

National Juvenile Defender Center

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Today the Supreme Court of Ohio decided the case of *In re D.B.*, holding that Ohio's statutory rape law, R.C. 2907.02(A)(1)(b), is unconstitutional as applied to children under the age of 13 who engage in sexual conduct with other children under 13. This decision reverses the judgment of the 5th District Court of Appeals.

The case arose from a series of incidents in which two male friends, age 12 and 11, engaged in sexual activity, but only D.B., the 12 year old child was charged. Although the trial court found that there was no force involved D.B. was adjudicated delinquent under the strict liability law for engaging in consensual sexual activity with his 11 year old male friend.

Brooke Burns, an Assistant State Public Defender from the Juvenile Division of the Office of the Ohio Public Defender, filed the appeal on the basis that both boys had engaged in sexual conduct with a person under the age of 13, and therefore applying R.C. 2907.02(A)(1)(b) to charge one participant as perpetrator and the other as the victim violated the equal protection and due process provisions of the state and federal constitutions.

The National Juvenile Defender Center together with the Juvenile Law Center and the National Center for Lesbian Rights, filed an amicus brief in August of last year in support of the challenge.

The Court's 7-0 decision (all 7 justices concurred on the due process analysis, though only 6 of the justices concurred on the equal protection analysis) found the statute to be unconstitutionally vague in violation of the Due Process Clause of the United States Constitution because it "authorizes and encourages arbitrary and discriminatory enforcement" and found that it violates the Equal Protection Clause of the Constitution because only one child was charged with being delinquent, while others similarly situated were not.

Congratulations to Brooke and the entire team at the Ohio Public Defender Juvenile Division, a division led by Jill Beeler, engaging in effective appellate advocacy to ensure the protection of the constitutional rights of juveniles in Ohio's justice system.

Please see the opinion through the link below.

<http://www.sconet.state.oh.us/rod/docs/pdf/0/2011/2011-ohio-2671.pdf>