In the
Indiana Supreme Court

J.M.,
Appellant,

v.

State of Indiana,
Appellee.

Supreme Court Case No.
25S-JV-00087

Court of Appeals Case No.
24A-JV-01226

Trial Court Case No.
82D04-2405-JD-000796

Published Order

By order dated April 9, 2025, the Court granted a petition seeking transfer of jurisdiction from the Court of Appeals. After further review, including consideration of the points presented by counsel at oral argument and discussion among the Justices in conference after the oral argument, the Court has determined that it should not assume jurisdiction over this appeal and that the Court of Appeals opinion reported as *J.M. v. State*, No. 24A-JV-1226 (Ind. Ct. App. Nov. 13, 2024) (mem.), should be reinstated as Court of Appeals precedent.

Accordingly, the order granting transfer is VACATED and transfer is hereby DENIED. Pursuant to Appellate Rule 58(B), this appeal is at an end.

Done at Indianapolis, Indiana, on 8/27/2025.

FOR THE COURT

Loretta H. Rush
Chief Justice of Indiana

Massa and Slaughter, JJ., concur.
Molter, J., concurs with separate opinion.
Rush, C.J., dissents from the denial of transfer with separate opinion in which Goff, J., joins.

Molter, J., respecting the denial of transfer.

The Fourteenth Amendment's Due Process Clause guarantees the right to counsel in juvenile delinquency proceedings. *In re Gault*, 387 U.S. 1, 41 (1967). And that counsel must be effective. *S.T. v. State*, 764 N.E.2d 632, 634–35 (Ind. 2002). Here, we've been considering what standard should govern a juvenile's claim that counsel was ineffective.

I. Our precedent holds that the *Strickland* standard applies.

Our Court previously held that we apply the same two-prong standard the United States Supreme Court established in *Strickland v. Washington*, 466 U.S. 668, 687 (1984), for the right to the effective assistance of counsel in criminal prosecutions. *S.T.*, 764 N.E.2d at 634–35. First, the juvenile must show that counsel's performance was deficient. *Id.* at 635. Counsel's performance is deficient when it falls below an objective standard of reasonableness under prevailing professional norms. *Lambert v. State*, 743 N.E.2d 719, 730 (Ind. 2001). Second, the juvenile must show prejudice. *S.T.*, 764 N.E.2d at 635. They do so by showing "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would be different." *Id.* And there is a reasonable probability of prejudice when the deficient performance undermines our confidence in the outcome. *Id.*

More recently, our Court held that a different standard governs juvenile disposition modification hearings. *A.M. v. State*, 134 N.E.3d 361, 365 (Ind. 2019). In that context, the Court said, we must consider "counsel's overall performance" and determine "whether that performance ensured the juvenile received a fundamentally fair hearing that resulted in a disposition serving the child's best interests." *Id.* But the Court expressly confined its holding to disposition modification hearings. *Id.* at 364 n.2. And it said it would "leave for another day the decision of what ineffective-assistance-of-counsel standard governs in the adjudicative and initial dispositional phases." *Id.* That includes revisiting

"whether our opinion in *S.T. v. State*, 764 N.E.2d 632 (Ind. 2002), was rightly decided." *Id.*

Expecting that day to arrive at the end of this appeal, we granted transfer. But I now concur with the decision to rescind transfer because there is no majority agreement on what standard to apply.

II. We should continue applying *Strickland*.

For my part, I conclude our predecessors in *S.T.* were correct to apply the *Strickland* standard. A juvenile's right to the effective assistance of counsel is the same right an adult enjoys for criminal prosecutions, and juveniles enjoy the right for the same reasons as adults: "The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it." *Gault*, 387 U.S. at 36 (footnote omitted); *see also Powell v. Alabama*, 287 U.S. 45, 69 (1932) ("Even the intelligent and educated layman has small and sometimes no skill in the science of law."). Since we're securing the same right for the same reasons, we should apply the same standard.

Nearly every court agrees, so like our predecessors in *S.T.*, they too apply *Strickland* to juvenile delinquency proceedings. *See* Barbara Fedders, *Losing Hold of the Guiding Hand: Ineffective Assistance of Counsel in Juvenile Delinquency Representation*, 14 Lewis & Clark L. Rev. 771, 804 (2010) ("Nearly all appellate courts evaluate such claims using the two-prong test articulated in *Strickland v. Washington*, or a state constitution-based analog." (footnotes omitted)); Pet. to Trans. at 12–13 (collecting authority); Oral Argument at 32:21–32:38 (State's counsel acknowledging that the majority of jurisdictions apply *Strickland* in the juvenile context). That includes federal courts applying *Strickland* to juveniles' habeas petitions. *See A.M. v. Butler*, 360 F.3d 787, 801 (7th Cir. 2004) (applying *Strickland* and affirming habeas relief for a juvenile based on "the conclusion that counsel was ineffective"). And the only court I've found that rejects the *Strickland* standard for federal constitutional claims in juvenile proceedings—the Montana Supreme Court—hasn't even adopted another standard in its place. *In re K.J.R.*, 391 P.3d 71, 78 (Mont. 2017) (acknowledging that the

court "has adopted no specific criteria for evaluating youth court ineffective assistance of counsel claims"). So entrenched is this consensus that it is rare for parties even to suggest another standard. Fedders, *supra*, at 807 n.187 (describing that "a Westlaw search of published opinions pertaining to juvenile delinquency appeals did not reveal that any litigant had raised a challenge to the use of the *Strickland* standard as a means of assessing ineffective assistance of counsel").

My dissenting colleagues see things differently. Their opinion implicitly concludes *S.T.* was wrong to apply *Strickland*, and it proposes extending our decision in *A.M.* to all phases of juvenile delinquency proceedings. But I respectfully disagree for three reasons.

A. The Fourteenth Amendment secures the right to counsel for both adults and juveniles in state courts.

First, the dissenting opinion's key premise for extending *A.M.* is mistaken. The Court rejected the *Strickland* standard in *A.M.* reasoning that *Strickland* applied the Sixth Amendment's right to counsel, and a juvenile's right to counsel instead flows from the Fourteenth Amendment's Due Process Clause. *A.M.*, 134 N.E.3d at 365. "[D]ifferent origins yield different tests," the Court said, *id.*, and now, for the same reason, the dissenting opinion proposes extending *A.M.* to all juvenile delinquency phases, *post*, at 2.

But the key premise—that the right to counsel has different origins for criminal prosecutions and juvenile delinquency proceedings—has two related flaws. One is that, in state courts, the origin is the same: the Fourteenth Amendment. To be sure, the Sixth Amendment guarantees a defendant's right to counsel for criminal prosecutions in federal courts. But the Bill of Rights, including the Sixth Amendment, limits only the federal government. *Livingston's Lessee v. Moore*, 32 U.S. 469, 551–52 (1833). And only through the Fourteenth Amendment's Due Process Clause are some of those same rights—including the right to counsel for criminal prosecutions—enforced against the States. *Gideon v. Wainwright*, 372 U.S.

335, 342 (1963) (explaining that "a provision of the Bill of Rights which is fundamental and essential to a fair trial is made obligatory upon the States by the Fourteenth Amendment," including the Sixth Amendment's right to counsel (quotations omitted)). So a state court defendant seeking counsel in a criminal prosecution must invoke the Fourteenth Amendment just like a juvenile seeking counsel in delinquency proceedings. *See Mosley v. State*, 908 N.E.2d 599, 604 (Ind. 2009) ("The Sixth Amendment right to counsel applies to the states via the Due Process Clause of the Fourteenth Amendment . . . .").

Relatedly, the right to counsel is a due process right. The only rights in the Bill of Rights that are incorporated against the states are "those rights of such a nature that they are included in the conception of due process of law." *McDonald v. City of Chicago*, 561 U.S. 742, 759 (2010) (quotations omitted). By incorporating the right to counsel in criminal prosecutions, the Supreme Court determined the right is necessary for due process. *Gideon*, 372 U.S. at 344 ("[R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."). *Strickland* itself confirmed that the Sixth Amendment's right to counsel is an element of due process. *Strickland*, 466 U.S. at 684–85 ("The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment, including the Counsel Clause . . . ."). So again, criminal defendants and alleged juvenile delinquents have a right to counsel for the same reason: due process compels it. *See also Reed v. Duter*, 416 F.2d 744, 749 (7th Cir. 1969) ("*Gault* must be construed as incorporating in juvenile court procedures, which may lead to deprivation of liberty, all of the constitutional safeguards of the Fifth and Sixth Amendments . . . which apply, by operation of the Fourteenth Amendment.").

B. Even if the right to counsel had different origins for adults and juveniles, the same test should apply.

Second, even if the dissenting opinion's premise (the right to counsel has different origins for adults and juveniles) were correct, the opinion's conclusion (there must be different tests for effectiveness) doesn't follow. We recently recognized in *State ex rel. Allen v. Carroll Cir. Ct.*, 226 N.E.3d 206, 215 (Ind. 2024), that different constitutional provisions for the same right don't necessarily yield different tests. In that case, we reinstated appointed counsel after the trial court removed them over the defendant's objection based on the court's conclusion that they were ineffective. *Id.* at 217. We explained there was a broad consensus that courts have limited authority to remove court-appointed counsel, but courts are divided over whether those limitations derive from the Sixth Amendment's right to counsel or the Fifth and Fourteenth Amendment's due process protections. *Id.* at 214–16. We concluded the origin doesn't make a difference, and the limitations are the same either way. *Id.* at 215. "So whether as a product of a defendant's right to due process or the right to counsel, the bottom line" is the same—a trial court cannot remove court-appointed counsel over the defendant's objection unless removal is a last resort, the removal is necessary to protect the defendant's rights or the integrity of the proceedings, and those concerns outweigh the prejudice to the defendant. *Id*; *see also Members of the Med. Licensing Bd. of Ind. v. Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky., Inc.*, 211 N.E.3d 957, 976 (Ind. 2023) ("Because this fundamental right of self-protection—whether considered as an exercise of the right to life, an exercise of the right to liberty, a limitation on the scope of the police power, or as a matter of equal treatment—is so firmly rooted in Indiana's history and traditions, it is a relatively uncontroversial legal proposition that the General Assembly cannot prohibit an abortion procedure that is necessary to protect a woman's life or to protect her from a serious health risk.").

We should take a similar approach here. Whether the right to counsel derives from the Sixth Amendment or the Fourteenth Amendment, we are measuring the same thing—effectiveness—so we should ask the same

questions either way: Was counsel's performance deficient? And if so, is there a reasonable probability it made a difference? *Cf. Gideon*, 372 U.S. at 347 (Douglas, J., concurring) (explaining that "rights protected against state invasion by the Due Process Clause of the Fourteenth Amendment are not watered-down versions of what the Bill of Rights guarantees.").

C. Our precedents don't support a heightened standard for juvenile delinquency proceedings.

Third, our precedents don't support the dissenting opinion's higher standard for juvenile delinquency proceedings. While the opinion says it relies heavily on the standard to review ineffectiveness claims in cases to terminate parental rights, *post*, at 3, that standard cuts the other way.

In those cases, "the focus of the inquiry [is] whether it appears that the parents received a fundamentally fair trial whose facts demonstrate an accurate determination." *Baker v. Marion Cnty. Off. of Fam. & Child.*, 810 N.E.2d 1035, 1041 (Ind. 2004). Two of the key reasons for the *Baker* standard are that (1) experience with post-conviction proceedings following criminal cases showed "that with rare exception counsel perform capably," and (2) judicial involvement is "much more intensive" in termination proceedings than in "the usual criminal case." *Id.* at 1039, 1041. So, we've reasoned, more deferential appellate review for termination of parental rights cases is appropriate.

Confirming that the *Baker* standard is more deferential, our Court described it as similar to the so-called *Baum* standard for ineffectiveness in post-conviction proceedings. *Id.* at 1041 n.6. Under the *Baum* standard, we ask only whether "counsel in fact appeared and represented the petitioner in a procedurally fair setting which resulted in a judgment of the court." *Id.* (citing *Baum v. State*, 533 N.E.2d 1200 (Ind. 1989)). We've since reiterated that the standard in termination proceedings is "akin to the *Baum* standard," *Graves v. State*, 823 N.E.2d 1193, 1196 n.4 (Ind. 2005), which we describe as "a lesser standard" than the *Strickland* standard. *Baum*, 533 N.E.2d at 1201.

The dissenting opinion's approach departs sharply from *Baker*. In *Baker*, we said that rather than asking "whether the lawyer might have objected to this or that," we should ask "whether the lawyer's overall performance was so defective that the appellate court cannot say with confidence that the conditions leading to the removal of the children from parental care are unlikely to be remedied and that termination is in the child's best interest." *Baker*, 810 N.E.2d at 1041. But the dissenting opinion says we should grant transfer to say otherwise—"that this standard is *not* satisfied merely because the record reflects a disposition aligned with a child's best interests." *Post*, at 3–4 (emphasis added).

Under the dissent's proposed standard, if an appellate court concludes a hearing was unfair, it must reverse even if there is no reasonable possibility that counsel's deficiency impacted the outcome, and even if the judgment reflects a decision in the child's best interests. *Post*, at 4. The reason given for this juvenile-specific rule is that a child's perception of fairness "is vital to effectuate the rehabilitative purpose of our juvenile justice system." *Id.* But while that is no doubt true, it is true for adults too. *See, e.g.*, *Morrissey v. Brewer*, 408 U.S. 471, 484 (1972) (explaining that "fair treatment in parole revocations will enhance the chance of rehabilitation"); *Rita v. United States*, 551 U.S. 338, 367 (2007) (Stevens, J., concurring) ("If the defendant is convinced that justice has been done in his case—that society has dealt with him fairly—the likelihood of his successful rehabilitation will surely be enhanced."). And that is why this concern is generally the reason for affording juveniles the *same*—not greater—protection through the effective assistance of counsel. *See, e.g.*, *McKeiver v. Pennsylvania*, 403 U.S. 528, 562 (1971) ("Thus, a general societal attitude of acceptance of the juvenile as a person entitled to the *same* protection as an adult may be the true beginning of the rehabilitative process." (Douglas, J., dissenting) (emphasis added) (quotations omitted)).

With that in mind, we should continue protecting juveniles' rights to the effective assistance of counsel the same way we protect adults', which is through the *Strickland* standard.

III. Courts should apply *Strickland* mindful of the differences between adult criminal proceedings and juvenile delinquency proceedings.

So where does the law stand now that we've denied transfer?

For now, *S.T.* still governs even though *A.M.* and the dissenting opinion reveal it may be on shaky ground. *Cohoon v. Fisher*, 45 N.E. 787, 788 (Ind. 1897) ("When this court has once decided a question of law, that decision, when the question arises again, is not only binding on all the inferior courts in the state, but it is binding on this court also until that case is overruled."). *A.M.* made clear that it governs only disposition modification proceedings, and it is distinguishable from *S.T.* anyway. Disposition modification proceedings are like probation revocation hearings, and *A.M.* noted that our Court of Appeals has declined to apply *Strickland* "to assess counsel's performance in probation revocation case[s]." *A.M.*, 134 N.E.3d at 365 (citing *Childers v. State*, 656 N.E.2d 514, 517 (Ind. Ct. App. 1995)). So *S.T.* currently governs the adjudicative and initial disposition phases, and *A.M.* governs disposition modification proceedings.

While *S.T.* and *A.M.* are in tension (though still largely reconcilable), *A.M.* supplies critical insight for applying the *Strickland* two-prong standard to juvenile delinquency proceedings. That insight is that while we ask the same *questions* about effectiveness in both the adult and juvenile contexts—focused on whether counsel was deficient and whether that made a difference—the *answers* may depend on the context in which they are asked. Professional norms and prejudice are both different in criminal and juvenile proceedings. One reason the norms are different is that in a juvenile proceeding "a child's attorney assumes a role . . . that is altogether different from an attorney in a criminal proceeding." *Id.* Reflective of this different role, "under Indiana law, juvenile delinquency hearings are conducted free from the formalities, procedural complexities, and inflexible aspects of criminal proceedings." *Id.* at 366 (quotations omitted).

Prejudice considerations are different in juvenile proceedings too. One reason is that the goal of the juvenile courts is different. The parens patriae doctrine animates the juvenile system, giving "the court the power to step into the shoes of the parents in order to further the best interests of the child." *Id.* (quotations omitted). This is "dramatically different from criminal proceedings" because juvenile proceedings "focus on the best interests of the child and not the child's guilt or innocence." *Id.* at 367. For that reason, a juvenile judge is also "required to be an attentive and involved participant in the process." *Id.* (quotations omitted). And that impacts the prejudice analysis because the more intensive judicial participation means "the role of the lawyer, while important, does not carry the deleterious impact of ineffectiveness that may occur in criminal proceedings." *Id.* at 368.

Pulling *S.T.* and *A.M.* together, when applying the *Strickland* standard to juvenile delinquency proceedings a court should ask: Was counsel's performance deficient by falling below an objective standard of reasonableness under prevailing professional norms, mindful of the differences between an attorney's role in adult criminal proceedings and juvenile delinquency proceedings? And, if so, is there a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would be different, mindful of the differences between adult and juvenile proceedings as they relate to procedures, objectives, and the role of the judge?

Conclusion

In the end, I agree with my dissenting colleagues that it is "imperative that, when given the opportunity, we articulate clear standards for evaluating counsel's performance when a child raises an ineffective-assistance claim." *Post*, at 7. But I also agree with Justice Slaughter that extending *A.M.* would be "unclear and prompt[] more questions than answers." *A.M.*, 134 N.3d at 370 (Slaughter, J., concurring in the judgment). So overruling our *S.T.* precedent and extending *A.M.* in its place would not supply sufficient clarity. Nor would persisting with

transfer only to affirm the judgment by splicing together reasoning from multiple justices with no one line of reasoning enjoying majority support.

Better instead to leave the law where it is.

Rush, C.J., dissenting.

The trajectory of a child's life can hinge on a single court hearing, making the assurance of fundamental fairness and the presence of a competent advocate not luxuries, but constitutional imperatives. Indeed, it is well settled that the Due Process Clause of the Fourteenth Amendment affords children the right to the effective assistance of counsel during juvenile delinquency proceedings. *A.M. v. State*, 134 N.E.3d 361, 364 (Ind. 2019); *see In re Gault*, 387 U.S. 1, 34–41 (1967). What remains unsettled is the appropriate standard for reviewing ineffective-assistance claims that stem from counsel's performance at different stages of those proceedings. We recently adopted a juvenile due process test that applies to disposition-modification hearings. *A.M*, 134 N.E.3d at 362–63. But we left "for another day" the decision of what standard governs claims arising from other phases, such as initial hearings and dispositions. *Id.* at 364 n.2.[1] That day has come—the facts of this case provide us with a vital opportunity to resolve the issue.

J.M. was on juvenile parole when he admitted to three delinquency allegations. His initial hearing and dispositional hearing, held consecutively, were marred by significant procedural defects. But his attorney remained silent as these errors occurred—despite their direct effect on her client—and merely responded, "No comments," when asked for her dispositional recommendation. The trial court ordered J.M. to return to the Department of Correction (DOC). He appealed, asserting he received ineffective assistance of counsel. But the Court of Appeals disagreed after applying both the Sixth Amendment standard established in *Strickland v. Washington*, 466 U.S. 668 (1984), and the juvenile due

[1] We also left for another day determining "whether our opinion in *S.T. v. State*, 764 N.E.2d 632 (Ind. 2002), was rightly decided." *A.M.*, 134 N.E.3d at 364. But *S.T.* only governs a child's ineffective-assistance claim based on counsel's performance at a fact-finding hearing. 764 N.E.2d at 634, 636. And here, J.M.'s claim is based on counsel's performance during his initial hearing and dispositional hearing. Thus, my colleague's reliance on *S.T*. is misplaced. *Ante*, at 1–3, 8–9. And contrary to his assertion, nothing in this opinion "implicitly concludes *S.T.* was wrong to apply *Strickland*" or "proposes extending our decision in *A.M.* to all phases of juvenile delinquency proceedings." *Id.* at 3. Neither issue is properly before us.

process standard. *J.M. v. State*, No. 24A-JV-1226, at *7–10 (Ind. Ct. App. Nov. 13, 2024) (mem.).

We need to grant transfer for two reasons. Juveniles, their guardians, and their attorneys need clarity on what standard governs a child's ineffective-assistance claim based on counsel's performance during initial and dispositional hearings. *See* Ind. Appellate Rule 57(H)(4). And the Court of Appeals misapplied the juvenile due process standard in evaluating J.M.'s claim. *See* App. R. 57(H)(6). Ultimately, I would grant transfer and hold that the juvenile due process standard governs a child's ineffective-assistance-of-counsel claim arising from initial and dispositional hearings.[2] Then, in applying that standard, I would hold that J.M. was denied effective assistance of counsel because he did not receive a fundamentally fair hearing.

I. The juvenile due process standard should apply when reviewing a child's ineffective-assistance claim arising from counsel's performance in initial and dispositional hearings.

A few years ago, we set forth a juvenile due process test for evaluating a child's claim of ineffective assistance of counsel in a disposition-modification hearing. *A.M.*, 134 N.E.3d at 362–63. In determining the appropriate test, we rejected two others. Acknowledging that a child's right to effective assistance stems from the Fourteenth Amendment, we declined to adopt the Sixth Amendment's two-part *Strickland* test that applies in criminal proceedings. *Id.* at 365. And we also declined to adopt the "less stringent" due process standard established in *Baum v. State*, 533 N.E.2d 1200, 1201 (Ind. 1989), which "essentially asks whether counsel represented the client in a procedurally fair proceeding that yielded a

[2] Despite J.M.'s potential release from the DOC—which could render this case moot—I would reach the merits given the fundamental interests at stake in delinquency proceedings and the likelihood that the issue will recur. *See G.W. v. State*, 231 N.E.3d 184, 188–89 (Ind. 2024).

reliable judgment from the trial court." *A.M.*, 134 N.E.3d at 365. Instead, we concluded that courts must consider "counsel's overall performance" and then determine "whether that performance ensured the juvenile received a fundamentally fair hearing that resulted in a disposition serving the child's best interests." *Id.*

The underlying reasoning and rationale for this test support extending its application to both initial hearings and dispositional hearings. In crafting the juvenile due process standard, we relied heavily on the test used to evaluate a parent's ineffective-assistance-of-counsel claim stemming from proceedings to terminate parental rights. *Id.* at 367–68 (citing *Baker v. Marion Cnty. Off. of Fam. & Child.*, 810 N.E.2d 1035, 1041 (Ind. 2004)). We found that "these two groups of litigants" shared two "striking similarities." *Id.* at 367. First, "both the parents' and the child's rights to counsel share the same statutory and constitutional origins." *Id.* And second, those "statutory and constitutional rights are vindicated in parallel proceedings" that are distinct from criminal proceedings in focusing "on the best interests of the child and not the child's guilt or innocence." *Id*.

These similarities also hold true for initial and dispositional hearings in juvenile delinquency proceedings. Children in these hearings have the same statutory and constitutional rights to counsel. *See* Ind. Code § 31-32-4-1(1); *A.M.*, 134 N.E.3d at 365–66. And though these hearings share characteristics with their criminal-law analogs, the underlying purposes are collaborative, rehabilitative, and require consideration of a child's best interests. *See* I.C. § 31-10-2-1(5)–(6); *A.M.*, 134 N.E.3d at 366, 369; *In re K.G.*, 808 N.E.2d 631, 635–36 (Ind. 2004). Additionally, courts routinely apply the statutory factors governing initial dispositional decrees when reviewing a challenge to a modified dispositional order. *See, e.g.*, *R.G. v. State*, 212 N.E.3d 720, 722–23 (Ind. Ct. App. 2023). For these reasons, I would grant transfer and hold that the juvenile due process standard governs a child's ineffective-assistance-of-counsel claim that stems from initial and dispositional hearings.

But transfer is warranted for another reason: to clarify that this standard is not satisfied merely because the record reflects a disposition

aligned with a child's best interests. The need for such clarification is underscored by the Court of Appeals' analysis, which concluded only that placement in the DOC was "consistent with [J.M.'s] best interests" and failed to consider whether counsel ensured J.M. received a fundamentally fair hearing. *J.M.*, No. 24A-JV-1226, at *10.

Because due process in juvenile proceedings requires "fundamental fairness," *McKeiver v. Pennsylvania*, 403 U.S. 528, 543 (1971), our courts must determine whether counsel's overall "performance ensured the child received a fundamentally fair hearing," *A.M.*, 134 N.E.3d at 363. This independent inquiry is vital to effectuate the rehabilitative purpose of our juvenile justice system, as a child's investment in their rehabilitation is based on their perception that they were treated fairly. Indeed, *Gault* quoted a study recognizing that "[u]nless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel." 387 U.S. at 26 (quoting Stanton Wheeler & Leonard S. Cottrell, Jr., *Juvenile Delinquency—Its Prevention and Control* 33 (1966)). And ample legal scholarship confirms that a key factor shaping a child's perception of fair treatment is their attorney's performance. *See, e.g.*, Barbara Fedders, *Losing Hold of the Guiding Hand: Ineffective Assistance of Counsel in Juvenile Delinquency Representation*, 14 Lewis & Clark L. Rev. 771, 797 (2010).

Thus, the juvenile due process standard requires assessing the overall performance of a child's attorney to determine whether that performance both secured a fundamentally fair hearing and led to a disposition that served the child's best interests. This dual focus aligns with our analysis of the child's claim in *A.M.* 134 N.E.3d at 368–69. It underscores the vital role procedural fairness plays in promoting a child's rehabilitation. *See Gault*, 387 U.S. at 26; Fedders, *supra*, at 797. And it honors Indiana's long-standing commitment to safeguarding a child's procedural rights. *See, e.g.*, *T.D. v. State*, 219 N.E.3d 719, 722–23 (Ind. 2023). I turn now to J.M.'s claim and explain why he was denied effective assistance.

II. J.M. received ineffective assistance of counsel because his attorney did not ensure he received a fundamentally fair hearing.

As explained above, a juvenile's potential for rehabilitation is inextricably linked to their perception of the fairness of the proceedings. For many children facing delinquency allegations, the initial hearing and dispositional hearing—often held consecutively when a child admits to an allegation—mark their first appearance with counsel in a courtroom before a judge. It is therefore essential for the child's attorney to ensure these proceedings are fundamentally fair to maximize the child's opportunity for rehabilitation. But the juvenile due process inquiry also focuses on the proceedings as a whole because, like in termination proceedings, the trial court "is required to be an attentive and involved participant in the process." *A.M.*, 134 N.E.3d at 367–68 (quoting *Baker*, 810 N.E.2d at 1041).

Here, J.M.'s initial and dispositional hearings—which occurred back-to-back—were marred by at least **six statutory** violations, each undermining the fundamental fairness of the proceedings:

- The trial court issued an en masse advisement of rights without individually following up with J.M. or his guardian. *See* I.C. §§ 31-37-12-5, 31-32-5-1; *T.D.*, 219 N.E.3d at 729.
- The trial court failed to obtain a valid waiver of rights before J.M. admitted committing multiple delinquent acts. *See* I.C. § 31-32-5-1.
- The trial court proceeded to the dispositional hearing without obtaining consent from J.M., his attorney, or his guardian. *See* I.C. § 31-37-12-9(c).
- The trial court did not order or waive the preparation of a predispositional report and proceeded to disposition without considering one. *See* I.C. §§ 31-37-13-2(a)(2), 31-37-17-1(a)–(c); *see also A.F. v. State*, 247 N.E.3d 841, 845 (Ind. Ct. App. 2024) (reversing this magistrate for the same error).

- The trial court failed to give J.M. or his guardian an opportunity to be heard or offer recommendations before announcing the disposition. *See* I.C. § 31-37-18-1.3(b).
- The trial court did not advise J.M. or his guardian of the procedures for modifying the dispositional decree. *See* I.C. § 31-37-18-8.

Given the court's failure to comply with multiple statutory requirements, it is especially troubling that J.M.'s counsel's entire representation at the dispositional hearing consisted of a single phrase: "No comments." In the face of significant procedural defects, that lone statement suggests counsel effectively abandoned J.M.—amounting to ineffective assistance even under the more deferential *Baum* standard. *See Waters v. State*, 574 N.E.2d 911, 912 (Ind. 1991); *Taylor v. State*, 882 N.E.2d 777, 784 (Ind. Ct. App. 2008). And this level of inaction contrasts with the attorneys' actions in *A.M.* and *Baker*, where each advocated on behalf of their client. *See A.M.*, 134 N.E.3d at 368–69; *Baker*, 810 N.E.2d at 1042.

Indeed, J.M.'s attorney made no mention of J.M.'s mental health diagnoses following his grandfather's death or his multiple acute mental health hospitalizations for severe anger episodes. And though J.M.'s probation officer mentioned J.M.'s parole status, his previous commitment to the DOC, and his prior attempts at substance abuse treatment, J.M.'s attorney offered no additional background information on J.M.'s behalf. The troubling consequences of this lack of advocacy are evident in J.M.'s attempts to self-advocate after the court announced the disposition. He asked the court why no one had come to talk to him about "drugs" and "rehab." These concerns were echoed in the preliminary inquiry report, which documented that J.M. tested positive for marijuana when he was taken into custody, reported heroin use since his release from the DOC, and expressed a desire to avoid returning to the DOC because he "had easy access to drugs" and was "unable to address his substance abuse" issues there. Yet the trial court appeared unaware of this information. And despite the report's direct relevance to the disposition, J.M.'s attorney neither submitted it into evidence nor brought any of its contents to the court's attention—leaving J.M. to raise those concerns on his own.

Ultimately, considering counsel's overall performance during J.M.'s initial and dispositional hearings, it is difficult to conclude that performance ensured J.M received a fundamentally fair proceeding. Each hearing was marked by clear statutory violations that impaired J.M.'s procedural rights. And counsel's sole contribution—"No comments"—at the dispositional hearing not only reflects constructive abandonment but also left a child to attempt to advocate for himself.

It is no secret that juveniles face a higher risk of receiving ineffective assistance of counsel than adults in criminal proceedings. *See, e.g.*, Fedders, *supra*, at 791–95; Michael Stechschulte, *Vulnerable and Disadvantaged: Juveniles Suffering Wrongful Adjudications Are Frequently Deprived of Collateral Relief*, 55 No. 6 Crim. L. Bull. art. 4 (Winter 2019); Tamar R. Birckhead, *The Racialization of Juvenile Justice and The Role of the Defense Attorney*, 58 B.C. L. Rev. 379, 446–47 (2017); Joshua A. Tepfer & Laura H. Nirider, *Adjudicated Juveniles and Collateral Relief*, 64 Me. L. Rev. 553, 557–58 (2012); Laura Cohen, *A New Hope Found in Practice Standards*, 23 Crim. Just. 49, 49 (Winter 2009). This reality makes it imperative that, when given the opportunity, we articulate clear standards for evaluating counsel's performance when a child raises an ineffective-assistance claim. Equally imperative is our responsibility to recognize ineffective assistance when, as here, the record establishes that counsel failed to ensure a child received a fundamentally fair proceeding. Because today's decision does neither, I dissent from the denial of transfer.

Goff, J., joins.