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STATE OF WASHINGTON
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NO. 95542-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

B.O.J.,

Petitioner.

RESPONSE OF RESPONDENT TO *AMICI CURIAE* BRIEFS

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ARGUMENT

May the criminal justice system detain a juvenile primarily for the purposes of rehabilitation?

Consistently, the answer has been yes. The legislature made rehabilitation one of many “equally important” goals of Washington’s juvenile justice system. RCW 13.40.010(2). Washington’s appellate courts have held accordingly, deferring to the trial court’s balancing of the Juvenile Justice Act’s competing purposes. See State v. Rice, 98 Wn.2d 384, 386, 655 P.2d 1145 (1982); State v. M.L., 134 Wn.2d 657, 660-61, 952 P.2d 187 (1998); State v. F.T., 426 P.3d 753 (2018); State v. J.V., 132 Wn. App. 533, 540-42, 132 P.3d 1116 (2006); State v. T.E.H., 91 Wn. App. 908, 917-18, 960 P.2d 441 (1998); State v. Bevins, 85 Wn. App. 281, 284, 932 P.2d 190 (1997); State v. S.H., 75 Wn. App. 1, 11-12, 877 P.2d 205 (1994); State v. N.E., 70 Wn. App. 602, 606-07, 854 P.2d 672 (1993); State v. Taylor, 42 Wn. App. 74, 77, 709 P.2d 1207 (1985).

Many youth before the juvenile court face two paths, neither ideal. In the community, B.O.J. would almost surely continue to struggle with substance use, not attend school, flee foster placements, and associate with people leading her into dangerous situations. The alternative is detention, depriving B.O.J. of her liberty because there is no reason to expect success outside of a secure setting. Neither outcome is desirable, yet the juvenile

courts have few tools to work with when the judiciary, an inherently reactive system, is tasked with meeting youth's prospective needs.

What Amici leave unsaid is that every actor in the juvenile justice system wants more options. The experienced judge who imposed B.O.J.'s disposition used the Juvenile Rehabilitation Administration (JRA) as a service provider of last resort. Unfortunately, JRA is the only secure setting in Washington in which juveniles can receive the support B.O.J. needed. As such, the legislature has combined the state's rehabilitative and punitive functions for youth. This creates challenges, as Amici point out, that are often borne by the youth the state intends to serve. Disproportionately, these youth are poor and children of color. These are problems upon which all actors in the juvenile justice system can agree, but the juvenile court's options can only be expanded through an act of the legislature, not merely the parties wishing it were so.

As a result, the legal question before the Court is this: When are a juvenile's needs sufficiently severe that detention is clearly and convincingly warranted? Amici seem to suggest that no such situation exists; that the harms of confinement are so great that it is always preferable to leave the youth in the community. Amici, however, see this challenge as a problem to eliminate, not a problem to solve. What if, for example, secure therapeutic facilities existed, located in the most underserved communities.

staffed by professionals who could both provide services and empathize with juveniles' difficult life experiences? What if this hypothetical option could produce data demonstrating that it has a positive rehabilitative impact without creating or exacerbating youths' trauma? The state should only stop trying to help juveniles if it has exhausted the possibilities in its attempts. If the current possibilities are insufficient, the state should create new options.

Ultimately, this may be an empirical question. Proponents and opponents alike should engage in the empirical analysis to improve and validate rehabilitative options. This analysis should provide the basis on which trial courts, and ultimately this Court, measure the "clear and convincing" standard, balancing an individual's demonstrated needs with a rehabilitative option's demonstrated value. Rather than drawing bright, immutable lines, the Court should set forth a positive standard to guide juvenile courts in their attempts to serve youth in need.

DATED this 25th day of February, 2019.

Respectfully submitted,

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