No. 103006-1

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Petitioner,

v.

A.M.W.,
Respondent.

MEMORANDUM OF AMICI CURIAE OF THE KING COUNTY DEPARTMENT OF PUBLIC DEFENSE AND THE WASHINGTON STATE OFFICE OF PUBLIC DEFENSE IN SUPPORT OF PETITION FOR REVIEW

King County Department of Public Defense	**Washington State Office of Public Defense**
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I. INTRODUCTION

Before this Court implemented Juvenile Court Rule 7.16, juvenile courts issued warrants without analyzing whether the youth posed a serious threat to public safety. Warrants were commonly issued if, for example, a youth did not come to court for a probation violation hearing or was not at home when they were supposed to be. A 2018 study by the Council of State Governments Justice Center found that more than half of all incarcerated youth in Washington received either a technical violation/contempt or a misdemeanor as their highest charge. The Council of State Governments Justice Center, *Washington's Juvenile Justice System Improvement Planning Grant: Key Findings from System Analysis* (2018), p.42.[1]

JuCR 7.16 imposed limits on the juvenile court's ability to issue a warrant for a youth who allegedly violated a court order but

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[1] https://web.archive.org/web/20230608233050/https://www.opd.wa.gov/documents/01183-2018_OJJDPReport.pdf.

did not present a serious threat to public safety. Contrary to the Court of Appeals decision, this rule is procedural, meaning that this Court was well within its power when it issued the rule. The Court of Appeals erred when it found JuCR 7.16 unconstitutional as a violation of separation of powers.

Review of the Court of Appeals decision is necessary to resolve a conflict between a Court of Appeals decision and this Court's adoption of a court rule, is a significant question of law under the Constitution, and involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(1), (3), and (4).

II. IDENTITY OF AMICI

The identity and interests of amici King County Department of Public Defense and Washington State Office of Public Defense are set forth in the Motion for Leave to Participate as Amici Curiae filed concurrently with this memorandum.

III. STATEMENT OF THE CASE

The government sought a warrant for 13-year-old A.M.W. for violating her disposition order on a misdemeanor assault offense. CP 7-14. A.M.W.'s attorney argued the warrant was not authorized because the youth did not pose a serious threat to public safety. CP 60-63; RP 9-11.

The juvenile court determined it could issue a warrant despite JuCR 7.16's requirements. CP 64-69. The court also found that the allegations of self-harm, substance abuse, mental health, and the failure to follow court orders posed a serious risk to public safety. CP 64; RP 15. The court found A.M.W.'s suicidal ideation met the requirements of JuCR 7.16 because of the possible need for first responders to assist in her care.

On appeal, the parties agreed A.M.W. did not pose a serious risk to public safety, as did the Court of Appeals. *State v. A.M.W.*, ___ Wn.3d ___, 545 P.3d 394, 399 (2024). The Court of Appeals recognized that the "attenuated risk of conceivable harm" did not meet the standards set forth in JuCR 7.16. *Id.*

The Court of Appeals then determined JuCR 7.16 created a substantive rule, which it held this Court did not have the authority to issue. *Id.* at 403. The majority conceded JuCR 7.16 only concerned the issue of warrants, but it determined that the ability of the court to "impose incarceration as punishment is inextricably tied to its power to haul defendants into court, such as by issuing a warrant." *Id.* at 402 n.3.

The dissent found this Court's actions in issuing JuCR 7.16 proper and the majority opinion misguided. *A.M.W.*, 545 P.3d at 404 (Fearing, C.J., dissenting). The dissent wrote, "[t]he majority cites no decision that establishes the notion that a procedural rule transmogrifies into a substantive rule if the procedural rule interferes with substantive law or the purpose behind the substantive law." *Id.* at 412. Likewise, the dissent highlighted the harms incarceration causes youth and that other tools are better suited to deal with youth in crisis like A.M.W., including those the legislature has adopted to reduce detention. *Id.* at 414.

IV. ARGUMENT

A. The public has an interest in the protection that JuCR 7.16 provides against racial bias.

Without JuCR 7.16, juvenile courts will again have unfettered discretion to issue a warrant. Such discretion invites implicit bias back into judicial decision-making. Historically, warrants have been disproportionately issued against youth of color.

Limiting when a warrant can be issued reduces racial inequities. In March 2012, a statewide multi-disciplinary task force examined racial disproportionality in Washington's juvenile courts. *See* Juvenile Justice Subcommittee of the Task Force on Race and the Criminal Justice System, *Preliminary Report and Recommendations to the Supreme Court to Address the Disproportionality in Washington's Juvenile Justice System*

(March 28, 2012).[2] The task force recommended limiting "the use of secure confinement on failure to appear warrants...." *Id.* at 20.

For example, 82-84% of the warrants issued in King County juvenile court before the issuance of this rule were for youth of color. Letter submitted by George Yeannakis and Katherine Hurley on behalf of multiple signatories to Chief Justice Debra L. Stephens and Justice Charles W. Johnson in support of proposed JuCR 7.16 (Sept. 29, 2020).[3] Before this Court implemented JuCR 7.16, juvenile court judges issued warrants without analyzing whether the youth posed a serious threat to public safety. *Id.* Instead, they were very commonly issued when, for example, a youth did not come to court or was not at home when they were supposed to be. *Id.*

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[2] https://digitalcommons.law.seattleu.edu/korematsu_center/117

[3] https://www.courts.wa.gov/court_Rules/proposed/2020Jul/JuCR%207.16/George%20Yeannakis%20and%20Katherine%20Hurley%20JuCR%207.16.pdf.

This Court has recognized the role implicit bias plays in the legal system. *See State v. Berhe*, 193 Wn.2d 647, 657, 444 P.3d 1172 (2019); *State v. Bagby*, 200 Wn.2d 777, 794, 522 P.3d 982 (2023); *see also* Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. Rev. 1124, 1136 (2012) (citing Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. Personality & Soc. Psychol. 876 (2004)).

These biases include stereotyping Black youth as violent and criminal. *State v. B.O.J.*, 194 Wn.2d 314, 332, 449 P.3d 1006 (2019) (González, C.J. concurring). Indeed, judges possess the same level of implicit bias against African Americans as most lay adults. Judge Andrew J. Wistrich and Jeffrey John Rachlinski, *Implicit Bias in Judicial Decision Making How It Affects Judgment and What Judges Can Do About It*, Chapter 5: American Bar Association, Enhancing Justice (2017).[4]

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[4] https://ssrn.com/abstract=2934295

"For a single defendant, these biases may surface for various decisionmakers repeatedly in policing, charging, bail, plea bargaining, pretrial motions, evidentiary motions, witness credibility, lawyer persuasiveness, guilt determination, sentencing recommendations, sentencing itself, appeal, and so on. Even small biases at each stage may aggregate into a substantial effect." Kang, *supra* at 1151.

In Washington state, the Task Force on Race and the Criminal Justice System found that "[r]ace and racial stereotypes play a role in the judgments and decision-making of human actors within the criminal justice system. The influence of such bias is subtle and often undetectable in any given case, but its effects are significant, cumulative, and observable over time. When policymakers determine policy, when official actors exercise discretion, and when citizens proffer testimony or jury service, bias often plays a role." Research Working Group, Task Force on Race and the Criminal Justice System, *Preliminary Report on Race and Washington's Criminal Justice System*, 87 Wash. L. Rev. 1 (2012).

Against this backdrop, the absence of standards regarding when to issue a juvenile court warrant re-opens the door to the continuation of implicit racial bias and racial disproportionality. This Court has called upon legal professionals to "develop a greater awareness of our own conscious and unconscious biases in order to make just decisions in individual cases, and we can administer justice and support court rules in a way that brings greater racial justice to our system as a whole." *Matter of Rhone*, 1 Wn.3d 572, 578, 528 P.3d 824 (2023) (citing Supreme Court of Washington, *Letter to Members of the Judiciary and Legal Community* (June 4, 2020)).

This case presents an opportunity to ensure juvenile courts meet certain procedural standards before they issue arrest warrants for a youth, hopefully reducing the bias prevalent in the legal system.

B. The rule does not render the juvenile court an ineffective tribunal.

The appellate court claimed that "the effect of the rule is to limit enforcement of the Juvenile Justice Act" and that the rule

"renders the juvenile court an ineffective tribunal for many of the cases the State is authorized to charge under the Act." However, the court cited no facts in support of this claim.

In fact, in King County, as of Feb. 8, 2024, only 26 unique youths were on "Failure to Appear Status." The dates of filing for these cases ranged from 2019-2023. Between 2020 and 2023, 1,547 unique youth were charged in King County Juvenile Court, meaning that .01% were on "Failure to Appear Status."

The Court of Appeals holding to the contrary, without factual support, is wrong. This Court should accept review to correct this harmful error.

C. There is a conflict between a decision of the Court of Appeals and this Court's decision to adopt JuCR 7.16

In 2020, this Court enacted JuCR 7.16 to restrict when a court may issue a warrant for youth in juvenile court. In 2023, this Court maintained the court rules after the Superior Court Judges' Association and the Washington Association of Juvenile Court Administrators asked this Court to rescind or substantially modify the rule.

The Court of Appeals' decision finding JuCR 7.16 unconstitutional and unenforceable clearly conflicts with this Court's decision to adopt JuCR 7.16 in 2020 and reject the effort to rescind or substantially change the rule in 2023.

For this reason, this Court should accept review.

D. The Court should accept review to resolve a significant question of Constitutional law.

The Court of Appeals' decision finds that JuCR 7.16, adopted by the Supreme Court in 2020 and then reaffirmed in 2023, "conflicts with the substantive provisions of the Juvenile Justice Act" and is "unenforceable as a violation of the separation of powers doctrine." This holding is a significant question of law under the Constitution since it relates to the power of the Court to govern its procedures.

Judge Fearing noted in his dissent that,

> JuCR 7.16 does not address primary rights or substance. It does not impact sentencing. The court rule only involves pretrial procedure and enforcement of court orders.

A.M.W., 545 P.3d at 411.

This Court has always had the primary authority to create rules governing its own procedures. *State v. Gresham*, 173 Wn.2d 405, 431, 269 P.3d 207 (2012). By ruling that this Court may not issue rules that will impact court procedure if they might impact the ability to incarcerate a person charged with a crime, the Court of Appeals calls into question many of this Court's rules. This Court must accept review to reverse this obvious error made in the Court of Appeals and to allow JuCR 7.16 to stand.

V. CONCLUSION

For the aforementioned reasons, amici request that the Court accept review.

RESPECTFULLY SUBMITTED this 24th day of May 2024.

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VI. CERTIFICATE OF COMPLIANCE WITH RAP 18.17

I certify that the word count for this brief, as determined by the word count function of Microsoft Word, and pursuant to Rule of Appellate Procedure 18.17, excluding title page, tables, certificates, appendices, signature blocks and pictorial images is 1,801.

RESPECTFULLY SUBMITTED this 24th day of May 2024.

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CERTIFICATE OF SERVICE

I certify that on May 24, 2024, I filed this brief through the Washington Court Appellate Portal, which will serve one copy of the document by email on all attorneys of record.

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