No. 116402

IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	:	**On appeal from the Appellate Court of Illinois**
Plaintiff-Appellee,	:	**Fourth Judicial District, No. 4-11-0409**
v.	:	**There heard on appeal from the Circuit Court of Clark County, Illinois, No. 10-CF-63.**
MARIA S. PACHECO,	:	**Honorable Tracy W. Resch,**
Defendant-Appellant.	:	**Judge Presiding.**

BRIEF OF JUVENILE LAW CENTER, LOYOLA *CIVITAS* CHILDLAW CLINIC *ET AL.*, AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT

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POINTS AND AUTHORITIES

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.

ARGUMENT

Amici respectfully argue that Illinois statutes that require fifteen and sixteen year-old youth charged with murder by accountability to be tried and sentenced in the same manner as adults are unconstitutional in light of recent United States Supreme Court jurisprudence.

As explained in detail *infra*, Illinois's transfer and mandatory sentencing statutes are unconstitutional because they 1) create an irrebuttable presumption in favor of culpability and against the child's capacity for change and rehabilitation and 2) do not allow for individualized sentencing of minors transferred to adult court and convicted of murder by accountability. Unlike Illinois, most state transfer schemes require some individualized determination by a court prior to a youth's prosecution in adult court. Illinois is an outlier in not allowing a court to consider constitutionally relevant factors before subjecting a youth to prosecution and sentencing in the adult criminal system.

While the intermediate appellate court affirmed Defendant-Appellant Maria Pacheco's conviction, the majority acknowledged that "it may be time for our supreme court to consider [the] important issue" of whether the holdings in *Miller v. Alabama*, __ U.S. __, 132 S.Ct. 2455 (2012), *Graham v. Florida*, __ U.S. __, 130 S. Ct. 2011 (2010), and *Roper v. Simmons*, 543 U.S. 551 (2005) call into question Illinois statutes that require automatic transfer of minors and the consequent imposition of mandatory sentences. *People v. Pacheco*, 2013 IL App (4th) 110409, ¶68. Indeed, the dissent below found that the mandatory transfer of youth under the Illinois statute violates the holdings of *Miller*, *Graham*, and *Roper*. *Id.* at ¶94 (Appleton J., dissenting). As the dissent stated, "While there are juvenile offenders who may, based on the totality of the circumstances, be

eligible for adult prosecution, an automatic transfer provision based on age and offense alone, without consideration of the wide variance in the maturity, sophistication, intelligence, and social adjustment of any particular juvenile offender, cannot pass constitutional muster." *Id.* at ¶98.

Recent United States Supreme Court case law, Illinois's variance from the national norm, and the fact that several hundred organizations have denounced the automatic transfer and mandatory sentencing of certain youth as adults, all align with the dissent's reasoning below. This Court last reviewed Illinois' automatic transfer laws long before the United States Supreme Court's watershed decisions of the last eight years that are discussed in this brief. *See People v. J.S.*, 103 Ill.2d 395 (1984); *People v. M.A.*, 124 Ill.2d 135 (1988). This case provides this Court the opportunity to revisit its prior decisions regarding juvenile transfer and subsequent exposure to mandatory sentences in light of this recent United States Supreme Court jurisprudence. *See, e.g.*, Graham, 130 S.Ct. at 2031. *Amici* respectfully submit that an examination of this statutory scheme against the backdrop of this jurisprudence demonstrates that it is constitutionally defective.

I. U.S. SUPREME COURT JURISPRUDENCE DEMONSTRATES THAT THE AUTOMATIC PROSECUTION AND MANDATORY SENTENCING OF CERTAIN YOUTH CHARGED WITH MURDER AS ADULTS IS UNCONSTITUTIONAL

The United States Supreme Court repeatedly has held that youth are categorically less culpable and more amenable to treatment and rehabilitation than adults for the purposes of sentencing. *Miller*, 132 S.Ct at 2463; *Graham*, 130 S. Ct. at 2026; *Roper*, 543 U.S. at 570. The Court also has recognized that, while all youth are categorically less blameworthy than adult offenders, youth mature at dissimilar rates and, therefore, there are differences in the degree of culpability among individual youth charged with crimes. *See Graham*, 130 S. Ct. at 2026 (quoting *Rope*r, 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*, 130 S.Ct. at 2031 (emphasis added). In *Graham*, the Supreme Court found problematic a sentencing statute which "denie[d] the juvenile offender a chance to demonstrate growth and maturity." *Graham*, 130 S. Ct. at 2029. Thus, the Court's jurisprudence instructs that each juvenile must be given an opportunity to show the capacity to change -- not only at the time of sentencing but over the course of time.

The Illinois statutory scheme at issue in this case is 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, Section 5-130 of the Juvenile Court Act provides that Maria and all 15- and 16-year-olds charged with first degree murder must be automatically tried and sentenced as adults, with no opportunity for the minor to seek a return to juvenile court or to be sentenced as a juvenile following conviction. 705 ILCS 405/5-130(1)(a), (c)(I) (West 2010). The Code of Corrections provides that the sentencing range for murder is 20 to 60 years of imprisonment, 730 ILCS 5/5-4.5-20(a) (West 2010), and sentences may not be reduced through the earning of good conduct credit. 730 ILCS 5/3-6-3(a)(2)(I) (West 2010). Thus, youth such as Maria are subject to the same mandatory sentences as adults without an individualized determination by a court that takes into account the youth's age, developmental level, degree of culpability and capacity for change. As explained *infra*, the statutory scheme taken as a whole violates the principles enunciated in several recent United States Supreme Court cases.

A. Under United States Supreme Court case law, Illinois's transfer and mandatory sentencing statutes are unconstitutional because they do not allow for individualized sentencing of minors transferred to adult court and convicted of murder

1. 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*, 130 S. Ct. at 2022 (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*, 130 S. Ct. at 2026; *Roper*, 543 U.S. at 569. Research demonstrates that adolescents, as compared to adults, generally have less decision-making capacity and 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") (citing Somerville, Fani, and McClure-Tone (2011) *Behavioral And Neural Representation Of Emotional Facial Expressions Across The Lifespan*. DEVELOPMENTAL NEUROPSYCHOLOGY, 36 (4), 408-428.) 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 Discou*nting, 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. Abigail A. Baird *et al.*, *Functional Magnetic Resonance Imaging of Facial Affect Recognition in Children and Adolescents*, 38 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 195, 197 (1999); Nitin Gogtay *et al.*, *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROCEEDINGS NAT'L ACAD. SCI. 8174, 8174 (2004); K. Rubia *et al.*, *Functional Frontalisation with Age: Mapping Neurodevelopmental Trajectories with fMRI*, 24 NEUROSCIENCE & BIOBEHAV. REVS. 13, 18 (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 syste*ms.

> 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).

"Second, children 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*, 130 S. Ct. at 2026; 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.") (citing Gardner and Steinberg, *Peer Influence On Risk Taking, Risk Preference, And Risky Decision Making In Adolescence And Adulthood: An Experimental Study*, DEV. PSYCHOL. 2005 Jul 41(4):625-35; Figner et al., *Affective And Deliberative Processes In Risky Choice: Age Differences In Risk Taking In The Columbia Card Task*, J. EXP. PSYCHOL. LEARN MEM. COGN. 2009 May 35(3):709-30). "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 imaging findings 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).

"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. 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"). 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 (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.). *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*, 130 S. Ct. at 2026. 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.* "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.

2. The Illinois automatic transfer and mandatory sentencing statutes are unconstitutional because they do not permit a sentencing court to consider the individual maturity and degree of culpability of each youth convicted of murder

Illinois statutes run afoul of the U.S. Supreme Court holdings described above because they mandate that 15- and 16-year old youth who are charged with murder by accountability be tried in adult court and receive the same mandatory sentence as an adult. As New York University Law School Professor Martin Guggenheim has observed,

> [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.").

Essentially, Illinois's statutory scheme creates "a non-rebuttable presumption that the juvenile who committed the crime is equally morally culpable as an adult who committed the same act." Guggenheim at 491. 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*, 380 U.S. 89, 96 (1965), 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; 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. Chesterfield County School Bd*., 414 U.S. 632, 644 (1974), 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. 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).

Illinois's automatic transfer statute in concert with its mandatory sentencing laws are unconstitutional because they 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 their lack of capacity to change or reform. The statutes thus ignore the key attributes of youth which the United States Supreme Court instructs must inform all criminal laws, i.e., that youth individually possess different levels of maturity, decision-making ability, culpability, and capacity for change and growth. "[T]he presumption here created" -- that Maria 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.

This statutory framework -- in which *"[t]here is no individualized determination," id.* – "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 Supreme Court's irrebuttable presumption cases instruct that "as a matter of due process of law, [Maria] was entitled to a hearing," *Stanley,* 405 U.S. at 649, to rebut the presumption that she 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 [Maria] ever to controvert the presumption of [the same level of culpability]', the State … unjustifiably effected a substantial deprivation. It viewed [Maria] 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).

Read together, the Supreme Court's irrebuttable presumption jurisprudence and its recent juvenile sentencing cases demonstrate that the transfer and sentencing statutes at issue violate due process, as youth are denied the opportunity to a hearing in which the court makes an individualized determination upon evidence of, *inter alia*, the youth's age, developmental status, and degree of culpability.[1] The recent sentencing cases also confirm that these statutes violate the Eighth Amendment and Illinois's disproportionate penalties clause because "[a]n 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*, 130 S.Ct. at 2031 (emphasis added).

[1] At least one commentator has suggested there also may be a *substantive* due process right not to be treated the same as an adult for sentencing purposes. Guggenheim at 492.

Finally, 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 to 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.

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 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 based its holding 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 on the same research that drove its 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*, 130 S. Ct. at 2039 (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 penological 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*, 130 S.Ct. at 2031-20332). *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.")

C. Illinois' statutory scheme is unconstitutional because it subjects youth who were not principally responsible – such as those charged with felony murder or those charged under an accountability theory – to automatic transfer to adult court and mandatory sentencing without a court's consideration of the constitutionally relevant attributes of adolescence

Holding a 16-year old youth accountable in equal measure for the actions of an adult, or subjecting that youth to criminal liability under the felony murder doctrine, is inconsistent with the adolescent developmental and neurological research recognized by the United States Supreme Court in *Roper*, *Graham*, *J.D.B.*, and *Miller* (described in Part II.A.1 and B *infra*). These United States Supreme Court cases preclude ascribing the same level of anticipation or foreseeability, as well as culpability, to a juvenile who takes part in a felony -- even a dangerous felony -- as the law ascribes to an adult. Yet the application of Illinois's excluded jurisdiction and mandatory sentencing statutes to murder by accountability and felony murder offenses does just that. This further supports Maria's argument that Illinois's statutory scheme is unconstitutional, particularly as it allows for automatically trying youth accused under an accountability theory and/or felony murder doctrine in adult court and subjecting them to mandatory sentences.

The State charged Maria, via accountability, with four counts of first degree murder for the death of her uncle, alleging: (1) intent to kill; (2) knowledge the acts would result in death; (3) knowledge the acts would create a strong probability of death; and (4) felony murder (Maria's 20-year-old co-defendant struck the victim with a hammer while committing a robbery). *People v. Pacheco*, 2013 IL App (4th) 110409, ¶¶ 1, 3-4.[2] Maria was found guilty of robbery (accountability) (720 ILCS 5/18-1 (West 2008)) and first degree murder (accountability) (720 ILCS 5/9-1(a)(3) (West 2008). *Pacheco*, ¶1. From the general verdict form returned by the jury, it is unclear if she was found guilty of felony murder or one of the other specific mental state-based theories alleged by the State. *Id.* at ¶86. While it may be likely the jury intended to find her guilty of felony murder – and Maria contends on appeal, pursuant to *People v. Smith*, 233 Ill.2d 1 (2009), that the general verdict form should be treated as a conviction for felony murder – it is uncontested that her convictions were based on an accountability theory. *Id*. at ¶39.

Under Illinois law, a defendant can be found guilty of first degree murder by accountability if before or during the commission of the offense the defendant, with the intent to promote or facilitate the offense, solicits, aids, abets, agrees, or attempts to aid the principal in the commission of the murder. 720 ILCS 5/5-2 (West 2010). Illinois follows the "common design rule," i.e., that once there is a plan to commit an offense, the act of one person who was part of the agreement is considered the act of all. *Id. See also People v. Perez*, 189 Ill. 2d 254, 267(2000). "Accountability may be established through a person's knowledge of and participation in the criminal scheme, even though there is no

[2] Maria was also charged and found guilty of unlawful possession of a stolen vehicle as a principle (625 ILCS 5/4-103(a)(1) (West 2008)). XIV, R. 174, 178-80.

evidence that he directly participated in the criminal act itself." *Perez*, 189 Ill. 2d at 267. This is precisely the scenario now before this court. Regardless of the theory on which the jury convicted Maria – be it holding her accountable for the intentional actions of her adult boyfriend or through the felony murder doctrine's theory of transferred intent[3] – Illinois's accountability statute is inconsistent with United States Supreme Court findings with respect to adolescents, specifically their lesser capacity to foresee or appreciate the potential consequences of their actions.

The Supreme Court case law recognizes that adolescents participating in criminal activity, including the most serious felonies, are driven more by outside pressures, impulses, and emotion than by careful assessment of the risks to themselves or others. A youth's "'lack of maturity and underdeveloped sense of responsibility . . . often result in impetuous and ill-considered actions and decisions.'" *Graham*, 130 S. Ct. at 2028 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)). In particular, the Court has noted that adolescents have "[d]ifficulty in weighing long-term consequences" and "a corresponding impulsiveness." *Graham*, 130 S. Ct. at 2032. *See also* Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 15, 20 (2008). Adolescents are less likely than adults to assess and weigh the risk that someone might get hurt or killed in the course of the felony.

[3] The felony murder doctrine relies upon a "transferred intent" theory. The intent to kill is inferred from an individual's intent to commit the underlying felony since a reasonable person would know that death is a possible result of felonious activities. *See, e.g., People v. Davison*, 236 Ill.2d 232, 239–40 (2010) ("The offense of felony murder is unique because it does not require the State to prove the intent to kill, distinguishing it from other forms of first degree murder when the State must prove either an intentional killing or a knowing killing.")

Thus, it is no longer reasonable to infer that that a juvenile had the intent to kill merely based on the juvenile's decision to engage in a felony.

In addition, "juveniles are more vulnerable or susceptible to negative influences and outside pressures" than are adults. *Roper*, 543 U.S. at 569. They "have less control, or less experience with control, over their own environment." *Id*. Research confirms the common perception that adolescents are highly susceptible to peer pressure. Scott and Steinberg, *Adolescent Development* at 21. In particular, because certain criminal behaviors can heighten status among adolescent peers, youth may face peer pressure to engage in criminal activities that they otherwise would avoid. *Id*. at 20-21. The influence of peers may be especially significant in felony murder or accountability cases, which by definition always include accomplices. For these reasons, the theory of transferred intent in felony murder or equal culpability under accountability cases lack justification when applied to juveniles. As Justice Breyer explains in his concurring opinion in *Miller*, "[T]he ability to consider the full consequences of a course of action and to adjust one's conduct accordingly is precisely what we know juveniles lack the capacity to do effectively." 132 S. Ct. at 2476 (Breyer, J., concurring) (internal citations omitted).

Indeed, this Court has previously distinguished between adult and juvenile offenders convicted of murder under a theory of accountability. *See People v. Miller*, 202 Ill. 2d 328, 339-43 (2002). Finding the multiple-murder sentencing statute disproportionate for a juvenile convicted based on a theory of accountability, this Court found that "in many cases courts have discretion to grant leniency to a juvenile even if he or she is prosecuted as an adult." *Id*. at 342. This Court noted that the case "does not

only concern the sentence of a juvenile," but specifically "concerns the sentence of a juvenile convicted under a theory of *accountability*." *Id*. The Court recognized that "as with juvenile offenders, courts in some cases may grant leniency in sentencing to offenders guilty by accountability. Disparate sentences between an offender convicted by accountability and a principal offender reflect the different degrees of participation in a crime." *Id*. Under the Illinois statutes at issue here, however, a court has no discretion to consider a juvenile offender's young age, level of participation and, therefore, the juvenile's overall level of responsibility and accountability before trying the youth in adult court and subjecting the youth to harsh adult sentences.

As noted above, given the general verdict form in this case, there has been no specific finding that Maria actually killed or intended to kill the victim. In fact, the appellate court gave tacit approval to defense counsel's apparent strategy of conceding Maria's guilt for participating in the robbery that occurred in this case (a concession with direct implications on the charge of felony murder via accountability). *Pacheco*, ¶¶73-81. Significantly, had she been charged with robbery alone, whether as a principal or by accountability, she would not have been subject to Illinois's excluded jurisdiction statute. 705 ILCS 405/5-130. Indeed, robbery is neither a mandatory nor a presumptive transfer offense in Illinois. 705 ILCS 405/5-805(1-2). Had Maria been charged solely with robbery, the state would have had to petition for a discretionary hearing to transfer Maria to adult court; a juvenile court judge then would have made the decision to try Maria in adult court only after affording Maria a full hearing. 705 ILCS 405/5-805(3). The juvenile court's individualized determination of whether it was in the public's best

interest to prosecute Maria would have included consideration of numerous factors including:

- Maria's age;
- Maria's history, including:
  - any previous delinquent or criminal history,
  - any previous abuse or neglect history, and
  - any mental health, physical, or educational history, combination of these factors;
- the circumstances of the offense, including:
  - the seriousness of the offense,
  - whether Maria was charged through accountability,
  - whether there is evidence the offense was committed in an aggressive and premeditated manner,
- whether there was evidence the offense caused serious bodily harm,
- whether there was evidence Maria possessed a deadly weapon;
- the advantages of treatment within the juvenile justice system including whether there are facilities or programs, or both, particularly available in the juvenile system;
- whether the security of the public requires sentencing under Chapter V of the Unified Code of Corrections:
- Maria's history of services, including her willingness to participate meaningfully in available services;
- whether there was a reasonable likelihood that Maria could be rehabilitated before the expiration of the juvenile court's jurisdiction;
- the adequacy of the punishment or services.

705 ILCS 405/5-805(3)(b). Because her co-defendant killed her uncle in the course of the felony, she lost her opportunity to show that she was amendable to treatment in the juvenile court. Illinois' excluded jurisdiction statute is therefore constitutionally defective because Maria was denied the opportunity to have a court conduct an individualized review of this exhaustive list of factors before being prosecuted as an adult.

Furthermore, the fact that Maria, once convicted on a theory of accountability, was then subject to the same mandatory sentencing scheme as adults, with no individualized consideration of her age, developmental level, level of participation,

degree of culpability and capacity for change, underscores the constitutional infirmities of what happened below. The culpability of the offender is a cornerstone of our criminal justice system and central to ensuring the rationality of sentencing. *See Tison v. Arizona*, 481 U.S. 137, 156 (1987) ("Deeply ingrained in our legal tradition is the idea that the more purposeful is the criminal conduct, the more serious is the offense, and, therefore, the more severely it ought to be punished."). *See also Williams v. New York*, 337 U.S. 241, 247 (1949) ("Highly relevant -- if not essential -- to [the] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics.") (footnote omitted). Applying adult mandatory sentencing schemes to juveniles rests on the unconstitutional premise that juveniles are *always* as morally culpable as adults. When sentencing a youth convicted based on a theories of accountability or transferred intent, a sentencing court must have the ability to impose an individualized sentence that accounts for the offender's reduced culpability based on her age and level of participation in the offense, particularly because, as discussed *supra*, these theories make little sense when applied to children and adolescents.

Moreover, *Graham* and *Roper* both explicitly provide that the capacity of juvenile offenders to change and grow, combined with their reduced blameworthiness and inherent immaturity, set them apart from adult offenders in pronounced, constitutionally relevant ways. *See also Miller*, 202 Ill. 2d at 341-42 ("[T]raditionally, as a society we have recognized that young defendants have greater rehabilitative potential."). In his concurrence in *Graham*, Justice Roberts cautioned that "[o]ur system depends upon sentencing judges applying their reasoned judgment to each case that comes before them." 130 S. Ct. at 2042. Mandatory sentencing schemes by definition preclude

individualized determinations. This 'one size fits all' sentencing practice is thus directly at odds with *Graham* and *Roper*, since it fails to adequately account for the categorically diminished culpability of youthful offenders in sentencing while simultaneously proscribing any "realistic opportunity" for release. *Id.* at 2034.

In summary, in Maria's case, while the court noted mitigating factors associated with her age and degree of participation, the court's hands were ultimately tied by the harsh sentencing boundaries set by the legislature because she was prosecuted as an adult. For this reason, Illinois's excluded jurisdiction and mandatory sentencing schemes are unconstitutional.

II. ILLINOIS'S STATUTORY SCHEME DEPARTS FROM NATIONAL NORMS

A. Illinois is an outlier because its statutes require certain youth to be tried in adult court based on age and charge alone, without the opportunity for a court to make an individualized determination as to whether juvenile court jurisdiction would be more appropriate based on the youth's unique degree of culpability and capacity for change and rehabilitation

Illinois is one of only 14 states (plus the District of Columbia) that either through statutory exclusion and/or prosecutorial discretion operates a transfer system that automatically places 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.[4]

Thus, while all states provide for the prosecution of certain juvenile offenders as adults, the vast majority of states require some individualized determination by a court prior to prosecution in adult court, unlike the automatic transfer statute at issue here. *See* Sara Alice Brown, National Conference of State Legislatures, *Trends in Juvenile Justice State Legislation 2001 – 2011* (June 2012) at http://www.ncsl.org/documents/cj/TrendsInJuvenile Justice.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. Illinois is an outlier because its statutes do not permit a court to conduct an analysis of

[4] 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.

these factors before subjecting a youth such as Maria to prosecution in the adult system and the imposition of mandatory sentencing schemes that prohibit judicial discretion.[5]

B. Public policy and public opinion overwhelmingly oppose the automatic transfer to adult court and mandatory imposition of adult sentences on youth

Driven by the emergent research and recent Supreme Court jurisprudence mandating different treatment for juveniles, 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.[6] The Report found that from 2005-2010, 15 states changed their state policies and an additional nine had active policy reform efforts underway. *Id*.

Recent polling also demonstrates that the public overwhelmingly opposes

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[5] 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.

[6] 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).[7] 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*.[8] A number of these organizations have individual position statements opposing the automatic application of adult criminal court jurisdiction for youth under the age of 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

[7] Available at http://www.campaignforyouthjustice.org/documents/FR_GBA_Poll_1011.pdf
[8] Available at http://www.campaignforyouthjustice.org/national-resolution.html

automatically transferred to adult court and subject to mandatory sentencing schemes. The Standards provide that "[n]o 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).[9] 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).[10] 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 particularly relevant to their youthful status." ABA Recommendation 105C, Adopted by the House of Delegates (February 11, 2008).[11]

Other legal organizations have adopted similar principles. 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

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

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

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

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.[12] Standards promulgated by the National Juvenile Defender Center emphasize the important role of defense counsel in advocating against transfer as

> one of the explicit goals of most juvenile courts—to address the rehabilitative needs of the youth—is irreconcilable with the goals of 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).[13] *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);[14] 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);[15] American Humane Association

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[12] Available at http://www.ncjfcj.org/sites/default/files/juveniledelinquencyguidelinescompressed[1].pdf.
[13] Available at http://www.njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf
[14] Available at http://www.nacdl.org/About.aspx?id=19903
[15] Available at http://www.juvjustice.njjn.org/position_9.html

Child Protection Position Statements (2009) at 18 (stating that children under age 18 should not be prosecuted as adults);[16] 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).[17]

Numerous correctional and government organizations share these organizations' opposition to automatic transfer and mandatory sentencing schemes. The National Association of Counties found that

> research confirms that the portion of the brain that controls and suppresses impulses, and is critical to good judgment and decision-making, is not fully developed in youth under age 18. Youth have difficulty thinking of consequences under stress and managing powerful impulses without adult help. Therefore, they 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.*[18] 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).[19] 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

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[16] Available at http://www.americanhumane.org/assets/pdfs/about/position-statements/children-position.pdf

[17] Availableat http://naacp.3cdn.net/62f96d3cfb942054cd_6dm6ivue4.pdf

[18] Available at http://www.naco.org/legislation/policies/Documents/Justice%20and%20Public%20Safety/JPS12-13.pdf.

[19] Available 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.

> [w]henever 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* (December 12, 2012).[20]

> The American Academy of Pediatrics recommends that
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> [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).[21] 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).[22] 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*.[23] Finally, the Parent Teacher

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[20] Available at http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf.

[21] Available at http://www.campaignforyouthjustice.org/documents/natlres/AACAP%20Recommendations%20for%20Juvenile%20Justice%20Reform.pdf

[22] Available at http://www.apha.org/advocacy/policy/policysearch/default.htm?id=234

[23] Available at http://www.abpsi.org/pdf/juvenilejustice.pdf

Association and United States Conference of Catholic Bishops call for the prohibition of youth 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);[24] 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).[25]

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court hold that the Illinois statutes which require that fifteen and sixteen year-old youth charged with felony murder or murder by accountability be tried and sentenced in adult court under mandatory transfer and mandatory sentencing schemes are unconstitutional. *Amici* further respectfully request that the Court reverse Maria's conviction and remand the case for further proceedings consistent with the Court's instructions.

[24] Available at http://www.pta.org/about/content.cfm?ItemNumber=986
[25] Available at http://old.usccb.org/sdwp/criminal.shtml#introduction

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APPENDIX A

IDENTITY OF *AMICI* 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 **Civitas ChildLaw Clinic** is a program of the **Loyola University Chicago School of Law**, whose mission is to prepare law students and lawyers to be ethical and effective advocates for children and promote justice for children through interdisciplinary teaching, scholarship and service. Through its Child and Family Law Clinic, the ChildLaw Center also routinely provides representation to child clients in juvenile delinquency, domestic relations, child protection, and other types of cases involving children. The ChildLaw Center maintains a particular interest in the rules and procedures regulating the legal and governmental institutions responsible for addressing the needs and interests of court-involved youth.

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

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 **Center on Children and Families** (CCF) at the University of Florida Fredrick G. Levin College of Law in Gainesville, Florida, is an organization whose mission is to promote the highest quality teaching, research and advocacy for children and their families. CCF‘s directors and associate directors are experts in children‘s law, constitutional law, criminal law, family law, and juvenile justice, as well as related areas such as psychology and psychiatry. CCF supports interdisciplinary research in areas of importance to children, youth and families, and promotes child-centered, evidence-based policies and practices in dependency and juvenile justice systems. Its faculty has many decades of experience in advocacy for children and youth in a variety of settings, including the Virgil Hawkins Civil Clinics and Gator TeamChild juvenile law clinic.

The **Children and Family Justice Center** (CFJC), part of Northwestern University Law School’s Bluhm Legal Clinic, was established in 1992 as a legal service provider for children, youth and families, as well as a research and policy center. Currently clinical staff at the CFJC provide advocacy on policy issues affecting children in the legal system, and legal representation for children, including in the areas of juvenile delinquency, criminal justice, special education, school suspension and expulsion, and immigration and political asylum. In its 21-year history, the CFJC has served as amici in numerous state and United States Supreme Court cases based on its expertise in the representation of children in the legal system.

The **Children's Law Center**, Inc. in Covington, Kentucky has been a legal service center for children's rights since 1989, protecting the rights of youth through direct representation, research and policy development and training and education. The Center provides services in Kentucky and Ohio, and has been a leading force on issues such as access to and quality of representation for children, conditions of confinement, special education and zero tolerance issues

within schools, and child protection issues. It has produced several major publications on children's rights, and utilizes these to train attorneys, judges and other professionals working with children.

Citizens United for Rehabilitation of Errants (CURE) is a grassroots organization that was founded in Texas in 1972. It became a national organization in 1985. 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.

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 prison s 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.

Fight for Lifers, West is a Lifers Support Group in Western Pennsylvanian 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 PADOC, 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. I this way they have shared information with each other, and made an impact of 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.

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 firm. 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.

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.

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 this case 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 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 **Public Defender Service for the District of Columbia** (PDS) is a federally funded, independent public defender organization; for 50 years, PDS has provided quality legal representation to indigent adults and children facing a loss of liberty in the District of Columbia justice system. PDS provides legal representation to many of the indigent children in the most serious delinquency cases, including those who have special education needs due to learning disabilities. PDS also represents classes of youth, including a class consisting of children committed to the custody of the District of Columbia through the delinquency system.

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 be 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.

Founded in 1971 by civil rights lawyers Morris Dees and Joseph Levin Jr., the **Southern Poverty Law Center** (SPLC) is a nonprofit civil rights organization dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of society. Since 1998, we have worked to reform juvenile justice and public school discipline systems throughout the country. The SPLC uses legal action, community education and mobilization, and media and legislative advocacy to ensure that students get the educational services that can mean the difference between incarceration and graduation and to prevent school discipline practices from pushing students out of school. We work to replace unnecessary juvenile detention with proven, community-based alternatives. And we seek to protect imprisoned children and teens from abuse and safely reduce the number of imprisoned children. SPLC believes that the adult criminal justice system is inappropriate and harmful to children, and works toward the day when all youth accused of crimes are dealt with in our nation's juvenile justice systems.

The **Uptown People's Law Center (UPLC)** was founded in 1975 by former coal miners and their widows in an effort to secure black lung benefits for disabled coal miners. In 1978, UPLC was incorporated as an Illinois not-for-profit and obtained federal 501(c)(3) status. The mission of the Uptown People's Law Center is to establish, administer, and promote programs providing legal aid to indigent persons, assisting community residents in obtaining legal services and benefits, and educating and training residents, paraprofessionals and volunteer attorneys. Its lawyers and support staff, the majority of whom have been working with the Law Center for decades, have developed formidable expertise in the areas of housing law, aid to the disabled, public benefits, and prison reform. UPLC has litigated dozens of civil rights cases, including disability rights, and actions brought by prisoners in both federal and state courts. UPLC has been a leading voice in Illinois for prisoner civil rights for over thirty years. It actively represents prisoners in both federal and state courts throughout Illinois, in both class action matters as well as individual cases. The cases currently being litigated by the Law Center include denial of adequate medical care, excessive force, denial of religious rights, discrimination, access to the courts, due process, and cruel and unusual punishment. UPLC also engages in regular outreach to young people in the community in an attempt to prevent them from becoming involved in the criminal justice system.

The **Youth Law Center** is a San Francisco- based national public interest law firm working to protect the rights of children at risk of or involved in the juvenile justice and child welfare systems. Since 1978, Youth Law Center attorneys have represented children in civil rights and juvenile court cases in California and two dozen other states. The Center's attorneys are often consulted on juvenile policy matters, and have participated as amicus curiae in cases around the country involving important juvenile system issues. Youth Law Center attorneys have written widely on a range of juvenile justice, child welfare, health and education issues, and have provided research, training, and technical assistance on legal standards and juvenile policy issues to public officials in almost every State. The Center has long been involved in public policy discussions, legislation and court challenges involving the treatment of juveniles as adults. Center attorneys were consultants in the John D. and Catherine T. MacArthur Foundation project on adolescent development, and have recently authored a law review article on juvenile competence to stand trial. The imposition of life without parole sentences upon fourteen year-olds is an issue that fits squarely within the Center's long-term interests.

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/.

Tamar Birckhead is an Assistant Professor of Law at the University of North Carolina at Chapel Hill where she teaches the Juvenile Justice Clinic and the criminal lawyering process. Her research interests focus on issues related to juvenile justice policy and reform, criminal law and procedure, and indigent criminal defense. Licensed to practice in North Carolina, New York and Massachusetts, Professor Birckhead has been a frequent lecturer at continuing legal education programs across the United States as well as a faculty member at the Trial Advocacy Workshop at Harvard Law School. She is president of the board for the North Carolina Center on Actual Innocence and has been appointed to the executive council of the Juvenile Justice and Children's Rights Section of the North Carolina Bar Association. Professor Birckhead received her B.A. degree in English literature with honors from Yale University and her J.D. with honors from Harvard Law School, where she served as Recent Developments Editor of the Harvard Women's Law Journal. She regularly consults on matters within the scope of her scholarly expertise, including issues related to juvenile justice policy and reform, criminal law and procedure, indigent criminal defense, and clinical legal education. She is frequently asked to assist litigants, advocates, and scholars with amicus briefs, policy papers, and expert testimony, as well as specific questions relating to juvenile court and delinquency.

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.

Brian J. Foley is a Professor of Law at Florida Coastal School of Law. He teaches and writes in the area of criminal law and procedure. Professor Foley co-authored a 50-state survey of law concerning juvenile life without parole that was published as an Appendix to Connie de la Vega and Michelle Leighton, *Sentencing Our Children to Die in Prison: Global Law and Practice,* 42 U.S.F. L. Rev. 984 (2008). He has done pro bono work against juvenile life without parole sentences, co-authoring several amicus briefs and the party brief, *Brief for Appellant,* in *Commonwealth of Pennsylvania vs. Edward Batzig,* Superior Court of Pennsylvania Sitting in Philadelphia, EDA 2005, No. 1711 (with Defender Association of Philadelphia, the Juvenile Law Center, and the Center for Law and Global Justice, University of San Francisco School of Law), May, 2008.

Stephen K. Harper is a clinical professor at Florida International University College of Law. Prior to that he taught juvenile law as an adjunct professor at the University of Miami School of law for 13 years. From 1989 until 1995 he was the Chief Assistant Public Defender in charge of the Juvenile Division in the Miami-Dade Public Defender's Office. In 1998 he was awarded the American Bar Association's Livingston Hall Award for "positively and significantly contributing to the rights and interests" of children. Harper took a leave of absence from his job to coordinate the Juvenile Death Penalty Initiative which ended when the Supreme Court of the United States ruled in *Roper v Simmons* 543 U.S. 551 **(2005).** In 2005 he, along with Seth Waxman, received the Southern Center for Human Rights Frederick Douglass Award for his work in ending the juvenile death penalty. He has consulted in many juvenile cases in Florida, Guantanamo and the United States Supreme Court (including *Graham v Florida*, (130 S. Ct. 2011 (2010) and *Miller v Alabama* 567 U.S.___ 2010).

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.

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 of 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.

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.

Barbara Bennett Woodhouse is L Q C 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 participating 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 child[i] 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.

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[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.

Youth Homes, 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