

NO. PD-1215-13
In The Court Of Criminal Appeals
Austin, Texas

NO. 01-10-00341-CR
In The First Court Of Appeals
Houston, Texas

NO. 1196446
In The 178th District Court
Harris County, Texas

THE STATE OF TEXAS
Appellant
v.
CAMERON MOON
Appellee

BRIEF OF JUVENILE LAW CENTER *ET AL.* AS *AMICUS CURIAE*
IN SUPPORT OF APPELLEE CAMERON MOON

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TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS:

NOW COMES Juvenile Law Center and additional *amici curiae* to submit this brief in support of the Appellee in the above-captioned case:

IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici Curiae Juvenile Law Center *et al.* work on behalf of children involved in the child welfare and juvenile and criminal justice systems. *Amici* have a particular interest and expertise in the interplay between minors' constitutional rights and the social science and neuroscientific research on adolescent development, especially with regard to youth involved in the justice systems. *Amici* recognize, as does the United States Supreme Court, that juveniles are different from adults and that individual youth develop and mature at different rates. Consequently, courts must take into account each youth's age, as well as other attributes of the individual youth including level of maturity and decision-making ability and capacity for rehabilitation, to ensure that each youth is provided with the same level of constitutional protection provided to adults. *Amici* write in the instant matter to urge this honorable court to reject the State's incorrect argument that a juvenile court is not required to make an individualized determination of a youth's immaturity and capacity for change before transferring the youth to adult criminal court.

A complete listing of *amici curiae* and their statements of interest is found at Appendix A.

Pursuant to T. R. App. P. 11, *amici* aver that no fee has been paid to any attorney for preparation of this brief.

STATEMENT OF THE CASE

Amici adopt the Statement of the Case as set forth in the brief of Appellee Cameron Moon.

ISSUES PRESENTED

Amici adopt the Issues Presented as set forth in the brief of Appellee Cameron Moon.

STATEMENT OF FACTS

Amici adopt the Statement of Facts as set forth in the brief of Appellee Cameron Moon.

SUMMARY OF ARGUMENT

Amici respectfully argue that the State's faulty contention – that a juvenile court may waive jurisdiction of a youth and transfer the youth to adult court based on the charged offense alone, and without an individualized determination of the youth's maturity, culpability and capacity for change -- is constitutionally infirm in light of United States Supreme Court jurisprudence. Specifically, the State's flawed interpretation of Texas's waiver statute is unconstitutional because it (1) creates an irrebuttable presumption in favor of culpability and against the child's capacity for change and rehabilitation and (2) does not allow for individualized determination's prior to transfer, in accordance with the requirements of TEX. FAM. CODE ANN. § 54.02(a) and (f) (2012).

Like Texas, most state transfer statutes require some individualized determination regarding a youth's age, developmental level, degree of culpability and capacity for change by a court prior to a youth's prosecution in adult court. Thus, the Texas statute incorporates the holdings of *Kent v. United States*, 383 U.S. 541 (1966), and of this court in *Hidalgo v. State*, 983 S.W.2d 746 (Tex. Crim. App. 1999), by mandating an inquiry into the youth's particular attributes. But if this court were to accept the State's flawed reading of the waiver statute, Texas would become an outlier in not requiring a court to consider constitutionally relevant factors before subjecting a youth to prosecution and sentencing in the adult

criminal system. Moreover, once in adult court, youth such as Cameron are subject to sentencing statutes that prevent the youth from demonstrating his capacity for rehabilitation to a sentencing judge and a parole board so that he may seek a shortening of his time in confinement.

In essence, the State is urging this Court to adopt an interpretation of the waiver statute that would create automatic transfer to adult court at a time when public policy and opinion overwhelmingly opposes the automatic transfer of youth charged with certain crimes to adult courts.

All of these factors weigh in favor of this Court rejecting the State's contention that a juvenile court may waive jurisdiction based on the sole factor of the alleged offense, and instead affirming the Court of Appeal's holding that the juvenile court misapplied the Texas waiver statute and thus abused its discretion in waiving its jurisdiction over Cameron and transferring him to adult court.

ARGUMENT

In *Kent v. United States*, 383 U.S. 541 (1966), the United States Supreme Court held that “waiver of jurisdiction is a ‘critically important’ action determining vitally important statutory rights of the juvenile,” *id.* at 556, “[as] potentially as important to petitioner as the difference between five years imprisonment and a death sentence.” *Id.* at 557. In *Hidalgo v. State*, 983 S.W.2d 746 (Tex. Crim. App. 1999), this court likewise recognized that “transfer to criminal district court for adult prosecution is ‘the single most serious act the juvenile court can perform . . . because once waiver of jurisdiction occurs, the child loses all protective and rehabilitative possibilities available.’” *Id.* at 755 (quoting *State v. R.G.D.*, 108 N.J. 1 (1987)).

Consequently, the Texas waiver statute mandates that the court conduct a full investigation and hearing prior to deciding that a youth is to be tried in adult court.¹ The statute incorporates the series of factors that the juvenile court must

¹ Section 54.02 of the Family Code authorizes a juvenile court to waive its exclusive, original jurisdiction and to transfer a child to a criminal district court if:

- (1) the child is alleged to have committed a felony;
- (2) the child was fourteen years or older if the alleged offense is a first degree felony or fifteen years or older if the alleged offense is a second degree felony; and
- (3) after a full investigation and hearing, the juvenile court determines that there is probable cause to believe that the juvenile committed the offense alleged and that because of the seriousness of the offense alleged or the background of the juvenile, the welfare of the community requires criminal proceedings.

Tex. Fam. Code Ann. § 54.02(a) (2012).

consider prior to waiver, as mandated by *Kent*. *Hidalgo*, 983 S.W.2d at 754 (citing *Kent*, 383 U.S. at 566–67). These factors include the individual youth’s level of maturity, past history, and capacity for rehabilitation within the juvenile court system.²

In the instant case, the Court of Appeals faithfully applied the *Kent* and *Hidalgo* holdings as well as the Texas statute to reverse the lower court’s waiver ruling. The Court of Appeals found that the lower court had abused its discretion in making key findings that were unsupported by the record. Specifically, the Court of Appeals held that

Our review finds no evidence supportive of the court’s finding that Moon was “of sufficient sophistication and maturity to have intelligently, knowingly and voluntarily waived all constitutional rights heretofore waived . . . [and] to have aided in the preparation of [his] defense.” As such, the evidence to uphold the juvenile court’s finding regarding Moon’s sophistication and maturity is legally insufficient.

² Specifically, the statute provides as follows:

(f) In making the determination required by Subsection (a) of this section, the court shall consider, among other matters:

- (1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;
- (2) the sophistication and maturity of the child;
- (3) the record and previous history of the child; and
- (4) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

We also find the evidence factually insufficient to support the court's finding regarding the prospect of adequate protection of the public and the likelihood of Moon's rehabilitation.

Moon v. State, 410 S.W.3d 366, 375, 378 (Tx. Ct. App. 1st Dist. 2013). Indeed, the uncontradicted evidence at the waiver hearing established that Cameron lacks sophistication and is immature as compared to other sixteen year-old youth, and that he is highly amenable to treatment and rehabilitation in the juvenile justice system. *See id.* at 374-75 (reviewing in detail the uncontroverted evidence presented at the waiver hearing). Thus, the Court of Appeals correctly concluded that “the first factor—whether the offense was against person or property—is the only factor weighing in favor of Moon’s transfer.” *Id.* at 378. Consequently, the Court of Appeals held the juvenile court abused its discretion when it certified Cameron as an adult and transferred his case to the district court.” *Id.*

The State now urges this court to ignore *Kent* and *Hidalgo*, as well as the plain language of the Texas waiver statute, to hold that a juvenile court is not required to make an individualized determination of a youth’s immaturity and capacity for change before transferring the youth to adult criminal court.

Specifically, the State contends that the Court of Appeals should have considered the sufficiency of the evidence to support the transfer order based on the strength of the lone factor relating to the circumstances of the alleged offense, despite the evidentiary insufficiency regarding the other three factors. State’s Pet. at 18. In

effect, the State urges this court to adopt an interpretation of the waiver statute that would essentially provide for automatic transfer of youth of certain ages who are charged with certain offenses. As explained in detail *infra*, such an interpretation would fly in the face of United States Supreme Court jurisprudence that warns that courts must carefully consider the individual attributes of youth in assessing the scope of their rights and the protections that must be afforded to them.

I. U.S. SUPREME COURT JURISPRUDENCE DEMONSTRATES THAT THE STATE’S FLAWED READING OF THE TEXAS WAIVER STATUTE IS ALSO CONSTITUTIONALLY DEFECTIVE

The United States Supreme Court repeatedly has held that youth are categorically less culpable and more amenable to treatment and rehabilitation than adults. *Miller v. Alabama*, 132 S. Ct. 2455, 2463 (2012); *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Roper v. Simmons*, 543 U.S. 551, 570 (2005). The Court also has recognized that, while all youth are categorically less blameworthy than adult offenders, youth mature at different ages and, therefore, there are differences in the degree of culpability among individual youth charged with crimes. *See Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 573, 569; *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988) (plurality opinion) (noting a distinction between “the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.”)).

“An offender’s age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants’ youthfulness into account *at all* would be flawed.” *Graham*, 560 U.S. at 76 (emphasis added). In *Graham*, the United States Supreme Court found problematic a sentencing statute which “denie[d] the juvenile offender a chance to demonstrate growth and maturity.” *Graham*, 560 U.S. at 73. Thus, the Court’s jurisprudence instructs that each juvenile must be given an opportunity to show the capacity to change throughout all stages of his involvement with the justice system.

The State’s reading of the Texas statute is also constitutionally infirm precisely because it “fail[s] to take defendant[‘s] youthfulness into account *at all*” and “denies the juvenile offender a chance to demonstrate growth and maturity.” *Graham, supra*. Specifically, the State’s flawed interpretation would require that all youth such as Cameron who are charged with murder be tried in adult court without a prior individualized determination by a court that takes into account the youth’s age, developmental level, degree of culpability and capacity for change. Moreover, once convicted in adult court, youth such as Cameron are subject to mandatory sentencing statutes that prevent the youth from demonstrating his capacity for rehabilitation while in prison so that he may seek a shortening of his time in confinement.

A. The State’s flawed reading of Texas’s transfer statute runs afoul of constitutional requirements for an individualized judicial determination prior to trial in adult court, where youth are subject to mandatory sentencing statutes

1. Waiver based solely on the offense charged without consideration of the youth’s level of maturity and capacity for rehabilitation violates due process

The State urges an interpretation of Texas’ transfer statute that would allow a juvenile court to ignore evidence at a waiver hearing as to a youth’s individual attributes and instead waive jurisdiction solely on the basis of the offense charged. Such a scheme would deprive youth such as Cameron of any individualized determination of their culpability and amenability to treatment, and thus runs afoul of general due process principles as articulated in *Kent v. United States*, 383 U.S. 541 (1966) and other United States Supreme Court cases.

As *Kent* warned, “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*.”³ *Id* at 554. Because of the vital nature of the liberty interest at stake in waiver proceedings,

³ *Amici* are particularly concerned that in the instant case, the juvenile court signed a form order that tracks the language of the Family Code, but gives no reasons and makes no factual findings specific to this case other than the nature of the offense with which Cameron was charged. CR 3-4. Such a “fill-in-the-blanks” approach, in which the court merely recites the language of the statute, does not “demonstrate ... that the question has received the careful consideration of the Juvenile Court,” *Kent*, 383 U.S. at 561, and is a blatant violation of due process.

[w]hat 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.

Id. at 553 n. 15 (internal quotation marks and citations omitted). Moreover, “[t]he hearing required by the Due Process Clause must be meaningful, and appropriate to the nature of the case. . . . [and] *a hearing which excludes consideration of an element essential to the decision . . . does not meet this standard.*” *Bell v. Burson*, 402 U.S. 535, 541-42 (1971) (citations and internal quotations omitted) (emphasis added).

A juvenile court that fails to consider the youth’s individual characteristics “excludes consideration of an element essential to the decision” as to whether to transfer the youth to adult court, *id.*, and unconstitutionally

precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him.

Miller, 132 S.Ct. at 2468 (citations omitted).

Adoption of the State's position would deny youth such as Cameron an individualized determination based on evidence of his age, developmental status, and degree of culpability. Such a scheme violates youth's due process right to be heard.

2. Youth are fundamentally different from adults in constitutionally relevant ways

The connection between a child's age and their status in law and under the United States Constitution is now well established. As the Supreme Court has consistently recognized, a youth's age "is far more than a chronological fact;" "[i]t is a fact that generates commonsense conclusions about behavior and perception" that are "self-evident to anyone who was a child once himself, including any police officer or judge" and are "what any parent knows—indeed, what any person knows—about children generally." *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403 (2011) (citations and internal quotations omitted). In the last eight years, the Court has issued four decisions that reinforce the primacy of this principle. *See also Miller*, 132 S. Ct. at 2470 (holding that mandatory sentence of life without possibility of parole for minors violates Eighth Amendment); *Graham*, 560 U.S. at 82 (ruling that imposition of life without possibility of parole for non-homicide crimes violates Eighth Amendment); *Roper*, 543 U.S. at 575 (holding that

imposition of death penalty on minors violates Eighth Amendment). In addition to being “commonsense conclusions,” the Court’s findings on the lesser level of maturity, decision-making capacity and culpability of minors as compared to adults, as well as their greater capacity for change, are buttressed by a body of development research and neuroscience demonstrating significant psychological and physiological differences between youth and adults.

“First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking.” *Miller*, 132 S. Ct. at 2464 (internal citations, quotation marks, and brackets omitted). *Accord Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 569. Research demonstrates that adolescents, as compared to adults, generally are less capable of making reasoned decisions and exercising judgment, particularly in stressful situations. Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 15, 20 (2008) (“Considerable evidence supports the conclusion that children and adolescents are less capable decision makers than adults in ways that are relevant to their criminal choices.”) (hereinafter “Scott & Steinberg, *Adolescent Development*”).

Psychosocial factors that influence adolescents’ perceptions, judgments and abilities to make decisions limit their capacities for autonomous choice. Kathryn Modecki, *Addressing Gaps in the Maturity of Judgment Literature: Age*

Differences in Delinquency, 32 L. & HUM. BEHAV. 78, 79-80 (2008); Elizabeth Cauffman & Laurence Steinberg, *Researching Adolescents' Judgment and Culpability*, in Youth on Trial: A Developmental Perspective on Juvenile Justice 325 (Thomas Grisso & Robert G. Schwartz eds., 2000). Recent research on adolescent decision-making suggests that youth are heavily influenced by these social and emotional factors. Marsha Levick *et al.*, *The Eighth Amendment Evolves: Defining Cruel And Unusual Punishment Through The Lens Of Childhood And Adolescence*, 15 U. PA. J. L. & SOC. CHANGE 285, 293 (2012) (citing Dustin Albert & Laurence Steinberg, *Judgment and Decision Making in Adolescence*, 21 J. RES. ON ADOLESCENCE 211, 217 (2011) (explaining that “socioemotional stimuli” have an impact on adolescent decision-making)). “[A]dolescents lack mature capacity for self-regulation in emotionally charged contexts, relative to adults and children.” Richard J. Bonnie *et al.*, eds. Reforming Juvenile Justice: A Developmental Approach 91 (2013) (hereinafter “Bonnie, Reforming Juvenile Justice”) (citations omitted). Thus, for example, adolescent decision-making is characterized by sensation- and reward-seeking behavior. Laurence Steinberg, *A Dual Systems Model of Adolescent Risk-Taking*, 52 DEVELOPMENTAL PSYCHOBIOLOGY 216, 217 (2010) (hereinafter “Steinberg, *A Dual Systems Model*”). Greater levels of impulsivity during adolescence may stem from adolescents' weak future orientation and not anticipating the consequences of

decisions. Laurence Steinberg *et al.*, *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD. DEV. 28, 29-30 (2009). See also Bonnie, Reforming Juvenile Justice at 91 (“[A]dolescents show less ability to make judgments and decisions that require future orientation. Adolescents are also less likely to perceive risks and are less risk-averse than adults.”) (citing Laurence Steinberg *et al.*, *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD. DEV. 28 (2009)); Scott & Steinberg, *Adolescent Development* at 21.

Advances in neuroscience confirm the lesser decision-making capacities of youth as compared to adults. The parts of the brain controlling higher-order functions – such as reasoning, judgment, inhibitory control -- develop after other parts of the brain controlling more basic functions (e.g., vision, movement), and do not fully develop until individuals are in their early 20s. Specifically, the prefrontal cortex – the brain’s “CEO” that controls important decision making processes – is the last to develop. Nitin Gogtay *et al.*, *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROCEEDINGS NAT’L ACAD. SCI. 8174, 8177 (2004); Elkhonon Goldberg, The Executive Brain: Frontal Lobes and the Civilized Mind 23, 24, 141 (2001); see also B.J. Casey *et al.*, *Structural and Functional Brain Development and its Relation to Cognitive Development*, 54 BIOLOGICAL PSYCHOL. 243-246 (2000).

Because the prefrontal cortex governs so many aspects of complex reasoning and decision making, it is possible that adolescents' undesirable behavior -- risk-taking, impulsivity, and poor judgment -- may be significantly influenced by their incomplete brain development. Steinberg, *A Dual Systems Model* at 217. Indeed,

the latest studies suggest that much of what distinguishes adolescents from children and adults is an *imbalance among developing brain systems*. This imbalance model implies dual systems: one that is involved in cognitive and behavioral control and one that is involved in socioemotional processes. Accordingly, adolescents lack mature capacity for self-regulation because the brain system that influences pleasure-seeking and emotional reactivity develops more rapidly than the brain system that supports self-control.

Bonnie, Reforming Juvenile Justice at 97 (emphasis added) (citations omitted).

The jurisprudence and science that finds that youth are immature and thus more prone to reckless, impulsive and risk-taking behavior -- particularly in stressful or emotionally charged situations -- is directly relevant in Cameron's case. The uncontradicted evidence at the waiver hearing established Cameron's lack of sophistication and immaturity compared to other youth his age. *Moon*, 410 S.W.3d at 374-75. Moreover, the homicide occurred during a stressful, highly charged situation -- a drug buy gone wrong -- which would have further impaired a youth's already-limited decision-making capacity. *Id.* at 368-69. The Texas waiver statute, in keeping with the holdings of *Kent* and *Hidalgo*, prudently

requires a juvenile court judge to consider these factors in making the waiver determination.

Second, the Supreme Court recognizes that youth are distinct from adults in constitutionally relevant ways because of their greater susceptibility to outside pressures. “[C]hildren are more vulnerable . . . to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings.” *Miller*, 132 S. Ct. at 2464. *Accord Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 569. That teenagers are more susceptible to peer pressure is widely confirmed in the social science literature. Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1012 (2003) (hereinafter “Steinberg & Scott, *Less Guilty by Reason of Adolescence*”); Bonnie, *Reforming Juvenile Justice* at 91 (“[A]dolescents have a heightened sensitivity to proximal external influences, such as peer pressure and immediate incentives, relative to adults.”) (citations omitted). “Peer influence affects adolescent judgment both directly and indirectly. In some contexts, adolescents make choices in response to direct peer pressure to act in certain ways. More indirectly, adolescents' desire for peer approval -- and fear of rejection --

affect their choices, even without direct coercion.” Steinberg & Scott, *Less Guilty by Reason of Adolescence* at 1012.

Recent brain imaging results further support the observation that adolescent behavior is greatly affected by peer influences:

Chein and colleagues...examined the neural basis of riskier driving decisions by adolescents relative to adults in the presence of peers during a simulated driving task. Adolescents, but not adults, showed heightened activity in reward-related circuitry, including the ventral striatum, in the presence of peers. This activity was inversely correlated with subjective ratings on resistance to peer influences. Individuals rating themselves low on this scale showed more reward-related brain activity in the presence of peers. Not only are peers influential but also positive exchanges with others may be powerful motivators. Asynchronous development of brain systems appears to correspond with a shift from thinking about self to thinking about others from early adolescence to young adulthood. *Together these studies suggest that in the heat of the moment, as in the presence of peers or rewards, functionally mature reward centers of the brain may hijack less mature control systems in adolescents.*

Bonnie, Reforming Juvenile Justice at 98 (emphasis added) (citations omitted).

These findings on the effect of peer influences on adolescent decision-making and behavior – which have been relied upon by the United States Supreme Court -- are directly relevant where, as here, the accused youth was in company of other young people at the time of the offense. *Moon*, 410 S.W.3d at 368-69.

“And third, a child’s character is not as well formed as an adult’s; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity.”

Miller, 132 S. Ct. at 2464 (echoing *Roper*, 543 U.S. at 570, noting “the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.”) Youth “are more capable of change than are adults, and their actions are less likely to be evidence of ‘irretrievably depraved character’ than are the actions of adults,” such that “a greater possibility exists that a minor's character deficiencies will be reformed.” *Graham*, 560 U.S. at 68. Indeed, this court has noted that “transfer was intended to be used only in exceptional cases” because “[t]he philosophy was that, whenever possible, children ‘should be protected and rehabilitated rather than subjected to the harshness of the criminal system’ because ‘children, all children are worth redeeming.’” *Hidalgo*, 983 S.W.2d at 754 (citation omitted).

Developmental research reaches the same conclusions. “It is well known that “[adolescence] is transitional because it is marked by rapid and dramatic change within the individual in the realms of biology, cognition, emotion, and interpersonal relationships.” Elizabeth S. Scott & Laurence Steinberg, Rethinking Juvenile Justice 31 (2008) (hereinafter “Scott & Steinberg, Rethinking Juvenile Justice”). The research confirms that “many of the factors associated with antisocial, risky, or criminal behavior lose their intensity as individuals become more developmentally mature,” Levick *et al.* at 297 (citing Steinberg, *A Dual Systems Model* at 220-21; Steinberg & Scott, *Less Guilty by Reason of Adolescence*

at 1011), and “the period of risky experimentation does not extend beyond adolescence, ceasing as identity becomes settled with maturity. Only a small percentage of youth who engage in risky experimentation persist in their problem behavior into adulthood.” Bonnie, Reforming Juvenile Justice at 90 (citations omitted). See also Scott & Steinberg, Rethinking Juvenile Justice at 31 (2008) (explaining that “[m]ost teenagers desist from criminal behavior . . . [as they] develop a stable sense of identity, a stake in their future, and mature judgment.”).

As a consequence of these unique developmental attributes, “juveniles have lessened culpability” and “are less deserving of the most severe punishments.” *Graham*, 560 U.S. at 69. A juvenile's wrongdoing --regardless of whether the transgression is extremely serious or petty -- “is not as morally reprehensible as that of an adult.” *Id.* at 68. “From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.” *Roper*, 543 U.S. at 570.

In summary, United States Supreme Court jurisprudence -- and the science behind it -- finds that youth are more immature and poorer decision-makers; are more susceptible to peer influences; and have a greater capacity for growth and change than adults. But this jurisprudence and science also tells us that individual youth develop and mature at different rates. For that reason, it is important that juvenile courts do as the Texas waiver statute instructs and “order and obtain a

complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense.” TEX. FAM. CODE ANN. § 54.02(d).

As this court noted in *Hidalgo*, a psychological examination is ordinarily required to assist the court in assessing a juvenile’s sophistication, maturity, decision-making capability, other environmental factors and the likelihood of rehabilitation as required by the waiver statute. *Hidalgo*, 983 S.W.2d at 754. However, in the instant case, neither the juvenile court nor the State presented a study. Cert. Hearing Px. 1. The defense did present the uncontroverted testimony of an experienced psychologist as to Cameron’s immaturity and lack of sophistication, and his great potential for rehabilitation in the juvenile justice system. *Moon*, 410 S.W.3d at 369-70, 374-78. The juvenile court turned a blind eye to the jurisprudence described *supra* and the evidence before it when it transferred Cameron to adult criminal court, and thus the Court of Appeals rightly held that the lower court had abused its discretion.

3. Accepting the State’s reading of the Texas statute would create an unconstitutional irrebuttable presumption that youth charged with murder are as culpable and have the same capacity for change and rehabilitation as adults, contrary to Supreme Court jurisprudence.

The State’s contention in the instant case – that a juvenile court may waive jurisdiction based solely on the offense alleged – would create “a non-rebuttable

presumption that the juvenile who committed the crime is equally morally culpable as an adult who committed the same act.” Martin Guggenheim, *Graham v. Florida and A Juvenile’s Right to Age-Appropriate Sentencing*, 47 HARV. C.R.-C.L. L. REV. 457, 490-91 (2012). But the United States Supreme Court has struck down statutes creating such irrebuttable presumptions as they “have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments.” *Vlandis v. Kline*, 412 U.S. 441, 446 (1973).

For example, in *Stanley v. Illinois*, the United States Supreme Court held unconstitutional an Illinois law that authorized the removal of children from the custody of their unwed fathers without requiring any showing of the father's unfitness. 405 U.S. 645, 649 (1972). The statute was “constitutionally repugnant” as it relied upon the non-rebuttable presumption that unwed fathers were unfit. *Id.* at 649. “[A]s a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him.” *Id.* at 649.

Similarly, in *Carrington v. Rash*, the United States Supreme Court overturned a Texas statute that presumed that all service people stationed there were not residents and therefore could not vote. 380 U.S. 89, 96 (1965). Key to the holding was the Court’s finding that “the presumption here created is . . . definitely conclusive -- incapable of being overcome by proof of the most positive character.” *Id.* (quoting *Heiner v. Donnan*, 285 U.S. 312, 324 (1932)). “By

forbidding a soldier ever to controvert the presumption of nonresidence,' the State, we said, unjustifiably effected a substantial deprivation. *It viewed people one-dimensionally (as servicemen) when a finer perception could readily have been achieved by assessing a serviceman's claim to residency on an individualized basis.*" *Stanley*, 405 U.S. at 655 (quoting in part *Carrington*, 380 U.S. at 96) (emphasis added).

And in *Cleveland Bd. of Educ. v. LaFleur*, the Court held that school board maternity leave policies that required pregnant female teachers to terminate employment at the fourth or fifth month violated due process. 414 U.S. 632, 644 (1974). As the Court found,

the provisions amount to a conclusive presumption that every pregnant teacher who reaches the fifth or sixth month of pregnancy is physically incapable of continuing. *There is no individualized determination* by the teacher's doctor -- or the school board's -- as to any particular teacher's ability to continue at her job. *The rules contain an irrebuttable presumption of physical incompetency, and that presumption applies even when the medical evidence as to an individual woman's physical status might be wholly to the contrary.*

Id. (emphasis added). See also *Vlandis*, 412 U.S. at 452 (due process forbids a state to deny an individual the resident tuition rate at a state university "on the basis of a permanent and irrebuttable presumption of nonresidence, *when that presumption is not necessarily or universally true, in fact, and when the*

State has reasonable alternative means of making the crucial determination.”) (emphasis added).

Likewise, the Supreme Court of Texas has struck down state statutes that created irrebutable presumptions because such provisions violate the due course of law guarantee in the Texas Constitution. For example, in *In the Interest of J.W.T.*, the Supreme Court of Texas held invalid a statutory scheme that deprived a man, who claimed to be a child's biological father, of standing to rebut the “marital presumption” – that when a child was born, and the mother was married to someone other than the biological father, the mother’s husband was “presumed” to be the child's actual father – that was embedded in the Texas law. 872 S.W.2d 189, 190 (Tex. 1994). The Texas statute created an irrebutable presumption of paternity as to the mother’s husband, and was therefore unconstitutional.

Similarly, in *Waites v. Sondock*, the Texas Supreme Court held that a statute that provided for “legislative continuances” – mandatory continuances by courts of causes or lawsuits involving legislators – violated the due process clause of the Fourteenth Amendment of the United States Constitution and Article I, sections 13 and 19 of the Texas Constitution. 561 S.W.2d 772, 773 (Tex. 1977). In *Waites*, a woman filed contempt proceedings to compel the father of her children to comply with a child support order; the father’s attorney, then a sitting state legislator, invoked the legislative continuance to delay the contempt trial. *Id.* at 772. The

court found that in enacting the statute at issue, the legislature “created an irrebuttable presumption that the policy behind [the legislative continuance rule] is entitled to prevail in all cases.” *Id.* at 774. Such a statute is “arbitrary and unreasonable,” *id.* at 775, because it “makes no provision for those cases in which delay will cause an injury that cannot be remedied later, an injury over and above the common inconvenience of delay, an injury that can only be prevented by immediate access to the court.” *Id.* at 774.

The State’s position in the instant case -- that the juvenile court may waive jurisdiction based solely on the offense charged, and may disregard evidence of the youth’s individual characteristics -- is unconstitutional because it would create an irrebuttable presumption that all youth of a certain age charged with a certain offense are identical to their adult counterparts with respect to culpability and amenability to rehabilitation. Adoption of the State’s contention would allow the juvenile court to ignore evidence at waiver hearings about the key attributes of youth which the United States Supreme Court instructs must inform all criminal laws -- that youth individually possess different levels of maturity, decision-making ability, culpability, and capacity for change and growth. “[T]he presumption here created” by the state’s position-- that Cameron is as culpable as an adult and is not amenable to rehabilitation “is . . . definitely conclusive -- incapable of being overcome by proof of the most positive character,” *Carrington*,

380 U.S. at 96, “even when the ...evidence ... might be wholly to the contrary,” *Cleveland Bd. of Educ.*, 414 U.S. at 644, and is “arbitrary and unreasonable.” *Waites*, 561 S.W.2d at 775.

The state’s flawed interpretation of the Texas statute -- in which “[t]here is no individualized determination,” *Stanley*, 405 U.S. at 655 – “impermissibly allows the State to forgo having to prove material facts -- the propriety of punishing a juvenile based on the same combination of deterrence, incapacitation and retribution which is appropriate for an adult.” *Guggenheim* at 491-492. The United States and Texas Supreme Courts’ irrebuttable presumption cases instruct that “as a matter of due process of law, [Cameron] was entitled to a hearing,” *Stanley*, 405 U.S. at 649, to rebut the presumption that he is as culpable and incapable of change as adults who are convicted of murder, as that “presumption is not necessarily or universally true ... and [] the State has reasonable alternative means of making the crucial determination.” *Vlandis*, 412 U.S. at 452. Indeed, “[b]y forbidding [Cameron] ever to controvert the presumption of [the same level of culpability]’, the State ... unjustifiably effected a substantial deprivation. It viewed [Cameron] one-dimensionally [as an adult] when a finer perception could readily have been achieved by assessing [the youth's] claim to [lesser culpability and greater capacity to change than an adult] on an individualized basis.” *Stanley*, 405 U.S. at 655 (quoting in part *Carrington*, 380 U.S. at 96).

4. Consideration of an individual youth's maturity and amenability to rehabilitation in the waiver determination is particularly critical given that the Texas parole eligibility statute prohibits the sentencing judge and parole board from considering such factors

Once transferred to adult court and convicted of murder, Cameron was subject to the identical sentencing statutes as an adult convicted of the same crime. Cameron was sentenced to 30 years in prison pursuant to TEX. PENAL CODE § 12.32, which provides the sentencing range for a first degree felony. CR 123. In addition, pursuant to the Texas parole eligibility statute, Cameron is not eligible for release until his “actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less...” CR 123, 137; TEX. GOV'T CODE ANN. § 508.145 (West). Thus, despite the fact that constitutional jurisprudence establishes that youth are categorically less culpable and more amenable to treatment than adults, Cameron must serve the same number of years in prison as an adult before he is eligible for parole. Given the mandate of TEX. GOV'T CODE ANN. § 508.145, Cameron is deprived of the opportunity to seek earlier parole than an adult by, for example, presenting evidence to the sentencing court of his greater capacity for change and growth (as was elicited in his waiver hearing) or, prospectively, of giving evidence of good behavior in prison to the parole board.

The United States Supreme Court has held that laws “that fail to take defendants’ youthfulness into account at all” -- such as the statute that does not allow Cameron to seek parole earlier than adults convicted of the same crime -- are “flawed.” *Graham*, 560 U.S. at 76. In *Graham*, the Supreme Court found problematic a sentencing statute which “denie[d] the juvenile offender a chance to demonstrate growth and maturity.” *Graham*, 560 U.S. at 73. As New York University Law School Professor Martin Guggenheim has observed, after the U.S. Supreme Court’s holding in *Graham*

[a] state sentencing statute that requires, regardless of the defendant's age, that a certain sentence be imposed based on the conviction violates a juvenile's substantive right to be sentenced based on the juvenile's culpability. When the only inquiry made by the sentencing court is to consult the legislature's mandatory punishment for the crime, without any further inquiry into whether the punishment is appropriate for a juvenile, for no other reason than it is appropriate for an adult, the Constitution requires more.

Martin Guggenheim, *Graham v. Florida and A Juvenile’s Right to Age-Appropriate Sentencing*, 47 HARV. C.R.-C.L. L. REV. 457, 490-91 (2012) (citing *Graham*, 130 S. Ct. at 2038 (Roberts, C.J., concurring) (“[J]uvenile offenders are generally -- though not necessarily in every case -- less morally culpable than adults who commit the same crimes.”); *id.* at 2050 (Thomas, J., dissenting) (“[J]uveniles can sometimes act with the same culpability as adults and ... the law should permit judges and juries to consider adult sentences -- including life without parole -- in those rare and unfortunate cases.”)).

Read together, the irrebuttable presumption jurisprudence, *see Part I.A.3 supra*, and the United States Supreme Court’s recent juvenile sentencing cases demonstrate that the sentencing statute applied to Cameron violates due process, as Cameron was denied a hearing at which the court makes an individualized sentencing determination upon evidence of, *inter alia*, the youth’s age, developmental status, and degree of culpability.⁴ That Cameron also would be deprived of consideration of these same factors in a juvenile waiver hearing under the state’s unsound reading of the waiver statute would only compound the due process violations.

B. The United States Supreme Court’s “kids are different” jurisprudence is not limited to a particular type of crime, sentence or constitutional provision

“‘[O]ur history is replete with laws and judicial recognition that children cannot be viewed simply as miniature adults.’ . . . [I]t is the odd legal rule that does *not* have some form of exception for children.” *Miller*, 132 S. Ct. at 2470 (citing *J.D.B.*, 131 S. Ct. at 2404). While *Miller*, *Graham* and *Roper* involved the

⁴ It should be noted that the Court’s jurisprudence “does not rule out the possibility that juveniles and adults may receive identical sentences but merely requires consideration of the differences between juveniles and adults prior to sentencing.” Guggenheim at 499. *See also Vlandis*, 412 U.S. at 452 (noting that state can exclude youth who are not bona fide state residents from receiving in-state tuition rates once determining that these students do not fulfill reasonable criteria for establishing residency). “What is impermissible . . . however, is a legislature’s choice to impose an automatic sentence on children that is the same sentence it imposes on adults for the same crime.” Guggenheim at 489.

constitutionality of the death penalty and life without parole sentences, the U.S. Supreme Court has made clear that the distinction between adolescents and adults is constitutionally relevant in a variety of contexts. *Graham*, 130 S. Ct. 2011 at 2027; *Roper*, 543 U.S. at 551. Indeed, in the last 75 years, the United States Supreme Court has applied the “youth are different” principle in a wide range of cases -- including cases involving youth confessions, searches, freedom of speech, freedom and establishment of religion, and reproductive rights -- that implicate several constitutional provisions. See Guggenheim at 476-486 (reviewing Supreme Court cases involving youth in several areas of the law.)

For example, in *J.D.B. v. North Carolina*, the United States Supreme Court held that, under the Fourth Amendment, a youth’s age must be considered in determining whether the youth was in custody for purposes of administering *Miranda* warnings. *J.D.B.* relied on the same research that drove the Supreme Court’s rulings in *Miller*, *Graham* and *Roper* under the Eighth Amendment: that youth are “generally less mature and responsible than adults”; they “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them”; and they “are more vulnerable or susceptible to ... outside pressures than adults”. *J.D.B.*, 131 S. Ct. at 2403 (citations and internal quotations omitted). As *J.D.B.* stressed, a child’s age is a “reality courts cannot simply ignore” in its analysis. *Id.* at 2406. *J.D.B.*, in turn, is simply the latest in a series of

cases in which the Court has consistently recognized the developmental immaturity of youth in the confession and interrogation context. *See, e.g., Gallegos v. Colorado*, 370 U.S. 49, 54 (1962); *Haley v. Ohio*, 332 U.S. 596, 599 (1948). Similarly, the *Graham* Court “borrowed all of the ideas underlying its conclusion” -- that the Constitution categorically forbids imposing a sentence of life without opportunity of parole on minors convicted of non-homicide cases -- from *Roper*, a case involving a different sentence (death) and a different crime (homicide). *Guggenheim* at 463. As Chief Justice Roberts made plain, “*Roper*’s conclusion that juveniles are typically less culpable than adults has pertinence beyond capital cases, and rightly informs the case-specific inquiry I believe to be appropriate. . . .” *Graham*, 560 U.S. at 90 (Roberts, C.J., concurring).

Thus, the most recent Supreme Court cases essentially echo longstanding doctrine. The consideration of youth and its attributes must not be limited to a specific crime or sentence, or a particular constitutional provision. “*Graham*’s recognition that it will commonly be inappropriate to be retributive to juveniles, combined with its conclusion that deterrence will rarely be an equally appropriate penalogical goal for juveniles as for adults, is just as true for the harshest sentences courts can impose as for lesser sentences.” *Guggenheim* at 490 (citing *Graham*, 560 U.S. at 76-81. *See also Miller*, 132 S.Ct at 2465. (“none of what [*Graham*]

said about children -- about their distinctive (and transitory) mental traits and environmental vulnerabilities -- is crime-specific.”)

II. ADOPTION OF THE STATE’S INTERPRETATION OF THE TEXAS STATUTE WOULD MAKE TEXAS AN OUTLIER, ALLOWING FOR THE PROSECUTION OF YOUTH AS ADULTS BASED ON AGE AND CHARGE ALONE WITHOUT AN INDIVIDUALIZED DETERMINATION OF THE YOUTH’S MATURITY LEVEL AND CAPACITY FOR CHANGE AND REHABILITATION

Only 14 states and the District of Columbia -- either through statutory exclusion and/or prosecutorial discretion -- automatically place certain juveniles directly and irrevocably into the adult criminal justice system. Patrick Griffin *et al.*, Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting, National Report Series Bulletin, Office of Juvenile Justice and Delinquency Prevention, September 2011. In these minority of states, either legislators or prosecutors dictate prosecution as adults with no “reverse mechanism” available to the youth, i.e., the youth cannot petition the adult court to conduct an individualized determination of whether the youth’s case should be returned to juvenile court. Griffin at 2, 3.⁵

Thus, while all states provide for the prosecution of certain juvenile

⁵ The states with prosecutorial discretion and/or statutory exclusion and no reverse waiver (i.e., when a defendant can petition to return a case to juvenile court) available are as follows: Alabama, Alaska, Washington D.C., Florida, Idaho, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Minnesota, New Mexico, South Carolina, Utah, and Washington. Griffin at 3. See also *Miller*, 132 S.Ct. at 2474 n.15.

offenders as adults, the vast majority of states require some individualized determination by a court prior to prosecution in adult court. See Sara Alice Brown, Trends in Juvenile Justice State Legislation 2001 – 2011, National Conference of State Legislatures, June 2012 available at [http://www.ncsl.org/documents/cj/TrendsInJuvenile Justice.pdf](http://www.ncsl.org/documents/cj/TrendsInJuvenileJustice.pdf). In these states,

[d]iscretionary waiver statutes prescribe broad standards to be applied, factors to be considered, and procedures to be followed in waiver decisionmaking and require that prosecutors bear the burden of proving that waiver is appropriate. Although waiver standards and evidentiary factors vary from state to state, most take into account both the nature of the alleged crime and the individual youth's age, maturity, history, and rehabilitative prospects.

Griffin at 2. “Even states with automatic or prosecutor-controlled transfer laws often have compensating mechanisms that introduce some form of individualized judicial consideration into the process. The most straightforward of these corrective mechanisms is the reverse waiver,” in which criminal court judges typically consider the same evidence as their juvenile court counterparts in discretionary waiver proceedings. *Id.* at 7.

Thus, adoption of the state's untenable argument – that a juvenile court may waive jurisdiction of a youth based on the charged offense alone, and without an individualized determination of the youth's maturity, culpability and capacity for

change -- would make Texas is an outlier, with respect to both prosecution and sentencing.⁶

III. Public Policy And Public Opinion Overwhelmingly Oppose Automatic Transfer To Adult Court And Mandatory Imposition Of Adult Sentences On Youth

Driven by the emergent research and recent Supreme Court jurisprudence, states are re-examining their transfer laws to reduce the number of youth tried as adults. In recent years, more than 20 states have changed or are considering changes to their policies around trying youth as adults. See Neelum Arya, State Trends: Legislative Changes from 2005 to 2010 Removing Youth from the Adult Criminal Justice System, (2011) Washington, DC: Campaign for Youth Justice.⁷ The Report found that from 2005-2010, 15 states changed their state policies and an additional nine had active policy reform efforts underway. *Id.* at 3.

Recent polling also demonstrates that the public overwhelmingly opposes

⁶ The Office of Juvenile Justice and Delinquency Prevention within the Department of Justice also points out that

[t]he scarcity of information on cases involving youth prosecuted under exclusion and prosecutorial discretion laws presents a serious problem for those wishing to assess the workings, effectiveness, and overall impact of these laws. Even the few states that provide a count of excluded or direct-filed cases seldom report the kind of demographic, offense, sentencing, and other detail that is needed to inform judgments about whether laws entrusting transfer decisions to prosecutors rather than judges are being applied fairly and consistently. It is not clear whether these laws are targeting the most serious offenders and resulting in the kinds of sanctions lawmakers intended.

Griffin at 15.

⁷ Available at

http://www.campaignforyouthjustice.org/documents/CFYJ_State_Trends_Report.pdf.

automatically trying youth as adults in favor of judges taking a case-by-case approach that takes into account various individual facts and circumstances. GBA Strategies, Campaign for Youth Justice Youth Justice System Survey (October 11, 2011).⁸ This measured approach to transfer finds support among various national and state-based organizations and policymakers as well. Campaign for Youth Justice, a national advocacy group dedicated to ending the practice of trying, sentencing and incarcerating youth under eighteen in the criminal system, adopted a National Resolution with the support of more than 200 national or state-based organizations, including correctional organizations, professional associations, policy organizations, faith-based organizations, mental health associations, and human rights organizations. *See full list at Appendix B.* The Resolution states, *inter alia*, that “...the use of statutes or procedures that automatically exclude youth from the juvenile court without an assessment of individual circumstances by an impartial judge denies youth basic fairness” and as a consequence “youth may receive extremely long mandatory minimum sentences and deserve an opportunity to demonstrate their potential to grow and change.” Campaign for Youth Justice, Natl. Resolution on Trying and Sentencing Youth as Adults.⁹ A number of these organizations have individual position statements opposing the automatic application of adult criminal court jurisdiction for youth under the age of

⁸ Available at http://www.campaignforyouthjustice.org/documents/FR_GBA_Poll_1011.pdf

⁹ Available at <http://www.campaignforyouthjustice.org/national-resolution.html>

eighteen.

The American Bar Association (ABA), since releasing its Juvenile Justice Standards in collaboration with the Institute of Judicial Administration more than three decades ago in 1980, has consistently recognized that children should not be automatically transferred to adult court and subject to mandatory sentencing schemes. The Standards provide that no child under fifteen should be transferred to adult court and that no youths aged fifteen, sixteen, or seventeen should be transferred except by a juvenile court judge after a hearing. IJA-ABA Juvenile Justice Standards Relating to Transfer Between Courts, Standard 1.1 (1980).¹⁰ In a more recent Resolution adopted in 2002, the ABA found that judges “should consider the individual characteristics of the youth during sentencing; and. . . [t]hat the ABA opposes, in principle, the trend toward processing more and younger youth as adults in the criminal justice system.” ABA Standards 101(D) (Criminal Justice, Litigation) Approved as submitted (2002).¹¹ Moreover, the ABA recommends that “[s]entences for youthful offenders should generally be less punitive than sentences for those age 18 and older who have committed comparable offenses” and “should recognize key mitigating considerations

¹⁰ Available at http://www.americanbar.org/content/dam/aba/migrated/sections/criminaljustice/PublicDocuments/JJ_Standards_Transfer_Between_Courts.authcheckdam.pdf.

¹¹ Available at <http://www.campaignforyouthjustice.org/documents/ABA%20-%20Resolution%20on%20Youth%20in%20the%20Criminal%20Justice%20System%20101D.pdf>.

particularly relevant to their youthful status.” ABA Recommendation 105C, Adopted by the House of Delegates (February 11, 2008).¹²

Other legal organizations have adopted similar principles. Importantly, the National Council of Juvenile and Family Court Judges affirms “that waiver and transfer decisions should only be made on an individual, case-by-case basis, and not on the basis of the statute allegedly violated; and affirms that the decision should be made by the juvenile delinquency court judge. ...that juvenile delinquency court jurisdiction should be in effect until a youth’s 18th birthday.... that waiver and transfer of juveniles to adult court should be rare and only after a thorough considered process.” National Council of Juvenile and Family Court Judges and Office of Juvenile Justice and Delinquency Prevention, Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases, Chapter V: Motions to Waive Jurisdiction and Transfer to Criminal Court (2005) at 102.¹³ Standards promulgated by the National Juvenile Defender Center emphasize the important role of defense counsel in advocating against transfer since

one of the explicit goals of most juvenile courts—to address the rehabilitative needs of the youth—is irreconcilable with the goals of

¹² Available at http://www.americanbar.org/content/dam/aba/directories/policy/2008_my_105c.authcheckdam.pdf.

¹³ Available at [http://www.ncjfcj.org/sites/default/files/juveniledelinquencyguidelinescompressed\[1\].pdf](http://www.ncjfcj.org/sites/default/files/juveniledelinquencyguidelinescompressed[1].pdf).

the adult court and correctional systems, which focus on the offense and mete out punishment. Various studies have demonstrated how adult prosecution fails to effectively rehabilitate youth, finding that youth in the adult system are more likely to re-offend than youth who remain in the juvenile system.

National Juvenile Defender Center, National Juvenile Defense Standards 132-33 (2012) (citations omitted).¹⁴ See also National Association of Criminal Defense Lawyers, Resolution of the Board of Directors Opposing the Transfer of Children to Adult Court (November 2002) (supporting legislation that prohibits automatic and/or non-judicial transfer);¹⁵ Coalition for Juvenile Justice, Position Papers, Consideration of Age and Development as Factors in Sentencing Juveniles (opposing statutory schemes that preclude consideration of youth as a mitigating factor);¹⁶ American Humane Association Child Protection Position Statements (2009) at 18 (stating that children under age 18 should not be prosecuted as adults);¹⁷ NAACP Resolution: Opposition to Transfer of Youth to the Adult Criminal Justice System (July 2008) (opposing policies, statutes, or laws that increase the number of youth transferred to the adult criminal system).¹⁸

Numerous correctional and government organizations share these organizations' opposition to automatic transfer and mandatory sentencing schemes.

¹⁴ Available at <http://www.njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf>

¹⁵ Available at <http://www.nacdl.org/About.aspx?id=19903>

¹⁶ Available at http://www.juvjustice.njcn.org/position_9.html

¹⁷ Available at <http://www.americanhumane.org/assets/pdfs/about/position-statements/children-position.pdf>

¹⁸ Available at http://naacp.3cdn.net/62f96d3cfb942054cd_6dm6ivue4.pdf

The National Association of Counties found that, in light of current research, youth should not be viewed as acting with the level of moral culpability that characterizes adult criminal conduct.... In light of these facts, NACo opposes trying and sentencing youth in adult criminal court, except in the case of a chronic and violent offender, and then only at the discretion of a juvenile court judge.

National Association of Counties, Policies: Justice and Public Safety.¹⁹ The Council of Juvenile Correctional Administrators supports this view and finds that the juvenile system is the most appropriate place to hold youth accountable and where they can receive effective treatment and rehabilitation. Council of Juvenile Correction Administrators, Position Statement: Waiver and Transfer of Youths to the Adult System (Oct. 2, 2009).²⁰ And just last year, the U.S. Attorney General assembled a Task Force on Children Exposed to Violence. In its final report, the Task Force recommended that

[w]henver possible, prosecute young offenders in the juvenile justice system instead of transferring their cases to adult courts. No juvenile offender should be viewed or treated as an adult. Laws and regulations prosecuting them as adults in adult courts, incarcerating them as adults, and sentencing them to harsh punishments that ignore and diminish their capacity to grow must be replaced or abandoned.

Office of Juvenile Justice and Delinquency Prevention, Report of the Attorney General's National Task Force on Children Exposed to Violence 23 (December 12,

¹⁹Available at <http://www.naco.org/legislation/policies/Documents/Justice%20and%20Public%20Safety/JPS12-13.pdf>.

²⁰Available at <http://cjca.net/index.php/component/content/article?id=65:a-collection-of-position-papers-covering-a-range-of-issues-critical-to-cjca-and-its-programs>.

2012).²¹

The American Academy of Pediatrics likewise recommends that

[t]ransfer to adult court should not be automatic or a presumption in the handling of juvenile cases. While further study is necessary, current research indicates that automatic transfer does not achieve the desired goals and may be potentially harmful to the community and the involved youth. Any transfer to criminal court should consider the individual case and the community, and not be based solely on the type of offense.

American Academy of Child and Adolescent Psychiatry Committee on Juvenile

Justice Reform, Eds. Louis J. Kraus, M.D. & William Arroyo, M.D.,

Recommendations For Juvenile Justice Reform Second Edition (October 2005).²²

The American Public Health Association's policy statement urges Congress and

the states to repeal mandatory sentences for juveniles. American Public Health

Association, Encourage Healthy Behavior by Adolescents, Policy Database

(January 2000).²³ The Association of Black Psychologists, Inc. calls into question

the use of automatic waiver on developmentally immature youth. Association of

Black Psychologists, Inc., Justice for All; Not Just Us: African American Youth

and the Criminal Justice System.²⁴ Finally, the Parent Teacher Association and

United States Conference of Catholic Bishops call for the prohibition of youth

²¹ Available at <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

²² Available at <http://www.campaignforyouthjustice.org/documents/natlres/AACAP%20Recommendations%20for%20Juvenile%20Justice%20Reform.pdf>

²³ Available at <http://www.apha.org/advocacy/policy/policysearch/default.htm?id=234>

²⁴ Available at <http://www.abpsi.org/pdf/juvenilejustice.pdf>

being tried in the adult criminal system. Parent Teacher Association, Position Statement: Child Safety and Protection (asking for a prohibition on transfer without opportunity for a hearing or appeal);²⁵ United States Conference of Catholic Bishops, Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice (Nov. 2000) (opposing policies that treat young offenders as adults).²⁶

Given the overwhelming opposition to trying youth in adult criminal court, it is absolutely critical that juvenile courts review all pertinent evidence regarding a youth's level of maturity and capacity for change and rehabilitation prior to determining whether to transfer youth such as Cameron to adult court.

²⁵ Available at <http://www.pta.org/about/content.cfm?ItemNumber=986>

²⁶ Available at [http://www.campaignforyouthjustice.org/documents/natlres/USCCB%20Responsibility,%20Rehabilitation,%20and%20Restoration%20abridged .pdf](http://www.campaignforyouthjustice.org/documents/natlres/USCCB%20Responsibility,%20Rehabilitation,%20and%20Restoration%20abridged.pdf)

CONCLUSION

For all the foregoing reasons, *Amici Curiae* Juvenile Law Center *et al.* respectfully request that this court affirm the ruling of the Court of Appeals in the instant matter that the juvenile court misapplied the Texas waiver statute and thus abused its discretion in waiving its jurisdiction over Cameron and transferring him to adult court.

Respectfully submitted,

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Attorneys for *Amici Curiae* Juvenile Law Center *et al.*

DATED: March 21, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies this 21st day of March, 2014 that a true and correct copy of the above brief of *Amicus Curiae* Juvenile Law Center *et al.* has been mailed first class and postage prepaid via the United States Postal Service to the following:

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/s/ Lourdes M. Rosado
Lourdes M. Rosado

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies this 21st day of March, 2014 that this computer-generated document, exclusive of Appendix B, has a word count of 14,547 words, based on the representation provided by the word processing program that was used to create this document.

/s/ Lourdes M. Rosado

Lourdes M. Rosado

APPENDIX A

Identity of Amici Curiae and Statements of Interest

Organizations

Juvenile Law Center (JLC) is the oldest multi-issue public interest law firm for children in the United States, founded in 1975 to advance the rights and well-being of children in jeopardy. JLC pays particular attention to the needs of children who come within the purview of public agencies -- for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement with specialized service needs. JLC works to ensure children are treated fairly by systems that are supposed to help them, and that children receive the treatment and services that these systems are supposed to provide. JLC also works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

The **Barton Child Law & Policy Center** is a clinical program of **Emory Law School** dedicated to promoting and protecting the legal rights and interests of children involved with the juvenile court, child welfare and juvenile justice systems in Georgia. The Barton Center achieves its reform objectives through research-based policy development, legislative advocacy, and holistic legal representation for individual clients. The Barton Center's children's rights agenda is based on the belief that policy and law should be informed by research and that legal service to children and families need to be holistic. That basis recognizes that children should be viewed in their social and familial contexts and provided with individualized services to protect their legal rights, respond to their human needs, and ameliorate the social conditions that create risk. The Barton Center adopts an interdisciplinary, collaborative approach to achieving justice for youth. The Barton Center was founded in March 2000 and has engaged in the legal representation of juveniles in delinquency cases since the summer of 2001. In 2010 the Barton Center added an appellate representation dimension through its Appeal for Youth Clinic, which seeks systemic reform through the holistic appellate representation of offenders in our juvenile and criminal justice systems.

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 adult jails and prisons and promotes research-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 focused 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 locally in DC, Maryland and Virginia and also across the country to reduce racial and ethnic disparities in juvenile justice systems, reduce the use of locked detention for youth and advocate 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 dangerous or fail to rehabilitate youth.

The **Colorado Juvenile Defender Coalition (CJDC)** is a non-profit organization dedicated to excellence in juvenile defense and advocacy, and justice for all children and youth in Colorado. A primary focus of CJDC is to reduce the prosecution of children in adult criminal court, remove children from adult jails, and reform harsh prison sentencing laws through litigation legislative advocacy, and community engagement. CJDC works to ensure all children accused of crimes receive effective assistance of counsel by providing legal trainings and resources to attorneys. CJDC also conducts nonpartisan research and educational policy campaigns to ensure children and youth are constitutionally protected and treated in developmentally appropriate procedures and settings. Our advocacy efforts include the voices of affected families and incarcerated children.

Fight for Lifers, West is a Lifers Support Group in Western Pennsylvania devoted to prisoners in Pennsylvania who are sentenced to Life Imprisonment Without Parole. In the years since Roper, FFLW has identified 481 Juvenile Lifers in the PADO, revealing that Pennsylvania leads the world in this category. We have sent 36 newsletters, one every two months to these Juvenile Lifers, helping to make these prisoners aware of each other and giving important information to them. In this way they have shared information with each other, and made an impact on the outside world. FFLW has been seriously involved in the PA Senate Judiciary Committee Public Hearing on Juvenile Lifers, September 22, 2008, and in the United States House Subcommittee on Crime and Terrorism and Homeland Security hearing on H.R. 2289--Juvenile Justice Accountability and Improvement Act of 2009--, on June 9, 2009. FFLW was included in an Amicus Brief filed by the Juvenile Law Center in *Graham v. Florida* in 2009.

The **Illinois Chapter of Citizens United for the Rehabilitation of Errants** (CURE IL) formed in 2010 and a member of CURE International. We currently have in excess of 2000 members. We believe that prisons should be used only for those who absolutely must be incarcerated and that those who are incarcerated should have all of the resources they need to turn their lives around. We also believe that human rights documents provide a sound basis for ensuring that criminal justice systems meet these goals. CURE IL supports the study of "The National Bureau of Economic Research". Prison for juveniles is not the answer to society's problems, it only exacerbates them.

Juvenile Justice Initiative (JJI) of Illinois is a non-profit, non-partisan, inclusive statewide coalition of state and local organizations, advocacy groups, legal educators, practitioners, community service providers and child advocates supported by private donations from foundations, individuals and legal firms. JJI as a coalition establishes or joins broad-based collaborations developed around specific initiatives to act together to achieve concrete improvements and lasting changes for youth in the justice system, consistent with the JJI mission statement. Our mission is to transform the juvenile justice system in Illinois by reducing reliance on confinement, enhancing fairness for all youth, and developing a comprehensive continuum of community-based resources throughout the state. Our collaborations work in concert with other organizations, advocacy groups, concerned individuals and state and local government entities throughout Illinois to ensure that fairness and competency development are public and private priorities for youth in the justice system.

Juvenile Justice Project of Louisiana (JJPL) is the only statewide, non-profit advocacy organization focused on reform of the juvenile justice system in Louisiana. Founded in 1997 to challenge the way the state handles court involved youth, JJPL pays particular attention to the high rate of juvenile incarceration in Louisiana and the conditions under which children are incarcerated. Through direct advocacy, research and cooperation with state run agencies, JJPL works to both improve conditions of confinement and identify sensible alternatives to incarceration. JJPL also works to ensure that children's rights are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights. JJPL continues to work to build the capacity of Louisiana's juvenile public defenders by providing support, consultation and training, as well as pushing for system-wide reform and increased resources for juvenile public defenders.

Amicus Curiae **National Association of Criminal Defense Lawyers (NACDL)** is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of approximately 10,000 and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. The American Bar Association recognizes NACDL as an affiliated organization and awards it representation in its House of Delegates. NACDL is dedicated to advancing the proper, efficient, and just administration of justice including issues involving juvenile justice. NACDL files numerous amicus briefs each year in the U.S. Supreme Court and other courts, seeking to provide amicus assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole. NACDL has a particular interest in these cases because the proper administration of justice requires that age and other circumstances of youth be taken into account in order to ensure compliance with constitutional requirements and to promote fair, rational and humane practices that respect the dignity of the individual.

The **National Center for Youth Law (NCYL)** is a private, non-profit organization that uses the law to help children in need nationwide. For more than 40 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. One of NCYL's priorities is to reduce the number of youth subjected to harmful and unnecessary incarceration and expand effective community based supports for youth in trouble with the law. NCYL has participated in litigation that has improved juvenile justice systems in numerous states, and engaged in advocacy at the federal, state, and local levels to reduce reliance on the justice systems to address the needs of youth, including promoting alternatives to incarceration, and improving children's access to mental health care and developmentally appropriate treatment. One of the primary goals of NCYL's juvenile justice advocacy is to ensure that youth in trouble with the law are treated as adolescents, and not as adults, and in a manner that is consistent with their developmental stage and capacity to change within the juvenile justice system.

The **National Juvenile Defender Center** was created to ensure excellence in juvenile defense and promote justice for all children. The National Juvenile Defender Center 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. The National Juvenile Defender Center 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. The National Juvenile Defender Center 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. The National Juvenile Defender Center 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 **Northeast Juvenile Defender Center** is one of the nine Regional Centers affiliated with the National Juvenile Defender Center. The Center 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. The Center 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 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 in extricating 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.

Individuals

Megan Annitto is an Assistant Professor of Law at Charlotte School of Law where she teaches and researches in the areas of criminal procedure and juvenile justice. Her research interests include juvenile justice reform and the intersections of youth and the criminal justice system, focusing on questions of consent and waiver of rights by minors. She recently authored a study about the dramatic absence of access to appeals for juveniles charged with crimes and its effect on the development of juvenile law. Her research also discusses sex trafficking of domestic youth and their prosecution for prostitution, advocating for a more legally coherent approach by courts and legislatures. As a public defender for juveniles at the Legal Aid Society of New York, Professor Annitto represented numerous youth, specializing on issues common for young females in the juvenile justice system. Later, as a legislative attorney, she continued to focus on improving services for vulnerable youth. Before joining Charlotte Law, Professor Annitto was the Director of the Center for Law and Public Service at the West Virginia University College of Law. She previously served as a law clerk to Judge Anne E. Thompson, United States District Court in the District of New Jersey. Professor Annitto remains active in juvenile justice issues. She is currently a Policy Advisor

to the Polaris Project in Washington, D.C. on legislative reform related to trafficking of minors. She was also appointed by the Chief Justice of the West Virginia Supreme Court to serve on a state commission reviewing conditions of confinement for juveniles. She received her J.D. and Master of Social Work from the Catholic University of America where she graduated *magna cum laude*. She received a B.A. from Boston College. Her research is available at http://works.bepress.com/megan_annitto/.

Professor **Laura Cohen** earned a B.A. summa cum laude from Rutgers College and a J.D. from Columbia, where she was managing editor of the Columbia Human Rights Law Review. She is the former director of training for the New York City Legal Aid Society's Juvenile Rights Division, where she oversaw both the attorney training program and public policy initiatives relating to juvenile justice and child welfare. She also has served as a senior policy analyst for the Violence Institute of New Jersey; deputy court monitor in *Morales Feliciano v. Hernandez Colon*, a prisoners' rights class action in the U.S. District Court in San Juan, Puerto Rico; adjunct professor at New York Law School; and staff attorney for the Legal Aid Society. Professor Cohen co-directs the Northeast Regional Juvenile Defender Center, an affiliate of the National Juvenile Defender Center, which is dedicated to improving the quality of representation accorded children in juvenile court. Her scholarly interests include juvenile justice, child welfare, and the legal representation of children and adolescents. Professor Cohen teaches doctrinal and clinical courses relating to juvenile justice law and policy, is a team leader of the MacArthur Foundation funded New Jersey Juvenile Indigent Defense Action Network, and has published numerous articles on juvenile justice and child welfare.

Professor **Barry Feld** is Centennial Professor of Law, University of Minnesota Law School. He received his B.A. from the University of Pennsylvania; his J.D. from University of Minnesota Law School; and his Ph.D. in sociology from Harvard University. He has written eight books and about seventy law review and criminology articles and book chapters on juvenile justice with a special emphasis on serious young offenders, procedural justice in juvenile court, adolescents' competence to exercise and waive Miranda rights and counsel, youth sentencing policy, and race. Feld has testified before state legislatures and the U.S. Senate, spoken on various aspects of juvenile justice administration to legal, judicial, and academic audiences in the United States and internationally. He worked as a prosecutor in the Hennepin County (Minneapolis) Attorney's Office and served on the Minnesota Juvenile Justice Task Force (1992-1994), whose

recommendations the 1994 legislature enacted in its revisions of the Minnesota juvenile code. Between 1994 and 1997, Feld served as Co-Reporter of the Minnesota Supreme Court's Juvenile Court Rules of Procedure Advisory Committee.

Randy Hertz is the Vice Dean of N.Y.U. School of Law and the director of the law school's clinical program. He has been at the law school since 1985, and regularly teaches the Juvenile Defender Clinic and a simulation course entitled Criminal Litigation. Before joining the N.Y.U. faculty, he worked at the Public Defender Service for the District of Columbia, in the juvenile, criminal, appellate and special litigation divisions. He writes in the areas of criminal and juvenile justice and is the co-author, with Professor James Liebman of Columbia Law School, of a two-volume treatise entitled —Federal Habeas Corpus Law and Practice, and also the co-author, with Professors Anthony G. Amsterdam and Martin Guggenheim of N.Y.U. Law School, of a manual entitled —Trial Manual for Defense Attorneys in Juvenile Delinquency Cases.¶ He is an editor-in-chief of the Clinical Law Review. In the past, he has served as the Chair of the Council of the ABA's Section of Legal Education and Admissions to the Bar; a consultant to the MacCrate Task Force on Law Schools and the Profession: Narrowing the Gap; a reporter for the Wahl Commission on ABA Accreditation of Law Schools; a reporter for the New York Professional Education Project; and the chair of the AALS Standing Committee on Clinical Legal Education. He received NYU Law School's Podell Distinguished Teaching Award in 2010; the Equal Justice Initiative's Award for Advocacy for Equal Justice in 2009; the Association of American Law Schools' William Pincus Award for Outstanding Contributions to Clinical Legal Education in 2004; the NYU Award for Distinguished Teaching by a University Professor in 2003; and the American Bar Association's Livingston Hall award for advocacy in the juvenile justice field in 2000.

Sara Jacobson is an Associate Professor and the Director of Trial Advocacy at Temple University's Beasley School of Law. Before joining the Temple faculty in 2008, she worked as a Public Defender at the Defender Association of Philadelphia for nearly a decade. At the Defender Association she spent much of her time defending kids in juvenile court and served as the Assistant Chief of the Juvenile Unit. She directed statewide trainings for Juvenile Defenders in Pennsylvania and helped to organize Pennsylvania's statewide Juvenile Defender Organization.

Jeffrey Shook is Associate Professor of Social Work and Affiliated Associate Professor of Law at the University of Pittsburgh. He received his Ph.D. in social work and sociology from the University of Michigan and his JD from American University. His research focuses on the intersections of law, policy, and practice in the lives of children and youth. Specifically, he has conducted studies and published numerous journal articles and book chapters on issues involving the administration of juvenile justice, juveniles in the criminal justice system, and the justice system involvement of young people who age out of the child welfare system. Dr. Shook also has substantial experience working with children and youth and in systems that serve children and youth. His interest in this case stems from his desire to insure that juveniles are punished at a level appropriate for their level of culpability and that law and policy reflect the capacity that young people have for change.

Wallace Mlyniec is the former Associate Dean of Clinical Education and Public Service Programs, and currently the Lupo-Ricci Professor of Clinical Legal Studies, and Director of the Juvenile Justice Clinic at Georgetown University Law Center. He teaches courses in family law and children's rights and assists with the training of criminal defense and juvenile defense fellows in the Prettyman Legal Internship Program. He is the author of numerous books and articles concerning criminal law and the law relating to children and families. Wallace Mlyniec received a Bicentennial Fellowship from the Swedish government to study their child welfare system, the Stuart Stiller Award for public service, and the William Pincus award for contributions to clinical education. He holds his B.S. from Northwestern University and his J.D. from Georgetown University. He is the Vice Chair of the Board of Directors of the National Juvenile Defender Center and former chair of the American Bar Association Juvenile Justice Committee.

Barbara Bennett Woodhouse is LQC Professor of Law and Director, Child Rights Project, Emory University. For twenty five years, she has been teaching, researching and writing about justice for children. Before joining the Emory faculty, she was co-founder of the multidisciplinary Center for Children's Policy Practice and Research at University of Pennsylvania and founder of the Center on Children and Families at University of Florida. She has published many articles, book chapters and an award winning book on children's rights, as well as participated in appellate advocacy in cases involving the rights of children and juveniles.

APPENDIX B

Signatories to Campaign for Youth Justice National Resolution

RESOLUTION OPPOSING THE TRANSFER OF YOUTH TO THE ADULT CRIMINAL SYSTEM

WHEREAS the historical role of the juvenile court system is to rehabilitate and treat youthful offenders while holding them accountable and maintaining public safety and is therefore better equipped to work with youth than the adult criminal justice system;

WHEREAS youth are developmentally different from adults and these differences have been documented by research on the adolescent brain and acknowledged by many state laws that prohibit youth under age 18 from taking on major adult responsibilities such as voting, jury duty, and military service;

WHEREAS an estimated 200,000 youth are tried, sentenced, or incarcerated as adults every year in the United States and most of the youth are prosecuted for non-violent offenses;

WHEREAS most laws allowing the prosecuting of youth as adults were enacted prior to research evidence by the Centers for Disease Control and Prevention and the Office of Juvenile Justice and Delinquency Prevention demonstrating that youth prosecuted in adult court are, on average, 34 percent more likely to commit crimes than youth retained in the juvenile system;

WHEREAS youth of color receive more punitive treatment than white youth for the same offenses at all stages in the justice system and the point of greatest disparities is often the decision to transfer a youth to the adult system;

WHEREAS the use of statutes or procedures that automatically exclude youth from the juvenile court without an assessment of individual circumstances by an impartial judge denies youth basic fairness;

WHEREAS it is harmful to public safety and to young offenders to confine youth in adult jails or prisons where they are significantly more likely to be sexually assaulted, physically assaulted, and upon release, more likely to re-offend than youth housed in juvenile facilities; **WHEREAS** youth detained or incarcerated in the adult criminal justice system should be housed in juvenile facilities which have been successful at rehabilitating youth;

WHEREAS most incarcerated youth show symptoms of mental health problems, studies show juveniles in adult facilities may manifest some of the most substantial mental health treatment needs among all juveniles involved in the justice system;

WHEREAS youth sentenced as adults receive an adult criminal record which is a barrier to further education or employment and the collateral consequences normally applied in the adult justice system should not automatically apply to youth arrested for crimes before the age of 18;

WHEREAS youth may receive extremely long mandatory minimum sentences and deserve an opportunity to demonstrate their potential to grow and change;

WHEREAS the monetary value of saving a high-risk youth from a life of crime is estimated to range between \$2.6 and \$4.4 million for each childⁱ and moving youth from the adult criminal justice system to the juvenile justice system is cost-effective;

BE IT RESOLVED that _____ supports the reform of laws, policies, and practices that will reduce the number of youth sent to adult criminal court, remove young offenders from adult jails and prisons, ensure youth sentences account for their developmental differences from adults, and enable youth to return to their families and society without compromising community safety.

ⁱ Mark Cohen paper: <http://www.youthbuild.org/atf/cf/%7B22B5F680-2AF9-4ED2-B948-40C4B32E6198%7D/Generic%20Report%20on%20Monetary%20Savings%20-%20Final.pdf>

National Organization Supporters as of 7/22/2011

American Academy of Child and Adolescent Psychiatry

American Friends Service Committee

American Jail Association

American Probation and Parole Association

American Youth Policy Forum

ASPIRA Association

Bazelon Center for Mental Health Law

Center for Children's Law and Policy

Center on Juvenile and Criminal Justice

Coalition for Juvenile Justice

Coalition on Human Needs

Covenant House International

Council of Juvenile Correctional Administrators

CURE LIFE-LONG

Disciple Justice Action Network

Federation of Families for Children's Mental Health

Forum for Youth Investment

Global Justice Ministry, Metropolitan Community Churches

Global Youth Justice

Human Rights Watch

International Community Corrections Association

Just Children

Justice Policy Institute

Learning Disabilities Association of America

Mental Health America

Mid-Atlantic Juvenile Defender Center

National Advocacy Center for the Sisters of the Good Shepherd

National African-American Drug Policy Coalition

National Alliance of Faith and Justice

National Alliance on Mental Illness

National Association for the Advancement of Colored People

National Association of Criminal Defense Lawyers

National Association of School Psychologists

National Association of Social Workers

National Campaign for the Fair Sentencing of Children

National Center for Lesbian Rights

National Center for Youth Law

National Collaboration for Youth

National Congress of American Indians

National Council of Jewish Women

National Council on Crime and Delinquency

National Disability Rights Network

National Institute for Law and Equity

National Juvenile Defender Center

National Juvenile Justice Network

National Network for Youth

National Parent Teacher Association

National Partnership for Juvenile Services

National Youth Advocate Program

NETWORK, A National Catholic Social Justice Lobby

New England Juvenile Defender Center

Reclaiming Futures

Presbyterian Church USA

School Social Work Association of America

Southern Juvenile Defender Center

Southern Poverty Law Center

Southwest Key Programs

The American Civil Liberties Union

The Annie E. Casey Foundation

The Juvenile Justice Foundation

The Salvation Army USA

The Sentencing Project

United Methodist Church, Board of Church and Society

Women of Reform Judaism

Youth Advocacy Programs, Inc.

State Organization Supporters as of 7/22/2011

Alabama

Alabama CURE

Alabama Youth Justice Coalition

VOICES for Alabama's Children

Alaska

Covenant House Alaska

Arizona

Arizona Center for Law in the Public Interest

Children's Action Alliance

Episcopal Diocese of Arizona

Maricopa County Juvenile Public Defender Office

Our Family Services

Arkansas

Arkansas Advocates for Children & Families

Arkansas Interfaith Alliance

Arkansas Voices for the Children Left Behind

California

Books Not Bars

California Coalition for Women Prisoners

Ella Baker Center

Larkin Street Youth Services

Office of Restorative Justice, Archdiocese of Los Angeles

Redwood Community Action Agency

University of California Berkeley, School of Law

Colorado

Colorado CURE

Colorado Juvenile Defender Coalition

Pendulum Foundation

Connecticut

Center for Children's Advocacy

Collaborative Center for Justice
Connecticut Association for Community Action
Connecticut Juvenile Justice Alliance
Connecticut Parent Teachers' Association
Connecticut Voices for Children
Middlesex Coalition for Children
National Association of Social Workers-Connecticut
National Coalition of Jewish Women—Connecticut Chapter
TeamChild Juvenile Justice Project

Delaware

Children & Families First
Jewish Family Services of Delaware
Stand Up for What's Right and Just
The Delaware Center for Justice

District of Columbia

Center for Juvenile Justice Reform at Georgetown University's Public Policy Institute
Children's Law Center
Covenant House DC
Sasha Bruce Youthwork

Florida

Diocese of St. Augustine Justice and Peace Commission
Florida CURE
Florida Youth Initiative
Pax Christi Florida
Urban Resource Strategists, Inc.

Georgia

Barton Juvenile Defender Clinic, Emory University School of Law
Georgia Rural Urban Summit

Hawaii

Community Alliance on Prisons

Idaho

Idaho Federation of Families for Children's Mental Health

Illinois

Black Network In Children's Emotional Health

Child Care Association of Illinois

Civitas Child Law Center, Loyola University

Griffin Center - East St. Louis

Illinois Juvenile Justice Initiative

John Howard Association of Illinois

YWCA Quincy

Indiana

Indiana Juvenile Justice Task Force, Inc.

Iowa

Iowa Coalition 4 Juvenile Justice

Kentucky

Central Juvenile Defender Center

Children's Law Center of Kentucky

Louisiana

Capital Post Conviction Project

Families and Friends of Louisiana's Incarcerated Children

Juvenile Justice Project of Louisiana

Maine

Child Protection & Juvenile Justice Section of the Maine State Bar

Juvenile Justice Clinic, University of Maine School of Law

Maine Children's Alliance

Maryland

ACLU of Maryland

Community Law in Action

Public Justice Center

Massachusetts

Citizens for Juvenile Justice

New Vision Organization, Inc.

Youth Advocacy Department

Michigan

Association for Children's Mental Health

Humanity for Prisoners

Juveniles Against Incarceration for Life
Michigan Collaborative for Juvenile Justice Reform
Michigan Council on Crime and Delinquency
Michigan Federation for Children and Families

Minnesota

Children's Law Center of Minnesota
Elim Transitional Housing, Inc.
Integrated Community Solutions, Inc.
Juvenile Justice Coalition of Minnesota
Minnesota Council of Child Caring Agencies
NAACP - Minnesota/Dakota Area

Mississippi

Mississippi Youth Justice Project
Mississippi Center for Justice

Missouri

Missouri Youth Services Institute
Sisters of St. Joseph of Carondelet, St. Louis Province

Montana

Mental Health America of Montana

Nebraska

Voices for Children in Nebraska

Nevada

National Association of Social Workers, Nevada Chapter

New Jersey

New Jersey Parents Caucus
Statewide Parent Advocacy Network of New Jersey

New Mexico

Community Action New Mexico
New Mexico Conference of Churches
New Mexico Council on Crime and Delinquency

New Hampshire

New Futures

New York

Center for Community Alternatives

Center for NuLeadership on Urban Solutions at Medgar Evers College

Church Women United of Chemung County

Church Women United of NYS

Correctional Association of New York

Court St Joseph #139 Catholic Daughters of the Americas

Chemung County Council of Women

Chemung County Council of Churches

FIERCE

Ladies of Charity of Chemung County

Mothers on the Move

Past Regents Club Catholic Daughters of the Americas, Diocese of Rochester

Pomona Grange #1

The Brotherhood/Sister Sol, Inc.

Urban Word NYC

Veteran Grange #1108

Youth Represent

North Carolina

Action for Children North Carolina

Juvenile Justice Clinic of the University of North Carolina at Chapel Hill School of Law

University of North Carolina School of Law

North Dakota

NAACP - Minnesota/Dakota Area

Ohio

Children's Defense Fund – Ohio

Juvenile Justice Coalition of Ohio

The Office of the Public Defender – Ohio

Voices for Ohio's Children

Oregon

Human Services Coalition of Oregon

Juvenile Rights Project

Partnership for Safety and Justice

Pennsylvania

Pennsylvania Council of Churches

Juvenile Detention Centers Association of Pennsylvania

Rhode Island

Parent Support Network of Rhode Island

South Carolina

Federation of Families for Children's Mental Health of South Carolina

South Dakota

NAACP - Minnesota/Dakota Area

South Dakota Peace and Justice Center

Tennessee

Mental Health Association of Middle Tennessee

Texas

Council on At-Risk Youth

Texans Care for Children

Vermont

Vermont Coalition for Homeless and Runaway Youth Programs

Virginia

Families & Allies of Virginia's Youth

Legal Aid Justice Center

Offender Aid and Restoration

Virginia Coalition for Juvenile Justice

Virginia CURE

Washington

Citizens for Responsible Justice

TeamChild

West Virginia

Daymark

Wisconsin

Madison-Area Urban Ministry

Wisconsin Council on Children and Families

Wyoming

Wyoming's Children Action Alliance