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December 17, 2025

Clerk Maura A. Looney  
Supreme Judicial Court of Massachusetts  
John Adams Courthouse, Suite 1400  
Boston, MA 02108

Re: *Commonwealth of Massachusetts v. Brian Donovan*,  
No. SJC-13799  
*Amicus Curiae Letter*

Dear Clerk Looney:

As an organization dedicated to advancing the highest standards of excellence for the legal profession, the Boston Bar Association (“BBA”) respectfully submits this letter in response to the *amicus* solicitation issued by the Justices in the above-captioned case. The BBA focuses its letter on the question posed by the Court concerning “[w]hether a defendant is entitled to the effective assistance of counsel at a transfer hearing pursuant to G. L. c. 119, § 72A,” (“§ 72A”) to which we answer an unequivocal, “yes.” The United States Constitution and Massachusetts Declaration of Rights require no less.

On this issue, the BBA joins the positions articulated in Section I of the *amicus* brief filed by the Committee for Public Counsel Services (“CPCS”).<sup>1</sup> As supported by CPCS’ brief, a “transfer hearing” pursuant to § 72A is a critical, adjudicative stage under the Sixth Amendment of the United States Constitution and Article 12 of the Massachusetts Declaration of Rights. Where the right to counsel attaches at this stage, the right to counsel must necessarily include the right to effective assistance of counsel. The BBA’s special interests lie not only in matters of the right to effective

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<sup>1</sup> The decision of the BBA not to join other portions of *amici*’s brief should not be interpreted as a rejection of the positions therein.

assistance of counsel, but also in ensuring that adults accused of crimes committed while juveniles are provided constitutional protections to ensure justice.

Consistent with its mission to facilitate access to justice and its sustained commitment to juvenile justice, the BBA has advocated for procedural safeguards that ensure young people receive fair, developmentally informed treatment at every stage of the justice system. In particular, the BBA submitted an *amicus* brief in Commonwealth v. Lutskov, 480 Mass. 575 (2018), advocating for all juveniles who are subject to adult, minimum mandatory prison sentences as youthful offenders to receive the benefit of an individualized sentencing hearing before imposition of a minimum mandatory sentence.<sup>2</sup>

Further, and particularly as it concerns juvenile transfer hearings, the BBA convened a Task Force to analyze the impact of major legislative changes intended to facilitate the transfer of juvenile cases to adult court. See *Boston Bar Association, The Massachusetts Juvenile Justice System of the 1990s: Rethinking a National Model* (1994), available at <https://bostonbar.org/wp-content/uploads/2022/06/majvenile94.pdf>. The Task Force concluded that removing judicial discretion in certain transfer hearings ran counter to the core principles of specialized juvenile rehabilitation and undermined the integrity of the juvenile justice system.

As this report and precedential cases since that time have clarified, the different treatment accorded to youths in the juvenile justice system is grounded in the well-established understanding that children possess a heightened capacity for growth, change, and rehabilitation. As repeatedly recognized by this Court, developmental science demonstrates that adolescent behavior is shaped by a still-developing brain that can be susceptible to external influences. See Commonwealth v. Perez, 477 Mass. 677, 686 (2017) (factors to consider when sentencing a juvenile include the juvenile’s “immaturity, impetuosity, and failure to appreciate risks and

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<sup>2</sup> In 2013, the BBA unanimously approved a set of juvenile justice principles, including that there be individualized, evidentiary sentencing hearings for all juveniles convicted of first-degree murder. See Boston Bar Association, *Juvenile Life Without Parole, Memo and Final Report*, December 17, 2013, available at <https://bostonbar.org/wp-content/uploads/2025/12/Juvenile-Life-without-Parole-12.17.13-BBA-Council-Report-.pdf>. See also Boston Bar Association, *Juvenile Justice Through the Possibility of Parole*, January 9, 2014, available at <https://bostonbar.org/policies/juvenile-justice-through-the-possibility-of-parole/>.

consequences; [their] family and home environment ... from which he cannot usually extricate himself; and [t]he circumstances of the ... offense, including the extent of the juvenile's participation in the conduct and the way familial and peer pressures may have affected him") (internal quotation marks and brackets omitted). Here, these characteristics do not lose their relevance merely because the individual reaches adulthood.

The fact that a § 72A transfer hearing involves a now-adult individual does not diminish the profound consequences of being prosecuted and sentenced as an adult for conduct committed in adolescence. An adult conviction, with its attendant collateral consequences,<sup>3</sup> stigma, and potential for significant incarceration, can be just as life-altering as it would be if imposed at the time of the alleged juvenile conduct. The imposition of adult penalties for youthful behavior without adequate consideration of the acts and development since the acts were committed disregards the very principles that justify treating juveniles differently in the first place. Just because a person has reached adulthood does not impact the potential for diminished culpability at the time of the offense and their potential for reform. The constitutional and policy rationales supporting individualized, developmentally informed consideration for juveniles apply with equal force in § 72A transfer hearings, even when the accused is now an adult.

With such life-altering penalties and consequences at stake, the responsibility of counsel to provide effective assistance takes on heightened importance, as recognized by defense counsel's constitutionally recognized role under the Sixth Amendment of the U.S. Constitution and Article 12 of the Massachusetts Declaration of Rights. *See* ABA Criminal Justice Standards for the Defense Function, Standard 4-1.4 (2017) (defense attorney must act zealously within bounds of law and applicable rules to protect client liberty interests). For justice to be accomplished, an accused individual must be able to rely on the effective assistance of counsel to evaluate and advocate for their interests.

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<sup>3</sup> The BBA's Criminal Justice Reform Working Group's 2017 report, *No Time to Wait: Recommendations for a Fair and Effective Criminal Justice System*, available at [https://www.bostonbar.org/wp-content/uploads/2022/06/no-time-to-wait\\_web.pdf](https://www.bostonbar.org/wp-content/uploads/2022/06/no-time-to-wait_web.pdf), recognized the impact of adult-criminal convictions and recommended, *inter alia*, a re-balancing of interests in favor of sealing the criminal records of people who are no longer involved with the justice system as one step in remedying past racial disparities.

Meaningful advocacy at a § 72A transfer hearing—addressing both whether probable cause supports the charges and how the defendant’s conduct and developmental history bear on the court’s determination—requires a careful, individualized factual record grounded in reliable evidence and applicable legal standards. See *J.H. v. Commonwealth*, 479 Mass. 285, 290 (2018). Such nuanced investigation and advocacy can only be provided by well-prepared defense counsel, as constitutional guarantees demand. For these reasons, the BBA joins Section I of the CPCS amicus brief and respectfully urges the Court to hold that defendants subject to § 72A transfer hearings are constitutionally entitled to the effective assistance of counsel, a safeguard essential to ensuring these consequential proceedings are fair, reliable, and consistent with our fundamental commitment to justice.

DECLARATION PURSUANT TO MASS. R. APP. P. 17(c)(5)

No party or a party’s counsel authored this letter in whole or in part. No party, party’s counsel, or a person or entity, other than the *amicus curiae*, its members, or its counsel, contributed money that was intended to fund preparing or submitting the letter. Neither *amicus curiae* nor its counsel has either represented any of the parties to this appeal in another proceeding involving similar issues, or been or represented a party in a proceeding or legal transaction at issue in the present appeal.



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## CERTIFICATE OF SERVICE

I, Michael Avitzur, certify that on December 17, 2025, pursuant to Mass. R. App. P. 13(d), a copy of the foregoing *Amicus Curiae* letter in Commonwealth v. Donovan, SJC-13799, was filed electronically by operation of the Court's electronic filing system, with notice to all parties indicated therein. I served a copy of this document directly on counsel for the Appellant, Ruth O'Meara-Costello (875 Massachusetts Avenue, Suite 31, Cambridge, MA 02139), at [ruth@ruthcostello.com](mailto:ruth@ruthcostello.com), and on counsel for the Appellee, Pamela Alford (45 Shawmut Road, Canton, MA 02021), at [pamela.alford@state.ma.us](mailto:pamela.alford@state.ma.us). Parties may access this filing through the Court's system.

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/s/ Michael Avitzur (BBO #600951)

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