

# Litigating Transfer:

*Statutes, Best Practices, Challenges*

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# A Tale of Two Transfers:

## Mandatory

- R.C. 2152.10 (Eligibility)
  - 16/17 + Category One
  - 16/17 + Category Two with Firearm Specification (Brandishing)
  - 14-17 + Category One with Prior Category One or Two *and* prior admission to DYS on that offense
  - Prior conviction
  - Foreign state
- R.C. 2152.12(A) (Procedure)
  - Probable Cause Hearing

# A Tale of Two Transfers:

## Discretionary

- R.C. 2152.10 (Eligibility)
  - Everybody Else...
    - 14 and up
    - Felony level offense
    - Probable Cause
    - Not amenable to juvenile court rehabilitation
- R.C. 2152.12(B) (Procedure)
  - Probable Cause Hearing +
  - Amenability Proceedings
    - Full investigation
    - Mental Examination
    - Weight of Factors
    - Determination youth is not amenable

BUT WAIT!

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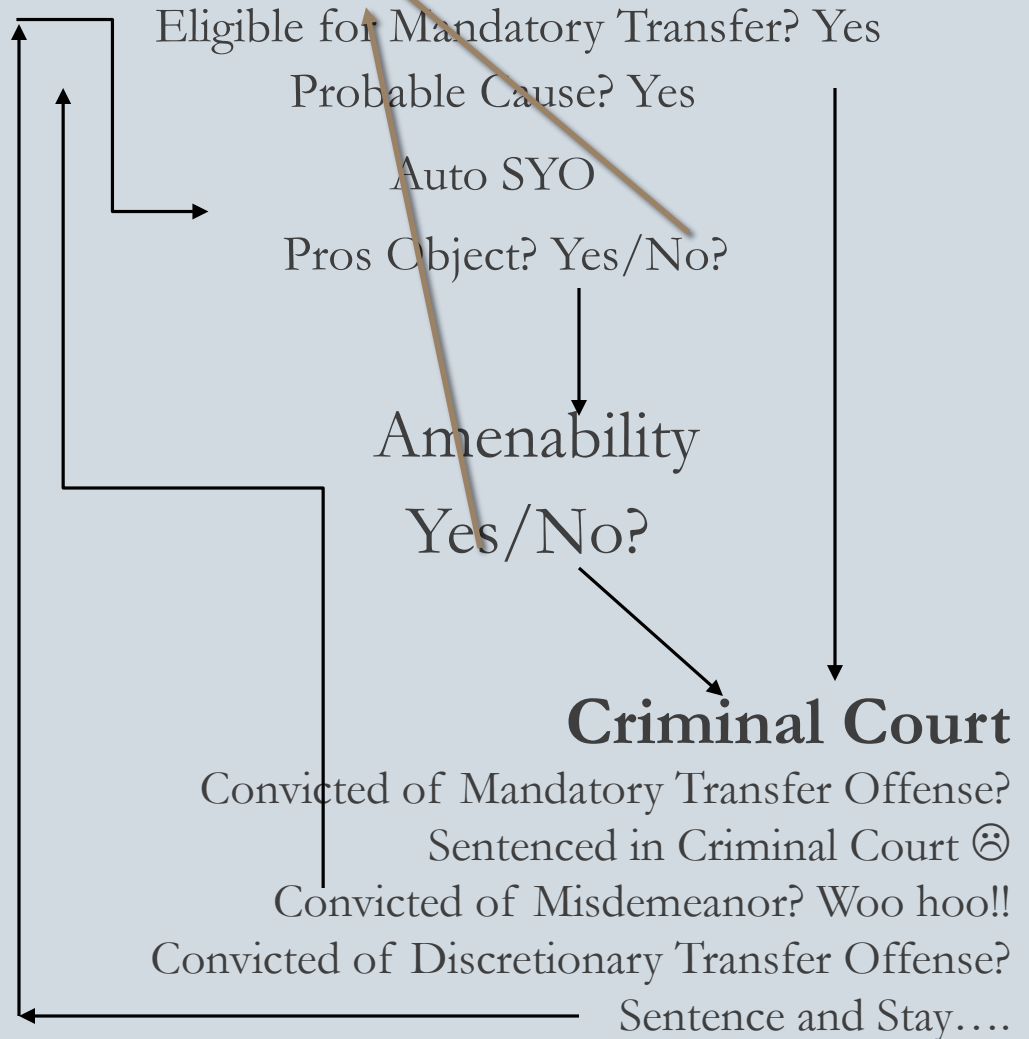
There's More...

# Reverse Waiver

R.C. 2152.121

Mandatory Transfer Youth

## Juvenile Court



# Challenges?

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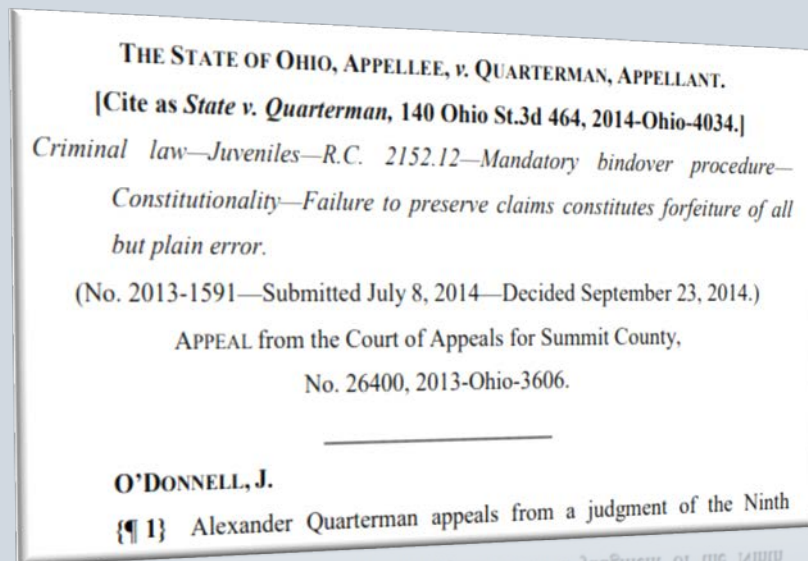
# Been There, Tried That

## *State v. Quarterman*, 2014-Ohio-4034

16 year old charged with armed aggravated robbery; mandatory transfer; 4-year prison term

Q: Does mandatory transfer violate due process, equal protection, and cruel and unusual punishment?

Held: Appellant failed to preserve claims.



{¶ 1} Alexander Quarterman appeals from a judgment of the Ninth  
O'DONNELL, J.

# Been There, Tried That

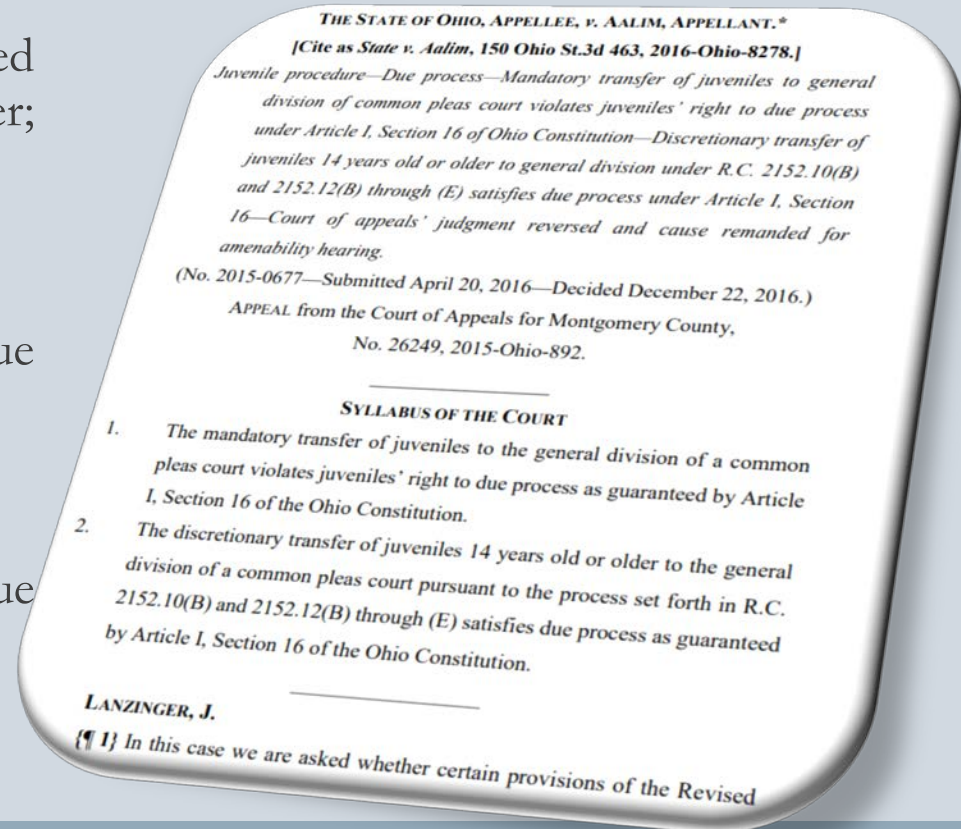
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## *State v. Aalim I*, 2016-Ohio-8278

16 year old charged with armed aggravated robbery; mandatory transfer; 4-year prison term

Q: Does mandatory transfer violate due process and equal protection?

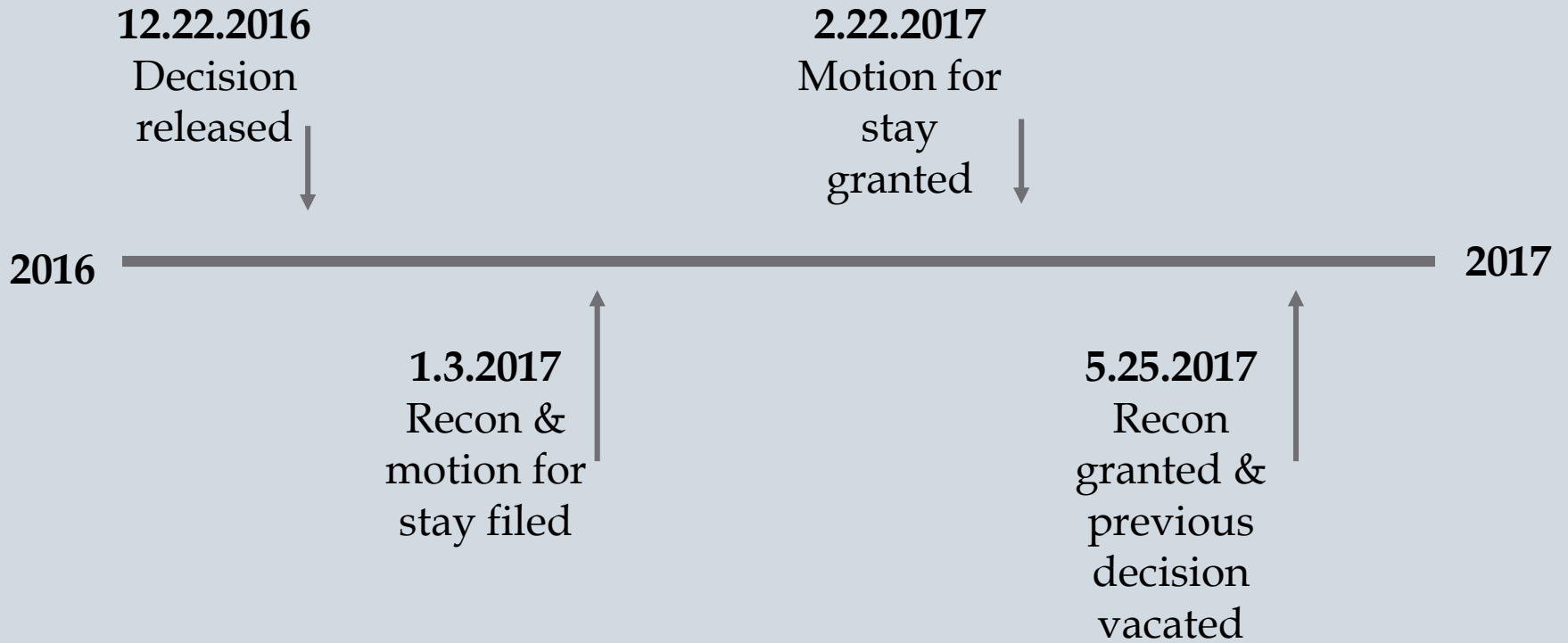
Held: Mandatory transfer violates due process.





# Timeline

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# Been There, Tried That

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## *State v. Aalim II*, 2017-Ohio-2956

THE STATE OF OHIO, APPELLEE, v. AALIM, APPELLANT.

[Cite as *State v. Aalim*, 150 Ohio St.3d 489, 2017-Ohio-2956.]

*Juvenile procedure—Due process—Equal protection—Mandatory transfer of juveniles to general division of common pleas court does not violate*  
(No. 2015-0677—Submitted February 7, 2017—Decided May 25, 2017.)

APPEAL from the Court of Appeals for Montgomery County,  
No. 26249, 2015-Ohio-892.

ON MOTION FOR RECONSIDERATION.

KENNEDY, J.

{¶ 1} This court has the authority to grant motions for reconsideration filed under S.Ct.Prac.R. 18.02 in order to “correct decisions which, upon reflection, are deemed to have been made in error.” *State ex rel. Huebner v. W. Jefferson Village*

Held: Mandatory transfer **does not** violate due process or equal protection.

# Majority opinion

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Authored by Justice Kennedy

*Aalim I* usurped the General Assembly's exclusive constitutional authority to define court jurisdiction.

## Due Process:

- No substantive right to amenability hearing
- Proceedings are fundamentally fair

## Equal Protection:

- Rational basis test
- Statute is rationally related to legitimate state interest of fighting rising juvenile crime

# Concurring opinions

Authored by Justices DeWine & Fischer

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Justice DeWine:

- Voted for reconsideration
- Rationale in *Aalim I* “invites courts to substitute their policy preferences for those of the legislature”

Justice Fischer:

- Voted to deny reconsideration
- Participated in the merit decision

# Dissenting opinion

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Authored by Chief Justice O'Connor

“The majority’s holding does not bring justice for Ohio’s children, who are among our weakest citizens.”

Fundamental fairness requires an **individualized determination** prior to transfer, citing *United States v. Kent*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966).

# Dissenting opinion

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Authored by former Justice O’Neill

“[T]here is nothing new to reconsider here; the only thing that has changed is the makeup of this court as a result of the 2016 election.”

# Cases held for decision in *Aalim*

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## *State v. Lee*

- Reconsideration granted & conviction affirmed

## *State v. D.B.*

- Reconsideration granted
- Held: When a criminal court determines that a 16- or 17-year-old has been convicted of at least one offense that is subject to mandatory transfer, the court shall sentence the child under R.C. 2929 for all charges in the case.

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What Now?





# Live Constitutional Challenges

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- Still argue constitutional challenges
  - Old ones: because, you never know, now
  - Old but not touched: Eighth Amendment
- New Ones
  - Discretionary Transfer = Unconstitutional
    - Eviscerates presumption of innocence because the factors presume guilt
    - Violates the right to due process because it forces counsel to presume guilt while advocating for retention
    - Violates *Apprendi* because it increases an allowable punishment for a child without a jury determination

# Live Challenges: Jurisdiction

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- *State v. Hanning*, 89 Ohio St.3d 86 (2000)
  - A youth charged with mandatory transfer because of a gun spec *must* be the one with the gun; complicity doesn't count.
  - So, if your client did not have the gun, argue that jurisdiction never properly transferred.

# Live Challenges: Jurisdiction

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- *State v. Baker*, 2017-Ohio-7795 (7<sup>th</sup>)
  - A 17-year-old was charged with drug trafficking directly in criminal court, following a prior conviction after bindover.
  - Ohio is not a direct file state!
  - Even if a youth has a prior conviction, the case must start in juvenile court and follow R.C. 2152.12.
  - Reversed.

# Live Challenges: Jurisdiction

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- *State v. D.W.*, 133 Ohio St.3d 434 (2012)
  - A teenager had two, separate cases at once – one mandatory and one discretionary.
  - Probable cause was found on the mandatory; the discretionary was still pending. The juvenile court bound over the juvenile case because the mandatory case was already in common pleas. The court of appeals affirmed.

# Live Challenges: Jurisdiction

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- *State v. D.W.*, 133 Ohio St.3d 434 (2012) (cont'd)
  - The Supreme Court found that the amenability proceeding is rooted in due process and is a vital part of fundamental fairness in discretionary transfer cases. Thus, if a child wants to waive, that waiver must comply with the waiver standard for waiving counsel in juvenile court (*In re C.S.*; Juv.R. 3). If there was no valid waiver, jurisdiction was not properly conferred.

**CAUTION:** *Brookshire* – limitation.

# Live Challenges: Factors

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- Statutory Factors in R.C. 2152.12(B)(C)
  - It is not a “weighting game”
  - Watch out for the Super Factor
  - Court abused its discretion

# Live Challenges: Discovery

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- *State v. Iacona*, 140 Ohio St.3d 309 and *In re D.M.*, 2014-Ohio-3628
  - Youth are entitled to *Brady* materials during transfer proceedings
  - Full discovery during transfer proceedings

# Live Challenges: Evidence and Sufficiency

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- *Kent v. United States*, 383 U.S. 541 (1966) and *State v. D.W.*, 133 Ohio St.3d 434 (2012)
  - The rules of evidence must apply during transfer proceedings
    - Critical stage of the proceedings (*Kent*)
    - Transfer is protected by due process (*D.W.*)
    - Insufficient evidence to support probable cause finding



# Odds and Ends (Best Practices)

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- Preservation (remember Quarterman?)
  - If you've got an objection?
    - The world is your oyster.
    - If not, there's still some space.
- Look for Jurisdictional Claims

# Odds and Ends (Best Practices)

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- Make sure your record is complete
  - Juvenile court pleadings, docket, transcripts
  - Not automatic
  - Amenability Reports, Competency Evaluations, Etc.
  - Correct and Supplement
- Talk with the Juvenile Defender
- When in doubt, PC it out!

# Questions?

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