

April 2015

# Chief Justice O'Connor's Juvenile Justice Jurisprudence: A Consistent Approach to Inconsistent Interests

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## Recommended Citation

McGee-Brown, Yvette and Jolson, Kimberly A. (2015) "Chief Justice O'Connor's Juvenile Justice Jurisprudence: A Consistent Approach to Inconsistent Interests," *Akron Law Review*: Vol. 48 : Iss. 1 , Article 4.

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## CHIEF JUSTICE O’CONNOR’S JUVENILE JUSTICE JURISPRUDENCE: A CONSISTENT APPROACH TO INCONSISTENT INTERESTS

*Yvette McGee Brown and Kimberly A. Jolson\**

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### I. INTRODUCTION

Few issues challenge our legal system like juvenile justice. The juvenile court was established as an alternative system to adult criminal courts, whereby the juvenile judge was to act as a guardian to the

wayward child and reform institutions were to replace prisons as a means of punishment.<sup>1</sup>

But it has become increasingly clear that juveniles can—and sometimes do—commit horrific crimes.<sup>2</sup> In response, states across the country passed tough-on-crime legislation.<sup>3</sup> The enhanced penalties left juveniles with the short end of both systems: subject to the vast discretionary power of juvenile judges *and* without the procedural safeguards of adult criminal courts.<sup>4</sup>

The Supreme Court of the United States responded. Over the last 50 years, the Court has made clear that young offenders are less culpable—and must be treated differently—than adult offenders.<sup>5</sup> And juveniles must be afforded constitutional protections regardless of the system a state uses to adjudicate a young offender.<sup>6</sup>

Because of the competing, yet equally important values at play, the juvenile justice questions facing state supreme courts are often the most difficult issues they tackle. Despite this complexity, Chief Justice Maureen O'Connor has developed an effective framework to balance these interests. The framework accounts for the objectives of the juvenile court system—rehabilitation of juveniles and protection for the child and society—and also considers the need for harsher sentencing of violent juvenile offenders. In her analysis, Chief Justice O'Connor acknowledges that the purpose of the juvenile system is not to permanently mark juveniles as criminals.<sup>7</sup> Her analysis also factors in the rise in juvenile crime rates and the reality that not all juveniles are susceptible to rehabilitation.<sup>8</sup> Her framework, grounded in the Constitution and the purpose of the juvenile system, ensures juveniles receive consistent and well-reasoned treatment from Ohio courts while, at the same time, effectuating the Ohio General Assembly's policy

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1. Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383, 388-91 (2013).

2. See Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965, 976-77 (1995).

3. See, e.g., Julian Borger, *U.S. Throws "Predator" Kids to the Wolves*, GUARDIAN (Mar. 16, 2000, 8:58 PM), <http://www.theguardian.com/world/2000/mar/17/julianborger>.

4. See Henning, *supra* note 1, at 391-92.

5. See *infra* Part II.A.

6. See *In re Gault*, 387 U.S. 1, 27-32 (1967).

7. See *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, at ¶¶ 66-67.

8. *State v. D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894, at ¶ 9.

choices.

Part II of this Article examines the growth of the juvenile justice system as a system apart from the adult criminal system. It reviews the goals of the juvenile court system—to treat children differently than adults, to rehabilitate, and to protect both the child and society. Part II also discusses the gradual movement to harsher sentencing of young offenders and transferring those offenders to the adult criminal justice system, as well as the subsequent exhortation of the United States Supreme Court that youth in the juvenile justice system must be afforded the protection of constitutional rights.<sup>9</sup>

Part III.A explains the framework that Chief Justice O'Connor has applied consistently in juvenile-rights cases. In *In re C.S.*, the Supreme Court of Ohio held, in an opinion written by then-Justice O'Connor,<sup>10</sup> that juveniles may waive their right to counsel *only if*, under a totality-of-the-circumstances analysis, the juvenile court concludes that the juvenile received “meaningful advice” regarding the waiver.<sup>11</sup> Part III.B describes the importance of *In re C.S.*, in that Ohio appellate courts have applied its holding to assure meaningful pre-waiver advice to juveniles and that important aspects of *In re C.S.*'s requirements have been codified. Part III.C explores *State v. D.W.*, in which the Supreme Court of Ohio—again in an opinion written by Chief Justice O'Connor—concluded that juveniles have a right to a hearing *before* being transferred from the juvenile justice system to the adult criminal system.<sup>12</sup> The section also examines the Chief Justice's arguments, in dissent in *In re M.W.*, that (1) juveniles have a statutory right to counsel, under the Ohio Revised Code § 2151.352,<sup>13</sup> during a police interrogation and before a complaint is filed; and (2) the majority used an incorrect constitutional analysis in determining whether juveniles have a constitutional right to counsel in the context of police interrogation.<sup>14</sup>

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9. *In re Gault*, 387 U.S. at 14-15.

10. At the time *In re C.S.* was released in 2007, Chief Justice O'Connor was an associate justice on the Ohio Supreme Court. She was elected to the Chief Justice position in 2010. For ease of discussion, however, we refer to her as Chief Justice throughout this Article.

11. *In re C.S.*, 2007-Ohio-4919 at ¶¶ 108-10.

12. *D.W.*, 2012-Ohio-4544 at ¶ 21.

13. OHIO REV. CODE ANN. § 2151.352 (West, Westlaw through Files 1 to 140 and Statewide Issue 1 of the 130th GA (2013-2014)).

14. *In re M.W.*, 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164, at ¶ 70 (O'Connor, C.J., dissenting).

## II. JUVENILE LAW AND ITS INHERENT DIFFICULTIES

### A. *Juvenile Law: A Very Brief History*

During the latter part of the 19th century, a movement began to establish a separate justice system for juveniles.<sup>15</sup> Convinced that society's duty to a child should focus on rehabilitation, not punishment,<sup>16</sup> reformers developed a scheme wholly outside the criminal law for adjudicating juvenile offenders.<sup>17</sup> This unique system, rooted in the doctrine of *parens patriae*, permitted the state to intervene when parents were unable to discipline or care for their child.<sup>18</sup>

The first juvenile court was founded in Illinois in 1899,<sup>19</sup> and the concept quickly spread across the country, including to Ohio.<sup>20</sup> The new system, which the United States Supreme Court has called "peculiar,"<sup>21</sup>

15. *In re Gault*, 387 U.S. 1, 14-15 (1967). For a more detailed history of the juvenile court in the 19th century, see Robin Walker Sterling, *Fundamental Unfairness: In re Gault and the Road Not Taken*, 72 MD. L. REV. 607, 616-21 (2013).

16. The juvenile court system grew out of the Progressive Movement, which focused on a "Rehabilitative Ideal" with an emphasis on reforming the offender rather than punishing the offense. See Barry C. Feld, *Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court*, 69 MINN. L. REV. 141, 148-49 (1984) ("The juvenile court professionals were to make discretionary, individualized treatment decisions to achieve benevolent goals and social uplift by substituting a scientific and preventative approach for the traditional punitive philosophy of the criminal law.").

17. *In re Gault*, 387 U.S. at 15-18.

18. *Id.* at 17-18. "The early conception of the Juvenile Court proceeding was one in which a fatherly judge touched the heart and conscience of the erring youth by talking over his problems, by paternal advice and admonition, and in which, in extreme situations, benevolent and wise institutions of the State provided guidance and help 'to save him from a downward career.'" *Id.* at 25-26 (quoting Julian Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 120 (1909)); Drew Darnell, Comment, *Specialty Juvenile Courts in Texas: Using the Rehabilitative Juvenile Justice Approach to Reform Texas's Youngest Gang Members*, 44 ST. MARY'S L.J. 715, 720 (2013); Ira M. Schwartz, Neil Alan Weiner & Guy Enosh, *Nine Lives and Then Some: Why the Juvenile Court Does Not Roll Over and Die*, 33 WAKE FOREST L. REV. 533, 535 (1998) (explaining that the juvenile court was "expected to fulfill the complicated dual roles of the societal disciplinarian who can punish children and of the parental substitute who can supervise, treat and rehabilitate and, if necessary, care for the children").

19. DEAN J. CHAMPION & G. LARRY MAYS, *TRANSFERRING JUVENILES TO CRIMINAL COURTS: TRENDS AND IMPLICATIONS FOR CRIMINAL JUSTICE* 38 (1991).

20. The Supreme Court of Ohio first recognized the parental role of the court system when adjudicating juveniles in 1869. *Prescott v. State*, 19 Ohio St. 184, 188 (1869). Following the recognition of *parens patriae*, the first juvenile court in Ohio was established in 1902, and by 1906, juvenile courts were used across the State. See *In re Agler*, 249 N.E.2d 808, 810 (Ohio 1969). By 1945, every state had implemented a juvenile justice system. See, e.g., CHAMPION & MAYS, *supra* note 19.

21. *In re Gault*, 387 U.S. at 17. The Court even suggested that while the doctrine of *parens patriae* was "a great help to those who sought to rationalize the exclusion of juveniles from the constitutional scheme," there was "no trace of the doctrine in the history of criminal jurisprudence." *Id.* at 16.

quickly drew critics.<sup>22</sup> Because its purpose was to rehabilitate rather than punish, judicial discretion replaced procedural rules and formality.<sup>23</sup> Although well-intentioned, this unbridled discretion led to juveniles' loss of liberty without due process of law.<sup>24</sup>

Eventually, the Supreme Court of the United States stepped in, issuing the landmark decision of *In re Gault*.<sup>25</sup> The Court held that constitutional protections apply to juvenile offenders, and proceedings adjudicating them must satisfy the Due Process Clause of the Fourteenth Amendment.<sup>26</sup> *In re Gault*'s holding—the extension of due process rights to juveniles—laid the foundation for the consistent framework Chief Justice O'Connor has developed for applying juvenile law in Ohio.<sup>27</sup>

### B. Today's Dilemma

Despite *In re Gault*'s laudatory pronouncements, juveniles commit

22. *Kent v. United States*, 383 U.S. 541, 556 (1966) (citing generally Joel F. Handler, *The Juvenile Court and the Adversary System: Problems of Function and Form*, 1965 WIS. L. REV. 7 (1965)) (“There is evidence . . . that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.”). See also Sheldon Glueck, *Some “Unfinished Business” in the Management of Juvenile Delinquency*, 15 SYRACUSE L. REV. 628, 629-30 (1964) (listing numerous unanswered questions and concerns facing the juvenile court system).

23. See Sterling, *supra* note 15, at 619-20; Feld, *supra* note 2, at 971.

24. *In re Gault*, 387 U.S. at 19-20 (1967) (“Failure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy.”). See also *id.* at 20 n. 26.

25. *Id.* at 18 (“Juvenile Court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure.”). *In re Gault* was the culmination of a series of decisions extending due process protections to juveniles. See *Haley v. Ohio*, 332 U.S. 596, 601 (1948) (recognizing a juvenile’s due process interest in juvenile court proceedings); *Kent*, 383 U.S. at 554 (holding that a juvenile is entitled to a hearing on whether juvenile court jurisdiction should be waived before being released to criminal court). Further decisions clarified these due process rights, but *In re Gault* remains the seminal case on juvenile law. See *In re Winship*, 397 U.S. 358, 367-68 (1970) (holding that due process requires the state to prove charges against a juvenile beyond a reasonable doubt).

26. Specifically, the Court granted juveniles in delinquency hearings the right to counsel, notice, confrontation, and the privilege against self-incrimination. *In re Gault*, 387 U.S. at 33, 41, 55-57 (1967); see also Margot Adler, *Gault Case Changed Juvenile Law*, NPR (May 19, 2007), available at <http://www.npr.org/templates/story/story.php?storyId=10279166>. However, the rights granted to juveniles in *Gault* did not mirror the rights enjoyed by adults. See Sterling, *supra* note 15, at 612 (citing *In re Gault*, 387 U.S. at 41) (“Instead of applying the procedural protections of the Bill of Rights, the Court extended juvenile delinquency respondents only Fourteenth Amendment due process protections.”).

27. See *infra* Part III.A.2.

a disturbing number of violent crimes.<sup>28</sup> In response, many juvenile judges shifted their focus toward punishment rather than rehabilitation.<sup>29</sup> Similarly, state legislatures, including the Ohio General Assembly, passed laws criminalizing juvenile conduct based on age or offense without regard for the rehabilitative goals of juvenile justice.<sup>30</sup> Mandatory sentencing replaced the discretion of judges, and juveniles often faced harsh punishment.<sup>31</sup>

Ohio previously had been at the forefront in treating juveniles differently than adults.<sup>32</sup> But after *In re Gault*, juvenile proceedings in Ohio took a different turn. The Ohio General Assembly altered the Juvenile Code and also granted the Supreme Court of Ohio authority to create Rules of Juvenile Procedure.<sup>33</sup> Consistent with the United States Supreme Court's decision, young offenders were afforded constitutional protections in juvenile court.<sup>34</sup> Even so, the corresponding punishments juveniles received grew in length and severity.<sup>35</sup>

In addition, Ohio created a procedure by which a juvenile may—and in some cases must—be transferred to adult criminal court.<sup>36</sup> In certain circumstances, transfer to criminal court is mandatory, leaving judges no choice.<sup>37</sup> However, when transfer is discretionary, the judge must first find (1) the child is not amenable to care or rehabilitation in the juvenile system; and (2) the safety of the community may require that the child be subject to adult sanctions.<sup>38</sup> Transfer to criminal court has a host of ramifications, but the most damning to the juvenile is that he may be sentenced to an adult facility.<sup>39</sup> Despite these inherent

28. See generally U.S. DEP'T OF JUSTICE, OJJDP STATISTICAL BRIEFING BOOK: JUVENILE ARREST RATE TRENDS (Feb. 25, 2014), available at [http://www.ojjdp.gov/ojstatbb/crime/JAR\\_Display.asp?ID=qa05201](http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05201).

29. See Borger, *supra* note 3.

30. See, e.g., Erik Eckholm, *Juveniles Facing Lifelong Terms Despite Rulings*, N.Y. TIMES (Jan. 19, 2014), <http://www.nytimes.com/2014/01/20/us/juveniles-facing-lifelong-terms-despite-rulings.html>.

31. *Id.* (noting that “states have adapted by imposing minimum mandatory terms . . .”).

32. See *In re Agler*, 249 N.E.2d 808, 810 (Ohio 1969).

33. See WILLIAM A. KURTZ & PAUL C. GIANELLI, OHIO JUVENILE LAW 22, 24 (3d ed. 1994). The Ohio Rules of Juvenile Procedure took effect on July 1, 1972. OHIO R. JUV. P. 47(A).

34. See Susan A. Burns, Comment, *Is Ohio Juvenile Justice Still Serving Its Purpose?*, 29 AKRON L. REV. 335, 349-52 (1996).

35. See *id.* at 341-49.

36. OHIO REV. CODE ANN. § 2152.12 (West, Westlaw through Files 1 to 140 and Statewide Issue 1 of the 130th GA (2013-2014)); OHIO R. JUV. P. 30.

37. OHIO REV. CODE ANN. § 2152.12(A).

38. *Id.* § 2152.12(B). The juvenile court is required to take numerous factors into account when considering discretionary transfer. *Id.* § 2152.12(B)-(E).

39. Barry C. Feld, *Unmitigated Punishment: Adolescent Criminal Responsibility and LWOP Sentences*, 10 J. L. FAM. STUD. 11, 38 (2007).

difficulties, Chief Justice O'Connor nimbly addressed the maelstrom of competing interests, conflicting motivations, and grave consequences, emerging with a workable framework for Ohio courts to follow.

## II. CHIEF JUSTICE O'CONNOR'S JUVENILE LAW JURISPRUDENCE AND ITS IMPACT

The Supreme Court of Ohio has grappled regularly with juvenile justice during Chief Justice O'Connor's tenure.<sup>40</sup> The Court, as the third branch of government, is charged with applying the law in a manner consistent with the state and federal constitutions. While this limited role requires a delicate balancing act, Chief Justice O'Connor has managed to craft a consistent framework that gives due weight to the rehabilitative purpose of juvenile law and the reality that juveniles commit heinous offenses. In *In re C.S.*, she identified a framework that balances the historical goals of juvenile courts with the modern realities of juvenile sanctions, including the potential long-term deprivation of liberty.<sup>41</sup> *In re C.S.* stands as a guidepost for courts to follow and has ensured constitutional procedures for juveniles in Ohio.

### A. *In re C.S.*

In 2007, the Supreme Court of Ohio, in an opinion by Chief Justice O'Connor, held that a juvenile in a delinquency proceeding may waive his constitutional right to counsel only after consulting with a parent, guardian, or attorney.<sup>42</sup> Chief Justice O'Connor's analysis examined the history and purpose of the juvenile system, constitutional doctrine, statutory construction, the jurisprudence in other states, and the fact that most parents and especially juveniles are unfamiliar with the legal process.<sup>43</sup>

The court held that the juvenile in *In re C.S.* did not properly waive his right to counsel.<sup>44</sup> Chief Justice O'Connor analyzed the adequacy of the juvenile's waiver based on United States Supreme Court precedent regarding the due process rights of juveniles, the Ohio General Assembly's intent in passing § 2151.352 of the Ohio Revised Code, and

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40. See, e.g., *In re J.V.*, 134 Ohio St.3d 1, 2012-Ohio-4961, 979 N.E.2d 1203; *Rowell v. Smith*, 133 Ohio St.3d 288, 2012-Ohio-4313, 978 N.E.2d 146; *State v. D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894; *In re M.W.*, 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164.

41. See generally *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177.

42. *Id.* at ¶ 98.

43. *Id.* at ¶¶ 65-103.

44. *Id.* at ¶ 122.



the importance of having legal counsel.<sup>45</sup> Because of the significance of counsel and a juvenile's right to representation, Chief Justice O'Connor reasoned that the waiver must be meaningful in light of the attendant circumstances.<sup>46</sup>

### 1. The Facts

Unfortunately the facts of *In re C.S.* are all too common. C.S., a minor of almost 14 years old, was no stranger to the justice system. Already on probation for assault, he found himself before a magistrate on two counts of grand theft.<sup>47</sup> Before the hearing, the court sent C.S. and his mother documents that included information on the right to counsel and court-appointed attorneys.<sup>48</sup> C.S. and his mother signed a form acknowledging this right, but waiving the assistance of counsel.<sup>49</sup>

During the hearing, the magistrate questioned C.S.<sup>50</sup> The minor acknowledged his right to counsel and indicated an understanding that he had waived that right.<sup>51</sup> His mother similarly affirmed such knowledge and waiver, expressing her desire that C.S. be placed in the same juvenile facility as his brother.<sup>52</sup> Later, C.S. admitted to the wrongdoing, and the magistrate adjudicated him delinquent and sentenced him to a minimum one-year commitment to the Ohio Department of Youth Services.<sup>53</sup>

### 2. Analysis

On appeal, the Court had to determine whether C.S.'s waiver of counsel was valid.<sup>54</sup> To answer this question, Chief Justice O'Connor undertook a comprehensive examination of the juvenile system, constitutional precedent, and legislative history and intent.<sup>55</sup> Combining

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45. *Id.* at ¶¶ 77-98.

46. *Id.* at ¶¶ 113-14.

47. *Id.* at ¶¶ 2-3.

48. *Id.* at ¶¶ 5-8. Incidentally, the notice provision in these documents required C.S. and his mother to contact the clerk seven days before the hearing. Because the hearing was held less than two days after C.S. was taken into custody, C.S. and his mother could not have complied with the notice provision. *See id.*

49. *Id.* at ¶ 8.

50. *Id.* at ¶¶ 10-61.

51. *Id.* at ¶¶ 11-16.

52. *Id.* at ¶¶ 17-18, 121. In fact, the magistrate believed the "plan" was for C.S. to be arrested and go to the same facility as his brother. *Id.* at ¶ 61.

53. *Id.* at ¶ 61.

54. *Id.* at ¶ 64.

55. *Id.* at ¶¶ 65-115.

these concepts into one, the Chief Justice applied a framework that she has returned to time and again. This important framework requires consideration of the juvenile justice system, legislative intent, and the Constitution.

#### a. The Juvenile System

Chief Justice O'Connor began by reviewing the purpose of juvenile courts, "which occupy a unique place in our legal system."<sup>56</sup> "[J]uvenile courts were premised on profoundly different assumptions and goals than a criminal court" and "eschewed traditional, objective criminal standards and retributive notions of justice."<sup>57</sup> Unlike criminal courts, juvenile courts were intended to "protect the wayward child" and rehabilitate, rather than prosecute.<sup>58</sup> Thus, "juvenile courts adopted proceedings that were less formal and more inquisitorial than adversarial."<sup>59</sup>

But, as the Chief Justice noted, the reality of juvenile courts did not fulfill the original vision.<sup>60</sup> Instead, juvenile courts often doled out the "worst of both worlds," providing "neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."<sup>61</sup> Therefore, the Chief Justice explained, the United States Supreme Court intervened.<sup>62</sup> In a series of cases, the Supreme Court affirmed juveniles' due process rights and held that juveniles, like adults, must be informed of certain rights—including the right to counsel.<sup>63</sup> Importantly, because juvenile proceedings are civil, the juvenile's right to counsel is not governed by the Sixth Amendment—as it would be in criminal court—but instead by the Due Process Clause of the Fourteenth Amendment.<sup>64</sup>

Chief Justice O'Connor recognized the "inherent tension" between the rehabilitative goals of the juvenile justice system and the increasing criminalization of juvenile offenses.<sup>65</sup> Indeed, although the Ohio General Assembly "adhered to the core tenets of the juvenile system," it also "made substantive changes to the Juvenile Code in a get-tough response

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56. *Id.* at ¶ 65.

57. *Id.* at ¶ 66 (internal citations omitted).

58. *Id.*

59. *Id.* at ¶ 67 (citing *In re T.R.*, 556 N.E.2d 439, 448 (Ohio 1990)).

60. *See id.* at ¶ 70.

61. *Id.* (quoting *Kent v. United States*, 383 U.S. 541, 556 (1966)).

62. *Id.* *See also infra* Part II.A.

63. *In re C.S.*, 2007-Ohio-4919 at ¶¶ 71-72.

64. *See In re Gault*, 387 U.S. 1, 41 (1967).

65. *In re C.S.*, 2007-Ohio-4919 at ¶ 75.

to increasing juvenile caseloads, recidivism, and the realization that the harms suffered by victims are not dependent upon the age of the perpetrator.”<sup>66</sup>

With this backdrop, the Chief Justice emphasized the need to reconcile the original purpose of the juvenile court system with its present form: “We . . . abide by the principles that underlie the founding of the juvenile courts, but we do so with pragmatism and an understanding of modern realities.”<sup>67</sup>

#### b. The Juvenile’s Constitutional Right to Counsel

Chief Justice O’Connor then considered the statute at hand, which provided that a juvenile is entitled to legal representation, and “[i]f a party appears without counsel, the courts shall ascertain whether the party knows of the party’s right to counsel and of the party’s right to be provided with counsel if the party is an indigent person.”<sup>68</sup> With the right to counsel firmly established, the Court needed to determine: (1) whether a juvenile may waive that right; and (2) if so, what test to apply to determine the waiver’s validity.<sup>69</sup> C.S. argued that juveniles have a non-waivable right to counsel, and therefore the statute was unconstitutional.<sup>70</sup>

First, the Chief Justice examined a number of factors to decide whether a juvenile could waive the right to counsel. Taking into account statutory language, history (including the context in which the statute was adopted), and constitutional requirements, the Court concluded a “juvenile may waive his rights, including his right to counsel . . . but only if the juvenile is advised by a parent in considering waiver.”<sup>71</sup> The Court explained that this conclusion was not only true to constitutional principles and legislative intent, but also “reinforce[d] the vital role a parent can play in a delinquency proceeding.”<sup>72</sup>

Next, Chief Justice O’Connor applied the traditional standard for an effective waiver to juveniles: an “intentional relinquishment or

66. *Id.* at ¶ 74.

67. *Id.* at ¶ 75.

68. OHIO REV. CODE ANN. § 2151.352 (West, Westlaw through Files 1 to 140 and Statewide Issue 1 of the 130th GA (2013-2014)).

69. *In re* C.S., 2007-Ohio-4919 at ¶ 64.

70. *Id.* at ¶ 86. C.S. argued that former Ohio Revised Code § 2151.352—which stated that “[c]ounsel must be provided for a child not represented by the child’s parent, guardian, or custodian”—implicitly and improperly permitted a child’s parent (or guardian or custodian) to substitute for legal representation in juvenile court. *Id.*

71. *Id.* at ¶ 95.

72. *Id.* at ¶ 102.

abandonment of a known right”<sup>73</sup> that is “voluntary, knowing, and intelligent.”<sup>74</sup> To determine whether a waiver is voluntary, knowing, and intelligent, the Chief Justice established the “totality-of-the-circumstances analysis” as the “proper test” for a valid waiver by a juvenile.<sup>75</sup> She then enumerated a host of factors courts must consider:

[T]he age, intelligence, and education of the juvenile; the juvenile’s background and experience generally and in the court system specifically; the presence or absence of the juvenile’s parent, guardian, or custodian; the language used by the court in describing the juvenile’s rights; the juvenile’s conduct; the juvenile’s emotional stability; and the complexity of the proceedings.<sup>76</sup>

Chief Justice O’Connor concluded that “the degree to which the juvenile’s parent is capable . . . and willing to assist the juvenile in the waiver analysis” is a “key factor” in analyzing the validity of a waiver.<sup>77</sup> This emphasis on the willingness and ability of the parent to assist the juvenile has important ramifications for the way the totality of the circumstances test is applied in Ohio.

### c. “Totality of the Circumstances” Applied

Chief Justice O’Connor then turned to the facts of the case.<sup>78</sup> Applying the totality-of-the-circumstances test, she found that although C.S. and his mother had signed the “right papers,” the record was unclear as to whether C.S. had relinquished his rights knowingly and intelligently: “An important aspect of our consideration in this case is our concern that there was not any meaningful advice rendered to C.S. in his decision to waive counsel.”<sup>79</sup> In particular, the Court was not satisfied that C.S.’s mother “was in a position to render any meaningful advice to her son in this case” because she had not spoken to C.S. since his arrest or reviewed his police report.<sup>80</sup> Thus, the court determined C.S.’s right to counsel had not been legally waived.<sup>81</sup>

73. *Id.* at ¶ 105 (quoting *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, at ¶ 31 (internal citations omitted)).

74. *Id.* at ¶ 106 (citing *State v. Gibson*, 345 N.E.2d 399, 400 (Ohio 1976)).

75. *Id.* at ¶ 108 (following *In re Dalton S.*, 730 N.W.2d 816, 824-25 (Neb. 2007)).

76. *Id.*

77. *Id.* at ¶ 110. Although the Chief Justice was careful to note that this factor was not dispositive, part of the Court interpreted it as an additional requirement. *See infra* Part III.A.3.

78. *In re C.S.*, 2007-Ohio-4919 at ¶¶ 116-23.

79. *Id.* at ¶ 119.

80. *Id.*

81. *Id.* at ¶ 122.

Chief Justice O'Connor concluded by remarking that the case was "difficult" and that the magistrate's "clear frustration" with C.S. was understandable.<sup>82</sup> Nevertheless, the Chief Justice was steadfast in her commitment to applying due process to juveniles in keeping with the Constitution: "[T]hat frustration, and the judge's broad discretion in imposing disposition, cannot override the need for the careful consideration of the fairness and due process rights that *Gault* demands and the application of those principles in all delinquency cases."<sup>83</sup>

### 3. The Dissents

Two justices dissented. Justice O'Donnell, writing for himself only, agreed that a juvenile has a right to counsel, that it can be waived, and that the totality-of-the-circumstances test applied.<sup>84</sup> However, Justice O'Donnell would have come to a different conclusion in C.S.'s case. He saw the majority's reasoning as "invad[ing] the province of a parent's role in raising his or her child" and, thus, concurred with Justice Lanzinger's dissent.<sup>85</sup>

Justice Lanzinger's dissent was likewise narrow, but its proposed framework deviated slightly from Chief Justice O'Connor's opinion. Justice Lanzinger, joined by Justice O'Donnell, agreed with the majority's conclusion that C.S. had the right to counsel and that the totality-of-the-circumstances test should be used in ascertaining the validity of a waiver.<sup>86</sup> However, she disagreed with the majority's focus on parental intent, believing it incorrectly required "meaningful advice" from a parent prior to a valid waiver.<sup>87</sup> Justice Lanzinger preferred to view parental advice as one of the factors in the inquiry, rather than a separate requirement.<sup>88</sup> Using this slightly modified framework, Justice Lanzinger would have found the waiver sufficient.<sup>89</sup>

After examining the dissents, a common thread emerges: all of the justices—even those who disagreed with the result—adhered to Chief Justice O'Connor's framework and its underlying reasoning. It is this

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82. *Id.* at ¶ 123.

83. *Id.*

84. *Id.* at ¶ 124 (O'Donnell, J., dissenting).

85. *Id.* at ¶ 125. Justice O'Donnell believed the majority placed too much weight on C.S.'s mother's expressed desire to have both her children housed in the same juvenile facility, and that "[n]othing in the record . . . suggests incompetence or failure of this mother to act in the best interests of her child." *Id.* at ¶ 126.

86. *Id.* at ¶¶ 130-33 (Lanzinger, J., dissenting).

87. *Id.* at ¶ 133.

88. *Id.*

89. *Id.* at ¶ 135.

framework that has allowed *In re C.S.* to become the seminal case that Ohio courts consistently apply when grappling with juvenile law.

### B. *In re C.S.*'s Impact

At first blush, *In re C.S.* may seem less than remarkable. Chief Justice O'Connor applied settled United States Supreme Court precedent and utilized a tried-and-true test to determine a waiver's validity.<sup>90</sup> Even the dissents were narrow, mainly disagreeing about how to apply the majority's test to particular facts.<sup>91</sup> Despite its unassuming nature, *In re C.S.* has had a lasting impact because it requires that, in the totality of circumstances analysis, a court must consider not only whether a juvenile conferred with his or her parent, but also "the degree to which the juvenile's parent is capable . . . and willing to assist the juvenile in the waiver analysis."<sup>92</sup> This second requirement ensures that courts probe whether a juvenile in fact received adequate assistance before waiving any constitutional rights.

#### 1. *In re C.S.* Applied

Since *In re C.S.* was decided, Ohio courts have applied the totality-of-the-circumstances test numerous times to determine the validity of a juvenile's waiver of counsel.<sup>93</sup> While this may be a common legal test, the manner in which Chief Justice O'Connor applied it to C.S.'s case has made a difference in the lives of juveniles by holding juvenile courts to an appropriately high standard. Three cases stand out.

##### a. *In re Ramon*

Shortly after the Supreme Court of Ohio decided *In re C.S.*, the Court of Appeals of Ohio for the Third District had to determine the validity of a juvenile's waiver of counsel.<sup>94</sup> In *In re Ramon*, the State of Ohio filed a complaint against a juvenile for receiving stolen property.<sup>95</sup> During Ramon's initial appearance on the delinquency complaint, the

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90. See *infra* Part III.A.2.

91. See *infra* Part III.A.3.

92. *In re C. S.*, 2007-Ohio-4919 at ¶ 110.

93. See *infra* Part II.B-C. Beyond the typical juvenile delinquency hearing, *In re C.S.* has been applied to determine the validity of waivers of counsel in other court proceedings, including probation revocation hearings. See, e.g., *In re L.A.B.*, 121 Ohio St.3d 112, 2009-Ohio-354, 902 N.E.2d 471, at ¶¶ 56-57 (2009).

94. *In re Ramon*, No. 4-07-03, 2007 Ohio App. LEXIS 5080, at \*6-7 (Oct. 29, 2007).

95. *Id.* at \*3.

juvenile judge accepted the juvenile's waiver of counsel.<sup>96</sup> The judge informed Ramon of "the right to have an attorney," and if he wanted to "consult with an attorney . . . [the hearing could] be postponed."<sup>97</sup> The judge added that if Ramon and his parents were unable to afford an attorney, one would be appointed at the county's expense.<sup>98</sup> The judge next asked if Ramon had discussed the complaint with his parents, and Ramon confirmed he had.<sup>99</sup> Finally, Ramon and his father each indicated on the record a desire to proceed without counsel.<sup>100</sup>

At the adjudicatory hearing a few weeks later, the juvenile court and Ramon had the following exchange:

Court: . . . When we were here the last time, you guys elected to go ahead without counsel and I did tell you about subpoena's at that point, right? Okay, you ready to proceed?

Ramon: Yes, sir.<sup>101</sup>

The State contended that Ramon understood his rights because he had been before the juvenile court "numerous times."<sup>102</sup> Further, the State argued for the waiver's validity because Ramon's parents had the financial means to hire counsel if they so desired.<sup>103</sup>

The Third District Court of Appeals applied *In re C.S.* and disagreed.<sup>104</sup> Noting that "a juvenile court has a special duty when a juvenile waives their right to counsel," the Court concluded that the colloquies from previous dealings in juvenile court did not demonstrate that Ramon's parents were in a "position to render meaningful advice on the waiver of counsel."<sup>105</sup> In other words, Ramon's father's presence was not enough. The juvenile court was required to "thoroughly address [and] investigate" the relevant factors to "determine whether Ramon

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96. *Id.* at \*7, \*14.

97. *Id.* at \*12.

98. *Id.* at \*12-13. The appellate court also took issue with the juvenile court's representation to Ramon that counsel could only be appointed if his parents were unemployed. *Id.* at \*14. Juvenile courts in Ohio are to determine a child's indigence independent from their parents. *See* OHIO ADMIN. CODE 120-1-03(C)(5) (2009) ("Juveniles are presumed indigent. In determining the eligibility of a child for court-appointed counsel in juvenile court, only the juvenile's income shall be considered when determining if counsel should be appointed.")

99. *In re Ramon*, 2007 Ohio App. LEXIS 5080, at \*13.

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.* at \*14.

105. *Id.* at \*7, \*14.

knowingly, intelligently, and voluntarily waived his right to counsel.”<sup>106</sup> Something more—in fact, much more—was needed.<sup>107</sup>

b. *In re J.F.*

The following year, the Second District Court of Appeals of Ohio faced the remarkably similar case of *In re J.F.*<sup>108</sup> J.F., who had appeared in juvenile court previously, acknowledged an understanding of his right to counsel and stated on the record that he wished to proceed without representation.<sup>109</sup> And—mirroring *In re C.S.* and *In re Ramon*—J.F.’s mother was present and acquiesced to the waiver, requesting only continued treatment for her son.<sup>110</sup> Despite the mother’s presence, the Second District acted in accordance with Chief Justice O’Connor’s framework and found the waiver of counsel invalid.<sup>111</sup>

The Court followed *In re C.S.*’s instruction to determine “the degree to which the juvenile’s parent is capable of assisting and willing to assist the juvenile in the waiver analysis.”<sup>112</sup> Applying the totality-of-the-circumstances test, the Court found “no indication” that J.F.’s mother had counseled her son about the ramifications of waiving his right to counsel. Because J.F. had not been advised about the consequences of his decision, the waiver was invalid.<sup>113</sup>

c. *In re E.C.*

More recently, the Seventh District Court of Appeals came to the same conclusion.<sup>114</sup> E.C. requested representation at a delinquency hearing, but told the juvenile court her mother could not afford it.<sup>115</sup> After questioning E.C.’s mother on her income, the juvenile court incorrectly told E.C. she did not qualify for court-appointed counsel at

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106. *Id.* at \*15-16.

107. *Id.* at \*15 (quoting *In re Bays*, Nos. 2002-CA-52, 2002-CA-56, 2003 Ohio App. LEXIS 1175, at \*11 (Mar. 14, 2003)) (“To be valid such a waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and other circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter.”).

108. *In re J.F.*, 178 Ohio App.3d 702, 2008-Ohio-4325, 900 N.E.2d 204.

109. *Id.* at ¶ 35-40.

110. *Id.* at ¶ 56.

111. *Id.* at ¶ 4.

112. *Id.* at ¶ 91 (quoting *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, at ¶ 110).

113. *Id.* at ¶ 4.

114. *In re E.C.*, No. 09-NO-366, 2011 Ohio App. LEXIS 5377, at \*10–11 (Dec. 15, 2011).

115. *Id.* at \*8.



the county's expense.<sup>116</sup> Following this exchange, E.C. waived her right to counsel.<sup>117</sup>

Although her mother was present, the Seventh District was not convinced the waiver was voluntary, knowing, and intelligent.<sup>118</sup> Because her mother was not asked whether "she believed [her daughter] understood her constitutional rights," and because E.C. "was never advised of possible defenses to the alleged violations or circumstances that might mitigate her potential punishment," the waiver was invalid.<sup>119</sup>

## 2. Codification of *In re C.S.*

With Chief Justice O'Connor's framework successfully implemented in Ohio courts, the next step was to firmly establish it in Ohio's formal juvenile law procedure.

On July 1, 2012, *In re C.S.*'s impact grew. The case's holding was incorporated into Rule 3 of the Ohio Rules of Juvenile Procedure in recognition of the significant consequences juveniles face in delinquency adjudications.<sup>120</sup> Rule 3(D) now reads:

Any waiver of the right to counsel shall be made in open court, recorded, and in writing. In determining whether a child has knowingly, intelligently, and voluntarily waived the right to counsel, the court shall look to the totality of the circumstances including, but not limited to: the child's age; intelligence; education; background and experience generally and in the court system specifically; the child's emotional stability; and the complexity of the proceedings. The Court shall ensure that a child consults with a parent, custodian, guardian, or guardian ad litem, before any waiver of counsel. However, no parent, guardian, custodian, or other person may waive the child's right to counsel.<sup>121</sup>

Further, a juvenile's right to counsel may *not* be waived "when there is a conflict or disagreement between the child and the parent, guardian, or

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116. *Id.* at \*9-10. The juvenile court repeated the mistake made in *In re Ramon* by using a parent's income to determine whether the juvenile was indigent. *See* former OHIO ADMIN. CODE § 120-1-03(D) (2008) (amended 2009) ("In determining eligibility of a child for court-appointed counsel in juvenile court, only the child's income shall initially be considered."). E.C., who estimated her net worth at "[a] thousand dollars probably," would almost certainly have been deemed indigent. *In re E.C.*, 2011 Ohio App. LEXIS 5377, at \*9, \*13; OHIO ADMIN. CODE 120-1-03(C) (2009).

117. *In re E.C.*, 2011 Ohio App. LEXIS 5377, at \*10.

118. *Id.* at \*10-11.

119. *Id.* at \*12-15.

120. OHIO R. JUV. P. 3.

121. *Id.* at 3(D).

custodian; or if the parent, guardian, or custodian requests that the child be removed from the home.”<sup>122</sup>

The Staff Notes make clear that the revised rule “is intended to implement a process for the mandates of the United States Supreme Court’s decision *In re Gault*, and the Supreme Court of Ohio’s decision *In re C.S.*, to ensure children have meaningful access to counsel and are able to make informed decisions about their legal representation.”<sup>123</sup> To that end, the rule also requires a child facing felony charges to “[meet] privately with an attorney to discuss the child’s right to counsel and the disadvantages of self-representation.”<sup>124</sup>

### C. *In re C.S.*’s Progeny

Even though *In re C.S.* dealt with a waiver of counsel issue, the strength of Chief Justice O’Connor’s framework lies in its broad applicability to various juvenile justice issues. In 2012, the Supreme Court of Ohio revisited juvenile justice in two important, but different, cases. One case dealt with a juvenile’s ability to waive a hearing regarding a discretionary transfer from the juvenile court system to the adult criminal justice system.<sup>125</sup> The second dealt with the scope of a juvenile’s right to counsel and whether it extends to the time before juvenile court proceedings begin.<sup>126</sup> Both demonstrate the Chief Justice’s consistency in balancing difficult, competing interests in juvenile justice cases.

#### 1. *State v. D.W.*

In an opinion by Chief Justice O’Connor herself, the Court addressed the most damaging outcome for a juvenile: transfer to adult court and the possibility of incarceration in an adult prison.<sup>127</sup> The statutory scheme of Ohio Revised Code § 2152.12 provides for two types of transfer: mandatory and discretionary.<sup>128</sup> If transfer is discretionary, an amenability hearing must be held to determine a

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122. *Id.* at 3(A)(3).

123. OHIO R. JUV. P. 3 staff notes.

124. OHIO R. JUV. P. 3(C).

125. *State v. D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894.

126. *In re M.W.*, 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164.

127. *D.W.*, 2012-Ohio-4544 at ¶ 5-6. *See also* OHIO REV. CODE ANN. § 2152.12 (West, Westlaw through Files 1 to 140 and Statewide Issue 1 of the 130th GA (2013-2014)) (allowing juvenile courts to transfer certain juveniles to adult court to face criminal sanctions).

128. *D.W.*, 2012-Ohio-4544 at ¶ 10 (quoting *State v. Hanning*, 728 N.E.2d 1059, 1062 (Ohio 2000)).

juvenile's eligibility for transfer.<sup>129</sup> In *State v. D.W.*, the Court had to decide whether a juvenile may waive his right to an amenability hearing and, if so, the contours of a valid waiver.<sup>130</sup>

Chief Justice O'Connor wrote for a unanimous Court and took a familiar path. As in *In re C.S.*, she began with the history of the juvenile system and United States Supreme Court precedent.<sup>131</sup> In particular, she noted that "[t]he objectives of the juvenile court 'are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment.'"<sup>132</sup> Further, she recognized the United States Supreme Court's separate treatment of juveniles because of their "diminished culpability."<sup>133</sup> The Chief Justice then compared these principles to the Ohio statute, which had been enacted "in response to a rise in rates and severity of juvenile crime and the belief that not all juveniles can be rehabilitated."<sup>134</sup>

With these important but divergent principles in mind, the Chief Justice explored the purpose of an amenability hearing.<sup>135</sup> She explained that it is a "critical stage of the juvenile proceedings" because it "affects whether the juvenile faces a delinquency adjudication, or adult criminal sanctions and the label 'felon.'"<sup>136</sup> Thus, the Chief Justice had "no doubt that a juvenile's right to an amenability hearing, like a juvenile's right to counsel, is compelled by federal due process protections."<sup>137</sup>

However, like the right to counsel articulated in *In re C.S.*, the right to an amenability hearing is not absolute.<sup>138</sup> A juvenile may waive the right so long as certain precautions are taken:

An amenability hearing under R.C. 2152.12(B)(3) may be waived provided (1) the juvenile, through counsel, expressly states on the record a waiver of the amenability hearing and (2) the juvenile court engages in

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129. *Id.* at ¶¶ 11-12.

130. *Id.* at ¶ 6.

131. *Id.* at ¶¶ 7-9; *see also* Part III.A.2.(a).

132. *D.W.*, 2012-Ohio-4544 at ¶ 7 (quoting *Kent v. United States*, 383 U.S. 541, 554 (1966)).

133. *Id.* at ¶ 8 (quoting *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012)).

134. *Id.* at ¶ 9.

135. *Id.* at ¶ 12.

136. *Id.* (citing *Kent*, 383 U.S. at 560).

137. *Id.* at ¶ 21. As in *In re C.S.*, the Chief Justice's analysis was rooted in precedent from the Supreme Court of the United States, which emphasized the importance of due process rights in amenability hearings nearly 50 years ago. *See Kent*, 383 U.S. at 557. In *Kent*, the Court found that juveniles must have access to effective counsel in the context of a waiver hearing. *Id.* at 561 ("The right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is the essence of justice. Appointment of counsel without affording an opportunity for hearing on a 'critically important' decision is tantamount to denial of counsel.").

138. *D.W.*, 2012-Ohio-4544 at ¶ 21.

a colloquy on the record with the juvenile to determine that the waiver was made knowingly, voluntarily, and intelligently.<sup>139</sup>

However, the Chief Justice concluded the juvenile court failed to conduct an amenability hearing based on the mistaken belief that one was not necessary, and thus waiver of the amenability hearing was never addressed.<sup>140</sup> The case was therefore remanded for an amenability hearing or a proper waiver of such hearing.<sup>141</sup> Chief Justice O'Connor held that a valid waiver of an amenability hearing requires the waiver to "be expressly stated on the record by the juvenile, through counsel, and the juvenile court must determine, through colloquy with the juvenile, that the waiver is made voluntarily, knowingly, and intelligently."<sup>142</sup>

## 2. *In re M.W.*

The day before her opinion in *State v. D.W.* was released, Chief Justice O'Connor found herself in an unfamiliar position: issuing the dissent in a juvenile justice case.<sup>143</sup> Chief Justice O'Connor reiterated the holding in *In re C.S.*, which concluded that the Fourteenth Amendment governs a juvenile's right to counsel.<sup>144</sup> Her dissenting opinion reminds the majority that the Sixth Amendment does not control a juvenile's right to counsel.<sup>145</sup> The Chief Justice concluded that the majority holding defied Ohio Supreme Court precedent regarding juvenile constitutional rights and § 2151.352 of the Ohio Revised Code.<sup>146</sup> Justice O'Donnell—who had dissented in *In re C.S.*—wrote for the majority.<sup>147</sup>

In *In re M.W.*, the Court had to resolve "whether a juvenile has a statutory right to counsel during a police interrogation conducted before

139. *Id.* at ¶ 47.

140. *Id.* at ¶ 48.

141. *Id.*

142. *Id.* at ¶¶ 27-28.

143. *In re M.W.*, 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164 (O'Connor, C.J., dissenting).

144. *Id.* at ¶ 43.

145. *Id.*

146. *Id.* at ¶¶ 69-70; see also Cara A. Gardner, *Failing to Serve and Protect: A Proposal for an Amendment to A Juvenile's Right to A Parent, Guardian, or Custodian During A Police Interrogation After State v. Oglesby*, 86 N.C. L. REV. 1685, 1698-99 (2008) (citing *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, at ¶ 96) (advocating for parental guidance through the waiver process because juveniles are vulnerable due to unfamiliarity with the legal system and susceptibility to interrogation); Francine T. Sherman, *Justice for Girls: Are We Making Progress?*, 59 UCLA L. REV. 1584, 1596 (2012) (citing *In re C.S.*, 2007-Ohio-4919 at ¶ 111) (acknowledging a move in state and federal courts to acknowledge juvenile competency in determining whether a juvenile can stand trial and how to appropriately sentence juveniles).

147. *In re M.W.*, 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164.

a complaint is filed or an appearance is made in juvenile court.”<sup>148</sup> Section 2151.352 of the Ohio Revised Code provides a right to counsel “at all stages of the proceedings,” and thus the case turned on the definition and scope of the term “proceedings.”<sup>149</sup> The majority held that “proceedings” was limited to *court* proceedings, and therefore the right to counsel attached only after the juvenile court’s jurisdiction was invoked.<sup>150</sup>

The majority curiously chose not to address “any constitutional right to counsel or the issue of waiver.”<sup>151</sup> Instead, it distinguished between a juvenile’s right to counsel under the Fifth and Sixth Amendments.<sup>152</sup> Based on the majority’s framework, juveniles have a Fifth Amendment right to counsel at arrest only if they exercise that right, while the Sixth Amendment right to counsel attaches only after court proceedings begin.<sup>153</sup> Thus, because M.W. was interrogated *before* court proceedings were initiated and had not explicitly requested counsel, he validly waived his *Miranda* right to representation.<sup>154</sup>

Chief Justice O’Connor wrote an impassioned dissent. She began by taking the majority’s interpretation of “proceedings” to task.<sup>155</sup> Relying on a variety of sources, she concluded that the meaning of “proceedings” in the statute was ambiguous and could not be so easily limited to court proceedings.<sup>156</sup>

With even more force, she criticized the majority for using an incorrect framework.<sup>157</sup> The Fourteenth Amendment—not the Sixth Amendment, as the majority held—applied to juveniles’ right to counsel.<sup>158</sup> And that distinction, the Chief Justice explained, made all the difference: “Because it is founded in due process, the juvenile’s right to counsel in proceedings is a malleable right rather than a rigid one; it is driven by concerns for fundamental fairness.”<sup>159</sup> Further, she disagreed with the majority’s easy dismissal of the constitutional right at issue, noting that “[t]he *Miranda* warning is more than fodder for television and movie depictions of police work . . . [its] protection is critical for all

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148. *Id.* at ¶ 1.

149. *Id.* at ¶ 2.

150. *Id.* at ¶ 20.

151. *Id.* at ¶ 26.

152. *Id.*

153. *Id.*

154. *Id.* at ¶ 25.

155. *Id.* at ¶¶ 36-40 (O’Connor C.J., dissenting).

156. *Id.*

157. *Id.* at ¶¶ 41-43.

158. *Id.*

159. *Id.* at ¶ 43.

individuals, but particularly for juveniles.”<sup>160</sup>

She called upon her analysis in *In re C.S.*, where the Court “clearly enunciated [its] protective philosophy of juvenile justice that recognizes the realities of modern delinquency proceedings.”<sup>161</sup> The Chief Justice then did what the majority failed to do—she put all of the puzzle pieces together:

The General Assembly enacted R.C. 2151.352 in response to a series of directives from the United States Supreme Court calling for courts to ensure fundamental fairness in juvenile proceedings, including protecting juveniles’ right, from custodial interrogation through adjudication, not to incriminate themselves. Given those purposes, the majority’s construction of R.C. 2151.352 improperly vitiates the very purpose of the statute and thus violates the canon of statutory construction that forbids reading statutes in a manner that leads to absurd results or that defeats the purpose for which the statute was passed. More importantly, it offends fundamental notions of due process and fairness.<sup>162</sup>

*In re M.W.* demonstrates that some juvenile constitutional rights remain underdeveloped, but consistent application of Chief Justice O’Connor’s framework offers juveniles access to the full spectrum of due process protections they are intended to have.

#### IV. CONCLUSION

Fundamental fairness requires consistency. With *In re C.S.* as a roadmap, Chief Justice O’Connor’s juvenile law decisions always take the same path. That path—based on precedent from the Supreme Court of the United States and the Ohio Supreme Court, legislative intent, and the very purpose of the juvenile justice system—demonstrates her commitment to the United States and Ohio Constitution and her role as an interpreter, rather than a maker of the law.

The analysis in *In re C.S.* has been routinely applied to determine the validity of a juvenile’s waiver of counsel. The rule was then codified and now continues to have broad applicability to various juvenile justice issues. Consistent application of Chief Justice O’Connor’s framework will continue to balance the tension between the rehabilitative goals of the juvenile justice system, constitutional requirements, and the severity of some juvenile crimes. In addition to the benefits realized by the

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160. *Id.* at ¶ 61.

161. *Id.* at ¶ 68.

162. *Id.* at ¶ 70.

justice system as a whole, Chief Justice O'Connor's jurisprudence has ensured constitutional juvenile due process rights in Ohio.