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SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

B.O.J.,

Appellant.

AMICI CURIAE BRIEF OF TEAMCHILD AND THE MOCKINGBIRD
SOCIETY IN SUPPORT OF APPELLANT

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INTRODUCTION

The danger of incarceration for youth is real,¹ and community-based alternatives are available.² And yet, here, the Juvenile Court departed from a standard range disposition of local sanctions to impose a year of incarceration for misdemeanor theft, even though more effective community-based treatment and support were available for B.O.J. The court's sentence was not only outside the norm but also unsupported by the record. B.O.J.'s sanction undermines the purpose and parameters of the Juvenile Justice Act as well as scientific and legal standards relating to adolescent brain development. *See* RCW 13.40.010; *Graham v. Florida*, 560 U.S. 48, 68, 82, 130 S. Ct. 2011, 176 L. Ed. 2d. 825 (2010); *J.D.B. v. North Carolina*, 564 U.S. 261, 271-72, 131 S. Ct. 2394, 180 L. Ed. 2d. 310 (2011); *State v. Houston-Sconiers*, 188 Wn.2d 1, 9, 391 P.3d 409 (2017). The Juvenile Court's decision to sentence B.O.J. to a year for shoplifting is further complicated by implicit bias and consideration of impermissible factors. Thus, the decision must be overturned.

¹ Barry Holman & Jason Ziedenberg, Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (2011), at 3-4, http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf; Richard A. Mendel, Annie E. Casey Foundation, *No Place for Kids: The Case for Reducing Juvenile Incarceration* (2011), at 5-9, <https://files.eric.ed.gov/fulltext/ED527944.pdf>.

² Richard A. Mendel, Annie E. Casey Foundation, *Juvenile Detention Alternatives Initiative Progress Report* (2014), at 19, <http://www.aecf.org/m/resourcedoc/aecf-2014JDAIProgressReport-2014.pdf>. King County is a Juvenile Detention Alternatives Initiative site. *Id.* at 15.

IDENTITIES AND INTERESTS OF *AMICI CURIAE*

The identities and interests of *amici curiae* are described in the Motion for Leave to File *Amici Curiae* Brief submitted with this Brief.

ISSUE TO BE ADDRESSED BY *AMICI*

Whether a sentence departing from the standard range to impose extensive incarceration for a juvenile adjudicated for a misdemeanor must be vacated when available community-based alternatives were overlooked and prohibited factors were improperly considered.

STATEMENT OF THE CASE

Amici Curiae adopt the statement set forth by Appellant B.O.J.

ARGUMENT

Amici Curiae will address the wide-ranging support available to B.O.J. in the community and the Juvenile Court's error in failing to fully consider that support. This brief also discusses the Juvenile Court's consideration of impermissible aggravating factors. *Amici* join Appellant B.O.J. in requesting that this Court reverse her sentence.

1. **The Court Erred by Failing to Adequately Consider Alternative Community-Based Treatment Options for B.O.J.**
 - a. **Effective services are available for addressing the treatment and support needs of B.O.J. and other youth.**

There is scientific, social, and legal consensus that children are different from adults in ways that impact their decision-making and

potential for positive change. *Miller v. Alabama*, 567 U.S. 460, 471, 132 S. Ct. 2455, 2464, 183 L. Ed. 2d 407, 418 (2012). Research shows that incarceration of young people undermines healthy adolescent development.³ In line with this understanding, community-based alternatives to incarceration are increasingly available to address the unique needs of young people.⁴ Pursuant to the Juvenile Justice Act, courts should rely on local sanctions, treatment, and services, including all medically necessary healthcare, positive youth development programs, and public and alternative education. *See* RCW 13.40.020(18), (3), & (2).

For B.O.J., the Juvenile Court erred by failing to consider all the support available in the community had it imposed a local sanctions sentence. By so erring, the manifest injustice disposition was not supported by clear and convincing evidence.

- i. Public healthcare provides meaningful opportunities to support children and young adults.*

B.O.J. was legally entitled to all medically necessary healthcare to address her needs. She had a history of trauma, mental health needs, and struggled with substance use disorder. Pet. for Review at 2. Because

³ E.S. Barnert, et al. *How Does Incarcerating Young People Affect Their Adult Health Outcomes?* Pediatrics 139(2) (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5260153/>.

⁴ *See* Mendel, *supra* note 2; *see also* King County, *Road Map to Zero Youth Detention* (2018), <https://kcyouthjustice.files.wordpress.com/2018/09/road-map-to-zero-youth-detention.pdf>.

B.O.J. was in foster care, she was categorically eligible for Apple Health, Washington State's umbrella healthcare program for Title XIX Medicaid programs, Title XXI Children's Health Insurance Program, and other state-funded health coverage for children. *See* WAC 182-505-0211; *id.* 182-500-0010. B.O.J.'s eligibility for Apple Health entitled her to all medically necessary treatment to address her behavioral health conditions. *See* WAC 182-534-0100; 42 U.S.C. § 1396d(r)(5); RCW 74.09.470(3).

The record indicates that B.O.J. had struggled with recovery. Pet. for Review at 3. But it is not uncommon that youth relapse and require multiple attempts to achieve recovery.⁵ B.O.J.'s past challenges in community-based treatment do not mean that she would be unsuccessful if given the opportunity to try again. There is additionally no evidence that treatment in a carceral setting would be more effective.⁶ Indeed, B.O.J. continued to indicate willingness to engage in treatment. *Id.* at 6-8.

B.O.J. could have accessed a full range of community-based behavioral health treatment to address her substance use disorder, mental health needs, and her history of trauma, including the following:

⁵ Mary C. Aciri, et al., *What Adolescents Need to Prevent Relapse after Treatment for Substance Abuse: A Comparison of Youth, Parent, and Staff Perspectives*, *Journal of Child & Adolescent Substance Abuse*, 21:2, 117-29, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3979558/>.

⁶ Aciri, *supra* note 5; *see also* Lisa M. Dennis & Thomas L. Hafemeister, *Detained Juvenile Offenders with Substance Abuse Treatment Needs: An Examination of Associated Legal Issues*, 1 *J. Health & Biomed. L.* 49, 65 (2004).

- **Substance use disorder treatment.** Residential, recovery house, and outpatient treatment are available to youth with Apple Health.⁷ Juvenile courts also have independent funding for treatment services.⁸
- **Wraparound mental health services.** Wraparound is a treatment model that provides youth with team support to develop a community-based, culturally competent, and strength-based intervention plan. *See* RCW 71.36.010. Wraparound with Intensive Services (WISe) is available statewide for Medicaid-eligible youth such as B.O.J. and includes intensive therapeutic treatment, 24-hour crisis response availability, and peer and family support.⁹
- **Evidence-based behavioral health interventions.**

Evidence-based programs have been shown to improve behavioral

⁷ Wash. Dep't of Soc. & Health Serv., *Benefits Book*, DSHS 22-661 (2016), 6-9, <https://www.hca.wa.gov/assets/free-or-low-cost/22-661EN-behavioral-health-benefits-book.pdf>. At the time of B.O.J.'s disposition, King County was piloting a project to advance existing treatment and recovery services. *See* Wash. Dep't of Soc. & Health Serv., *Fact Sheet: WA State Youth Treatment Improvement Project* (2016), <https://www.hca.wa.gov/assets/free-or-low-cost/fact-sheet-youth-treatment-improvement.pdf>.

⁸ *See* King County, *Juvenile Court Services* (2018) at 14, <https://www.kingcounty.gov/~media/courts/superior-court/docs/juvenile/juvenile-court-annual-reports/2018.ashx?la=en>; Wash. Dep't of Soc. & Health Serv., *Report to the Legislature Juvenile Block Grant Program*, Nov. 30, 2017, at 9, https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=Juvenile%20Court%20Block%20Grant%20Report_c6fd7ac7-972c-4490-98a0-1a18f5f08a89.pdf.

⁹ *See T.R. v. Quigley*, 2:09-cv-01677-TSZ (W.D. Wash.), Order Granting Joint Mot. for Final Approval of Class Action Settlement Agreement, December 19, 2013, at 8-9 & App. A, https://www.hca.wa.gov/assets/program/tr-dreyfus-settlement-agreement_0.pdf.

outcomes for youth.¹⁰ In King County, multiple evidence-based programs are available, both through Juvenile Court and in the community, including multi-systemic therapy, trauma-focused cognitive behavioral therapy, and dialectical behavioral therapy.¹¹ These programs teach practical skills that are effective in helping youth like B.O.J. overcome challenges with substance use disorder and juvenile offending behaviors.

ii. *Youth development programs help youth build life skills and engage positively in the community.*

B.O.J. may also have benefited from developing a positive social support network and increasing her life skills to aid her transition to adulthood. Community-based diversion programs and youth development programs were available. These programs, which offer opportunities for youth to develop positive, culturally-meaningful community connections,

¹⁰ Wash. Inst. for Pub. Pol’y, *Updated Inventory of Evidence-Based, Research-Based, and Promising Practices* (2018), http://www.wsipp.wa.gov/ReportFile/1698/Wsipp_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_Report.pdf; King County, *supra* note 8, at 15.

¹¹ See King County, *supra* note 8, at 15; see also, e.g., Harborview, *Trauma-Focused Cognitive Behavioral Therapy* (2008), <http://depts.washington.edu/hcsats/PDF/TF-%20CBT/pages/7%20Trauma%20Focused%20CBT/TFCBT%20information2011.pdf> (“Many studies have shown that traumatic stress and depression improve more with TF-CBT than with non-specific therapy.”); Univ. of Wash. Behavioral Research & Therapy Clinics, *DBT Resource List* (2017), <http://depts.washington.edu/uwbrtc/wp-content/uploads/2017.07.27-DBT-Resource-List.pdf>. There are also specialized therapy programs for even more specific needs if relevant to B.O.J. or other youth. For example, Escape to Peace is a nonprofit that works with youth who have experienced sexual trauma and provides Trauma Therapy and other support. See Escape to Peace, *Self Regulation Therapy*, (last visited Jan. 17, 2019), <http://escapetopeace.org/trauma-therapy/>.

life skills, self-care strategies, and employment opportunities, include:

- **Choose 180.** Choose 180 is a diversion program that has been demonstrated to reduce recidivism in King County. It involves a workshop, as well as aftercare or follow up, to:

- 1) give youth the information, skills and support they need and to connect them to resources to help them make a 180 degree turn in their lives and 2) provide a community-driven process to show youth they have value and give them a way out of the formal criminal justice system.¹²

Choose 180 works with community partners to connect youth to case management, employment opportunities, mentorship, academic support, and other services based on the youth's individual needs.

- **Theft 3/ Mall Safety Project.** This pilot project specifically serves youth like B.O.J., who may otherwise be charged criminally for misdemeanor theft or formally diverted. The project demonstrates innovative and collaborative ways to serve youth through mentoring, job training, skill building, and other support in the

¹² King County Off. of Performance, Strategy & Budget, *180 Workshop Program Evaluation* (Oct. 2014), at 10, (last visited Jan. 17, 2019), https://www.kingcounty.gov/~media/depts/executive/performance-strategy-budget/CJ%20Strategy%20and%20Policy/Data%20and%20Reports/180_Program_Evaluation_-_FINAL_20141013.ashx?la=en. See generally Choose 180, <https://choose180.org/our-impact>.

community.¹³

- **Community Passageways.** Community-based programs have also been designed for youth who commit more serious offenses or have more serious needs, like Community Passageways. Community Passageways provides higher risk youth with mentoring, life skills, and other support using restorative and evidence-based practices.¹⁴

- **Credible Messengers Initiative.** King County developed a mentoring program specifically for young people who are the hardest to reach. This program is based on a national model that engages youth with mentors, who have lived or shared community experience. The mentors are provided with extensive training.¹⁵

- **Other programming.** King County partners with comprehensive youth services programs throughout the county, giving B.O.J. many other available, yet unexplored options to address her

¹³ King County, *Best Starts for Kids Implementation Plan* (Sept. 2016) 18373 - Attachment A, at 82, at <https://www.kingcounty.gov/~media/elected/executive/constantine/initiatives/best-starts-for-kids/documents/BSK-Plan-final.ashx?la=en>.

¹⁴ See King County Regional Law, Safety, & Just. Committee, *Agenda & Meeting Notes*, Mar. 22, 2018, at <https://www.kingcounty.gov/~media/depts/executive/performance-strategy-budget/documents/pdf/RLSJC/2018/Mar22/032218-RLSJC-Meeting-Notes.ashx?la=en>; see generally Community Passageways, (last visited Jan. 17, 2019), <https://www.communitypassageways.org/>.

¹⁵ King County, *supra* note 8, at 16.

needs.¹⁶

iii. Public and alternative education programs are available to develop academic and job skills.

The education system also supports youth and young adults like B.O.J.¹⁷ Youth have the right to remain in public education until 21 to earn a diploma. RCW 28A.225.160. B.O.J. indicated a desire to earn her GED. See Chapter 180-96 WAC; Appellant's Opening Br. at 7. In addition to public school options, other GED and vocational opportunities can engage youth in achieving their education goals and career readiness. Examples of educational programming include:

- **Alternative high schools.** These schools are designed to reengage youth. For example, Seattle Public Schools provides a network of small, alternative high schools known as Interagency Academy, which are explicitly designed to reach students who need support that comprehensive schools do not offer.¹⁸ Open Doors is another example, with programs across the state. RCW 28A.175.100; Chapter 392-700

¹⁶ See, e.g., King County, *supra* note 8, at 20-21; see also Press Release, King County, *Creating opportunities for young people who face systemic barriers to success* (Jan. 19, 2018), at <https://kingcounty.gov/elected/executive/constantine/news/release/2018/January/19-best-starts-remove-systemic-barriers.aspx> (highlighting Creative Justice, a program that builds leadership skills with youth through the arts).

¹⁷ Lois A. Weithorn, *Envisioning Second-Order Change in America's Responses to Troubled and Troublesome Youth*, 33 Hofstra L. Rev. 1305, 1330 (2005).

¹⁸ See generally Seattle Public Schools, *Interagency Academy*, (last visited Jan. 17, 2019), <https://interagency.seattleschools.org>.

WAC.¹⁹ There are even programs, such as Eastside Academy, that provide housing options for youth experiencing homelessness.²⁰

- **Vocational Programs.** There are educational programs that focus on employment. WorkSource, for example, helps low-income youth ages 14 to 24 to complete school and find employment.²¹
- **GED Programs.** B.O.J. could have sat for the GED. *See* Chapter 180-96 WAC. GED programs throughout King County offer varying levels of support, including test preparation classes, tutoring, case management, joint vocational training, and college preparation.²²

Many more educational options are available to youth outside of a carceral setting. Community reengagement creates an opportunity for enrollment until graduation, while education in juvenile institutions causes significant challenges for youth during reentry. They may be denied enrollment or unable to transfer all credits to a community program upon

¹⁹ Office of Superintendent of Public Instruction, *Open Doors Youth Reengagement*, (last visited Jan. 17, 2019), <http://www.k12.wa.us/Reengagement/default.aspx>.

²⁰ *See, e.g.,* Eastside Academy, *Re:New Housing Program*, (last visited Jan. 17, 2019), <http://www.eastsideacademy.org/programs/renew-housing.html>.

²¹ *See* 29 U.S.C. Ch. 32; WorkSource, *Workforce Innovation and Opportunity Act (WIOA) Youth program*, (last visited Jan. 17, 2019), <https://www.worksourcewa.com/Resources/YouthProgram.aspx>.

²² *See, e.g.,* Seattle Goodwill, *High School Completion*, (last visited Jan. 17, 2019), <https://seattlegoodwill.org/job-training-and-education/work-readiness/high-school-completion>; Seattle Central College, *Learning Center Seattle*, (last visited Jan. 17, 2019), <https://seattlecentral.edu/programs/basic-and-transitional-studies/learning-center-seattle>.

their release from incarceration.²³

iv. Other supports are available to B.O.J. through the State Children's Administration.

B.O.J., as a dependent youth, had access to other needed support, as the State was obligated to meet her basic needs. *See* RCW 74.13.031. B.O.J. experienced several unsuccessful foster care placements where she felt unsafe. Pet. for Review at 2. This is not uncommon. *In re Dependency of A.K.*, 162 Wn.2d 632, 655, n.8, 174 P.3d 11 (2007). Many dependent youth struggle to stay in foster care placements, and sanctioning them with detention often exacerbates their problems. *Id.* While B.O.J. needed appropriate housing placement, the State was already obligated to find it for her. *See* RCW 74.13.031. It could have done so through traditional foster care or through a behavioral rehabilitation services program. *See* WAC 110-50-0210. Because of her dependency status, B.O.J. was not only entitled to housing but also had access to a social worker and other advocates. *See* RCW 74.13.031(6). To the extent the court had concerns about placement, those should have been addressed through the dependency proceedings rather than through an offender disposition. *See id.* 13.40.150(4)(a).

²³ *See* Peter Leone & Lois Weinberg, *Addressing the Unmet Educational Needs of Children and Youth in the Juvenile Justice and Child Welfare Systems* (2012) at 16-19, at http://cjr.georgetown.edu/wp-content/uploads/2015/03/EducationalNeedsOfChildrenandYouth_May2010.pdf.

Significantly, B.O.J. was only months away from turning 18. Pet. for Review at 5. She could have qualified for ongoing support until 21 through the State’s Extended Foster Care Program. *See* RCW 74.13.336. This program provides financial and other support to youth who are continuing their education; employed; participating in programs that reduce barriers to employment; or are too disabled to participate. RCW 13.34.267. Participating youth can receive a stipend for state approved housing known as “supervised independent living.”²⁴ Extended foster care had the potential to support B.O.J. by allowing the State to approve independent living for her, so that she could have identified a safe placement with fictive kin that would have been stabilized by her stipend.

As a dependent youth, B.O.J. also qualified for Independent Living Skills, a program for youth aged 15 to 21 who have been in foster care. *See* RCW 74.13.540. This community-based program provides group meetings, workshops, and one-to-one counseling on budgeting, renting, school, work, or vocational training, along with other support for basic needs.²⁵

²⁴ Wash. Dep’t of Children, Youth, & Family Serv., Policy 43105(6), at <https://www.dcyf.wa.gov/4310-services-adolescents/43105-extended-foster-care-program>.

²⁵ *See* Independence for Wash. Foster Youth, *Independent Living Program*, (last visited Jan. 17, 2019), <http://independence.wa.gov/programs/independent-living-program/>.

- v. *With so many community-based resources available, clear and convincing evidence did not support a manifest injustice finding.*

The Juvenile Court erred in failing to adequately consider community-based alternatives to incarceration at the institution. In fact, as described and referenced herein, the Juvenile Court itself had available programming and the power to decide who can access those resources. The Juvenile Court should have looked to and relied on services in the community to meet B.O.J.'s needs. *See* RCW 13.40.020(18), (3), & (2).

Instead, the Juvenile Court emphasized noncompliance with court conditions as the primary basis for a manifest injustice.²⁶ *See* RCW 13.40.150(i); RP 28-30. But a youth's noncompliance can be because of the same characteristics that distinguish them from adults: immature reasoning skills, underdeveloped sense of responsibility, and vulnerability to environmental circumstances and influence.²⁷ *See Miller*, 567 U.S. at 471. The Juvenile Court should have considered the impact of B.O.J.'s youth and trauma history on her lapses in compliance rather than mete out

²⁶ There were no allegations or evidence to suggest aggravating factors related to public safety, the manner of B.O.J.'s offense, or the vulnerability of the victim. *See* RP at 28-30. Even when the Juvenile Court attempted to make a finding that the standard range was too lenient considering the seriousness of prior adjudications, the Court backtracked: "And I guess - - let me back up - - not so much the seriousness of her adjudications, but the seriousness of the services that she needs in order to have success." *Id.* at 30.

²⁷ Marty Beyer, *A Developmental View of Youth in the Juvenile Justice System*, *Juvenile Justice: Advancing Research, Policy, and Practice* (Francine Sherman & Francine Jacobs, Eds.) (2011), 6-9.

a manifest injustice. *Cf. J.D.B.*, 564 U.S. at 275-77.

Without a thorough assessment of community-based alternatives and consideration of youthfulness as it impacts aggravating factors, clear and convincing evidence did not support a manifest injustice disposition. Accordingly, the Juvenile Court improperly imposed extended incarceration. Together with her probation officer, social worker, dependency and offender attorneys, and others, B.O.J. should have been allowed to develop an individualized community-based plan. *See* RCW 13.40.020(18), (3), & (2).

b. Even if there were no appropriate community-based services, that alone cannot be a basis for incarceration.

To the extent a court finds *all* the community options inadequate for an individual youth, the failure of systems cannot be borne by a child. RCW 13.40.150(5).

That programming had not worked for B.O.J. in the past is not necessarily her fault or something punishment and extended incarceration will cure. The needs of youth, especially girls, that cause them to become involved in the court system are complex, including trauma history, mental health, and relational and internalizing behaviors.²⁸ Larger societal

²⁸ Wendy S. Heipt, *Courts Igniting Change: Girls' Court: A Gender Responsive Juvenile Court Alternative*, 13 Seattle J. Soc. Just. 803, 804-05 (2015); Francine T. Sherman, Annie E. Casey Foundation, *Detention Reform and Girls* (2005), at 16, 21-23, <https://www.prearesourcecenter.org/sites/default/files/library/pathwaysgirls.pdf>.

problems of racism, poverty, and gender discrimination are also factors. Resorting to lengthy incarceration disregards the complexity of systemic barriers and individual needs, as well as the time and expertise necessary to overcome and meet them. In this case, the Juvenile Court could—and should—have recognized a behavioral health recovery, adolescent brain development, and trauma-informed response that would have centered and supported B.O.J. Courts cannot punish young people for inadequate community or probation services. *See* RCW 13.40.150(5).

2. Treatment Needs are Better Met in the Community: A Need for Housing Placement is not a Valid Aggravating Factor for a Manifest Injustice.

In this case, clear and convincing evidence did not support a departure from the standard range. There were no arguments that incarceration was necessary due to aggravating factors linked to public safety. Rather, the basis of the ruling appears, at its heart, to be about protecting B.O.J. But however much a court may be trying to protect a juvenile by locking them up, treatment needs are better met outside detention.²⁹ In fact, extended incarceration only limited B.O.J.’s options for treatment and education and placed her at even higher risk.

Specifically, B.O.J.’s substance abuse treatment needs are more

²⁹ National Collaboration for Youth, *Beyond Bars: Keeping Young People Safe at Home and Out of Youth Prisons* (November 2017), at 7-8, <https://ctjja.org/wp-content/uploads/2017/11/BeyondBars.pdf>.

appropriately managed outside juvenile prison. Community-based treatment is more effective because it teaches skills, coping strategies, resiliency, wellness, and healing in the environment where the young person lives.³⁰ Treatment and skills taught in an institution, on the other hand, are not reliably transferrable to other environments:

Although institutional treatment allows for closer monitoring of program integrity and the behavior of the juvenile, "criminologic risk and need factors exhibited by delinquent youth are manifested in their home, school, peer group and neighborhood environments" and treatment out of this context has less long-term success.³¹

Here, nothing would require B.O.J. to participate more meaningfully in treatment in an institution. Instead, treatment in an institution only creates additional risks of relapse and barriers to transfer learned skills when B.O.J. is released.

The idea that detention will be a safe placement is belied by years of research. Prolonged incarceration is not a safe housing option.³² Risks abound for juveniles in detention, including lasting negative impacts on health, recidivism and homelessness.³³ The health risks for young people,

³⁰ Dennis, *supra* note 6, at 65-66.

³¹ Dennis, *supra* note 6, at 65 (quoting Robert D. Hoge, *The Juvenile Offender: Theory, Research, and Applications* 1-4 at 261).

³² Mendel, *supra* note 1.

³³ Mendel, *supra* note 1; *see also* Walker, et al., *Developing a coordinated youth housing stability program for juvenile courts*, *Cityscape* 20(3), 117-37 (2018), at <https://www.sajecenter.org/publications/>.

like B.O.J., who are incarcerated at the time of transition to adulthood, have been shown to be even more significant.³⁴

As many of the skills and resources that are fostered in the transition to adulthood can be used to protect health over the life course, the disruption of this critical period by incarceration is likely to result in worse health over the course of life.³⁵

Similar to the national data, Washington State’s Juvenile Rehabilitation Administration (JRA) has high rates of recidivism and is challenged to provide a safe environment for youth.³⁶ No matter the intention to keep B.O.J. safe, the reality is that incarceration carries heavy risks.

What is more, JRA has no means to improve outcomes for B.O.J. that would not be better accomplished in the community. While JRA maintains residential facilities in the community to, at its discretion, transition youth toward reentry, the only community-based residential

³⁴ Esposito, et al., *The consequences of contact with the criminal justice system for health in the transition to adulthood*, *Longitudinal and Life Course Studies*, 8(1), 57-74 (2017), at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5539981/>.

³⁵ Esposito, *supra* note 34; *see also* Walker, *supra* note 33.

³⁶ *See* Mendel, *supra* note 1, at 10; Wash. Center for Court Research, *Juvenile Recidivism in Washington State: A 2013 Court Cohort and 2014 Juvenile Rehabilitation Release Cohort*, at 20, <https://www.courts.wa.gov/subsite/wscrr/docs/2013%20Juvenile%20Recidivism%20in%20Washington%20State.pdf> (“Those with any kind of prior incarceration . . . had higher recidivism rates than those without any incarcerations and those with JR admissions had higher recidivism rates than those that only had been in detention across all types of recidivism.”); *see also* Gov. Jay Inslee, *Proposed 2019-21 Budget & Policy Highlights*, at 21, <https://www.governor.wa.gov/sites/default/files/201921-Budget-and-Policy-Highlights.pdf> (“Reduce assault in juvenile facilities . . . [and] bring all three juvenile rehabilitation institutional facilities into compliance with the Prison Rape Elimination Act[.]”).

facility for girls is in Yakima—nowhere near B.O.J.’s home.³⁷

The risks of incarceration continue even after release. Upon reentry, girls have a higher recidivism rate than boys.³⁸ Furthermore, B.O.J. would not receive any aftercare or supervision through parole to aid in reentry because her crime was not serious.³⁹ This lack of support pales in comparison to what B.O.J. could have accessed had she received a standard range disposition. *See supra* Section 1.

Long-term incarceration is not a panacea for safety or treatment. In fact, it can inhibit those very goals. The Juvenile Court’s decision to impose a manifest injustice sentence was in error and not supported by the evidence or valid factors.

3. The Juvenile Court Improperly Considered Legally Prohibited Factors and Wrongfully Used Those Factors to Support the Manifest Injustice Sentence.

A court cannot consider the sex and race of the respondent in sentencing. RCW 13.40.150(4). And yet, girls are routinely treated differently than boys. While detention numbers in juvenile court have

³⁷ Wash. Dep’t of Social & Health Serv. Rehabilitation Admin., *Ridgeview Community Facility*, (last visited Jan. 17, 2019), <https://www.dshs.wa.gov/ra/juvenile-rehabilitation/ridgeview-community-facility>.

³⁸ Wash. Center for Court Research, *supra* note 36, at 11.

³⁹ “As a result of budget cuts in State Fiscal Year 2009, parole was eliminated for all JR offenders except high-risk, auto theft offenders, and sex offenders.” Rehabilitation Administration, *Report to the Legislature Parole Services for High-Risk Juvenile Offenders*, (December 2015), at 17, https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=2015%20Intensive%20Parole%20Model_ef504876-7199-4917-a256-2dbc9b003129.pdf.

gone down over the last decade,⁴⁰ the percentage of girls involved in juvenile court has increased.⁴¹ Girls are more likely to be involved in the system for low-level offenses, and girls of color are even more disproportionately impacted.⁴² Significantly:

A greater proportion of girls than boys are detained for warrants, which are often triggered by running away from home or placement. As a result of warrant practices that mandate detention, girls are detained due to the combination of minor delinquency and running away, when neither the underlying delinquency nor the running away alone would have resulted in detention.⁴³

Reasons for these differences include: paternalism, detention to obtain services, protection from sexual exploitation, and “[i]ntolerance of girls who are non-cooperative and non-compliant.”⁴⁴ That community-based alternatives to incarceration are rationed by courts and disproportionately withheld from girls and youth of color is symptomatic of structural racism and gender bias.

In B.O.J.’s case, it is impossible to escape the overtones of paternalism. The Juvenile Court put to counsel:

What do you think the chances are of [B.O.J.] being harmed running on the streets? Being addicted to drugs? Not being

⁴⁰ Mendel, *supra* note 2, at 13-17.

⁴¹ Heipt, *supra* note 28, at 803-04.

⁴² Heipt, *supra* note 28, at 816.

⁴³ Sherman, *supra* note 28, at 16, 21-23.

⁴⁴ Sherman, *supra* note 28, at 17; *see also* Fana Gamal, *Good Girls: Gender-Specific Interventions in Juvenile Court*, 35 Colum. J. Gender & L. 228, 233-34 (2018).

able to get a job? Not having a place to live? What are the chances of her being harmed there?

RP 27. The Juvenile Court improperly considered prohibited factors such as her sex and race in the disposition. Such consideration undermines the ruling, and the manifest injustice should be overturned.

CONCLUSION

However well meaning, sentencing B.O.J. to extended incarceration for misdemeanor theft was unsupported by the law, by the record, and by best practices of keeping youth centered in community.

Amici request that the court overturn the disposition in this case.

Respectfully submitted,

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Dated: January 24, 2019

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,)
) NO. 95542-5
 v.)
)
 B.O.J.,)
)
 Appellant.)

DECLARATION OF DOCUMENT FILING AND SERVICE

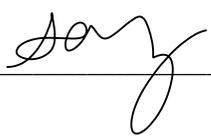
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SIGNED IN TACOMA, WASHINGTON, THIS 24TH DAY OF JANUARY, 2019.

X  _____

TEAMCHILD

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