

IN RE: TYRIQ T. : SUPREME COURT
SC 19153 :
DECEMBER 5, 2013 : STATE OF CONNECTICUT

**BRIEF OF NATIONAL CENTER FOR YOUTH LAW AND
JUVENILE LAW CENTER AS *AMICI CURIAE* IN SUPPORT OF
RESPONDENT-APPELLANT**

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INTEREST OF *AMICI CURIAE*¹

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.

¹Undersigned counsel for *amici curiae* certify, pursuant to Section 67-7 of the Connecticut Practice Book, that no counsel for a party wrote this amicus brief in whole or in part, no counsel or party contributed to the cost of the preparation or submission of the brief, and no other individuals made such monetary contribution.

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.

Amici Curiae 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 their capacity for change and rehabilitation, to ensure that each youth is provided with the same level of constitutional protection provided to adults.

ARGUMENT

Amici write in support of Respondent-Appellant's argument that rulings on discretionary transfers from juvenile to adult criminal court are subject to immediate appeal. Respondent-Appellant persuasively argues that, based on the legislative history and a reading of the juvenile transfer statute as a whole, the legislature intended that such decisions be susceptible to interlocutory appeal. *Amici* herein present further argument in support of Respondent-Appellant's additional position that recent United States Supreme Court holdings adopting current knowledge of adolescent development -- and its applicability to youth involved with the courts -- warrants a revisiting of this court's earlier, now discredited holding that youth do not suffer great and irreparable harm when they are forced to await a final judgment in adult court before they can challenge the transfer ruling. *In re Juvenile Appeal*, 195 Conn. 303, 312-13 (1985).

I. INTERLOCUTORY APPEAL OF RULINGS ON DISCRETIONARY TRANSFER FROM JUVENILE TO ADULT COURT IS CRITICAL GIVEN THE UNIQUE DEVELOPMENTAL WINDOW OF ADOLESCENCE

It has been almost thirty years since this court last reviewed the question of whether juvenile transfer orders should be immediately appealable, *see In re Juvenile Appeal*, 195 Conn. at 312-13. Since then, the United States Supreme Court has issued four watershed decisions that reinforce the primacy of a key principle -- youth are fundamentally different from adults in constitutionally relevant ways. *See Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455 (2012) (holding that mandatory sentence of life without possibility of parole for minors violates Eighth Amendment), *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011) (holding that a child's age must be taken into account for purposes of the *Miranda* custody test), *Graham*

v. Florida, ___ U.S. ___, 130 S. Ct. 2011 (2010) (ruling that imposition of life without possibility of parole for non-homicide crimes violates Eighth Amendment), and *Roper v. Simmons*, 543 U.S. 551 (2005) 575 (holding that imposition of death penalty on minors violates Eighth Amendment). The Court's findings with respect to youth's greater capacity for change as compared to adults – which are buttressed by a body of developmental research and neuroscience -- demonstrate why it is critical that this court permit youth to immediately appeal rulings that deny them access to juvenile courts and, more importantly, to facilities specifically operated and staffed to educate and treat juvenile offenders.

As the Supreme Court has found, “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 irretrievabl[e] deprav[ity].” *Miller*, 132 S. Ct. at 2464 (quoting *Roper*, 543 U.S., at 570). Indeed, “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.” *Roper*, 543 U.S. at 570. They “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*, 130 S. Ct. at 2026-27. 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*”).

Developmental experts emphasize the key developmental or psychosocial tasks of adolescence. Laurence Steinberg, *Reentry of Young Offenders from the Justice System: A*

Developmental Perspective, 2 YOUTH VIOLENCE AND JUVENILE JUSTICE 21, 24 (2004).

Whether a youth successfully transitions to adulthood depends on how well the youth is able to negotiate these psychosocial tasks. During the critical period of adolescence, youth must acquire those “basic skills needed to transition from dependence to relative independence from parental care.” Richard J. Bonnie *et al.*, eds. REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 90 (2013) (hereinafter “Bonnie, REFORMING JUVENILE JUSTICE”). These tasks include learning educational and vocational skills that will lead to employment; social skills that are critical for developing positive interpersonal relationships and functioning well in groups; and decision-making skills that result in positive choices. *Id.* 101-102. Scientific literature identifies three conditions “needed to make progress in accomplishing key developmental tasks and to allow the acquirement of skills essential to the transition to conventional adult roles”: youth engagement with a caring parent/parent figure; inclusion in a peer group that values and models pro-social behavior and academic success; and participation in activities that offer opportunities for autonomous decision making and critical thinking. *Id.* at 102. Denying a youth access to these critical supports and services – which necessarily results when a youth is held in developmentally-inappropriate Department of Corrections facilities, see Part II *infra* -- interferes with the youth’s ability to successfully complete the key developmental tasks of adolescence. This, in turn, could have negative, irreparable consequences for the youth’s life course.

The research confirms that “many of the factors associated with antisocial, risky, or criminal behavior lose their intensity as individuals become more developmentally mature,” 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, 297 (2012) (citing Laurence Steinberg, *A Dual Systems Model of Adolescent Risk-Taking*, 52 DEVELOPMENTAL PSYCHOBIOLOGY 216, 220-21 (2010); Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1011 (2003)), and “the period of risky experimentation does not extend beyond adolescence, ceasing as identity becomes settled with maturity.” Bonnie, REFORMING JUVENILE JUSTICE at 90 (citing Moffitt, *Adolescence-Limited And Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, PSYCHOL REV. 1993 Oct. 100(4):674-701; Snyder (1998) *Juvenile arrests 1997* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.). “Most teenagers desist from criminal behavior . . . [as they] develop a stable sense of identity, a stake in their future, and mature judgment.” Scott & Steinberg, RETHINKING JUVENILE JUSTICE at 31 (2008). Thus, research demonstrates that when provided with the essential conditions enumerated above, most adolescents will perform the psychosocial tasks necessary to mature and end their criminal behavior. But the key is to provide the right services at the right time.

Indeed, the justice system risks missing evanescent opportunities to rehabilitate youthful offenders when such youth are denied access to developmentally appropriate interventions while awaiting their chance to appeal a transfer ruling. For example,

[r]ecent studies of adolescent development show a change in sensitivity to reward-based cues, suggesting that they have a unique influence on cognition during the adolescent years... [the studies] ...have shown that *this sensitivity to rewards and incentives actually peaks during adolescence, with a steady increase from late childhood to adolescence and subsequent decline from late adolescence to adulthood*. These findings suggest that immediate incentives can alter both desirable and undesirable behavior in adolescents and may be used to positively alter behavior.

Id. at 94-95 (citing Cauffman et al., 2010 and Steinberg et al., 2009b) (emphasis added). This research demonstrates that there is a closing window of opportunity to utilize incentives to influence juvenile offenders to change their behaviors and function in more socially-acceptable ways.

However, to be effective and not cause harmful outcomes, such behavior modification programs must be administered by skilled professionals specifically trained to work with adolescents. As Part II *infra* demonstrates, youth do not have access to programming essential to their maturing process when they are not held in facilities especially designed for juvenile offenders.

II. INTERLOCUTORY APPEAL OF DISCRETIONARY TRANSFER RULINGS IS NECESSARY GIVEN THE RISKS ASSOCIATED WITH INCARCERATION OF JUVENILES IN ADULT PRISONS

Children housed pre-trial in adult facilities face possibly irreparable harm due to the lack of developmentally-appropriate programming, the risk of violence and self-harm, and the increased likelihood of future contact with the criminal justice system. In Connecticut, male children transferred to adult court are incarcerated in Manson Youth Institution (“Manson”), an adult prison run by the Department of Corrections (“DOC”) for youth aged 14 to 20. Female children transferred to adult court are incarcerated in York Correctional Institution (“York”), an adult DOC prison that incarcerates girls aged 14 to 17 as well as adult women. Both pre-trial and sentenced children are incarcerated in Manson and York. State of Connecticut Department of Correction *Administrative Directive 9.2: Offender Classification* ¶ 7D-E (2006); State of Connecticut Department of Correction, Manson Youth Institution, <http://www.ct.gov/doc/cwp/view.asp?a=1499&Q=265428> (last visited Dec. 2, 2013); State of Connecticut Office of the Child Advocate, *From Trauma to Tragedy:*

Connecticut Girls in Adult Prisons 2 (2008) (“OCA, *Connecticut Girls in Adult Prisons*”). In contrast, children who are tried in juvenile court are detained pre-trial by the Court Support Services Division (“CSSD”) of the Connecticut Judicial Branch.

A. Adult Facilities Lack Appropriate Educational and Rehabilitative Programming for Children

Because children are more malleable than adults and have a greater need for personal guidance, children have special programming needs, including educational services, vocational programming, and life skills development. Lonn Lanza-Kaduce et al., *Juvenile Transfer to Criminal Court Study – Final Report* 9, 30 (2002). However, adult facilities rarely are able to provide this specialized programming to children. See, e.g., Steven Berkowitz & Leonard Barbieri, *Treat Young Offenders Differently*, THE HARTFORD COURANT, Aug. 30, 2005; American Jail Association, *Resolutions of the American Jail Association* 23 (2012). Even where such programming exists, children incarcerated pre-trial may not be able to access it because of correctional policies that prioritize programming for individuals who have been sentenced and are near their release date. Quinnipiac University School of Law & Yale Law School, *Youth Matters: A Second Look for Connecticut’s Children Serving Long Prison Sentences* 21 (2013).

Nationwide, children incarcerated in adult prisons are often unable to attend school or receive educational services. According to the U.S. Department of Justice, forty percent of adult jails do not have any educational services for incarcerated youth. Washington Coalition for the Just Treatment of Youth, *A Reexamination of Youth Involvement in the Adult Criminal Justice System in Washington: Implications of New Findings about Juvenile Recidivism and Adolescent Brain Development* 8 (2009) (“Washington Coalition, *Reexamination of Youth Involvement in Criminal Justice System*”). Additionally, despite the

high prevalence of learning disorders and other disabilities among children tried as adults, only eleven percent of adult prisons nationwide report providing special education services. Liz Ryan, Campaign for Youth Justice, *Youth in Adult Courts* 8 (2012). In Connecticut, children incarcerated in adult facilities have high degrees of educational need, with nearly 80% requiring special education services and over 90% of children in Manson testing at below eighth grade level. OCA, *Connecticut Girls in Adult Prisons* at 12; The Justice Education Center, Inc., *Juvenile Offender Profile Study* 9 (2006).

Adult facilities also lack sufficient services to address the mental health needs of children. Both children in adult and juvenile facilities have high rates of mental health needs, however, for children in adult facilities, a lack of developmentally-appropriate mental health programming compounds these needs. OCA, *Connecticut Girls in Adult Prisons* at 12; see also Jason Washburn et al. *Psychiatric Disorders Among Detained Youth: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court* 59 *Psychiatric Services* 965, 969-970 (2008). Researchers estimate that children in adult facilities have rates of psychiatric disorders two to three times those of incarcerated adults, suggesting that facilities run by adult correctional agencies are unlikely to provide the magnitude of mental health services required by incarcerated children. *Id.* Children who are incarcerated as adults in Connecticut cannot access the same range of evidence-based mental health programs that benefit children in Connecticut's juvenile justice system, such as Multisystemic Therapy or Multidimensional Family Therapy. State of Connecticut Department of Children and Families, Bureau of Juvenile Services & Connecticut Judicial Branch, Court Support Services Division, *The Connecticut Juvenile Justice Strategic Plan: Building Toward a Better Future* 14 (2006).

B. Adult Facilities Do Not Protect Children From Violence and Self-Harm

Because children in adult facilities may be incarcerated with older and more physically-developed inmates, they are at high risk for physical and sexual violence. Reflecting this, the United States Congress has found that “[j]uveniles are five times more likely to be sexually assaulted in adult rather than juvenile facilities—often within the first 48 hours of incarceration.” Prison Rape Elimination Act, 42 U.S.C. § 15601(4) (2003). According to the U.S. Department of Justice’s Bureau of Justice Statistics, in 2006, thirteen percent of victims of inmate-on-inmate sexual assaults in adult jails were children under 18, although such children were only about one percent of the total population in adult jails. Allen J. Beck *et al.*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Sexual Violence Reported by Correctional Authorities, 2006* 35 (2007); Melissa Sickmund, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Juveniles in Corrections* 18 (2004). Because data on rape, suicide, and assault of children in adult prisons are often limited to children’s self-reports, researchers estimate that the actual rates may be much higher. Vincent Schiraldi & Jason Zeidenberg, *The Risks Juveniles Face When They Are Incarcerated With Adults* 1-2 (1997).

Children incarcerated in adult facilities also experience a higher risk of suicide. Research estimates that children incarcerated in adult facilities are anywhere from eight to thirty-six times more likely to commit suicide than children in juvenile facilities. Neelum Arya, Campaign For Youth Justice, *Jailing Juveniles: The Dangers Of Incarcerating Youths In Adult Jails In America* (2007); Campaign for Youth Justice, *The Consequences Aren’t Minor: The Impact of Trying Youth as Adults and Strategies for Reform* 44 (2007). Further,

nearly one-quarter of suicide attempts occur on the first or second day in jail, making even a short period of incarceration potentially life-threatening. Washington Coalition, *Reexamination of Youth Involvement in Criminal Justice System* at 7.

C. Incarcerating Children in Adult Facilities Increases Their Likelihood of Future Offending

Children incarcerated in adult facilities are more likely to have future arrests and convictions than children detained in juvenile facilities due, at least in part, to the absence of developmentally-appropriate programming and the greater threat of violence in adult facilities. Richard E. Redding, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention *Juvenile Justice Bulletin: Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* 7 (2010) (“Redding, *Juvenile Transfer Laws*”); Angela McGowan et al., *Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System*, 32 *Amer. J. of Preventative Medicine* S17-S19 (2007). All federally-funded, large-scale research studies have shown that children who are tried as adults have higher recidivism rates than similar children adjudicated through the juvenile justice system. Redding, *Juvenile Transfer Laws* at 6. These studies have also suggested that simply being charged in the adult criminal system, even without subsequent conviction, increases recidivism. *Id.* at 7. Incarcerating children pre-trial in adult facilities, therefore, does not deter children from re-offending and may ultimately lead to increased criminal activity.

Children incarcerated in adult facilities are also more likely to have future contact with the criminal justice system than children held in juvenile facilities because of their exposure to older inmates. Contact with older inmates may negatively influence children to increase criminal behaviors. *Id.* The State of Connecticut’s Office of Policy and

Management's report on juvenile transfers noted that transferred youth are incarcerated with people who have committed offenses that are more serious and "learn more deviant behaviors being locked up with them." Eliot C. Harstone, Ph.D. & Dorinda M. Richetelli, State of Connecticut, Office of Policy and Management – Policy Development and Planning Development, *A Study of Juvenile Transfers in Connecticut 1997 to 2002: Final Report* (2006).

The risks and negative consequences associated with jailing children pre-trial in adult facilities demonstrate the critical need – both for the children themselves and the communities to which they will one day return – for swift, interlocutory review of transfer decisions. Public safety is not served by prolonging risk to these children.

CONCLUSION

In light of the foregoing arguments, *amici curiae* respectfully request that this Court reverse the Appellate Court's dismissal of this matter and remand the matter to the Appellate Court for full consideration of the underlying appeal.

Respectfully submitted,



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CERTIFICATIONS

The undersigned hereby certifies that the foregoing brief complies with all provisions of Connecticut Practice Book Rules 67-2 and 67-7 and is set in Arial twelve-point font.

In accordance with the provisions of Section 67-7 of the Connecticut Practice Book, the undersigned hereby further certifies that the original and twenty-five (25) copies of this brief have been served via overnight mail on this the 4th day of December, 2013 to:

Supreme Court Clerk's Office
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The undersigned hereby further certifies that a copy of this brief has been served via first class mail, postage prepaid, on this the 4th day of December, 2013 to:

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A handwritten signature in black ink, appearing to read 'Lourdes M. Rosado', written in a cursive style.

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