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IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

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WASHINGTON STATE
SUPREME COURT

STATE OF WASHINGTON,

Respondent,

v.

ZYION DONTICE HOUSTON-SCONIERS AND TRESON ROBERTS,

Petitioners.

COURT OF APPEALS NO. 45374-6-II (CONSOLIDATED CASE)
APPEAL FROM THE SUPERIOR COURT OF PIERCE COUNTY,
CAUSE NUMBER 12-1-04161-1

AMICI CURIAE BRIEF OF JUVENILE LAW CENTER AND NATIONAL JUVENILE DEFENDER CENTER IN SUPPORT OF PETITIONERS

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ORIGINAL

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IDENTITY AND INTEREST OF AMICUS CURIAE

The identity and interest of *amici curiae* are set forth in the accompanying Motion for Leave to File an *Amicus Curiae* Brief.

STATEMENT OF THE CASE

Amici curiae adopt the Statement of the Case as set forth in the Supplemental Brief of Petitioner Houston-Sconiers.

ARGUMENT

Washington's "automatic decline" statute, RCW 13.04.030(1)(e)(v), violates the Due Process Clauses of the Fifth and Fourteenth Amendments by mandating that youth be transferred to adult court for prosecution based solely on the crime with which they have been charged and their age at the time the crime was allegedly committed. The statute exposes youth to the harsh consequences of the adult criminal justice system, including the same mandatory minimum sentences imposed upon adults, without any individualized determination of their suitability for prosecution as an adult, amenability to treatment as a juvenile, or their culpability prior to sentencing. This statutory scheme contravenes due process principles by creating an unconstitutional irrebuttable presumption that youth are as morally culpable as adults, failing to comply with the United States Supreme Court's decision in *Kent*

v. United States, 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966), and violating the Supreme Court's precedents recognizing that juveniles possess unique characteristics and attributes that laws of criminal procedure must take into account.

I. Washington's Automatic Decline Statute Violates the Due Process Protections Guaranteed by *Kent v. United States*

"[T]he Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures." *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985). Due process is a flexible concept, and the particular process required varies with the situation; generally speaking, the greater the interest at stake, and the higher the risk of an erroneous deprivation of that interest, the more stringent the procedural protections required. *Zinermon v. Burch*, 494 U.S. 113, 127, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990) (*citing Mathews v. Eldridge*, 424 US. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)); *see also Goldberg v. Kelly*, 397 U.S. 254, 262-263, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970) ("The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.'"). As the United States Supreme Court held fifty years ago in *Kent*, 383 U.S. at 553-54, the liberty

interests at stake in the transfer of a youth from juvenile to adult criminal court are "critically important," and they call for heightened procedural protections not provided under Washington's automatic decline statute.

In the *Kent* decision, the Supreme Court held that the transfer of a youth from juvenile court to adult criminal court imposes a significant deprivation of liberty and therefore warrants substantial due process protection. *Kent*, 383 U.S. at 554. The Court noted the "special rights and immunities" offered by the juvenile court that a youth loses upon transfer to the adult system.[1] *Id.* at 556. The Court also emphasized that the transfer determination might mean the difference between a few years' confinement until the youth reaches age twenty-one, and the harshest sentences imposed upon adults—a distinction between the two systems that is plainly apparent from the facts of this case. *Kent*, 383 U.S. at 557. In light of those circumstances, the Court found it "clear beyond dispute that the waiver of jurisdiction is a 'critically important' action determining vitally important statutory rights of the juvenile," and thus it must "satisfy

[1] This Court has also recognized the "fundamental" differences between adult and juvenile court, noting the "additional protections juveniles receive in juvenile court." *State v. Saenz*, 175 Wn.2d 167, 173, 283 P.3d 1094 (2012) (en banc); *see also State v. Chavez*, 163 Wn.2d 262, 271, 180 P.3d 1250 (2008) (en banc) (noting that "an adult criminal conviction carries far more serious ramifications for an individual than a juvenile adjudication, no matter where the juvenile serves his time").

the basic requirements of due process and fairness."[2] *Id.* at 553, 556.

Because of the vital importance of the liberty interests at stake in a transfer determination, due process requires a hearing prior to the transfer decision that allows the court to conduct an individualized assessment of the youth's amenability to juvenile court jurisdiction. As the *Kent* Court explained, "there is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing,

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[2] The fifty years since the *Kent* decision have not lessened the importance of the transfer decision. In fact, research has confirmed what the *Kent* Court suspected: that transferring youth to adult court places them at risk of devastating consequences. Research has shown that, while most youthful offenders become productive and law-abiding citizens without any interventions, youth transferred to the adult system "reoffend more quickly and are more likely to engage in violent crimes after release than youths processed in the juvenile justice system." Jason J. Washburn *et al.*, *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59 Psychiatric Services 965, 972 (2008). Youth are less likely to receive age-appropriate treatment and education in adult facilities, as adult corrections personnel lack the specialized training to meet the educational and mental health needs of young people, and adult facilities cannot provide the necessary programs, classes, or activities to address their rehabilitative potential. Campaign for Youth Justice, *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform* 7 (2007). Youth incarcerated in adult prisons are also extraordinarily vulnerable to victimization. *See* Marty Beyer, *Experts for Juveniles At Risk of Adult Sentences* in MORE THAN MEETS THE EYE: RETHINKING ASSESSMENT COMPETENCY AND SENTENCING FOR A HARSHER ERA OF JUVENILE JUSTICES 18-20 (P. Puritz, A. Capozello & W. Shang eds., 2002). One study showed that youth in adult facilities were five times more likely to be sexually assaulted while incarcerated and two times more likely to be assaulted with a weapon than were youth in the juvenile justice system. Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, June 2010, 7, Juvenile Justice Bulletin, Washington, D.C., Office of Juvenile Justice and Delinquency Prevention. Also, adolescents are more likely to be psychologically affected by the confinement and restrictions imposed than their adult counterparts, and are thus more likely to commit suicide. According to one report, youth in adult prisons were 36 times more likely to commit suicide than those housed apart from adult offenders. Jessica Lahey, *The Steep Costs of Keeping Juveniles in Adult Prisons*, The Atlantic, Jan. 8, 2016, *available online at* http://www.theatlantic.com/education/archive/2016/01/the-cost-of-keeping-juveniles-in-adult-prisons/423201/. These studies underscore the importance of the transfer determination, and reinforce that due process principles govern that decision.

without effective assistance of counsel, without a statement of reasons."[3] *Id.* at 554. Indeed, a "root requirement" of the Due Process Clause is "that an individual be given an opportunity for a hearing" before he is deprived of a significant liberty or property interest. *Loudermill*, 470 U.S. at 542 (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971)); *see also Board of Regents v. Roth*, 408 U.S. 564, 569-70, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972) ("When protected interests are implicated, the right to some kind of prior hearing is paramount."). Pre-deprivation hearings are constitutionally required in numerous contexts where there is no liberty interest at stake at all, such as when an employee who has a constitutionally protected property interest in his employment is terminated, *see Loudermill*, 470 U.S. at 542, or when certain governmental benefits may be discontinued, *see Goldberg*, 397 U.S. at 264. Yet, under Washington's automatic decline statute, Zyion Houston-Sconiers and Treson Roberts received no hearing or individualized determination before losing the juvenile court's rehabilitative services and facing the prospect of decades in prison pursuant to adult mandatory minimum sentences.

[3]As the *Kent* Court noted in the appendix to its opinion, factors a judge should consider when determining whether a juvenile should be transferred to adult court include: 1) "the sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living" (culpability) and 2) "the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile . . ." (amenability to rehabilitation). *Kent*, 383 U.S. at 566-67.

Such a scheme does not satisfy the concerns underlying the Court's requirement of basic due process and fairness under *Kent*.

II. The Automatic Decline Statute Violates Due Process by Putting in Place an Unconstitutional Irrebuttable Presumption

Washington's mechanism for identifying youth eligible for prosecution in the adult criminal justice system is no substitute for the individualized process required by *Kent*. By categorically determining that all youth of a certain age charged with certain offenses must be tried in adult criminal court, where they are automatically subject to the same mandatory minimum sentences as adults upon conviction, Washington's statutory scheme creates "a non-rebuttable presumption that the juvenile who committed the crime is equally morally culpable as an adult who committed the same act." Martin Guggenheim, *Graham v. Florida and a Juvenile's Right to Age-Appropriate Sentencing*, 47 HARV. C.R.-C.L. L. REV. 457, 490-91 (2012). This presumption conflicts with recent Supreme Court cases emphasizing the diminished culpability of juveniles, *see, e.g.*, *Graham v. Florida*, 560 U.S. 48, 68, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), as well as long-standing due process jurisprudence striking down statutes that create irrebuttable presumptions regarding material facts, *see, e.g.*, *Vlandis v. Kline*, 412 U.S. 441, 445-46, 93 S. Ct. 2230, 37 L. Ed. 2d 63 (1973). Despite the Supreme Court's repeated statement that "children

cannot be viewed simply as miniature adults," *J.D.B. v. North Carolina*, 564 U.S. 261, 274, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011) (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115-16, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982)), Washington's automatic decline statute does just that, by presuming Zyion Houston-Sconiers and Treson Roberts to be deserving of the same treatment as adults, with no opportunity to rebut that presumption, in violation of basic due process protections.

The United States Supreme Court has struck down several statutes creating such irrebuttable presumptions, noting that they "have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments." *Vlandis*, 412 U.S. at 446. For example, in *Stanley v. Illinois*, the Supreme Court held unconstitutional an Illinois law that authorized the removal of children from the custody of their unwed fathers without requiring any showing of the father's unfitness. *Stanley v. Illinois*, 405 U.S. 645, 649, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972). The statute was "constitutionally repugnant" as it relied on the non-rebuttable presumption that unwed fathers were unfit. *Id.* at 649. Similarly, in *Carrington v. Rash*, the United States Supreme Court overturned a Texas statute that presumed that all service people stationed there were not residents and therefore could not vote. *Carrington v. Rash*, 380 U.S. 89, 96, 85 S. Ct. 775, 13 L. Ed. 2d 675 (1965). Key to the holding was the

Court's finding that "[t]he presumption here created is . . . definitely conclusive—incapable of being overcome by proof of the most positive character." *Id.* (quoting *Heiner v. Donnan*, 285 U.S. 312, 324, 52 S. Ct. 358, 76 L. Ed. 772 (1932)). Likewise, in *Cleveland Board of Education v. LaFleur*, the Court held that school board maternity leave policies that required pregnant teachers to terminate employment at a particular point in pregnancy violated due process. *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 644, 94 S. Ct. 791, 39 L. Ed. 2d 52 (1974). The Court explained that the policy "amount[ed] to a conclusive presumption that every pregnant teacher who reaches the fifth or sixth month of pregnancy is physically incapable of continuing." *Id.* Rejecting this "irrebuttable presumption of physical incompetency," which applied "even when the medical evidence as to an individual woman's physical status might be wholly to the contrary," the Court held that due process requires an individualized determination of fitness. *Id.*; *see also Vlandis*, 412 U.S. at 452 (due process forbids a state to deny an individual the resident tuition rate at a state university "on the basis of a permanent and irrebuttable presumption of nonresidence, when that presumption is not necessarily or universally true"). In short, the Supreme Court has consistently rejected statutory schemes that contain conclusive presumptions about material facts, in a wide variety of contexts and implicating substantially different

interests.

Washington's automatic decline statute follows the same unlawful path as the challenged statutes above—it creates an irrebuttable presumption that all youth of a certain age charged with a certain offense are identical to their adult counterparts with respect to culpability and their lack of capacity to change or reform, thus warranting their prosecution and sentencing as adults without further inquiry. The statute presumes unfitness to be rehabilitated in the juvenile justice system, ignoring the key attributes of youth which the United States Supreme Court instructs must inform all criminal laws: that youth individually possess different levels of maturity, decision-making ability, culpability, and capacity for change and growth. *See Graham*, 560 U.S. at 76 ("[C]riminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed."); *see also infra*, Section III. "[T]he presumption here created"—that the youth is as culpable as an adult and is not amenable to rehabilitation "is . . . definitely conclusive—incapable of being overcome by proof of the most positive character," *Carrington,* 380 U.S. at 96, "even when the . . . evidence . . . might be wholly to the contrary." *LaFleur,* 414 U.S. at 644.

Based on this precedent, Zyion and Treson were entitled to a hearing where they could introduce evidence to rebut the presumption and offer evidence to the contrary. *Stanley,* 405 U.S. at 649. That

"presumption is not necessarily or universally true . . . [and the] State has reasonable alternative means of making the crucial determination." *Vlandis,* 412 U.S. at 452. By forbidding Zyion and Treson "ever to controvert the presumption," *see Carrington*, 380 U.S. at 96, of an adult level of culpability, the State "unjustifiably effected a substantial deprivation." *Stanley*, 405 U.S. at 655. It viewed Zyion and Treson "one-dimensionally" as adults, *id.*, rather than granting them the individualized determination due process requires.

III. Washington's Automatic Decline Statute Fails to Comply with the United States Supreme Court's Requirement that Our Criminal Laws Take Account of the Unique Characteristics of Youth

The irrebuttable presumption about certain youth created by Washington's auto-decline statute is particularly problematic in light of what we now know about the constitutionally significant distinctions between teenagers and adults. As the Supreme Court has explained, a youth's age "is far 'more than a chronological fact'"; "[i]t is a fact that 'generates commonsense conclusions about behavior and perception'" that are "self-evident to anyone who was a child once himself." *J.D.B.*, 564 U.S. at 272. These distinctions are "what any parent knows—indeed, what any person knows—about children generally." *Id.* (citations and internal quotations omitted). These distinctions are also supported by a significant

body of developmental research and neuroscience demonstrating significant psychological and physiological differences between youth and adults. *See, e.g.*, *Graham,* 560 U.S. at 68 ("developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds").

Between 2005-2012, the Court issued four decisions that reinforce the primacy of this principle in decisions about the culpability of youth and the legal processes due to them. *See Miller v. Alabama,* __ U.S. __, 132 S. Ct. 2455, 2469, 183 L. Ed. 2d 1 (2012) (holding that mandatory sentences of life without the possibility of parole for minors convicted of homicide offenses violate the Eighth Amendment); *Graham*, 560 U.S. at 82 (ruling that the imposition of life without the possibility of parole for juveniles convicted of non-homicide crimes violates the Eighth Amendment); *J.D.B.*, 564 at 271-72 (holding that age is a significant factor in determining whether a youth is "in custody" for *Miranda* purposes); *Roper v. Simmons*, 543 U.S. 551, 575, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (holding that the imposition of the death penalty on minors violates the Eighth Amendment).

In all of these decisions, the Court relied on three categorical distinctions between youth and adults to explain why children must be treated differently than adults—especially under our criminal laws. "First,

children have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking." *Miller*, 132 S. Ct. at 2464 (quoting *Roper*, 543 U.S. at 569). *Accord Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 569. Research demonstrates that adolescents, as compared to adults, are less capable of making reasoned decisions, particularly in stressful situations. Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 15, 20 (2008) ("Considerable evidence supports the conclusion that children and adolescents are less capable decision makers than adults in ways that are relevant to their criminal choices."). Adolescent decision-making is characterized by sensation- and reward- seeking behavior. Laurence Steinberg, *A Dual Systems Model of Adolescent Risk-Taking*, 52 DEVELOPMENTAL PSYCHOBIOLOGY 216, 217 (2010) [hereinafter "Steinberg, *A Dual Systems Model*"]. Greater levels of impulsivity during adolescence may stem from adolescents' weak future orientation and their related failure to anticipate the consequences of decisions. Laurence Steinberg *et al.*, *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD. DEV. 28, 29-30 (2009); *see also* Richard J. Bonnie *et al.*, eds. REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH at 91, 97 (2013) [hereinafter "Bonnie, REFORMING JUVENILE JUSTICE"].

Advances in neuroscience confirm the less developed decision-making capacities of youth as compared to adults. The parts of the brain which control higher-order functions—such as reasoning, judgment, inhibitory control—are the last to fully develop and mature, behind other parts of the brain which control more basic functions (*e.g.*, vision, movement). Indeed, the pre-frontal cortex—the brain's "CEO" that controls important decision making processes—does not reach full growth until individuals are in their early- to mid-20s. Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROCEEDINGS NAT'L ACAD. SCI. 8174, 8177 (2004); Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind* 23, 24, 141 (2001); *see also* B.J. Casey et al., *Structural and Functional Brain Development and its Relation to Cognitive Development,* 54 BIOLOGICAL PSYCHOL. 243-246 (2000).

Because the prefrontal cortex governs so many aspects of complex reasoning and decision making, it is possible that adolescents' undesirable behavior—risk-taking, impulsivity, and poor judgment—may be significantly influenced by their incomplete brain development. Steinberg, *A Dual Systems Model* at 216-217. Indeed,

> the latest studies suggest that much of what distinguishes adolescents from children and adults is an *imbalance among developing brain systems*. This imbalance model

> implies dual systems: one that is involved in cognitive and behavioral control and one that is involved in socioemotional processes. Accordingly, adolescents lack mature capacity for self-regulation because the brain system that influences pleasure-seeking and emotional reactivity develops more rapidly than the brain system that supports self-control.

Bonnie, REFORMING JUVENILE JUSTICE, 97 (citations omitted) (emphasis added).

Second, the Supreme Court recognized that youth are distinct from adults in constitutionally relevant ways because of their susceptibility to outside pressures. As the Court explained, "children 'are more vulnerable . . . to negative influences and outside pressures,' including from their family and peers; they have limited 'contro[l] over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings." *Miller*, 132 S. Ct. at 2464 (quoting *Roper*, 543 U.S. at 569). *Accord Graham*, 560 U.S. at 68. This view of youth is supported by extensive research. *See, e.g.*, Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1012 (2003) [hereinafter "Steinberg & Scott, *Less Guilty by Reason of Adolescence*"]; Bonnie, REFORMING JUVENILE JUSTICE at 91 ("[A]dolescents have a heightened sensitivity to proximal external influences, such as peer pressure and immediate incentives,

relative to adults."). As scientists explain:

> [I]nfluence affects adolescent judgment both directly and indirectly. In some contexts, adolescents make choices in response to direct peer pressure to act in certain ways. More indirectly, adolescents' desire for peer approval—and fear of rejection—affect their choices, even without direct coercion."

Steinberg & Scott, *Less Guilty by Reason of Adolescence*, at 1012.

Recent brain imaging studies further support the observation that adolescent behavior is greatly affected by peer influences. For example, researchers using brain imaging techniques to study risky driving decisions by teenagers have identified that when peers are present, teenagers, unlike adults, show heightened activity in the parts of the brain associated with rewards:

> Adolescents, but not adults, showed heightened activity in reward-related circuitry, including the ventral striatum, in the presence of peers. . . . Not only are peers influential but also positive exchanges with others may be powerful motivators. Asynchronous development of brain systems appears to correspond with a shift from thinking about self to thinking about others from early adolescence to young adulthood. *Together these studies suggest that in the heat of the moment, as in the presence of peers or rewards, functionally mature reward centers of the brain may hijack less mature control systems in adolescents.*

Bonnie, REFORMING JUVENILE JUSTICE, at 98 (citations omitted) (emphasis added).

Finally, the Supreme Court has recognized that children are different from adults because adolescence is a transitional phase. "[A] child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity].'" *Miller*, 132 S. Ct. at 2464 (quoting *Roper*, 545 U.S. at 570). As a result, "a greater possibility exists that a minor's character deficiencies will be reformed." *Graham*, 560 U.S. at 68.

This conclusion is likewise founded in research. It is well known that "[adolescence] is transitional because it is marked by rapid and dramatic change within the individual in the realms of biology, cognition, emotion, and interpersonal relationships." Elizabeth S. Scott & Laurence Steinberg, RETHINKING JUVENILE JUSTICE, 31 (2008) [hereinafter "Scott & Steinberg, RETHINKING JUVENILE JUSTICE"]. The research confirms that "many of the factors associated with antisocial, risky, or criminal behavior lose their intensity as individuals become more developmentally mature." Marsha Levick *et al.*, *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment Through the Lens of Childhood and Adolescence*, 15 U. PA. J. L. & SOC. CHANGE 285, 297 (2012). "[T]he period of risky experimentation does not extend beyond adolescence, ceasing as identity becomes settled with maturity. Only a small percentage of youth who engage in risky experimentation persist in their problem behavior into

adulthood." Bonnie, REFORMING JUVENILE JUSTICE at 90; *see also* Scott & Steinberg, RETHINKING JUVENILE JUSTICE at 53 (explaining that "[m]ost teenagers desist from criminal behavior . . . [as they] develop a stable sense of identity, a stake in their future, and mature judgment").

As a consequence of these unique developmental attributes, the Supreme Court held that the Constitution requires that youth receive procedural protections appropriate for their developmental status. *See, e.g.*, *Miller*, 132 S. Ct. at 2467 (striking as unconstitutional mandatory life without parole sentences for juveniles because "[s]uch mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it"); *J.D.B.,* 564 U.S. at 272 (holding that age is relevant for the *Miranda* custody decision because "a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go"). Thus, an individualized approach is particularly vital here. Failing to consider the youth's individual situation unconstitutionally

> precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances

> of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.

Miller, 132 S. Ct. at 2468 (holding mandatory life sentences for juveniles unconstitutional because they do not allow for individualized consideration).

By denying Zyion and Treson the benefits of juvenile court without individualized considerations concerning their age, developmental status, and degree of culpability, Washington's statutory scheme runs afoul of the due process guarantee of the right to be heard, where such critical and important interests are at stake.

CONCLUSION

Washington's automatic decline statute is unconstitutional under the Due Process Clauses of the Fifth and Fourteenth Amendments because it does not allow for individualized determinations regarding the propriety of prosecuting certain minors in adult criminal court rather than juvenile court, and it subjects these youth to the same mandatory sentencing scheme as adults. Therefore, *amici* urge this Court to hold RCW 13.04.030(1)(e)(v) unconstitutional.

Respectfully Submitted,

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Motion for Extension of Time & Leave to File Amici Curiae Brief
Amici Curiae Brief of Juvenile Law Center and National Juvenile Defender Center

To the Clerk:

Attached for filing on behalf of Marsha L. Levick PA Bar# 22535 and Nancy P. Collins, WSBA# 28806 is the Motion for Extension of Time And Leave to File Amici Curiae Brief and the Amici Curiae Brief of Juvenile Law Center and National Juvenile Defender Center in Support of Petitioners. Having received prior consent, all parties have been served via email attachment.

Thank you for your time and attention to this matter.

Sincerely,

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