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THE SUPREME COURT OF WASHINGTON

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STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

A.C.,

Petitioner.

AMICUS CURIAE BRIEF OF THE WASHINGTON ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS

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1. ARGUMENT

BECAUSE THE LEGISLATURE HAS ABANDONED THE REHABILITATIVE MODEL OF JUVENILE JUSTICE FOR JUVENILES CHARGED WITH SERIOUS OFFENSES, THIS COURT'S ONLY OPTION IS TO FIND THAT THOSE JUVENILES ARE ENTITLED TO A JURY TRIAL UNDER THE STATE AND FEDERAL CONSTITUTIONS.

The Sixth Amendment makes no distinction between adults and juveniles. In fact, at the time of the drafting of the amendment, there was no such distinction.

Our common criminal law did not differentiate between the adult and the minor who had reached the age of criminal responsibility, seven at common law and in some of our states, ten in others, with a chance of escape up to twelve, if lacking in mental and moral maturity. The majesty and dignity of the state demanded vindication for infractions from both alike. The fundamental thought in our criminal jurisprudence was not, and in most jurisdictions is not, reformation of the criminal, but punishment; punishment as expiation for the wrong, punishment as a warning to other possible wrongdoers. The child was arrested, put into prison, indicted by the grand jury, tried by a petit jury, under all the forms and technicalities of our criminal law, with the aim of ascertaining whether it had done the specific act -- nothing else -- and if it had, then of visiting the punishment of the state upon it.

Mack, Julian, *The Juvenile Court*, 23 Harv. L. Rev. 104, 106 (1909).

Similarly, at the time the Washington Constitution was adopted, there was no differentiation between juveniles and adults for purposes of the provision of a jury. Even after the juvenile courts' inception, juveniles

were statutorily entitled to trial by jury from 1905 until 1937, when the Legislature struck the right to a jury trial in juvenile court. Ch. 65, § 1, 1937 Wash. Laws at 211. Beginning in 1909, our juvenile laws made special provision for transfer to police court of cases where it appeared that “a child has been arrested upon the charge of having committed a crime.” Ch. 190, § 12, 1909 Wash. Laws at 675. The capacity statute, also enacted in 1909, specifically contemplates the possibility that a “jury” will hear a case where a child younger than 12 stands accused of committing a “crime.” RCW 9A.04.050. Thus, juveniles were entitled to jury trials at the time the Washington Constitution was adopted in 1889 and for more than 40 years thereafter – until the Juvenile Justice Act was amended to delete that right

In order to ameliorate the perceived injustice of treating children like adults, reformers at the turn of the 19th Century convinced state law makers juvenile justice should focus on rehabilitation and treatment through the use of more informal adjudication conducted by a judge instead of a jury. “[P]unishment as expiation for the wrong” was a concept that should be confined to adult criminal prosecutions that required the full panoply of constitutional rights. That rationale for adopting this model was that the state said it was acting in loco parentis. The original Juvenile

Court Act of Illinois (1899) was a model quickly followed by almost every state in the Union. See Paulsen, *Kent v. United States: The Constitutional Context of Juvenile Cases*, 1966 Sup. Ct. L. Rev. 167, 174. Washington followed other states and adopted similar juvenile justice measures. As noted above, this State statutorily abandoned the practice of affording juveniles the right to jury trial by 1937.

In *McKeiver v. Pennsylvania*, 403 U.S. 528, 29 L. Ed. 2d 647, 91 S. Ct. 1976 (1971), a fractured court found that a state juvenile justice scheme that did not provide for a jury trial was constitutionally permissible. Writing for a four-member plurality, Justice Blackmun concluded that juvenile proceedings in Pennsylvania and North Carolina were not “yet” considered “criminal prosecutions” and thus the due process requirements of fundamental fairness did not impose the Sixth Amendment guarantee of a right to trial by jury on juvenile courts. *McKeiver*, 403 U.S. at 541. The plurality questioned the necessity of a jury to accurate fact-finding and emphasized the unique attributes of the juvenile system that, 25 years ago, still differentiated it from adult criminal prosecutions. *McKeiver*, 403 U.S. at 543-51.

Thus, during that period of time when this State, through its various juvenile justice statutes, embraced a true non-punitive,

rehabilitative model for dealing with children who committed otherwise criminal acts, the deprivation of the Sixth Amendment right to a jury trial was justified. Juvenile adjudications were truly “non-criminal.” And, had the State maintained such a system, WACDL would not be urging this Court to find that jury trials are mandated for juveniles. As matter of both common sense and science, juveniles are different from adults.

As explained *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183 (2005), there are “[t]hree general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders.” *Id* at 569. The Court set forth those reasons as follows:

First, as any parent knows and as the scientific and sociological studies respondent and his amici cite tend to confirm, “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.” Johnson, *supra*, at 367, 113 S.Ct. 2658; see also Eddings, *supra*, at 115-116, 102 S.Ct. 869 (“Even the normal 16-year-old customarily lacks the maturity of an adult”). It has been noted that “adolescents are overrepresented statistically in virtually every category of reckless behavior.” Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 *Developmental Review* 339 (1992). In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age

from voting, serving on juries, or marrying without parental consent.

Id. at 569.¹

The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. *Eddings*, *supra*, at 115, 102 S.Ct. 869 (“[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage”). This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. See Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1014 (2003) (hereinafter Steinberg & Scott) (“[A]s legal minors, [juveniles] lack the freedom that adults have to extricate themselves from a criminogenic setting”).

Id.

The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. See generally E. Erikson, *Identity: Youth and Crisis* (1968).

Id. at 570.

Regrettably, however, the Legislature now fails to recognize these important differences and, for all practical purposes, has abandoned the in

¹ Citing *Eddings v. Oklahoma*, 455 U.S. 104, 102 S.Ct. 869 (1982) and *Johnson v. Texas*, 509 U.S. 350, 113 S.Ct. 2658 (1993).

loco parentis, rehabilitative model of juvenile justice. Instead, the Legislature has through various amendments and new legislation adopted a punitive system for juveniles charged with serious offenses. Those statutes are exhaustively set forth in A.C.'s supplemental brief. But, because the noble societal justifications that led the formation of juvenile court systems a century ago have disappeared, there is no longer any legal justification for depriving A.C. of his constitutional right to a jury trial.

2. CONCLUSION

This Court does not have the power to simply declare those statutes that have eliminated any distinction between the treatment of juveniles charged with serious crimes and adults charged with felonies void. Thus, this Court's only option is to find that there is no longer any legal justification for depriving juveniles charged with serious crimes their constitutional right to a jury trial.

DATED this 21st day of September, 2007.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served by United States Mail one copy of the foregoing Amicus Curiae Brief of WACDL on the following:

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