

April 3, 2014

ABEL ACOSTA, CLERK

**No. PD-1215-13
IN THE COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS**

**NO. 01-10-00341-CR
IN THE FIRST COURT OF APPEALS
HOUSTON, TEXAS**

**IN THE 178th DISTRICT COURT
HOUSTON, TEXAS**

THE STATE OF TEXAS,

Petitioner

v.

CAMERON MOON,

Respondent

**BRIEF FOR
THE CENTER FOR CHILDREN, LAW & POLICY,
UNIVERSITY OF HOUSTON LAW CENTER
AS AMICUS CURIAE**

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**THE CENTER FOR CHILDREN, LAW &
POLICY, UNIVERSITY OF HOUSTON
LAW CENTER
AMICUS CURIAE**

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Center for Children, Law & Policy at the University of Houston Law Center is an educational institute engaged in legal and interdisciplinary scholarship, advocacy and teaching to advance the interests of children through public policy.

The Center for Children, Law & Policy is interested in the questions presented because this case involves important issues related to the systemic disregard of the special procedural protections accorded children in juvenile court waiver of jurisdiction hearings in Harris County. No fee has been paid or will be paid to the Center for Children, Law & Policy for the preparation of this brief.

ISSUE PRESENTED

- I. What is the effect of the failure of a juvenile court to satisfy the procedural protections of Section 54.02 of the Texas Juvenile Justice Code in waiving its exclusive jurisdiction and transferring a child to the adult criminal justice system for prosecution?

STATEMENT OF FACTS

The Center for Children, Law & Policy incorporates the Statement of Facts in the Respondent's Brief for the purposes of this Amicus Brief.

SUMMARY OF ARGUMENT

The juvenile court in Texas may waive its exclusive jurisdiction and transfer a child for prosecution in the adult criminal justice system only in those rare circumstances where the procedural protections of Section 54.02 of the Texas Juvenile Justice Code are satisfied. To permit courts to ignore the strict requirements of this statutory scheme fundamentally alters the balance between our juvenile justice and criminal justice systems and deprives similarly situated children of the process of law they are due. Where, as here, the procedural protections of Section 54.02 of the Texas Juvenile Justice Code are a surrogate for the substantive constitutional rights recognized by the Texas and United States Supreme Court, the erosion of those protections requires strict enforcement and redress. As the U.S. Supreme Court has consistently recognized, in a line of cases beginning with *Kent v. United States*, through *Roper v. Simmons* and *Graham v. Florida*, and in the most recent juvenile case, *Miller v. Alabama*, juveniles are fundamentally different from adults and must be afforded special procedural protections as a matter of due process. National organizations that represent the interests of physicians, psychiatrists, psychologists, and social workers submitted briefs to the U.S. Supreme Court as amici curiae detailing the differences between juveniles and adults identified through extensive brain science research.

Section 54.02 is the statutory embodiment of these constitutional protections and requires strict oversight and enforcement to ensure compliance. If the Texas legislature has enacted statutes formally recognizing the inherent difference between adults and children, then the Courts must ensure that children are treated fairly as children. Where these protections are ignored, the legislative intent in establishing exclusive jurisdiction in the juvenile court is frustrated, and the due process rights of Cameron Moon and all similarly situated children in Harris County are fundamentally undermined. If this Court remands to the juvenile court, clear guidance must be provided to the juvenile court to satisfy these requirements.

In addition, the remedy fashioned by this Court should be sufficient to address the systemic effects of the pattern and practice of disregarding the procedural protections of Section 54.02. Harris County has a culture of rubberstamping waivers of jurisdiction over children without thorough consideration of the child's unique circumstances as required by Texas Family Code § 54.02. In its statutory scheme, the Texas legislature indicates an intent to protect the rehabilitative purpose of the juvenile system and balance that against the punitive and deterrent purposes of the criminal justice system when unique circumstances warrant it. The legislature could have implemented a direct file method of charging children in adult court, as other jurisdictions have, but chose not to. The legislature also could have created a statutory exclusion present in other

jurisdictions. Neither direct file nor statutory exclusion laws require a hearing as does the judicial waiver process adopted by the Texas legislature. The legislature further imbued the hearing procedure with requirements mandating that the hearing be meaningful. Where, as here, that meaningful hearing is denied, the affected child must be provided one now, even if the necessary result is vacating the conviction.

ARGUMENT

I. As embodied in the Texas Juvenile Justice Code and U.S. Supreme Court precedent, the juvenile court may waive its jurisdiction and transfer a child only in those rare circumstances where the procedural protections of Section 54.02 are satisfied.

A. The Texas Legislature’s statutory recognition of the inherent differences between adults and juveniles requires strict oversight and enforcement to ensure compliance with the special protections afforded juveniles.

In 1973, the Texas Legislature created a system for administering justice to children between the ages of ten to seventeen, separate from the system that applied to adults. *See* TEX. FAM. CODE §§ 51-61. The public purposes of the new Juvenile Justice Code indicated the Legislature’s belief that children are different from adults and should be treated in a manner that accounts for those differences. TEX. FAM. CODE § 51.01. Among other purposes, the Legislature enacted the Code to “provide for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions” and “achieve the foregoing purposes in a family environment whenever possible.” *Id.*

The substance of the Texas Juvenile Justice Code also provides a clear indication of the Legislature’s belief that children should be subject to a justice system that accounts for their differences. The language used to describe the juvenile justice system demonstrates the differences between the adult and juvenile systems. Juveniles do not have a trial; they have an adjudication hearing. *See* TEX.

FAM. CODE § 54.03. Juveniles are not charged with a crime and found guilty; a petition is filed and the juvenile is adjudicated delinquent. *See id.* Juveniles are not sentenced; they have a disposition hearing. *See* TEX. FAM. CODE § 54.04. Overall, the Texas Juvenile Justice Code’s strong emphasis on “treatment, training, and rehabilitation” of the child is an aim largely absent from statutes governing the adult system. TEX. FAM. CODE § 51.01(2)(C).

Because children are different, the Texas Juvenile Justice Code outlines strict guidelines juvenile courts must follow when determining whether to waive jurisdiction over a child. *See* TEX. FAM. CODE § 54.02. The court must conduct a “full investigation” and determine probable cause exists. TEX. FAM. CODE § 54.02(a)(2)(B)(3). All petition and notice requirements must be satisfied. TEX. FAM. CODE § 54.02(b). The court must “order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense.” TEX. FAM. CODE § 54.02(d). Finally, the court must consider four factors:

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

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

procedures, services, and facilities currently available to the juvenile court.

TEX. FAM. CODE § 54.02(f).

When enacting the Texas Juvenile Justice Code, the Legislature allowed juvenile courts the discretion to waive or retain jurisdiction. In the rare circumstances juvenile court judges considered waiving jurisdiction over a child, the Legislature enacted safeguards to ensure juveniles were provided with a true hearing, with all relevant information about the juvenile and the nature of the offense available to the court, so it could provide a thoughtful, meaningful review.

B. The U.S. Supreme Court has consistently recognized that compliance with the special procedural protections accorded juveniles is necessary due to the fundamental differences between juveniles and adults.

Since 1966, the United States Supreme Court has differentiated juveniles and adults. In spite of the differences between juveniles and adults, the *Kent* Court found that children still must be afforded due process rights. *Kent v. United States*, 383 U.S. 541, 560 (1966).

The modern Supreme Court has confirmed it still views juveniles and adults differently in a series of recent decisions. The majority in *Roper* utilized “scientific and sociological studies” to establish “that juvenile offenders cannot with reliability be classified among the worst offenders.” *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *See also* Ellen Marrus & Irene Merker Rosenberg, *After Roper v.*

Simmons: Keeping Kids Out of Adult Criminal Court, 42 SAN DIEGO L. REV. 1151, 1162 (2005). The *Roper* Court identified three differences between juveniles and adults. *Roper*, 543 U.S. at 569. First, juveniles possess “[a] lack of maturity and an underdeveloped sense of responsibility.” *Id.* The Court finds these qualities typically exhibit themselves with “impetuous and ill-considered actions and decisions.” *Id.* Second, juveniles are “more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.” *Id.* Finally, “the character of a juvenile is not as well formed as that of an adult.” *Id.*; *See also* Marrus, *supra*, at 1165 (stating “the most telling and objective difference between adults and adolescents is in brain development.”).

In *Graham*, the Court found “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.” *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010). The Court has based its differentiation between juveniles and adults on “science and social science,” common sense, and what “any parent knows.” *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012); *Roper*, 543 U.S. at 569.

Amicus briefs submitted by the American Medical Association (AMA), American Academy of Child and Adolescent Psychiatry (AACAP), American Psychiatric Association, American Psychological Association, and National Association of Social Workers (NASW) attribute these three differences between

juveniles and adults to brain immaturity and emphasize these traits will become more regulated as children progress through adulthood. Brief for the American Medical Association and the American Academy of Child and Adolescent Psychiatry as Amici Curiae in Support of Neither Party, *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (Nos. 10-9646, 10-9647), 2012 U.S. S. Ct. Briefs LEXIS 128 (“AMA & AACAP Brief”); Brief for the American Psychological Association, American Psychiatric Association, and National Association of Social Workers as Amici Curiae in Support of Petitioners, *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (Nos. 10-9646, 10-9647), 2012 U.S. S. Ct. Briefs LEXIS 215 (“APA & NASW Brief”).

1. Lack of Maturity and an Underdeveloped Sense of Responsibility

Unlike adult brains, adolescent brains have dramatic neurochemical imbalances between neurotransmitters. These imbalances promote reward-seeking behavior and support inhibitory control. AMA & AACAP Brief, *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (Nos. 10-9646, 10-9647), 2012 U.S. S. Ct. Briefs LEXIS 128. This research explains juveniles’ increased likelihood for hyperactivity, impulsivity, and risk-taking behavior:

Studies show that the motivational system, which underlies risky and reward-based behavior, develops earlier than the cognitive control system, which regulates such behavior. Furthermore, during adolescence, the motivational system continues to develop more quickly than the cognitive control system. The result is that

adolescents experience increasing motivation for risky and reward-seeking behavior without a corresponding increase in the ability to self-regulate behavior.... [W]hen making decisions, relative to children and adults, adolescents show exaggerated activation of the [reward processing region of the brain], in concert with less mature recruitment of top-down prefrontal control.

Id. at *53-58. This lack of developmental neurological coordination and exaggerated activity is consistent with the observed tendencies of juveniles to overvalue rewards and overlook the risks and consequences of their actions. *Id.*

2. Vulnerability to Outside Pressures

Neurobiological immaturity also helps explain why adolescents are more vulnerable to the negative influences of peer pressure and are more susceptible to the harmful impacts of stress. *See* AMA & AACAP Brief, *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (Nos. 10-9646, 10-9647), 2012 U.S. S. Ct. Briefs LEXIS 128.

The prefrontal cortex is a region of the brain associated with executive cognitive control, including voluntary behavior control, risk assessment, impulse control, and decision-making. *Id.* at *35. Stress affects cognitive functioning by inhibiting an individual's ability to effectively regulate behavior, weigh costs and benefits, and control impulsivity. *Id.* at *30. The development of the prefrontal cortex explains why adolescents are more susceptible to stress than adults:

The brain's frontal lobes are still structurally immature well into late adolescence, and the prefrontal cortex is 'one of the last brain regions to mature.' This, in turn, means that 'response inhibition, emotional regulation, planning and organization...continue to develop between adolescence and young adulthood.

Id. at *38-40. The inability of the adolescent brain to regulate behavioral control is aggravated by the inhibiting impact of stress, further distorting their risk appreciation and perception of reward. *Id.*

Stress and peer pressure have similar debilitating effects on adolescents. Peer pressure in adolescents, “can ‘arouse emotions of fear, rejection, or desire to impress friends’ that impact emotional regulation and rational thought,” causing greater impulsivity and sensation-seeking behavior. *Id.* at *28-29. The inability to regulate emotions is caused by the underdevelopment of connectivity between the neural receptors that control executive and cognitive functions in adolescent brains. *Id.* at *49-51.

The Court in *Miller* found that an adolescent’s inability to extricate himself from negatively influential peers or a dysfunctional or abusive family environment must be considered when addressing juvenile culpability. *Miller*, 132 S. Ct. at 2468. An adolescent’s ability to regulate his emotional and cognitive behavior is drastically undercut by his lack of control over his environment. This is mirrored in the adolescent’s culpability. APA & NASW Brief, *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (Nos. 10-9646, 10-9647), 2012 U.S. S. Ct. Briefs LEXIS 215, *1. Constant subjection to stress and peer pressure adversely affect the immature brain’s ability to regulate behavior and impulse control, exposing the adolescent to greater possibility of criminal activity.

3. Continuing Formation of Character

While neurological studies of adolescent brains describe all of the *inabilities* of adolescent brain functions, it is equally important to note that these traits are only temporary. Behavioral regulation and impulse control increase gradually into adulthood. AMA & AACAP Brief, *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (Nos. 10-9646, 10-9647), 2012 U.S. S. Ct. Briefs LEXIS 128, *26. The AMA states that adolescents have “not yet attained adult levels of impulse control... [however, this limited capacity] tends to decline linearly from childhood to adulthood.” *Id.*

The *Miller* Court also acknowledges that adolescents have greater changeability and are more capable of rehabilitation than adults in stating that “incorrigibility is inconsistent with youth.” *Miller*, 132 S. Ct. at 2465. Studies support this statement with neurobiological evidence:

In addition to motivation, dopamine also plays a crucial role in reinforcement learning. Thus, the adolescent period does not only include heightened motivation but also a greater capacity for learning having implications for enhanced amenability for rehabilitation in the adolescent period compared to adulthood.

AMA & AACAP Brief, *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (Nos. 10-9646, 10-9647), 2012 U.S. S. Ct. Briefs LEXIS 128, *61-62.

Risk-taking behavior and bad judgment in juveniles are not indications of morally reprehensible and depraved character. Rather,

recklessness and volatility stem from “psychosocial limitations in [adolescent] ability to consistently and reliably control their behavior.” *Id.* at *19-20. It is also a normal part of neurological and social development promoting learning and independence. *Id.* In fact, such sensation-seeking behavior and poor decision-making is so universal that experts note that “it is statistically aberrant to refrain from such [risk-taking] behavior during adolescence.” *Id.* at *19.

C. When the special protections accorded juveniles by the Texas Juvenile Justice Code are ignored, the legislative intent in establishing exclusive jurisdiction in the juvenile court is frustrated.

The Texas Legislature enacted the Texas Juvenile Justice Code in 1973 because they recognized the differences between juveniles and adults. The Code, enacted only seven years after the *Kent* decision, requires a “full investigation” to determine probable cause to certify a juvenile to adult criminal court, the same standard established in the District of Columbia Juvenile Court Act at issue in *Kent*.

The Supreme Court in *Kent* clearly stated, “Meaningful review requires that the reviewing court should review.” *Kent*, 383 U.S. at 560. The Court explained:

It may not ‘assume’ that there are adequate reasons, nor may it merely assume that ‘full investigation’ has been made. Accordingly, we hold that it is incumbent upon the Juvenile Court to accompany its waiver order with a statement of the reasons or considerations therefore. We do not read the statute as requiring that this statement must be formal

or that it should necessarily include conventional findings of fact. But the statement should be sufficient to demonstrate that the statutory requirement of ‘full investigation’ has been met; and that the question has received the careful consideration of the Juvenile Court; and it must set forth the basis for the order with sufficient specificity to permit meaningful review.

Id. The Court ultimately found the juvenile court judge failed to provide a meaningful review because he made no findings, gave no reasons for the waiver, and did not reference any motions filed by the petitioner. *Kent*, 383 U.S. at 546.

Similarly, the juvenile court judge in this case made no specific findings or reasons for granting the waiver of jurisdiction. Instead, the judge signed a form order, the ostensible purpose of which was to satisfy as generally as possible the letter of the Section 54.02 requirements. The form order was nearly identical, save the names and dates, to orders signed by Harris County juvenile court judges in other cases.

Juvenile certifications should be rare, dependent on the specific individual findings under the factors mandated by the Texas legislature to be individually applied to the child at issue in each proceeding. The use of the type of form order utilized here, which reduces the required factors to formulaic boilerplate is prima facie evidence of systemic disregard for the Legislature’s requirements in establishing a separate juvenile justice system in Harris County juvenile courts with built-in safeguards for children. The juvenile court judge in this case did not

provide Cameron with a meaningful review under *Kent*. Instead, the juvenile court judge reduced the statutorily and constitutionally mandated investigation and individualized assessment to a check-the-box pantomime of the 54.02(f) factors required by the Texas Legislature to be carefully considered.

II. The Texas Juvenile Justice Code evidences a specific legislative intent to avoid “rubberstamp” waivers of jurisdiction over children.

A. Harris County has a history of “rubberstamping” an exceptionally high number of waivers of jurisdiction without giving proper consideration to the statutorily prescribed factors.

The Texas Family Code and U.S. Supreme Court precedent ensure due process for children by requiring that special procedural protections be accorded to juveniles in waiver of jurisdiction hearings. Harris County juvenile courts have regularly disregarded those protections by “rubberstamping” waivers of jurisdiction and transferring juveniles to adult criminal courts with little substantive, meaningful review. Over the past decade, Harris County juvenile courts have approved an excessively high number of waivers, consistently ranking the highest in the state. *See* Table 1. In the last three years data is available, 2008-10, Harris County has waived jurisdiction in more cases than the second, third, and fourth largest Texas counties combined.

TABLE 1: COUNTY-BY-COUNTY Juvenile Court Waivers of Jurisdiction			
County:	2008¹	2009²	2010³
<i>Harris</i>	<i>81</i>	<i>56</i>	<i>53</i>
Dallas	24	24	35
Tarrant	8	5	4
Bexar	24	9	13
Travis	1	2	4
Collin	0	0	3
El Paso	0	0	0
Hidalgo	3	11	2
Denton	8	2	5
Fort Bend	2	1	0

In addition, although juvenile court waivers of jurisdiction should be rare, Harris County juvenile courts seldom deny waivers. Harris County approves the majority of all waivers brought by the State and, in some years, approved 100% of waiver requests.⁴

B. The Texas Legislature intentionally prescribed that juvenile courts must hold meaningful waiver of jurisdiction hearings, despite the existence of other acceptable alternatives that waive jurisdiction without judicial review.

¹ Texas Juvenile Probation Commission, *The State of Juvenile Probation Activity in Texas: Calendar Year 2008*, available at <http://www.tjpd.texas.gov/publications/reports/RPTSTAT2008.pdf> (July 2010).

² Texas Juvenile Probation Commission, *The State of Juvenile Probation Activity in Texas: Calendar Years 2009 & 2010*, available at <http://www.tjpd.texas.gov/publications/reports/RPTSTAT2010.pdf> (Nov. 2011).

³ Texas Juvenile Probation Commission, *The State of Juvenile Probation Activity in Texas: Calendar Years 2009 & 2010*, available at <http://www.tjpd.texas.gov/publications/reports/RPTSTAT2010.pdf> (Nov. 2011).

⁴ See, Brief for Texas Appleeed as Amicus Curiae Supporting Appellant’s Petition for Writ of Mandamus, In Re C.M. (Tex. App.—Houston [1st Dist.] 2009).

The Texas legislature specifically selected a judicial waiver model that includes *Kent*-like factors instead of the alternative procedures. Texas has never implemented a prosecutorial waiver model or a direct file model. In a prosecutorial waiver model, the prosecutor is granted discretion to decide whether to file charges in either juvenile court or adult criminal court. Marrus, *supra*, at 1176. A direct file model excludes “children of a certain age charged with certain crimes from juvenile court jurisdiction.” Marrus, *supra*, at 1178. Therefore, under this model, the statute would make it mandatory for children who committed certain crimes to be tried in an adult district court. The Texas legislature has never implemented a prosecutorial or direct file model. Therefore, when waiver is sought, the legislative intent is for each child to receive a meaningful waiver hearing where the judge reviews the individualized evidence to make a determination.

C. Meaningful appellate review and oversight is necessary to enforce the special procedural protections accorded to children by the Texas Juvenile Justice Code and the U.S. Constitution.

The fundamental and jurisdictional nature of the waiver decision requires heightened vigilance through meaningful appellate review and oversight. The very existence of a check-the-box form certification order indicates, *res ipsa loquitur*, that the procedural failings of the Harris County juvenile courts is likely to affect a substantial number of similarly situated children in Harris County. Judicial dereliction of the duty to perform the required analysis in the critical decision to

transform a child into an adult for the purposes of criminal prosecution compels a remedy which both guides future juvenile courts in understanding the importance of the required determinations and in resolving similar issues when those requirements are not met.

In *Kent*, the U.S. Supreme Court held that a waiver hearing is “critically important” and “must measure up to the essentials of due process and fair treatment.” *Kent*, 383 U.S. at 556, 562. Under *Kent*, “meaningful review means that the reviewing court should review.” *Id.*

As in *Kent*, this Court should provide clear guidance to prevent Texas juvenile courts from continuing to rubberstamp juvenile waivers. Moreover, this Court should clarify the imprecise statutory standards in the Texas Juvenile Justice Code that have resulted in substantial differences in the number of certifications from jurisdiction to jurisdiction.

In particular, this Court should prohibit the use of form orders in certification proceedings and require trial judges to provide individualized findings. Second, this Court should make clear that the potential for rehabilitation of a child should be the factor most heavily weighed by a trial court judge in a certification proceeding. Moreover, this Court should dictate to lower courts that merely committing an “offense against the person” of another (without additional

individualized findings) is not enough in itself to satisfy the *Kent* standard or Texas Juvenile Justice Code statutory protections.

PRAYER FOR RELIEF

WHEREFORE, The Center for Children, Law & Policy at the University of Houston Law Center prays that this Court consider the interests of similarly situated children across Texas and the need for meaningful appellate review and oversight in enforcing the procedural and due process protections required in the certification process.

Respectfully submitted,

The Center for Children, Law &
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2nd day of April, 2014, a true and correct copy of the above and foregoing Amicus Curiae Brief of the Center for Children, Law & Policy was served on parties and counsel in by electronic filing, email, or certified mail, returned receipt requested to:

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this computer-generated document has a word count of 3,954 words, based upon the representation provided by the word processing program that was used to create the document.

Certified to this the 2nd day of April 2014.

The Center for Children, Law & Policy,
University of Houston Law Center
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