Ohio General Assembly

# Ohio Senate Judiciary Committee

# Written Testimony in Support of SB 64

# December 12, 2017

# Justice Judith Ann Lanzinger, Supreme Court of Ohio, retired

Chairman Bacon, Vice-Chair Dolan, Ranking Member Thomas, and Members of the Senate Judiciary Committee:

I am here to speak in support of SB 64 as introduced before the 132nd General Assembly, the proposal that would eliminate mandatory bindover of certain juvenile cases. My remarks are informed generally by 32 years as a judge at all levels of Ohio’s judiciary and more specifically by service on both the Criminal Justice Recodification Committee and the Criminal Sentencing Commission. I participated in recommending massive changes to Title 29 of the Revised Code in 1996, and since then have had a deep interest in sentencing legislation. I believe that SB 64 would be a step forward in juvenile justice.

*A Case on Mandatory Bindover*

Matthew Aalim, an African American youth, was 16 when he allegedly used a gun and committed what would be considered aggravated robbery if committed by an adult. Because there was probable cause that he had committed the offense, the mandatory bindover law applied, meaning that he was automatically sent to the common pleas general division in Montgomery County to be prosecuted as an adult. No amenability hearing was held to evaluate his capacity for rehabilitation or suitability for juvenile court treatment.

In December 2016 I wrote the majority opinion in *State v. Aalim.*[[1]](#footnote-1) The Supreme Court held that mandatory transfer of juveniles without providing for the protection of a discretionary determination by the juvenile court judge violates juveniles’ right to due process as guaranteed by the Ohio Constitution[[2]](#footnote-2).

A few months later., after two new justices joined the court, the decision was reconsidered and then reversed. [[3]](#footnote-3) Chief Justice Maureen O’Connor, in a thorough dissent[[4]](#footnote-4) maintained the earlier majority position that Ohio’s mandatory-transfer proceeding does not comply with the fundamental-fairness standard required for juvenile-transfer proceedings and stated that “this case implores a closer look by the high court.” [[5]](#footnote-5)

But the General Assembly need not wait for the U.S. Supreme Court, and can re-establish Ohio’s forward-looking juvenile jurisprudence by enacting SB 64.

*The General Assembly provide due process to juveniles by enacting SB 64.*

Because the legislature created a state juvenile court system, Ohio juveniles have been given special status with special protections. Once a state provides statutory rights greater than those afforded by the federal Constitution, the state may not divest citizens of those rights without due process. In examining what process is “due,” a court examines three things under the federal test[[6]](#footnote-6): 1) what private interest is at risk, 2) how great is the risk of an error in the government’s procedure and the value of other procedural safeguards, 3) the government’s interest and the burden of a substitute procedural requirement. On the first factor, a child’s interest in retaining his or her juvenile status and the significant risk that juveniles capable of rehabilitation will be prosecuted in adult court as a result of the perfunctory procedure set forth in the mandatory-transfer statute clearly outweigh the state’s limited burden of conducting an amenability investigation in potentially transferable cases. The juveniles’ liberty interests are in jeopardy if they are subject to adult penalties in criminal courts; disposition consequences are harsher, and may include imprisonment with hardened adult offenders; collateral consequences are greater, including prevention from various types of employment; offenses are not sealed but may remain always on the public record.

On the second due process factor of risk of error, the mandatory-transfer statute permits the judge to consider just two factors beforehand: the juvenile’s age at the time of the offense and whether there is probable cause to believe that the juvenile committed the mandatory-transfer-eligible conduct. The statute does not permit the judge to consider any mitigating evidence, such as whether the accused lacks criminal history, has a mental illness, is emotionally or psychologically immature, or was under duress at the time of the alleged crime. All of these factors may be considered only at a discretionary-transfer hearing. R.C. 2152.12(E). Most importantly, in a mandatory bindover, a judge has no right to even inquire into a juvenile’s potential for rehabilitation, let alone weigh it. Without allowing a judge to conduct any inquiry beyond probable cause or age, there is significant risk of turning a delinquent capable of rehabilitation into a lifelong criminal. Thus, the risk of erroneous deprivation of the child’s status as a juvenile offender is substantial.

Third, the alternative that SB 64 provides by eliminating the mandatory bindover and allowing all bindovers to be discretionary is not a burden to the state. As the U.S. Supreme Court has said “none of what [Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010)] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific.” [[7]](#footnote-7) And the court has recognized that “it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. 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.”[[8]](#footnote-8)

As SB 64 proposes, R.C. 2152.12 will set forth the factors to consider in its amenability/community safety decision at a discretionary-transfer hearing. The factors ensure that the juvenile judge will consider the unique facts and circumstances of the particular offense and the offender. This procedure will remedy the concerns expressed by the majority in the first Aalim opinion and the Chief Justice’s dissent in the second.

*The Discretionary Transfer Process of SB 64 Satisfies Due Process and Promotes Public Safety*

It is important to emphasize that enactment of SB 64 would not compromise public safety or be considered “soft on crime.” Passage would mean a juvenile judge will have discretion to carry out judicial duties. Artificial mandates for transfer will disappear and decisions on the proper jurisdiction for a case will remain with the judge who is most likely to understand the intricacies of a situation. A judge may always find a juvenile unamenable after a hearing and may choose to transfer the case to common pleas court. The judge would no longer be prevented from full consideration of a juvenile case.

Ohio has a well-deserved reputation for being in the forefront of juvenile justice. We have judges who currently serve at a national level and those who recognize the importance of exercising their discretion appropriately. The juvenile judges should be trusted to determine the best interest of the community, the public safety and the individual juvenile in each case. SB 64 allows just that.

I earnestly support this legislation as proposed.

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1. *State v. Aalim*, 150 Ohio St.3d 463, 2016-Ohio-8278 [↑](#footnote-ref-1)
2. Art I, Sect. 16 of the Ohio Constitution states “All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, *shall have remedy by due course of law*, and shall have justice administered without denial or delay.” (emphasis added). [↑](#footnote-ref-2)
3. *State v. Aalim*, 150 Ohio St 3d 489,  [2017-Ohio-2956](http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2017/2017-Ohio-2956.pdf). [↑](#footnote-ref-3)
4. Id. ¶¶52-109. [↑](#footnote-ref-4)
5. Id. ¶ *105.* [↑](#footnote-ref-5)
6. *Mathews v. Eldridge,* 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) [↑](#footnote-ref-6)
7. Miller v. Alabama 567 U.S. at 473, 132 S.Ct. 2455, 183 L.Ed.2d 407. [↑](#footnote-ref-7)
8. Roper v Simmons, 543 U.S. at 570, 125 S.Ct. 1183, 161 L.Ed.2d 1. [↑](#footnote-ref-8)