce the use of locked detention for youth, and advocate for safe and humane conditions of confinement for children. CCLP helps counties and states develop collaboratives that engage in data-driven strategies to identify and reduce racial and ethnic disparities in their juvenile justice systems and reduce reliance on unnecessary incarceration. CCLP staff also work with jurisdictions to identify and remediate conditions in locked facilities that are abusive or deprive youth of necessary care.

The Center for the Promotion of Mental Health in Juvenile Justice ("CPMHJJ") was created in 2001 at Columbia University with Dr. Gail Wasserman as its Director. The Center's Steering Committee includes experienced and nationally prominent juvenile justice administrators, mental health researchers, and advocates. Over the past decade, the Center has provided technical assistance at sites in Illinois, New Jersey, South Carolina, Alabama, Texas, Washington State, and Wyoming to name a few. The Center has collaborated with local researchers or state officials in 133 sites in twenty-two states, with current (or planned) collaborations in Illinois, Utah, and New York. As

of the end of 2010, CPMHJJ had assisted in the assessment of over 17,000 youths across a variety of juvenile justice settings ranging from probation intake to youth in secure detention facilities. In an earlier national survey of mental health assessment practices conducted by the Center, juvenile justice staff nationwide reported on mental health assessment practices in their work settings and then expressed their opinions on best practices. A paper on these findings was published in 2004 in the Journal of the American Academy of Child and Adolescent Psychiatry.

Mental health concerns contribute to young persons' capacity to benefit from rehabilitation while involved in the juvenile justice system, and further contribute to likelihood of re-offending. Because of CPMHJJ's thorough understanding of the mental health issues faced by youth in the juvenile justice system, we support a comprehensive mental health assessment of all youth involved in the juvenile justice system. We also support the need for more serious consideration of the impact of mental health issues on juvenile problem solving, moral thinking and behavior inhibition. Understanding that upwards of two thirds of incarcerated youth (and as many as a third of those at probation intake) have mental health concerns that may hinder their ability to conform their behavior to adult standards, we

support a more nuanced and research-based approach to assigning culpability to youth in the juvenile justice system.

Todd Clear is Dean of the Rutgers University School of Criminal Justice and a former president of the American Society of Criminology. For over a decade prior to becoming Dean in 2010, Dr. Clear was a distinguished professor at John Jay College. Immediately prior to that, he was associate dean of the School of Criminology and Criminal Justice at The Florida State University from 1996 to 1999. Dr. Clear spent time at Rutgers University prior to his most recent appointment, serving as a member of the Rutgers faculty from 1978 to 1996, during which time he also served as vice president of the National Council on Crime and Delinquency from 1991 to 1993. He earned his master's and doctoral degrees at the School of Criminal Justice at S.U.N.Y. Albany, and did his undergraduate work in sociology at Anderson College in Indiana. Dr. Clear is the author of numerous academic articles and books on criminal justice and the American correctional system, wherein he advocates that youth involved with the law be treated as children and not adults.

John J. Farmer, Jr., is Dean of the Rutgers-Newark Law School. His previous positions include, *inter alia*, Chief Counsel to Governor Christine Todd Whitman, Attorney General of New Jersey, and Senior Counsel to the National Commission on

Terrorist Attacks Upon the United States (the "9/11 Commission"). The Attorney General guidelines, applicable to prosecutorial waiver decisions, addressed herein, were promulgated during his tenure as Attorney General.

Dr. Robert L. Johnson is Dean of the University of Medicine and Dentistry of New Jersey ("UMDNJ") - New Jersey Medical School. He is a member of the National Academy of Sciences' Division of Behavioral and Social Science and Education Advisory Board, where he also served on the Division's Committee on Law and Justice. Dr. Johnson is a renowned scholar of adolescent behavioral medicine, having served previously as the Chairman of the Department of Pediatrics at UMDNJ-New Jersey and Director of Adolescent Medicine at Children's Hospital of New Jersey. From 2001-2005, Dr. Johnson was Chief of the Department of Pediatrics at University Hospital in Newark. In 2003, Dr. Johnson was appointed to the New Jersey Child Welfare Panel, on which he served until 2007. He is the author of numerous articles in peer-reviewed medical journals related to juvenile and adolescent behavioral health, including "Problem Behavior of Adolescence: A Clinical Perspective," "Adolescent Social Development," and "The National Institutes of Health (NIH) State-of-the-Science Conference on Prevention Violence and Related Health-Risking Social Behaviors in Adolescents - a commentary."

The Juvenile Law Center ("JLC"), founded in 1975, is the oldest public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of vulnerable youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services, including services that will enable these youth to become healthy and productive adults. JLC has been at the forefront of advocating for the alignment of juvenile justice policy and practice, including state waiver laws, based on settled research on the developmental differences between children and adults and longstanding constitutional principles of fundamental fairness.

The Latino Leadership Alliance of New Jersey ("LLANJ") is a statewide, nonprofit, nonpartisan, organizational and individual membership organization whose mission is to obtain political, economic and social equity for Latino communities in New Jersey and to unify organizations and individuals in advocating for the rights of Latinos. Founded in 1999, LLANJ is administered by a 28-member Board of Delegates from organizations whose constituent members number in the tens of thousands. Organizational members include the New Jersey Chapter of National Latino Peace Officers Association; El Komite de Apoyo a los Trabajadores, "CATA" - The Farmworkers Support Committee; Utility Workers Union of America, Local 601; Dominican American

National Roundtable; National Coalition of Latino Clergy and Christian Leaders; the Puerto Rican Congress of New Jersey; and the Port Authority Police Hispanic Society, among others. LLANJ maintains its principal place of business in New Brunswick, New Jersey.

Chief among LLANJ's concerns are civil rights protection and eradication of the education achievement gap for Latino youth. In both of these areas, LLANJ has testified dozens of times before the New Jersey legislature and other governmental bodies on the potential impact of proposed policies and legislation. LLANJ has also joined the ACLU and New Jersey Citizen Action as organizational plaintiffs in civil rights litigation seeking to protect and advance voting rights.

LLANJ's advocacy work in the civil rights and education arena is informed by the work of its Education Committee, Legal Committee and Civil Rights Protection Project. Committees include LLANJ members and non-member legal and education experts and advocates. In 2011, Richard Rivera was named a Soros Justice Fellow by the Open Society Foundation for his work as Director of the Civil Rights Protection Project, and shared in a \$1.6 million award along with 18 other awardees.

LLANJ is deeply concerned about the impact of New Jersey's waiver statute on Latino youth, both as a potential barrier to raising educational outcomes for Latino youth and as a matter of

ensuring the fair and impartial administration of justice. From this perspective, LLANJ joins other *amici* in the hope that the New Jersey Supreme Court will engage in a thorough and comprehensive review of the statute giving due consideration to the concerns jointly raised by *amici*.

Founded in 1977, the **National Association of Counsel for Children** ("NACC") is a 501(c)(3) non-profit child advocacy and professional membership association dedicated to enhancing the well being of America's children. The NACC works to strengthen legal advocacy for children and families by promoting well resourced, high quality legal advocacy; implementing best practices; advancing systemic improvement in child serving agencies, institutions and court systems; and promoting a safe and nurturing childhood through legal and policy advocacy. NACC programs which serve these goals include training and technical assistance, the national children's law resource center, the attorney specialty certification program, policy advocacy, and the *amicus curiae* program. Through the *amicus curiae* program, the NACC has filed numerous briefs involving the legal interests of children and their families in state and federal appellate courts and the Supreme Court of the United States. The NACC uses a highly selective process to determine participation as *amicus curiae*. *Amicus* cases must pass staff and Board of Directors review using the following criteria: the request must

promote and be consistent with the mission of the NACC; the case must have widespread impact in the field of children's law and not merely serve the interests of the particular litigants; the argument to be presented must be supported by existing law or good faith extension the law; there must generally be a reasonable prospect of prevailing. The NACC is a multidisciplinary organization with approximately 3000 members representing all 50 states and the District of Columbia. NACC membership is comprised primarily of attorneys and judges, although the fields of medicine, social work, mental health, education, and law enforcement are also represented.

The National Association of Social Workers ("NASW") is the largest association of professional social workers in the world, with nearly 145,000 members and 56 chapters throughout the United States (including New Jersey) and abroad. NASW conducts research, publishes books and studies, promulgates professional criteria, and develops policy statements on relevant issues of importance. NASW does not favor any legislation or prosecutorial discretion permitting children to be charged and punished under adult standards.

The National Association of Social Workers - New Jersey Chapter ("NASW-NJ") is the New Jersey Chapter of the NASW and has 7,315 members. As part of the NASW, NASW-NJ conducts research, publishes books and studies, promulgates professional

criteria, and develops policy statements on relevant issues of importance. NASW-NJ opposes any legislation or prosecutorial discretion permitting children to be charged and punished under adult standards.

The National Center for Youth Law ("NCYL") is a private, non-profit organization devoted to using the law to improve the lives of poor children nation-wide. For more than 30 years, NCYL has worked to protect the rights of low-income children and to ensure that they have the resources, support and opportunities they need to become self-sufficient adults. NCYL provides representation to children and youth in cases that have a broad impact. NCYL also engages in legislative and administrative advocacy to provide children a voice in policy decisions that affect their lives. NCYL supports the advocacy of others around the country through its legal journal, Youth Law News, and by providing trainings and technical assistance. NCYL has participated in litigation that has improved the quality of foster care in numerous states, expanded access to children's health and mental health care, and reduced reliance on the juvenile justice system to address the needs of youth in trouble with the law. As part of the organization's juvenile justice agenda, NCYL works to ensure that youth in trouble with the law are treated as adolescents and not adults, in a manner

that is consistent with their developmental stage and capacity to change.

The National Juvenile Defender Center ("NJDC") was created to ensure excellence in juvenile defense and promote justice for all children. NJDC responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. NJDC gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice.

NJDC provides support to public defenders, appointed counsel, child advocates, law school clinical programs and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural and tribal areas. NJDC also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

The New Jersey Institute for Social Justice ("NJISJ" or the "Institute") is a Newark-based non-partisan research and advocacy organization dedicated to the advancement of New Jersey's urban areas and residents. NJISJ advances its agenda

through policy-related research and analysis, development and implementation of model programs, advocacy efforts, operational partnerships with government, and public education.

NJISJ has provided its expertise to the New Jersey appellate courts on multiple occasions. See, e.g., *In re Ronald C. Kollman, Jr., Petition for Expungement*, New Jersey Supreme Court Dkt. No. 067807 (fully submitted, argument pending) (regarding New Jersey expungement statute); *Association of New Jersey Rifle and Pistol Clubs, Inc. v. The City of Jersey City*, 201 N.J. 444 (2010) (dismissing appeal as moot based on passage of L. 2009, c. 104, and vacating *Association of New Jersey Rifle & Pistol Clubs, Inc. v. The City of Jersey City*, 402 N.J. Super. 650 (App. Div. 2008), in which NJISJ also appeared as amicus curiae); *State v. Meyer*, 192 N.J. 421 (2007) (expanding eligibility for the drug court program); *State in the Interest of S.S.*, 130 N.J. 20 (2005) (*per curiam*) (opposing the practice of subjecting children brought to the Family Court under "family-in-crisis" petitions to detention for violating court orders); *New Jerseyans for a Death Penalty Moratorium v. New Jersey Department of Corrections*, 185 N.J. 173 (2005) (examining attorneys' fees in OPRA cases); *N.J. State Conf.-NAACP v. Harvey*, 381 N.J. Super. 155 (App. Div. 2005), *certif. denied*, 186 N.J. 363 (2006) (challenging disfranchisement of those on probation and parole); *In re Adoption of the 2003 Low*

Income Hous. Tax Credit Qualified Allocation Plan, 369 N.J. Super. 2 (App. Div. 2004) (examining the scope of the federal Fair Housing Act's mandate to promote racial integration); and *Associates Home Equity Serv., Inc. v. Troup*, 343 N.J. Super. 254 (App. Div. 2001) (holding predatory lending to be a civil rights violation).

The Institute has a deep and longstanding interest in juvenile justice, waiver and reentry. The Institute played a central role in bringing the Juvenile Detention Alternatives Initiative ("JDAI") to New Jersey, where it is now statewide and has resulted in many thousands fewer pretrial detentions of juveniles, which have long term harmful effects, with no increase in either pretrial reoffense or court non-appearance rates. The Institute has served since its inception on the New Jersey Council for Juvenile Justice System Improvement, a body jointly established by the Acting Administrative Director of the Courts and the Executive Director of the Juvenile Justice Commission ("JJC"). The Institute submitted lengthy comments on behalf of a broad coalition of state and national organizations in support of proposed regulations, subsequently adopted, reducing from 30 to 5 days the maximum amount of time a juvenile in a JJC secure facility may be placed in administrative detention (the "hole"). The Institute commissioned the most far reaching analysis of the empirical operation of New Jersey's -

or, upon information and belief, any state's - juvenile waiver statute. See PUBLIC CATALYST GROUP *ET AL.*, RECOMMENDATIONS FOR THE REFORM OF NEW JERSEY'S JUVENILE WAIVER LAWS (2011), available at http://www.njisj.org/equal_justice/documents/RecommendationsfortheReformofNewJerseyJuvenileWaiverLaws.pdf.

The New Jersey State Conference of NAACP's ("NAACP-NJ") purpose and goals are to improve the political, educational, social, and economic status of minority groups; to eliminate racial prejudice; to keep the public aware of the adverse effects of racial discrimination; and to take lawful action to secure the elimination of racial discrimination. The NAACP-NJ has a long history of concern with, and engagement regarding, juvenile justice issues in New Jersey.

The Northeast Juvenile Defender Center ("NJDC") is one of the nine Regional Centers affiliated with the National Juvenile Defender Center. NJDC provides support to juvenile trial lawyers, appellate counsel, law school clinical programs and nonprofit law centers to ensure quality representation for children throughout Delaware, New Jersey, New York, and Pennsylvania by helping to compile and analyze juvenile indigent defense data, offering targeted, state-based training and technical assistance, and providing case support specifically designed for complex or high profile cases. NJDC is dedicated to

ensuring excellence in juvenile defense by building the juvenile defense bar's capacity to provide high quality representation to children throughout the region and promoting justice for all children through advocacy, education, and prevention.

Based in one of our nation's poorest cities, the **Rutgers School of Law - Camden Children's Justice Clinic** is a holistic lawyering program using multiple strategies and interdisciplinary approaches to resolve problems for indigent children facing juvenile delinquency charges, primarily providing legal representation in juvenile court hearings. While receiving representation in juvenile court and administrative hearings, clients are exposed to new conflict resolution strategies and are educated about their rights and the implications of their involvement in the juvenile justice system. This exposure assists young clients to extricate themselves from destructive behavior patterns, widen their horizons and build more hopeful futures for themselves, their families and their communities. Additionally, the Clinic works with both local and state leaders on improving the representation and treatment of at-risk children in Camden and throughout the State.

The **Rutgers Urban Legal Clinic, Rutgers School of Law-Newark ("ULC")** is a clinical program of Rutgers Law School - Newark, established more than thirty years ago to assist low-

income clients with legal problems that are caused or exacerbated by urban poverty. The Clinic's Criminal and Juvenile Justice section, taught by clinical professor Laura Cohen (co-counsel herein), provides legal representation to individual clients and undertakes public policy research and community education projects in both the juvenile and criminal justice arenas. In recent years, ULC students and faculty have worked with the New Jersey Office of the Public Defender, the New Jersey Institute for Social Justice, the Essex County Juvenile Detention Center, Covenant House - New Jersey, staff of the New Jersey State Legislature, and a host of out-of-state organizations on a range of juvenile justice practice and policy issues. Additionally, the ULC is a team leader of the New Jersey Juvenile Indigent Defense Action Network, an initiative of the John D. and Catherine T. MacArthur Foundation that, among other efforts, seeks to provide post-dispositional legal representation to young people committed to the New Jersey Juvenile Justice Commission. The ULC last appeared as *amicus curiae* before the New Jersey Supreme Court in *State in the Interest of P.M.P.*, 200 N.J. 166 (2009).

The Youth Law Center ("YLC") is a San Francisco-based national public interest law firm that works to protect the rights of children at risk of or involved in the juvenile justice and child welfare systems. Since 1978, YLC attorneys

have represented children in civil rights and juvenile court cases in California and two dozen other states. The Center's attorneys are often consulted on juvenile policy matters and have participated as *amicus curiae* in cases around the country involving important juvenile system issues. They have written extensively on juvenile justice policy issues and have provided research, training, and technical assistance to public officials in almost every State. YLC has long been involved in public discussions, legislation and court challenges involving the treatment of juveniles as adults. YLC attorneys served as consultants to the John D. and Catherine T. MacArthur Foundation project on adolescent development. This case fits squarely within YLC's long-term interests and expertise.