

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO,	:	CASE No: 2024-1276
PLAINTIFF-APPELLANT,	:	
	:	ON APPEAL FROM THE
VS.	:	CUYAHOGA COUNTY COURT OF APPEALS
	:	EIGHTH APPELLATE DISTRICT
D.T.,	:	
DEFENDANT-APPELLEE.	:	CASE No. CA-23-112955

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**BRIEF OF THE GAULT CENTER AS AMICUS CURIAE  
IN SUPPORT OF APPELLEE**

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## INTRODUCTION

Ohio's youth must retain their right to challenge violations of their fundamental rights through the appellate process. Appeals are a powerful mechanism of accountability to correct individual and systemic errors in court systems and an essential ingredient to ensure the constitutional mandates of due process are protected. Stripping youth of their ability to challenge fundamental violations, while the State maintains their right to appeal, insulates everyday injustices that have been on full display in Cuyahoga County for years. This Court must preserve that accountability.

At its core, juvenile court systems must be fair. Fairness is a “fundamental requirement” of the Due Process Clause of the Fourteenth Amendment to protect against unjust outcomes. *In re Gault*, 387 U.S. 1, 19. Fairness also has significant implications for whether individuals decide to trust or distrust the institution of law. Constitutional law and criminal justice scholar, Brandon L. Garrett explains, “The more people lose faith in due process and denigrate fairness as mere window dressing, the more they distrust the system.” Brandon L. Garrett, *Defending Due Process: Why Fairness Matters in a Polarized World*, Polity 7 (2025). When a system is unfair, in violation of the core requirements of due process, young people notice, and it shapes their perceptions and their behavior during a formative time of their development. Maintaining fairness through due process is critical not only to the positive growth of generations of youth but also to public safety.

Yet, youth in Cuyahoga County face a juvenile court system that has been under scrutiny for its systemic constitutional violations over the last several years. An assessment of Cuyahoga County's juvenile court system based on national standards that measure the constitutional compliance of juvenile legal systems reveals that youth in Cuyahoga, like D.T., were routinely processed in a system with structural deficiencies that distort due process and frustrate its core principles of fairness. The Gault Ctr., *National Youth Defense System Standards* (2024) available

at <https://www.defendyouthrights.org/document/national-youth-defense-system-standards/> (accessed May 15, 2025). In addition to due process violations as they relate to fundamental determinations of competence and bindover, Cuyahoga County's juvenile court system has structurally failed to safeguard the constitutional right to counsel. When systems lack a basic constitutional infrastructure, they result in unfair and nonsensical outcomes, like sending a functionally illiterate eighth grader with mental health diagnoses to face adult prosecution without a meaningful determination of whether he was competent to proceed in court and enter a guilty plea.

## STATEMENT OF INTEREST OF AMICUS CURIAE

**The Gault Center**, formerly the National Juvenile Defender Center, was created to promote justice for all children by ensuring excellence in youth defense. The Gault Center works to ensure that the constitutional rights of young people in juvenile court are fully protected, recognizing the developmental realities of children and the system's differential treatment of youth based on race, sexual orientation, gender identity and expression, disability, and poverty. The Gault Center has developed both national standards for the performance of youth defense attorneys and national standards for youth defense and juvenile court systems to ensure that all youth have access to the full range of constitutional protections guaranteed by the U.S. Constitution. The Gault Center also conducts assessments of states' youth defense delivery systems and works with local leaders to strengthen infrastructures that allow for children to meaningfully access qualified and specialized lawyers. The Gault Center has participated as amicus curiae before the United States Supreme Court and federal and state courts across the country.



## STATEMENT OF THE CASE AND FACTS

Amicus curiae adopts the Statement of the Case and Facts presented in D.T.'s Brief on the merits.

## ARGUMENT

### **I. Courts must uphold the promise of fundamental fairness under the Due Process Clause in their treatment of youth**

When a youth enters the juvenile legal system, there is a promise, backed by the Due Process Clause of the Fourteenth Amendment, that the process will be fundamentally fair. *In re Gault*, 387 U.S. 1 (1967). Due process of law is our country's mechanism for ensuring fairness. Brandon L. Garrett, *Defending Due Process: Why Fairness Matters in a Polarized World*, Polity 7 (2025). The U.S. Supreme Court, in applying the fundamental requirements of due process to youth, explained, "Due process of law is the primary and indispensable foundation of individual freedom . . . It is these instruments of due process which enhance the possibility that truth will emerge from the confrontation of opposing versions and conflicting data." *Gault* at 20-21. The Court further cautioned that this promise of due process and fairness must not be compromised for children, explaining, "Under our Constitution, the condition of being a boy does not justify a kangaroo court." *Id.* at 28.

Since *Gault*, the Supreme Court has recognized that when youth are involved, courts must consider the developmental realities of youth, which require heightened legal protection. *See, e.g., Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2011); *J.D.B. v. North Carolina*, 564 U.S. 261 (2011); *Miller v. Alabama*, 567 U.S. 460 (2012). These U.S. Supreme Court decisions rely upon a growing body of adolescent development research demonstrating that children and youth are undergoing a dynamic period of brain and psychosocial development that affects both their behavior and decision-making. Richard J. Bonnie et al., *Reforming Juvenile*

*Justice: A Developmental Approach*, The Natl. Academies Press 89-100 (2013). Specifically, researchers have found that youth, as a group, are vulnerable to compromised decision-making because of their developmental stage, which creates a tendency for youth to focus on the short-term, as opposed to long-term consequences; rewards, as opposed to risks; and compliance with authority figures—all of which calls for a *careful examination* into the circumstances leading up to a plea entered by a youth. Daftary-Kapur & Zottoli, *A First Look at the Plea Deal Experiences of Juveniles Tried in Adult Court*, 13 Internatl. Journal of Forensic Mental Health 323, 324 (2014).

Ensuring that young people are treated with fairness in the court system matters not only because it is required by due process, but also because how we treat youth during their formative years of development will leave an imprint on their identity, creating a generational impact that will shape our society. Adolescence is a time that is uniquely marked by the malleability and plasticity of young people’s developing brains and character formation—meaning that adolescent youth are heavily influenced by their environment, both positively and negatively, and how we treat youth during this time will leave a lasting impression. Steinberg & Cauffman, *A Developmental Perspective on Serious Juvenile Crime: When Should Juveniles Be Treated as Adults?*, 63 Fed. Probation 52, 53 (1999).

Upholding due process also improves public safety. Research has shown that the legitimacy of institutions is tied to whether people perceive processes to be fair. Bonnie et al. at 192. Further, a young person’s attitude toward obeying rules and following authority is directly shaped by either their own experiences with the law or their awareness of others’ experiences. *Id.* Juvenile court scholar, Barry Feld, explains, “[youth] are critical consumers of justice and the ways that court personnel treat them affects their ideas about laws, their perceptions of the process, and their feelings of obligation to obey the law.” Barry C. Feld, *The Evolution of the Juvenile Court: Race,*

*Politics, and the Criminalizing of Juvenile Justice*, NYU Press 228 (2017). This notion of procedural justice was also cited by the U.S. Supreme Court, quoting a study that concluded “[u]nless appropriate due process of law is followed, even the [youth] who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel.” *Gault*, 387 U.S. at 26, quoting Wheeler & Cottrell, *Juvenile Delinquency: Its Prevention and Control*, Russell Sage Found. 33 (1966). Thus, this Court, in this case, will decide what type of message to imprint on a generation of impressionable youth who are looking to whether they can trust the institution of law and whether the promise of fairness and due process is real or simply an illusion.

***A. Due process requires that courts ensure youth are competent before proceeding with a plea***

Integral to a functioning juvenile legal system is a basic infrastructure that protects due process rights for youth. The Gault Center, a national nonprofit dedicated to protecting youth rights, released a set of standards to measure a system’s compliance with the guarantees of the U.S. Constitution. The Gault Ctr., *National Youth Defense System Standards* (2024) available at <https://www.defendyouthrights.org/document/national-youth-defense-system-standards/> (accessed May 15, 2025). Standard 3.4 cautions that courts must carefully consider “the age and developmental maturity of youth, as well as any mental health challenges, cognitive delays, or learning differences that may be present” to comply with the constitutional demands of due process as they relate to young people. *Id* at 3.4

Abiding by the rules of due process is what ensures fairness in decision-making. As described by constitutional rights and criminal justice scholar, Brandon L. Garrett, “It is not just about getting the right outcome, but also showing that we are committed to making sure the process is fair.” *Defending Due Process* at 1-2. Due process ensures that judges have enough information to make

an appropriate and lawful decision on a given case, and studies have shown that when we uphold due process protections, we are also improving public safety. *Id.* at 64.

Yet, in the present matter before this Court, D.T. was deprived of due process to settle a fundamental question of whether he was competent enough to proceed. Throughout the juvenile court proceedings, there was no evidentiary hearing to resolve this question of whether D.T. was truly competent. *State v. D.T.*, 2024-Ohio-4482, ¶ 12 (8th Dist.). In fact, there is no indication that the juvenile court reviewed the report or made written findings about D.T.’s competence. *Id.* There is no indication that defense counsel stipulated to the findings of the report. *Id.* Further, there is no indication that defense counsel or the judge used the “developmentally appropriate communication” that the competency evaluation report cautioned was “part of the systemic equation” of whether D.T. was competent to stand trial. *Id.* at ¶ 11. There is also no indication that defense counsel hired an independent expert to examine D.T.’s competence or that there was an opportunity for defense counsel to cross examine the court’s evaluator, Dr. Ezzo, on the reliability and validity of his conclusion that D.T. was competent. *Id.* at 12.

When courts fail to follow due process requirements to resolve open questions of whether a child is competent to proceed, it leads to an unconstitutional result that fundamentally lacks fairness. Because the decision maker did not have the benefit of receiving all the information arising out of an adversarial hearing with zealous advocates on both sides, we do not know whether D.T. was indeed competent at the time he waived probable cause or during his amenability hearing. We do not know whether D.T. had the ability to meaningfully consult with his lawyer. We do not know whether D.T. understood what was happening to him, especially given his age and the assessment that he was functionally illiterate. We do not know what he understood to be at stake during the bindover proceedings. And because we do not know whether D.T. was competent, we

cannot begin an analysis into whether D.T. understood the significance and consequence of ultimately entering into a guilty plea. The lack of an actual determination about his competence calls into question the integrity of the juvenile court proceedings.

**i. The constitutional right to a competency hearing for youth**

A central tenet of the fundamental right to a fair trial is that an individual must first be competent, meaning an individual must have the “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and a “rational as well as factual understanding of the proceedings against him.” *Dusky v. U.S.*, 362 U.S. 402 (1960). The U.S. Supreme Court has held that this same inquiry must be used before an individual pleads guilty, in addition to an assessment of whether the waiver itself is knowing and voluntary. *Godinez v. Moran*, 509 U.S. 389, 400-01 (1993). Inherent within this fundamental right to be competent before pleading guilty is the constitutional right to a competency hearing under the Due Process Clause of the Fourteenth Amendment. *Pate v. Robinson*, 383 U.S. 375, 386 (1966).

When a child is the subject of a guilty plea, the constitutional necessity to ensure competence demands special consideration. The U.S. Supreme Court affirmed that a child’s age and experience mandates differential treatment as a class. *J.D.B. v. North Carolina*, 564 U.S. 261. Citing the growing developmental jurisprudence, the Court highlighted a series of cases recognizing that “children ‘generally are 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.” *Id.* at 272, citing *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982), *Bellotti v. Baird*, 443 U.S. 622, 635 (1979), *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

In fact, recent studies confirm that “adolescents, as a group, may have deficits in the capacities needed to competently enter into plea agreements and that they may be more vulnerable to suggestion and more easily coerced than adults.” Daftary-Kapur & Zottol at 324. Further, “adolescent decision making may be compromised by a tendency to focus on short- rather than long-term, or positive rather than negative, consequences.” *Id.* A recent study found that youth “showed deficits in both legal understanding and appreciation of the consequences of accepting a felony plea,” raising critical considerations when examining whether a youth has the legal prerequisite of competence. *Id.* at 334.

Another study examining young people’s comprehension of transfer proceedings found that “Every young person interviewed . . . indicated a lack of understanding of waiver and the court proceedings during their cases.” Human Rights Watch, *Kids You Throw Away: New Jersey’s Indiscriminate Prosecution of Children as Adults* 42 (2025), available at [https://www.hrw.org/sites/default/files/media\\_2025/02/crd\\_njwaiver0225web\\_1.pdf](https://www.hrw.org/sites/default/files/media_2025/02/crd_njwaiver0225web_1.pdf) (accessed May 15, 2025). In fact, among 43 individuals who were waived to adult court, 68 percent said they “rarely” or “almost never” understood what was happening in court and 23 percent understood “about half the time.” *Id.* at 43. The study also explained that “Learning disabilities, which are prevalent among youth in the system, can further compound the difficulty of understanding these proceedings.” *Id.* at 44.

The need to apply this developmental reality in legal calculations is so fundamental that the DOJ has held jurisdictions liable for their failure to comply with constitutional mandates surrounding guilty pleas. *National Youth Defense System Standards* 3.4; see, e.g., Civ. Rights Div., U.S. Dept. of Justice, *Investigation of the St. Louis County Family Court, St. Louis, Missouri* 28-29 (2015), available at <https://www.defendyouthrights.org/document/united-states-department-of->

justice-investigation-of-the-st-louis-county-family-court-st-louis-missouri/ (accessed May 15, 2025). The DOJ cautioned,

Young people’s developmental immaturity and lack of experience alone render them less likely than adults to understand the rights they are waiving and the legal and factual requirements of the charge to which they are admitting . . . Moreover, this lack of comprehension is exacerbated when, as is often in delinquency cases, the child suffers from learning disabilities, mental health disorders, or cognitive delays.

*Investigation of the St. Louis County Family Court at 29.*

The case before this Court involves a child in the eighth grade whose competence was called into question four times—on February 17, 2022, and March 2, 2022, in juvenile court, and then again on October 12, 2022, and October 19, 2022, in adult court. *State v. D.T.*, 2024-Ohio-4482, ¶¶ 6-7, 57-58. On March 23, 2022, Dr. Frank Ezzo, a court psychologist, issued a competency evaluation report of D.T., which noted that D.T. was in the 50th percentile in verbal comprehension, 18th percentile in perceptual reasoning, and 12th percentile in reading ability (equal to a fourth grade reading level). *Id.* at ¶ 9. While Dr. Ezzo’s report opined that D.T. was competent to stand trial—a conclusion that was never tested in an adversarial hearing—Dr. Ezzo cautioned that “developmentally appropriate communication by defense counsel and hearing officers was an important ‘part of the systemic equation in a juvenile’s competency to stand trial.’” *Id.* at ¶ 11. Yet, there is no indication that this critical piece of the “systemic equation” of whether D.T. would be competent to stand trial was ever acknowledged or satisfied by the court.

Adding to this open question of whether D.T. was indeed competent, D.T. also submitted to a psychological evaluation by Dr. Lynn Williams, court forensic psychologist, who testified as part of the bindover hearing on behalf of the State. Dr. Williams noted that D.T.’s IQ is within the 30th percentile and that he lacks “basic reading skills (scoring in the 12th percentile at a fourth-grade level) and likely meets the criteria for functional illiteracy.” *Id.* at ¶ 23. She also testified that “D.T.

endorsed ‘high levels of anxiety, depression, and trauma symptoms’” and that “she believed D.T. could be diagnosed with conduct disorder-unspecified onset-moderate severity and adjustment disorder with anxiety.” *Id.* at ¶¶ 24, 27.

In Ohio, when competency is challenged, a hearing must be held. R.C. 2152.58. The State attempts to diminish its importance, but this hearing is a necessary part of ensuring due process in the proceedings. When systems fail to abide by the rules of due process, unfair and nonsensical outcomes result, like sending a functionally illiterate eighth grader with several mental health diagnoses to face adult prosecution without a meaningful determination of whether he was competent enough to proceed both at the bindover proceeding and then to ultimately enter a guilty plea in adult court.

***B. Due process requires that courts recognize the significance of prosecuting children as adults and meaningfully review the evidence before making a bindover determination***

Due process matters because what’s at stake for D.T. and countless other youth facing bindover in Ohio is a decision that in an instant, can take away their right to be a child. *National Youth Defense System Standards* 6.3 (“Youth facing transfer to adult court are adversely positioned to face significant constitutional deprivations through a legal fiction that strips away the very reality of their childhood and adolescence.”). Human Rights Watch called this decision “one of the most consequential choices made by the state about a young person’s life, determining not only how they are tried but also where they are incarcerated, the opportunities they will have for rehabilitation, and the path their lives will take after incarceration.” *Kids You Throw Away* at 2. Considering the gravity of what is at stake for youth facing bindover, it is all the more critical that the constitutional commands of resolving competency issues and holding transfer hearings comply with the demands of due process.



Juvenile courts were created with the intention to treat children differently than adults—believing in the promise of adolescence, juvenile courts are tasked with focusing on treatment and rehabilitation, as opposed to punishment. *Gault*, 387 U.S. at 15-16; *Kent v. U.S.*, 383 U.S. 541, 554-55 (1966). Ohio law mirrors this intention, noting that the purpose of the juvenile court is “to provide for the care, protection, and mental and physical development of children.” R.C. 2151.01(A). And the Ohio Supreme Court affirmed this notion, stating “the juvenile-justice system must provide for accountability; yet it must also meet society’s need to secure its future through its youth. Thus, the juvenile-justice system must hold [youth] accountable for their actions and, whenever possible, provide them with opportunities for learning and growth toward a better path.” *State v. Smith*, 2022-Ohio-274, ¶ 2.

Accordingly, in recognizing bindover as a “critically important” determination, the U.S. Supreme Court held that youth are entitled to an evidentiary hearing that “must measure up to the essentials of due process and fair treatment.” *Kent*, 383 U.S. at 562. The Court emphasized that to comply with the essence of due process, “[m]eaningful review requires that the reviewing court should review. It should not be remitted to assumptions.” *Id.* at 561. National standards further outline, “stringent due process procedures must be in place whenever youth face transfer to adult court, and at the forefront must be representation by a qualified, zealous, and specialized youth defender to assert a youth’s legal rights and highlight mitigating factors that would ward off exposure to the adult system.” *National Youth Defense System Standards* 6.3. Ohio law states that following a hearing, “the record shall indicate the specific factors that were applicable and that the court weighed.” R.C. 2152.12(B)(3).

In addition, the DOJ weighed in on this issue through their litigation challenging constitutional violations in juvenile courts across the country and asserted that to ensure constitutional

compliance, following an adversarial and evidentiary transfer hearing, the judge must include written findings that discuss relevant law, legal reasoning behind a decision made, and a narrative of facts considered. *National Youth Defense System Standards* 6.3; see, e.g., Civ. Rights Div., U.S. Dept. of Justice, *Memorandum of Agreement Regarding the Juvenile Court of Memphis and Shelby County* 12, 18 (2012), available at <https://www.defendyouthrights.org/document/memorandum-of-agreement-regarding-the-juvenile-court-of-memphis-and-shelby-county/> (accessed May 15, 2025). Noting the “immediate harms” that await a child if sent to adult court, the DOJ also warned that the possibility of transfer may be improperly used as a “coercive bargaining tool” that may result in unfair plea agreements for children. *Investigation of the St. Louis County Family Court* at 27; *National Youth Defense System Standards* 6.3.

Bindover hearings are not preliminary hearings, as the State claims. See Appellant’s Merit Brief at 13-14. This assertion evinces a fundamental misunderstanding of the weight of bindover proceedings that the U.S. Supreme Court has recognized. See *Kent*, 383 U.S. at 554 (“[T]here is no such place in our system of law for reaching a result of such tremendous consequences without ceremony—without a hearing, without effective assistance of counsel, without a statement of reasons.”). Because children are different and because adolescence presents an opportunity for growth, juvenile court proceedings must stringently abide by requirements of due process. *Gault*, 387 U.S. at 27-28 (“[I]t would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase ‘due process’ [for youth].”).

Here, layering on top of the trial court’s failure to uphold D.T.’s due process right to a competency determination, the trial court’s conclusion that D.T. was not amenable to the care and treatment of the juvenile court lacked the “meaningful review” that due process demands. See *Kent* 383 U.S. at 561. There was no discussion of the facts considered. *D.T.*, 2024-Ohio-4482, at ¶ 126.

There was no explanation of the weight given to any of the factors. *Id.* There was no written legal reasoning about the basis of the court’s decision. *Id.* at ¶ 127. All the while, there was indication that the trial court may have relied on erroneous information about D.T.’s “prior commitments to the Department of Youth Services” to support its conclusion to transfer D.T., despite the fact that evidence raised at the amenability hearing revealed that D.T. was not previously committed. *Id.* at ¶¶ 120-21.

Following this hollowed out procedure, D.T. was transferred to adult court, where he faced the possibility of a de facto life sentence if he were to proceed to trial. *Id.* at ¶ 56. The question of whether D.T. was competent was raised again in adult court—twice. *Id.* at ¶¶ 57-58. And while a competency evaluation completed by a court forensic psychologist was issued, there was, again, no hearing or even a discussion to determine D.T.’s competence. *Id.* at ¶ 59. Rather, immediately before entering a guilty plea, the State and defense counsel stipulated to the competence report. *Id.* at ¶ 60. There was no independent defense expert. *Id.* There was no testing of the State’s evidence. *Id.* There was no inquiry from the court. *Id.* There were no findings made by the court. *Id.* And the court did not accept the stipulations on the record. *Id.* Instead, the court accepted D.T.’s guilty plea and sentenced D.T. to 21 to 24 years in prison. *Id.* at ¶ 62.

The State claims that “the knives are out for juvenile bindovers in Cuyahoga County.” Appellant’s Memorandum in Support of Jurisdiction at 1. It is not surprising that the Cuyahoga community is rightfully concerned that not only is its juvenile court sending more children to adult court than any other county in Ohio, but also that investigations into court practices have revealed alarming violations of constitutional standards intended to ensure the integrity of the bindover proceedings where children’s futures desperately hang in the balance.

Cuyahoga sends more youth to be tried in adult court than any other jurisdiction in Ohio. Juvenile Court Advisory Subcommittee, *Final Report of the Cuyahoga County Council Juvenile Court Advisory Subcommittee* (May 30, 2025), available at [https://cuyahogacms.blob.core.windows.net/home/docs/default-source/council/juvenile-court/resources/jcasfinalreport-053025.pdf?sfvrsn=76d2e10f\\_3](https://cuyahogacms.blob.core.windows.net/home/docs/default-source/council/juvenile-court/resources/jcasfinalreport-053025.pdf?sfvrsn=76d2e10f_3). When youth are sent to the adult system, they “experience significantly higher rates of depression, suicidal ideation, and suicide than those adjudicated in the juvenile system.” *Kids You Throw Away* at 16. The message we are sending youth when we throw them away to the adult system is that we are giving up on their “inherent capacity to change and grow.” *Id.* at 21. This very message is one that youth internalize themselves when they are transferred to adult court. One 16-year-old youth reflecting on being called a “monster” in court to justify her adult sentence said, “I actually thought that’s what I was. Someone in a higher power saying these things about me made me think, ‘Oh, that [must be] what I really am.’” *Id.* at 20.

## **II. The State’s proposition of law would insulate egregious violations of due process from accountability**

News coverage and reports from the last several years have illustrated egregious injustices of Cuyahoga’s juvenile court system. One important mechanism of accountability to correct such errors is through appeals. *Defending Due Process* at 118. Appellate courts are custodians of due process and fairness. Cutting young people’s access to the appeals process following a guilty plea amounts to locking a glass box filled with open secrets and throwing away the key.

The core issues raised by D.T.—competence and amenability—are squarely rooted within the constitutional promise of due process and fundamental fairness. This constitutional promise extends beyond the right to a fair trial, despite the State’s attempt to contain due process protections within trials alone. *See* Appellant’s Merit Brief at 13-15. The U.S. Supreme Court ruled that the

same competency requirement for trials is also foundational to guilty pleas, which is separate and apart from an inquiry into whether a plea was entered knowingly, intelligently, and voluntarily. *Godinez*, 509 U.S. at 400-01. The U.S. Supreme Court also ruled that transfer hearings, which include amenability determinations, must “measure up to the essentials of due process and fair treatment,” extending the guarantee of due process beyond trials. *Kent*, 383 U.S. at 562.

The State’s proposition of law would effectively close the door on the power of Ohio appellate courts to serve as custodians of fairness and the law. Under the State’s proposition of law, the State would maintain their ability to appeal, while cutting off access for youth to bring attention to and challenge deprivations of their fundamental rights—effectively creating a different set of rules blatantly in favor of the prosecution, at the expense of children’s rights. Appellee’s Memorandum in Opposition of Jurisdiction at 4, citing *In re M.P.*, 2010-Ohio-599, ¶ 16. This unequal access to appellate courts cuts against the due process principle of fairness and this area of law will suffer as a result. See Megan Annitto, *Juvenile Justice on Appeal*, 66 Univ. of Miami Law Rev. 671, 675 (“Without a vibrant appellate practice, the legal rights of juveniles suffer and ‘are often illusory.’”). When a system is marked by a combination of an overreliance on guilty pleas and the absence of a robust appellate practice, “these failings reflect a system devoid of adversarial process . . . in violation of the Constitution.” *Investigation of the St. Louis County Family Court* at 17; see also *National Youth Defense System Standards* 2.5.

***A. Matters related to the fundamental right to counsel would be insulated from review, diminishing individual constitutional rights***

Under the State’s proposition of law, even when defense counsel fails to safeguard key constitutional rights as youth face significant liberty deprivations, youth will have no remedy and appellate courts will have no power to ensure the system is working in accordance with the law. This means defense counsel could fail to ask for a competency hearing, despite a constitutional

and statutory right to a hearing, resulting in an incompetent youth facing trial or pleading guilty in flagrant violation of the U.S. Constitution, and youth would have no recourse. Defense counsel could do nothing at a bindover hearing and watch a youth get transferred to adult court as their one shot at adolescence disappears, and youth would have no recourse. Defense counsel could have a compromised duty of loyalty impacting their representation, and a youth would have no recourse. Defense counsel could even be unqualified to represent youth and lack sufficient familiarity with relevant law and what rights youth are entitled to, and still a youth would have no recourse.

Protecting a youth's right to appeal is a critical mechanism to ensure that fundamental aspects of a system are operating in accordance with the law. This becomes all the more important when there are structural impediments that perpetuate violations of youth rights. An assessment of Cuyahoga County's juvenile court system based on the National Youth Defense System Standards reveals that youth in Cuyahoga, like D.T., were routinely processed in a system with structural deficiencies that distort due process and frustrate the core principles of fairness. As a result, unjust outcomes flow, leading to cases like D.T.'s where the fundamental question of competence never gets resolved before he is faced with the choice to plead guilty or risk a life sentence in adult court.

#### **i. Independence of youth defense and separation of powers**

A functioning adversarial court system requires the independence of youth defense and the separation of powers for the system to operate fairly. *National Youth Defense System Standards* 2.5, 3.2. The U.S. Constitution outlines the role of the judiciary to adjudicate "cases or controversies," and the U.S. Supreme Court clarified that youth defense counsel must be solely dedicated to the youth, separate and apart from the adjudicatory role of the judge. U.S. Const. art. III, § 2; *Gault*, 387 U.S. at 34-37. Ohio law further outlines that "to ensure the provision of effective and meaningful legal services to qualified persons," attorney appointment systems must

“be independent from individual influence by a member of the judiciary.” Adm. Code 120-1-01, 120-1-10.

The independence of youth defense and separation of powers are so fundamental to the concept of fairness that the U.S. Department of Justice, which has the authority to investigate constitutional violations in juvenile courts under 34 U.S.C. §12601, has held jurisdictions accountable for sustaining an “entangled judiciary.” *National Youth Defense System Standards* 3.2; *see, e.g.*, Civ. Rights Div., U.S. Dept. of Justice, *Investigation of the Shelby County Juvenile Court* (2012), available at <https://www.defendyouthrights.org/document/united-states-department-of-justice-investigation-of-the-shelby-county-juvenile-court/> (accessed May 15, 2025); *Investigation of the St. Louis County Family Court*. In noting the “apparent conflict of interest,” the DOJ cautioned against structures that compromise a youth defender’s duty of loyalty to their client, which arises when the judiciary is involved in the attorney appointment process. *Investigation of the Shelby County Juvenile Court* at 50.

Yet, in Cuyahoga, judges have been routinely entangled in the selection of attorneys for youth, according to a policy report by the Wren Collective. The Wren Collective, *Gideon at Sixty: Advancing the Right to Counsel for Kids in Cuyahoga County* 5 (Dec. 2023) available at [https://www.wrencollective.org/\\_files/ugd/8fe8f0\\_1079cdb763ae4fd4b86cffa5a5f3631e.pdf](https://www.wrencollective.org/_files/ugd/8fe8f0_1079cdb763ae4fd4b86cffa5a5f3631e.pdf). This direct involvement of judges over the attorney appointment system sets Cuyahoga apart from other jurisdictions in that it has resulted in the handpicking of select private attorneys, while the county’s public defender remains underutilized. *Id.* at 5-6. In fact, the Wren Collective reported, “Seven private attorneys received over 50% of the delinquency cases—more appointments than the entire public defender office, which has 28 juvenile attorneys.” *Id.* at 10; *see also* Doug Livingston & Rachel Dissell, *For a Handful of Lawyers in Cuyahoga County, Juvenile Cases are Big Business*,

The Marshall Project (March 22, 2024), available at <https://www.themarshallproject.org/2024/03/22/kids-lawyer-cuyahoga-county-fees>.

This practice compromises an attorney’s duty of loyalty to their client, undercutting the very foundation of the right to counsel. The Wren Collective warned, “When judges routinely decide which attorneys get to take which cases, there is a significant risk that the attorneys will act in a way that ensures they will receive future appointments, which does not necessarily translate to acting zealously on behalf of their client.” *Gideon at Sixty* at 9.

Despite the readiness and resources of the Cuyahoga County public defender’s office to provide robust and effective representation for youth, judicial preference of individual private attorneys was systematically overpowering the attorney appointment process. *Id.* at 3-5. And young people in Cuyahoga are the ones that suffer lifelong consequences because of this structural defect. As an example, when the Wren Collective examined a set of bindover outcomes in Cuyahoga, it found that public defenders had been more effective in keeping young people in the juvenile legal system than private counsel—60% of youth represented by private counsel were sent to the adult system after a discretionary bindover hearing, compared to 13% of youth represented by the public defender’s office. *Id.* at 7.

Even with this data, Cuyahoga’s juvenile court still “prefer more say in choosing who they think will best represent each youth, despite what the state and best practices advise.” Kaitlin Durbin, *Facing Backlash, Cuyahoga County Juvenile Judges Begrudgingly Change How They Pick Attorneys for Kids* (Sept. 7, 2024), <https://www.cleveland.com/news/2024/09/facing-backlash-cuyahoga-county-juvenile-judges-begrudgingly-change-how-they-pick-attorneys-for-kids.html> (accessed May 15, 2025).



## ii. Hallmarks of effective representation

The right to counsel for youth is guaranteed by the Fourteenth Amendment in recognition that representation is the key to accessing fairness in the juvenile legal system. *Gault*, 387 U.S. at 34-42. This right is so critical that the DOJ has held jurisdictions accountable for their failure to systematically uphold this right. *National Youth Defense Standards* 1.1, 1.2. The DOJ stated, “The right to counsel means more than just a lawyer in name only. Justice systems must ensure that the right to counsel comprehends traditional markers of client advocacy and adequate structural support to ensure these traditional markers of representation are met.” U.S. Statement of Interest, *N.P. v. Georgia*, No. 2014-CV-241025 (Ga. Super. Ct. Fulton Cnty. 2015), available at <https://www.defendyouthrights.org/document/doj-statement-of-interest-in-n-p-v-georgia/> (accessed May 15, 2025).

When a system fails to uphold the traditional hallmarks of representation, it amounts to a wholesale, constructive denial of counsel that hollows the constitutional guarantee of representation under the Sixth and Fourteenth Amendments. *National Youth Defense System Standards* 1.2; see, e.g., U.S. Statement of Interest, *Hurrell-Harring v. New York*, 930 N.E.2d 217 (N.Y. 2010) (No. 8866-07), available at <https://www.defendyouthrights.org/document/statement-of-interest-in-hurrell-harring/> (accessed May 15, 2025); U.S. Statement of Interest, *Wilbur v. Mount Vernon*, 989 F.Supp.2d 1122 (W.D. Wash. 2013), available at <https://www.defendyouthrights.org/document/statement-of-interest-in-wilbur-v-city-of-mount-vernon/> (accessed May 15, 2025). Traditionally, the hallmarks of effective representation include “independent investigation, review of discovery, legal research, visits to clients, motion practice, engagement of experts, adversarial testing of evidence, and development of alternative dispositional plans.” *National Youth Defense System Standards* 1.2. The Wren Collective report

highlights data indicating that appointed private attorneys in Cuyahoga County failed to use experts, investigators, or social workers in preparing for their cases. *Gideon at Sixty* at 7.

Cuyahoga's practice of allowing for judicial interference in youth defense representation by appointing attorneys who not only have a compromised duty of loyalty to their clients but also regularly fail to meet the hallmarks of effective representation amounts to the constructive denial of counsel, in direct violation of *Gault*. *National Youth Defense System Standards* 1.1, 1.2. This practice is even more egregious when considering the availability of a specialized youth defense unit within Cuyahoga's public defender office, equipped with social workers, investigators, and support staff to ensure robust representation. *See Gideon at Sixty* at 3.

### **iii. Qualified and specialized advocacy of youth**

At a minimum, to comply with the constitutional demands of youth defense representation, a system must support the integration of the traditional markers of effective representation with the developmental realities of working with youth. *National Youth Defense System Standards* 1.2, 3.3. As such, youth defense representation must be specialized. National standards state, "[youth defense representation] demands an understanding of developmental science, racial justice, and youth rights jurisprudence, paired with skills in developmentally appropriate communication and community engagement." *National Youth Defense System Standards* 3.3. Upholding youth defense specialization requires an infrastructure of mandatory and regular training for attorneys representing youth, statewide practice standards, and a shared understanding and expectation of the role of youth defense counsel across all system professionals within the juvenile legal system. *Id.*

The Ohio Public Defender Commission has established minimum training and experience requirements that private attorneys must meet for the county to receive state reimbursement for

their assignment. Adm. Code 120-1-10. Ohio administrative law outlines specific qualification requirements for attorneys to handle “juvenile bindover cases” and “juvenile cases.” *Id.* at 120-1-10(L), (M). These include prior trial experience and continuing legal education in “juvenile delinquency practice and procedure.” *Id.* These rules were promulgated to ensure “effective and meaningful legal services” that comport with the constitutional guarantee of counsel. Ohio Public Defender Commission, *Exceptional Circumstances Exemption*, available at [https://dam.assets.ohio.gov/image/upload/opd.ohio.gov/Law%20Library/Training/Attorney%20Qualification%20and%20Exemption%20Guidance/Sept-2023\\_OPD-Exemption-Guidance-and-Form.pdf](https://dam.assets.ohio.gov/image/upload/opd.ohio.gov/Law%20Library/Training/Attorney%20Qualification%20and%20Exemption%20Guidance/Sept-2023_OPD-Exemption-Guidance-and-Form.pdf) (accessed May 15, 2025). If an attorney does not meet the statutory training and experience requirements, an attorney may request an exemption from the Ohio Public Defender Commission. *Id.*

Despite this state law, in Cuyahoga, unqualified attorneys routinely represented youth. *Gideon at Sixty* at 8-9. Both the Wren Collective and the Marshall Project analyzed the CLE transcripts of Cuyahoga’s list of attorneys for bindover or serious-youthful-offender (SYO) cases and found that more than half did not have the requisite education to represent youth in reimbursed cases. *Id.*; The Marshall Project – Cleveland, *Kids Assigned Unqualified Attorneys in Cuyahoga County Juvenile Court* (June 28, 2024), available <https://www.themarshallproject.org/2024/06/28/kids-assigned-unqualified-attorneys-in-cuyahoga-county-juvenile-court>.

And yet, the county *was* reimbursed for their representation, despite not a single attorney filing for an exemption. *Gideon at Sixty* at 8-9. The Wren Collective notes, “these state education and experience requirements do not ensure an attorney will be effective or even work hard, but they do at least establish minimum expectations for those who want to represent children in juvenile court.” *Id.* at 9. However, “many of the court-appointed attorneys in Cuyahoga County who have

sought to represent children facing bindovers appear not to have met them.” *Id.* The Marshall Project conducted its own investigation and ultimately determined that since 2020, 1,200 youth in Cuyahoga County were given attorneys who had not met the state’s qualification standards for reimbursement. Doug Livingston & Rachel Dissell, *Not ‘Mini-Adult Court’: Lawyers Lacking Qualifications Defended 1,200 Cuyahoga County Kids* (Sept. 12, 2024), available at <https://www.themarshallproject.org/2024/09/12/cuyahoga-juvenile-courts-appointed-public-defender>.

***B. Preserving the right to appeal is a necessary mechanism of accountability***

Preserving a youth’s right to appeal gives appellate courts the opportunity to examine matters related to an attorney’s duty of loyalty, constructive denial of counsel, and unqualified representation, all the while serving as an important function of accountability when systems are set up to interfere with constitutional rights.

An example of what could result when the right to appeal is taken away is the judicial “Kids for Cash” scandal, where it was revealed that judges were accepting kickbacks from private juvenile facilities in exchange for locking up youth in Luzerne County, Pennsylvania. Even as the public became aware of the unlawful activity in Luzerne County, Pennsylvania appellate courts lacked power to serve as an important check on the system because “there was no available appellate remedy” for youth. *Juvenile Justice on Appeal* at 685.

To prevent a “due process death spiral,” this Court must protect the right to appeal. *See generally Defending Due Process* at 7. Protecting fairness takes work, and it demands layers of justice to safeguard this sacred right. Heeding the words of the U.S. Supreme Court, we must offer youth “the appearance as well as the actuality of fairness, impartiality, and orderliness—in short, the essentials of due process.” *Gault*, 387 U.S. at 36.

## CONCLUSION

For the foregoing reasons, *Amicus* respectfully requests this Court to uphold the Eighth District ruling in this case.

Respectfully submitted,

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