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STATE OF WASHINGTON
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NO. 94973-5

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TYLER WATKINS,

Petitioner.

ANSWER TO THE AMICUS BRIEF OF THE WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS

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A. INTRODUCTION

Because they are still maturing, children charged with crimes are entitled to due process protections that shield them from the harsh realities of adulthood. *Graham v. Florida*, 560 U.S. 48, 76, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010); *see also State v. S.J.C.*, 183 Wn.2d 408, 413, 352 P.3d 749 (2015). "To balance these unique concerns, the law has constructed a constitutional wall around juveniles, maintaining its integrity through a continuous process of refining its contours and repairing its cracks." *S.J.C.*, 183 Wn.2d at 413. This Court should now hold that within this constitutional wall of protections is the right to a hearing before the child is automatically declined to adult court.

B. ARGUMENT

1. This Court can no longer rely on *In Re Boot* to justify depriving juveniles of a hearing before allowing their cases to be declined to adult court.

The United States Supreme Court's understanding of the rights of juveniles has been a substantive departure from the decisions this Court relied on when it upheld automatic decline in 1996. *Montgomery v. Louisiana*, 577 U.S. ___, 136 S. Ct. 718, 735, 193 L. Ed. 2d 599 (2016). In 1989, the United States Supreme Court upheld capital punishment for 16 and 17-year old youth. *Stanford v. Kentucky*, 492

U.S. 361, 380, 109 S. Ct. 2969, 106 L. Ed. 2d 306 (1989). When this Court first examined automatic decline, it relied on *Stanford* to find that due process was not offended by Washington's decline statute. *In Re Boot*, 130 Wn.2d 553, 571, 925 P.2d 964 (1996) . *Stanford* is no longer good law. *Roper v. Simmons*, 543 U.S. 551, 561, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005).

This Court has acknowledged that *Boot* stands in tension with the United States Supreme Court's holdings on how youth must be treated when they are charged with crimes. *State v. Houston-Sconiers*, 188 Wn.2d 1, 26, 391 P.3d 409 (2017). WAPA ignores this tension, wrongly arguing that *Boot* is reaffirmed by the substantive changes recognized by the Supreme Court's decisions. Brief of WAPA at 5. WAPA appears to argue that children should only be treated differently when sentenced to life without parole or the death penalty. *Id*. This narrow interpretation of juvenile justice has already been repudiated by this Court. *Houston-Sconiers*, 188 Wn.2d at 25.

Neither *Boot* nor *Stanford* are cases this Court can or should continue to rely on. This Court has moved away from the arguments it found acceptable in *Boot* and has instead consistently held that criminal procedure laws must account for youthfulness, even when the Eighth

Amendment does not apply. This Court afforded juveniles greater sealing rights than adults. *S.J.C.*, 183 Wn.2d at 419. This Court held that trial courts abuse their discretion when they do not consider youthfulness at sentencing. *State v. O'Dell*, 183 Wn.2d 680, 696, 358 P.3d 359 (2015). Where a defense attorney failed to extend jurisdiction to take advantage of the prosecutor's offer, this Court required the prosecutor to offer a deferred disposition plea bargain, even though juvenile court jurisdiction had lapsed and there was no adult statutory provision authorizing such an offer. *State v. Maynard*, 183 Wn.2d 253, 256, 351 P.3d 159 (2015).

Even when analyzing Eighth Amendment issues, this Court has not confined itself solely to life sentence and death penalty cases, as WAPA argues it should. Brief of WAPA at 5. Both boys in *Houston-Sconiers* were sentenced to a period of years that likely would have resulted in their release at approximately age 42 and 47. 188 Wn.2d at 13. This Court rejected WAPA's restrictive view of the rights of children in *Houston-Sconiers* and should reject them here.

Instead, this Court has acknowledged and accepted the constitutional implications of recent Supreme Court precedent to mean that youth have a right to be heard and assessed as individuals. *Boot*

was premised on outmoded and overturned law that failed to acknowledge this distinction. *Boot*, 130 Wn.2d at 572. This Court can no longer rely on *Boot* to uphold the constitutionality of Washington's automatic decline statute.

2. Since *Kent v. U.S.*, the United States Supreme Court has made clear the failure to provide due process before declining a youth to adult court is prohibited.

In 1966, the United States Supreme Court described the decision to prosecute a youth in the adult justice system as one of the most "critically important" steps that youth face. *Kent v. U.S.*, 383 U.S. 541, 556, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966). In *Kent*, the Supreme Court recognized the importance of process for children who faced adult prosecution. *Id*. *Kent* paved the way for *In Re Gault*, where the court held that "[n]either man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law." 387 U.S. 1, 13, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967) (quoting *Haley v. Ohio*, 332 U.S. 596, 601, 68 S. Ct. 302, 304, 92 L. Ed. 224 (1948)).

The *Gault* Court also examined *Kent*, emphasizing that had the trial court in *Kent* followed the established criteria in the District of Columbia's statute before declining the youth, the basic requirements

of due process and fairness would have been satisfied. *Gault*, 387 U.S. at 12. *Kent* and *Gault* make clear that due process is required before a child may be declined to adult court.

The basic requirements of due process required by *Kent* and *Gault* are not present in Washington's automatic decline statute. Unlike the statute at issue in *Kent*, Washington's automatic decline statute provides no process at all. RCW 13.04.030. As WAPA correctly points out, the District of Columbia's decline statute required a hearing and an attorney who would have access to his client's social history file. *Kent*, 383 U.S. at 553-54. Before a child could be declined, the D.C. trial court was required to issue stated reasons for why decline was required. *Id*. This is in stark contrast to Washington's statute, where juvenile jurisdiction is declined automatically. RCW 13.04.030.

Had young Morris Kent been provided with the process guaranteed by the D.C. statute, his decline to adult court would have been constitutional. 383 U.S. at 556. Although WAPA argues to the contrary, the failure to provide Kent with any process violated his constitutional rights. When Tyler was sent to adult court without a hearing, the same violation occurred. The failure to provide Tyler with

a hearing before he was sent to adult court violates the principles established in *Kent* and *Gault* and is unconstitutional.

3. The United States Supreme Court also recognizes that children must be provided with greater protections than adults when they are charged with crimes.

WAPA argues that the Supreme Court's holdings on the rights of juveniles are restricted to cases where a youth can be executed or sentenced to life without parole. Brief of WAPA at 10. Because of the rare circumstances where this is possible in Washington, WAPA argues due process before a child is declined to adult court is not necessary. *Id*. This argument disregards the protections youth are afforded the entire time they are prosecuted and not only at their sentencing. The failure to provide protections to a youth before they are deprived of their right to be treated like a juvenile is not cured by considering youthfulness at sentencing. WAPA's argument to the contrary is without merit.

While this country's history is "replete with laws and judicial recognition" that children cannot be simply viewed as "miniature adults," the abolition of the capital punishment for youth marked a substantive change in the United States Supreme Court's understanding of how youth must be treated. *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 (1981)). Since then, the Court has issued a series of decisions addressing the rights of children charged with crimes. *Roper*, 543 U.S. 551; *Graham*, 560 U.S. 48; *J.D.B. v. North Carolina*, 564 U.S. 261; *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). When deciding the retroactive effect of *Miller*, the Court refined its definition of youth from "the rarest of children, those whose crimes reflect 'irreparable corruption'" to "juvenile offenders whose crimes reflect the transient immaturity of youth." *Montgomery*, 136 S. Ct. at 734. These decisions have substantively changed the way children must be treated, requiring each one to be individually assessed. Unlike Washington's automatic decline statute, these decisions require a judicial officer to determine whether a child's crimes reflect adulthood or the transient immaturity of youth.

For decline to be constitutional, a court must be allowed to determine when a child's crimes reflect irreparable corruption as opposed to when they constitute the transient immaturity of youth. *Montgomery*, 136 S. Ct. at 734. Washington's decline statute fails to provide an opportunity for a court to consider whether a child's offenses constitute the rare circumstances where the child should be

treated like an adult rather than a youth. Without a hearing, automatic decline fails to provide sufficient due process for youth like Tyler.

4. This Court similarly understands that the measurable and material differences between juveniles and adults entitle children to greater constitutional protections than adults.

This Court's recent jurisprudence also demonstrates its firm understanding that the measurable and material differences between juveniles and adults have constitutional implications. *S.J.C.*, 183 Wn.2d at 428 (citations omitted). *S.J.C.* affirms that youth are entitled to greater protections than adults when they are prosecuted. *S.J.C.*, 183 Wn.2d at 428 (citing *Miller*, 567 U.S. at 471-72; *Graham*, 560 U.S. at 82; *Roper*, 543 U.S. at 578). *S.J.C.* is not an Eighth Amendment case, but it applies the same analysis to the rights of juveniles who are seeking to have their records sealed. *Id*. at 428.

This Court relies on the same principles to hold that a court abuses its discretion when it fails to consider youthfulness at sentencing. *O'Dell*, 183 Wn.2d at 680; *see also Houston-Sconiers*, 188 Wn.2d at 25-26. This Court has also required the government to extend a juvenile court offer to a young man when juvenile court jurisdiction has lapsed because of an error, even though jurisdiction had lapsed.

Maynard, 183 Wn.2d at 256. These protections are far broader than those afforded under the Eighth Amendment.

Washington's decline statute is contrary to these decisions. *See* RCW 13.04.030(e). The automatic decline statute takes away from youth the ability to have their individual needs assessed by a court and deprives them of their fundamental right to hearing before they are tried as adults. *Id*. As such, this Court should reject WAPA's argument that the automatic decline statute remains constitutionally viable. The underpinnings of the automatic decline statute have been abrogated by the United States Supreme Court and recognized as no longer good law by this Court. *Houston-Sconiers*, 188 Wn.2d at 25-26. Tyler asks this Court to hold that before a youth is deprived of the protections of juvenile court, a decline hearing must be held.

5. Washington's juvenile justice system provides far greater protection to juveniles than exist in the adult system, including a focus on rehabilitation, which a fundamental difference from the purposes of adult prosecution.

This Court should also reject WAPA's argument that the lack of process provided to youth when they are declined to adult court is solved at sentencing. Brief of WAPA at 9. This Court has established clear distinctions between the way juveniles and adults who are

prosecuted must be treated. From the initial investigation, throughout the pendency of their charges, at sentencing, and even in post-conviction proceedings, youth are entitled to greater protections that adults. WAPA's argument ignores this lesson and should be rejected.

This Court recognizes that there is a "fundamental difference between juvenile courts and adult courts—unlike wholly punitive adult courts, juvenile courts remain … rehabilitative." *State v. Saenz*, 175 Wn.2d 167, 173, 283 P.3d 1094 (2012). The differences between adult and juvenile court are not only about the sentence a youth receives. *Saenz*, 175 Wn.2d at 173. While punishment is the paramount purpose of the adult criminal system, the policies of the Juvenile Justice Act are twofold: to establish a system of having primary responsibility for, being accountable for, and responding to the needs of youthful offenders, and to hold juveniles accountable for their offenses. *State v. Chavez*, 163 Wn.2d 262, 267–68, 180 P.3d 1250 (2008) (citing *State v. Posey*, 161 Wn.2d 638, 645, 167 P.3d 560 (2007)).

If punishment were the only distinction between the two courts, the prosecutor would not have opposed Tyler's motion to return to juvenile court because the sentence Tyler received in adult court could easily have been imposed in juvenile court. 10/20/16 RP 7; 11/17/16

RP 6, CP 88. Tyler was sentenced to 16 months in prison. 11/17/16 RP 6. Tyler was only 16 when he was convicted of burglary and he could have been held in a residential center until he was 21. CP 116, RCW 13.40.300(1)(a). Juvenile court was never a barrier to imposing the sentence the trial court ultimately imposed. In refusing to agree to send Tyler's case back to juvenile court, the prosecutor acknowledged that the distinctions between the two courts was far greater than sentencing.

This Court has consistently recognized that the purposes of juvenile court differ significantly from those of the adult system. *State v. Rice*, 98 Wn.2d 384, 392, 655 P.2d 1145 (1982); *see also State v. Schaaf*, 109 Wn.2d 1, 10, 743 P.2d 240 (1987). Unlike the adult court, juvenile court is intended not only to ensure accountability, but also to rehabilitate and reintegrate youth into society. *S.J.C.*, 183 Wn.2d at 419. To achieve this end, the juvenile system places considerable emphasis on the current needs of the child. *State v. J.N.*, 64 Wn. App. 112, 116, 823 P.2d 1128 (1992). These goals are in stark contrast to the Sentencing Reform Act, which focuses on punishment and accountability, rather than rehabilitation. RCW 9.94A.010.

These stated goals of juvenile court have created significant advantages and opportunities for youth who are tried in juvenile court.

See RCW 13.40.010(1). Youth may seek a deferred disposition for eligible offenses. RCW 13.40.127. Most youth who remain in juvenile court are entitled to have their records sealed. RCW 13.50.260(4); JuCR 7.12(c)-(d). Legal financial obligations are mostly eliminated. RCW 7.68.035. Many evidence-based programs exist which seek to rehabilitate the youth and reduce recidivism. *See, e.g.*, Washington State Department of Social and Health Services, *Juvenile Justice Evidence Based Programs: Evidence Based Programs – Research Based Programs – Promising Practices* (2016).[1]

Had Tyler remained in juvenile court, his rehabilitation could have begun almost immediately, as a social file would have been created containing the records and reports of the probation department. RCW 13.50.010(e). In Snohomish County, where Tyler was prosecuted, the probation department embraces a model of community supervision that focuses on evidence-based practices or programs. Snohomish County, *Juvenile Court*.[2] These services begin in detention, where staff serve as positive role models for those held in custody.

[1] https://www.dshs.wa.gov/ra/juvenile-rehabilitation/juvenile-justice-evidence-based-programs.

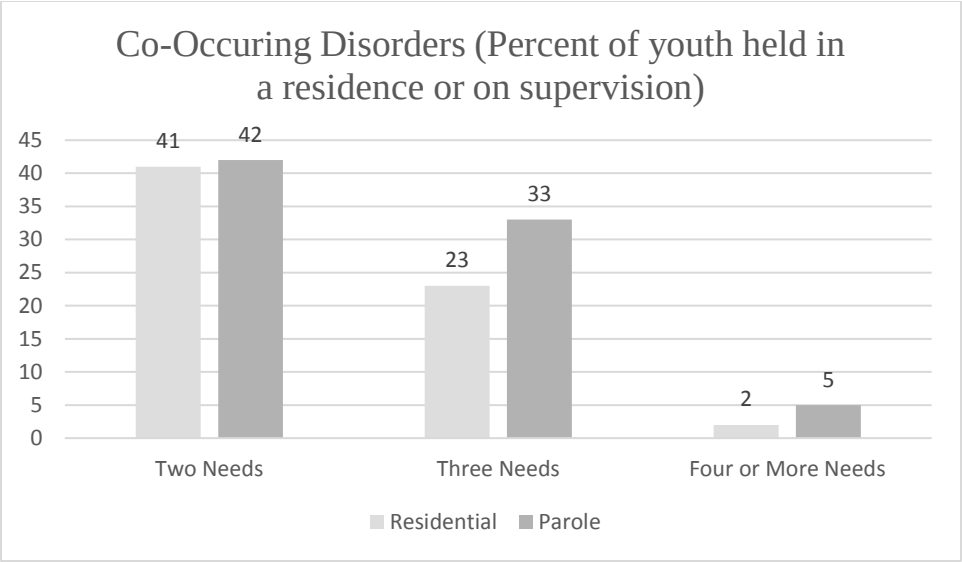
[2] https://snohomishcountywa.gov/195/Juvenile-Court

Snohomish County, *Detention Services*.[3] Through the social file, the juvenile court judges would have come to know Tyler and would have been able to examine his needs, while his case was pending and at resolution. RCWA 13.50.010(e). The sentencing hearing would have focused on Tyler's rehabilitative needs. RCW 13.40.020(2).

Those who are found delinquent and sent to a residential facility are treated for the many complex disorders they may suffer from. *See* Washington State Dep't of Soc. & Health Services, *Service Needs*.[4] The Department of Social and Health Services (DSHS) tracks youth who are committed to residential care and have found that at over 80% of them suffer from at least two significant disorders requiring treatment while residing in an institution or on supervision after-care, including mental health disorders, substance abuse, sexual offending, cognitive impairment, and medical fragility. *Id*.

[3]https://snohomishcountywa.gov/842/Detention-Services

[4]https://www.dshs.wa.gov/sites/default/files/JJRA/jr/documents/Reports/Service%20Needs.pdf



The Department has continued to expand its services to help the children in its care. DSHS has been tracking its work since the legislature asked the Department to create additional services to provide prevention and intervention to youth residing in an institution or when they enter parole after-care. Second Substitute House Bill 2536, Chapter 232, Laws of 2012. DSHS has spent considerable efforts focusing on these research and evidence-based programs that are designed to rehabilitate children. Washington State Institute for Public Policy, *Updated Inventory of Evidence-Based, Research-Based, and Promising Practices: For Prevention and Intervention Services for Children and Juveniles in the Child Welfare, Juvenile Justice, and*

Mental Health Systems, 6-7 (2017).[5] Each year, the Washington State Institute for Public Policy assesses these programs. *Id*. at 1. The latest reports state that DSHS had added five new evidence-based programs to treat juveniles in the last year, including the Adolescent Diversion project and cognitive behavioral therapy. *Id*. The Department had also added 27 new research-based or otherwise promising programs designed to rehabilitate youth. *Id*.

Youth who are automatically declined to adult court will receive no such help. Automatic decline increases the likelihood a youth will commit future crimes, even compared to youth who are declined to adult court after a hearing. Elizabeth Drake, *The Effectiveness of Declining Juvenile Court Jurisdiction of Youthful Offenders*, Washington State Institute of Public Policy, 1, 9 (2013).[6] In 2013, the Washington State Institute for Public Policy (WISSP) compared youth charged with the same crimes before and after the automatic decline statute went into effect. *Id*. at 5. One reason for why the rates may have been higher is that processing youth to adult court has a criminogenic

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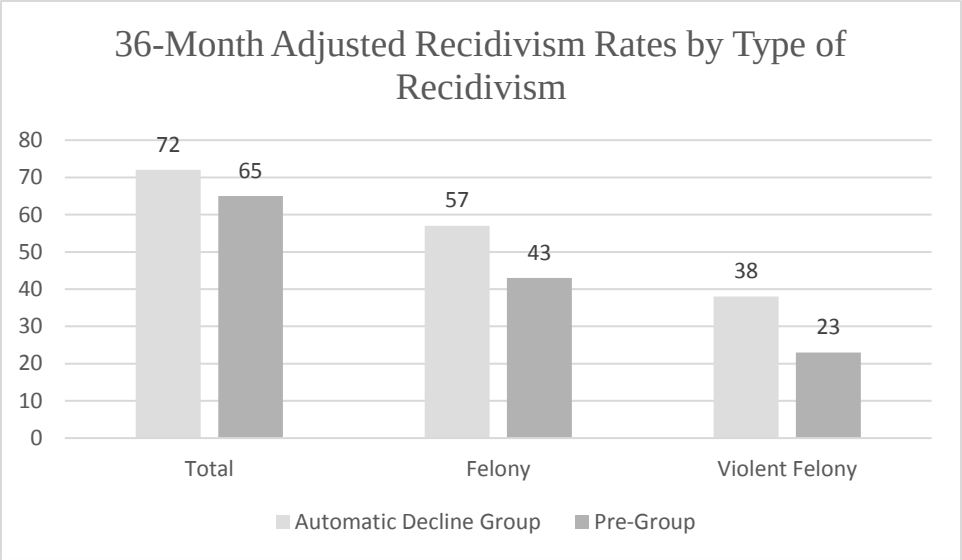
[5]http://www.wsipp.wa.gov/ReportFile/1639/Wsipp_Updated-Inventory-of-Evidence-Based-Researched-Based-and-Promising-Practices-For-Prevention-and-Intervention-Services-for-Children-and-Juveniles-in-the-Child-Welfare-Juvenile-Justice-and-Mental-Health-Systems_Report.pdf

[6]http://www.wsipp.wa.gov/ReportFile/1544/Wsipp_The-Effectiveness-of-DecliningJuvenile-Court-Jurisdiction-of-Youth_Final-Report.pdf

effect—the tendency to increase crime. *Id*. at 7 (citing Anna Aizer & Joseph Doyle, *Juvenile Incarceration, Human Capital, and Future Crime: Evidence from Randomly-assigned Judges*, National Bureau of Economic Research (2013). At the least, it appears that providing process is an important rehabilitative tool for youth, even if they are ultimately declined.



These findings are consistent with other studies regarding the increased likelihood a juvenile sent to adult court is likely to reoffend. Jeffrey Fagan, Aaron Kupchick, & Akiva Liberman, *Be Careful What You Wish For: Legal Sanctions and Public Safety Among Adolescent Offenders in Juvenile and Criminal Court, Columbia Law School*, 9

(2007). There is no justification to send a juvenile to adult court without providing them with this minimum process.

When Tyler was sent to adult court, he became just another offender charged with an adult crime. He was deprived of the rehabilitative opportunities afforded to youth prosecuted in juvenile court. No court examined his needs, other than to sentence Tyler to a standard range sentence of 16 months in prison, along with 18 months of community supervision. 11/17/16 RP 6. There is no record of any rehabilitative plan being put in place, other than one and a half years of adult supervision on his return to the community. *Id*.

It is not only sentencing that distinguishes adult and juvenile court. Juvenile court provides far greater protection and individualized services to youth than they can ever expect to receive in adult court. WAPA's argument that Washington's sentencing structure cures the deprivation of Tyler's right to a decline hearing is not borne out by the facts. By depriving Tyler of the opportunity to have his case heard in juvenile court, he was deprived of his due process. This Court should reject WAPA's argument.

6. Automatic decline fails to protect the rights of juveniles and should be found to be unconstitutional.

WAPA defends punitive procedures that were put into place in reaction to the unfounded fear of juvenile super-predators. Brief of WAPA at 6. WAPA's arguments do not have merit. This Court should hold that these punitive statutes do not provide sufficient due process for Washington's youth.

As amicus Creative Justice points out, automatic decline laws were not created to protect children, but to deprive them of the right to be treated like children. Brief of Creative Justice at 2. The misguided belief that harsher sentences were required to prevent a new wave of juvenile crime has been now been repudiated, as no such wave ever existed. The Fair Punishment Project, *The "Superpredator" Myth and The Rise of the JWLOP* (April 12, 2016).[7]

As Creative Justice also makes clear, these laws had racial overtones, which is reflected in the disproportional number of youth of color who are automatically declined in Washington today. Brief of Creative Justice at 7 (citing Washington State Dep't of Soc. & Health

[7]http://fairpunishment.org/the-superpredator-myth-and-therise-of-jwlop/

Services, *Annual Report: Data Analysis Juvenile Transfers to Adult Court*, Annual Report 1, 146 (2014)).[8] The DSHS data has been affirmed by others, including the Sentencing Guidelines Commission, which found that youth of color are still disproportionately over-represented in automatic decline procedures. Wash. Sentencing Guidelines Comm'n, *Disproportionately and Disparity in Juvenile Sentencing*, 4 (2007).[9]

WAPA asks this Court to affirm an outdated and constitutionally infirm procedure which deprives juveniles of their due process rights. Brief of WAPA at 10. The notion that due process is advanced rather than offended by depriving youth of their right to a hearing is incorrect. Providing a hearing to juveniles will not prevent youth from ever being prosecuted as adults, but it will ensure that only those who should be prosecuted as adults in fact are. A decline hearing is required to protect the rights of children before they are prosecuted as adults.

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[8]https://www.dshs.wa.gov/sites/default/files/JJRA/pcjj/documents/decline_Final.pdf.

[9]http://www.cfc.wa.gov/PublicationSentencing/DisparityDisproportionality/Juvenile_Disp arityDisproportionality_FY2007.pdf.

C. CONCLUSION

Over 50 years ago, the Supreme Court recognized the importance of a hearing before a child is sent to adult court. *Kent*, 383 U.S. at 556. Transfer of a juvenile to adult court is the single most serious act that the juvenile court can perform. *State in Interest of N.H.*, 226 N.J. 242, 252, 141 A.3d 1178 (2016) (quoting Paul Hahn, *The Juvenile Offender and the Law*, 180 (3d ed.1984)). "There is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons." *Gault*, 387 U.S. at 30 (quoting *Kent*, 383 U.S. at 554). Youth like Tyler, who by all indications would have benefited from a juvenile court adjudication, deserve a chance to establish their cases belong in juvenile court. Tyler asks this Court to hold that due process requires a hearing before juvenile court jurisdiction is declined.

DATED this 26th day of February 2018.

Respectfully submitted,

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Washington Appellate Project (91052)
Attorneys for Petitioner

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent/Cross-appellant, v. TYLER WATKINS, Appellant/Cross-respondent.	)))))))))	NO. 94973-5

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 26TH DAY OF FEBRUARY, 2018, I CAUSED THE ORIGINAL **ANSWER TO AMICUS CURIAE BRIEF** TO BE FILED IN THE **WASHINGTON STATE SUPREME COURT** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON, THIS 26TH DAY OF FEBRUARY, 2018.

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