

SUPREME COURT OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

ZYION HOUSTON-SCONIERS and TRESON LEE ROBERTS,

Petitioners.

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*AMICUS CURIAE* BRIEF OF AMERICAN CIVIL LIBERTIES UNION  
OF WASHINGTON, CENTER FOR CHILDREN & YOUTH JUSTICE,  
COLUMBIA LEGAL SERVICES, TEAM CHILD, WASHINGTON  
ASSOCIATION OF CRIMINAL DEFENSE LAWYERS and  
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#### A. INTEREST OF AMICUS CURIAE

The identity and interest of Amicus are described in the Motion which accompanies this Brief.

#### B. ISSUE TO BE ADDRESSED BY AMICUS

Whether the right to due process and fundamental fairness requires holding a hearing prior to a youth's decline to adult court to consider whether the transfer is justified in light of the individual circumstances of the youth as well as other factors.

#### C. STATEMENT OF THE CASE

Zyion Houston-Sconiers, age 17, and Treson Lee Roberts, age 16, were charged and convicted in adult court of multiple charges for robbing trick or treaters on Halloween, 2012. In a period of an hour and a half, Zyion, Treson and three other boys stole 96 pieces of candy, a cell phone and a devil mask. Adam Lynn, *Halloween Robbers Receive Sentences*, The News Tribune (September 14, 2013). They were armed with a firearm which they did not fire. Jonathan Martin, *When a Second Chance for Teens is a Better Alternative to Prison*, Seattle Times (March 23, 2016). Two boys avoided being charged by testifying against Zyion and Treson, while a third boy pled guilty in juvenile court. Lynn, *News Tribune*.





Treson Roberts (left) and Zyion Houston-Sconiers (right). Martin, *Seattle Times*.

A divided Court of Appeals panel upheld the convictions of these two teenagers who were never afforded the opportunity for an individualized determination of whether they should be sent to adult court or remain in juvenile court. At sentencing, the court imposed sentences of 31 years for Zyion and 26 years for Treson, based solely on the firearm enhancements their convictions carried.

#### D. ARGUMENT

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, \_\_\_, 141 A.3d 1178 (2016) (quoting *State v. R.G.D.*, 108 N.J. 1, 4–5, 527 A.2d 834 (1987) (quoting Paul Hahn, *The Juvenile Offender and the Law* 180 (3d ed.1984))). Although in 1996 this court determined automatic

transfer to be constitutional,<sup>1</sup> scientists and the courts, in a string of landmark Supreme Court rulings, have come to recognize that youth accused of crimes are more capable of change than adults accused of the same crimes, respond to different kinds of interventions than adults, and therefore should not automatically be punished in the same way. *See* MacArthur Found. Research Network on Adolescent Dev. & Juvenile Justice, *Issue Brief 3, Less Guilty by Reason of Adolescence* 1 (2006); Nat'l Research Council, *Reforming Juvenile Justice: A Developmental Approach* vii (Richard J. Bonnie et al. eds., 2013); *see also, Roper v. Simmons, Graham v. Florida, Miller v. Alabama, Montgomery v. Louisiana*, and *State v. O'Dell, infra*. Indeed, these cases overrule the cases relied on in earlier rulings to uphold auto-decline, demonstrating that both the law and the newer scientific information warrant reconsideration of the auto-decline law.

The auto-decline law violates constitutional due process provisions. Transfer from juvenile to adult court imposes a significant deprivation of liberty requiring commensurate procedural protection under

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<sup>1</sup> Almost all of the cases relied on by *In re Boot*, 130 Wn.2d 553, 925 P.2d 964 (1996), have been overruled in *Roper, Graham* et al. *See e.g., Roper's* abrogation of *Stanford v. Kentucky*, 492 U.S. 361, 109 S. Ct. 2969, 106 L. Ed. 2d 306 (1989), which was heavily cited in *Boot*. For that reason and the other reasons set forth in the appellant's and amici's briefs, "there has been 'a clear showing that an established rule is incorrect and harmful,'" justifying this Court's rejection of precedent. *W.G. Clark Constr. Co. v. Pac. Nw. Reg'l Council of Carpenters*, 180 Wn.2d 54, 66, 322 P.3d 1207 (2014) (citation omitted).

the due process clause. *Kent v. United States*, 383 U.S. 541, 546, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966). Washington’s automatic decline statute violates state and federal due process because it eliminates the individualized consideration and discretion the federal and state constitutions require prior to subjecting youth to adult court. Moreover, the lack of a hearing creates a severe risk of error and, like other flawed mass incarceration policies, perpetuates harmful racial bias and decreases public safety.

**1. THE PROCESS FOR SUBJECTING YOUTH TO ADULT COURT MUST COMPLY WITH DUE PROCESS.**

Juveniles have long been found to be entitled to due process of law. *Kent*, 383 U.S. at 553; *Application of Gault*, 387 U.S. 1, 13, 87 S. Ct. 1428, 1436, 18 L. Ed. 2d 527 (1967). While juvenile courts have wide latitude to determine when a youth should remain in juvenile court, “this latitude is not complete.” *Kent*, 383 U.S. at 553. To satisfy due process, transfer rules must satisfy both due process and principles of fairness. *Kent*, 383 U.S. at 553.

Washington’s courts have also long recognized the important benefits of juvenile court and applied due process principles to youth. *See State v. Maynard*, 183 Wn.2d 253, 259, 351 P.3d 159, 163 (2015) (citing *State v. Dixon*, 114 Wn.2d 857, 860, 792 P.2d 137 (1990)). Even prior to

the U.S. Supreme Court ruling in *Gault* that juvenile offenders were entitled to fundamental due process, Washington's juvenile courts employed most of the required practices. *State v. S.J.C.*, 183 Wn.2d 408, 424, 352 P.3d 749 (2015); *see also* Const. art. 1, § 3. Washington's courts "have built a constitutional wall around juvenile justice; and while the dimensions of this wall have changed, its structural integrity has not." *S.J.C.*, 183 Wn.2d at 417.

**2. COURTS RECOGNIZE THAT "YOUTH MATTERS"  
AND THAT IT IS NO LONGER ACCEPTABLE TO  
"AUTOMATICALLY" TREAT YOUTH LIKE ADULTS.**

Procedures for adults do not automatically satisfy the constitutional requirements for youth. In *J.D.B. v. North Carolina*, the Supreme Court recognized that because juveniles lack the maturity and experience of an adult, procedures like police interrogation, put in place for adults, must instead adapt to the attributes of youth. 564 U.S. 261, 272-74, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011). *J.D.B.* acknowledges a fact the non-judicial world had understood for a long time: children do not have the education, judgment, and experience of adults and are not simply "miniature adults." *Id.*, at 2403-04. Likewise, Washington's Supreme Court has recognized the attributes of youth are legally significant and justify maintaining the longstanding rehabilitative purpose of juvenile court. *S.J.C.*, 183 Wn.2d at 434.

Youth is now clearly recognized as a mitigating factor in the punishment context, and the same legal principles are relevant to a due process analysis. *Roper v. Simmons* established that because juveniles have lessened culpability they are less deserving of the most severe punishments. 543 U.S. 551, 569, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). In *Graham v. Florida*, the Supreme Court held a life sentence could not be imposed without the creation of a procedure which would provide a meaningful opportunity for release. 560 U.S. 48, 75, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), as modified (July 6, 2010). These decisions incorporate both common sense – what “any parent knows” – and recent developments in brain science supporting the lesser culpability of youth. *Miller v. Alabama*, 567 U.S. \_\_\_, 132 S. Ct. 2455, 2464, 183 L. Ed. 2d 407 (2012). The courts have made abundantly clear that the law can no longer simply assume adult sentences apply to youth; to the contrary, long adult sentences like those in issue here are presumptively invalid for youth unless “irreparable corruption” is proven. *Montgomery v. Louisiana*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 718, 736, 193 L. Ed. 2d 599 (2016).

Likewise, this Court has recognized in the sentencing context, even when a young adult is involved, that youth have less ability to control their emotions, identify consequences and make reasoned decisions about their actions, while at the same time having greater capacity for rehabilitation,

warranting at least consideration of a lower sentence than the “standard” for a mature adult. *State v. O’Dell*, 183 Wn.2d 680, 692-93, 358 P.3d 359 (2015). The factors which must be considered are virtually identical to the factors that as a matter of due process under *Kent* must be considered in a decline hearing: the sophistication and maturity of the juvenile as determined by consideration of the juvenile’s home, environment, situation, emotional attitude, and pattern of living, and the likelihood of reasonable rehabilitation of the juvenile. This authority establishes that youth cannot constitutionally be automatically treated as adults.

**3. DUE PROCESS REQUIRES COURTS TO CONDUCT AN INDIVIDUALIZED INQUIRY BEFORE ORDERING DECLINE TO ADULT COURT.**

To ensure that the youth’s interests in juvenile status and freedom from confinement are adequately protected, the hearing which precedes decline must allow the court to conduct an individualized inquiry. *Kent* at 553 n. 15. To satisfy this due process requirement, courts must conduct an inquiry into the youth’s needs, amenability to treatment and investigate the underlying facts to determine whether decline is appropriate. *Kent*, 383 U.S. at 546; *Miller*, 132 S. Ct. at 2467. At a minimum, compliance with due process and fundamental fairness requires the court to identify the private interest affected by the official action, the risk of erroneous deprivation, the probable value of additional safeguards and, finally, the

State's interest. *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L.Ed.2d 18 (1976).

a. *Mandatory decline fails to adequately protect the significant interests of the juvenile.*

For a youth who has been accused of a serious crime, the most important question is which court will hear the case. *R.G.D.*, 108 N.J. at 4–5. 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). This Court has many times recognized the importance of this distinction. *State v. Rice*, 98 Wn.2d 384, 393, 655 P.2d 1145 (1982). Furthermore, given the lengthy prison sentences imposed on the young defendants in this case, it is obvious that their significant physical liberty interests were at stake.

The Court has also recognized the important benefits a juvenile receives by remaining in juvenile court. *Maynard*, 183 Wn.2d at 259. While the clearest difference between adult and juvenile court is the length of time a youth will serve if convicted of a crime, many other differences also exist. *See State v. Chavez*, 163 Wn.2d 262, 271, 180 P.3d 1250 (2008). 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.*<sup>2</sup> In contrast, as discussed below in Section c., subjecting youth to adult court harms public safety.

*b. The failure to assess the individual circumstances of a youth before declining the youth to adult court creates a great risk of erroneous deprivation and the probable value of the right to a hearing is great.*

In eliminating the right to a decline hearing, the auto-decline law violates the state and federal due process clauses because it eliminates any judicial discretion to consider the “mitigating qualities of youth” and the “character and record of the individual offender or circumstances.” *Miller*, 132 S. Ct. at 2467 (*quoting Woodson v. N. Carolina*, 428 U.S. 280, 284, 96 S. Ct. 2978, 49 L. Ed. 2d 944 (U.S. 1976)); *Johnson v. Texas*, 509 U.S. 350, 367, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993). Thus, automatic decline creates a severe risk of erroneous deprivation of a juvenile’s rights. In contrast, protecting the right to a decline hearing for all juveniles would

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<sup>2</sup> <https://www.dshs.wa.gov/ra/juvenile-rehabilitation/juvenile-justice-evidence-based-programs>.



ensure that the risks of erroneously causing the following harmful effects are reduced.

- i. The differences between adults and juveniles have constitutional implications.

There are “measurable and material differences” between juveniles and adults that have constitutional implications. *S.J.C.*, 183 Wn.2d at 428. Courts recognize children are immature, irresponsible, impetuous and reckless. *Johnson*, 509 U.S. at 368. Because of this, the background and emotional development of a youthful offender must be considered before a court can weigh culpability. *Miller*, 132 S.Ct. at 2467 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 110–112, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982)). As the *Kent* case recognized in describing the factors considered at a decline hearing, and in light of the evidence discussed below, it is essential to consider individualized information about the child *before* transfer to adult court, not at some later date such as sentencing in adult court.

- ii. Automatic decline excludes consideration of several individual factors, including the high prevalence of trauma suffered by youth.

Automatic decline fails to take into account the prevalence of trauma in young people who have been arrested and the role that trauma can play in causing criminal behavior. Patricia K. Kerig et al., Nat’l Child Traumatic Stress Network, *Assessing Exposure to Psychological Trauma and Posttraumatic Stress Symptoms in the Juvenile Justice Population* 4

(2014). As much as 80 percent of young people who have been arrested report exposure to at least one traumatic incident and the majority report multiple types of trauma. *Id.*

The prevalence of trauma has led the U.S. Attorney General’s Task Force on Children Exposed to Violence to declare “[l]aws and regulations prosecuting [juveniles] as adults in adult courts, incarcerating them as adults, and sentencing them to harsh punishments . . . must be replaced or abandoned.” Robert L. Listenbee et al., Report of the Attorney General’s National Task Force on Children Exposed to Violence 23 (2012)<sup>3</sup>.

- iii. Youth who are prosecuted in adult court are more likely to be abused in prison.

Children in adult facilities face significant dangers. The risk of sexual assault for children in adult facilities is five times greater than it is for children in juvenile detention. Kanako Ishida et al., Juvenile Justice Initiative, *Automatic Adult Prosecution of Children in Cook County, Illinois, 2010-2012* (2014)<sup>4</sup>

While children under 18 are just 1 percent of the prison population, they account for a significant percentage of inmate-on-inmate sexual violence in jails. Campaign for Youth Justice, *Jailing Juveniles: The*

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<sup>3</sup> <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

<sup>4</sup> <http://jjustice.org/wordpress/wp-content/uploads/Automatic-Adult-Prosecution-of-Children-in-Cook-County-IL.pdf>.

*Dangers of Incarcerating Youth in Adult Jails in America* 4 (2007).<sup>5</sup> They are also twice as likely as young people in juvenile detention to be physically assaulted by staff. Malcolm C. Young & Jenni Gainsborough, The Sentencing Project, *Prosecuting Juveniles in Adult Court: An Assessment of Trends and Consequences* 6 (2000)<sup>6</sup>. They are eight times as likely to commit suicide as those detained in juvenile facilities. Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, *Juv. Just. Bull.*, June 2010 at 7.<sup>7</sup>

iv. The adult correctional system negatively influences youth and harms development.

Beyond dangers to their physical safety, children are vulnerable to the negative influences that surround them in adult facilities. They are “likely to learn social rules and norms that legitimate domination, exploitation, and retaliation.” Donna Bishop & Charles Frasier, *Consequences of Transfer, The Changing Borders of Juvenile Justice: Transfer of Adolescents to Criminal Court* 227, 263 (Jeffrey Fagan & Franklin Zimring eds., 2000). They miss opportunities critical to their

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<sup>5</sup>[http://www.campaign4youthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing\\_Juveniles\\_Report\\_2007-11-15.pdf](http://www.campaign4youthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf).

<sup>6</sup> <http://www.prisonpolicy.org/scans/sp/juvenile.pdf>. This view is endorsed by the American Jail Association; American Psychiatric Association, the American Academy of Pediatrics; the National Association of Counties; the American Bar Association; and the National Commission on Correctional Healthcare, all of which oppose holding juveniles in adult facilities.

<sup>7</sup> <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>.

development into adulthood, including the assumption of adult social roles, improving one's prospects for employment and seeking financial stability through work and education. Campaign for Youth Justice, at 6-14. These factors contribute to a mortality rate for people who were transferred to the adult system as teens that is nearly 50 percent higher than for people who were prosecuted in the juvenile system. Matthew C. Aalsma et al., *Mortality of Youth Offenders Along a Continuum of Justice System Involvement*, Am. J. Preventative Med., 303 (2016).<sup>8</sup>

- v. Youth have a lesser capability to understand and participate in legal proceedings; a decline hearing improves the likelihood youth will make informed decisions in their case.

Transferring juveniles to adult court without any inquiry into their developmental maturity ignores the fact that adolescents have a lesser capability to understand and participate in legal proceedings against them, undermining the fairness of the justice process. Unlike proceedings in juvenile court, proceedings in adult criminal court are not tailored to a young person's level of understanding, nor managed by professionals familiar with juvenile needs, comprehension and communication abilities. See *J.D.B.*, 131 S. Ct. at 2403. Thus automatically subjecting youth to adult court increases the risk of error.

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<sup>8</sup> <http://www.ajpmonline.org/article/S0749-3797%2815%2900520-6/abstract>.

Developmental immaturity can impede a young defendant's ability to make decisions in his or her best interest during the criminal process. Eraka Bath & Joan Gerring, *National Trends in Juvenile Competency to Stand Trial*, 53 J. Am. Acad. Child & Adolescent Psychiatry 265, 265 (2014). For example, adolescents accused of committing a crime with co-defendants may be influenced by a desire for peer approval when determining trial strategy. Richard E. Redding & Lynda E. Frost, *Adjudicative Competence in the Modern Juvenile Court*, 9 Va. J. Soc. Pol'y & L. 353, 377 (2001).

Adolescents may have difficulty assisting their attorneys because court procedures can lead children to believe that the judge, prosecutor and defense attorney are all on the same side and against the adolescent. Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 Ann. Rev. Clinical Psychol. 459, 475 (2009). They may also be at a disadvantage in the plea bargaining process in criminal court. Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 Victims & Offenders 428, 440–41 (2012). All of these considerations support at least considering whether a case involving juveniles is inappropriate for adult court.

- c. *Providing the right to a decline hearing serves the State's interests because it increases public safety and reduces racial disparity.*

- i. Prosecuting youth in adult court increases recidivism and is a threat to public safety.

Automatic decline takes away one of the last chances a youth has to avoid becoming part of a revolving system of recidivism. When a youth is prosecuted as an adult, the ability to provide the youth with the tools to stay out of future trouble is greatly diminished and, as a result, the likelihood the youth will be unable to escape from the criminal justice system is enhanced.

Research on the effectiveness of juvenile decline has demonstrated it fails to be an effective tool in reducing future crime. Patrick Griffin, *Legal boundaries between the Juvenile and Criminal Justice Systems in the United States*, From Juvenile Delinquency to Adult Crime: Criminal Careers, Justice Policy and Prevention, 26 (2012). Studies continue to confirm that youth whose cases are transferred to adult court are more likely to recidivate than youth with similar offenses whose cases remained in juvenile court. Children's Law Center, Inc., *Falling Through the Cracks: A New Look at Ohio Youth in the Adult Criminal Justice System*, 1 (2012).<sup>9</sup>

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<sup>9</sup> In recognition of these realities, the United Nations Commission on Human Rights, the Institute of Judicial Administration, American Psychiatric Association, the American Academy of Child and Adolescent Psychiatry, the Council of Juvenile Correctional Administrators, the National Association of Counties, and the American Bar Association all have declared that transferring juveniles to adult court, especially without consideration of each child's individual characteristics, is wrong. Human Rights Comm., *Concluding Observations on the Fourth Report of the United States of America*, U.N.

Because prosecuting juveniles in adult court does not achieve public safety goals, many states have taken one or more measures to remove youths from the adult system. *See* Sarah Alice Brown, Nat'l Conference of State Legislatures, *Trends in Juvenile Justice State Legislation, 2011-2015* (2015)<sup>10</sup>. Fourteen states have reformed their transfer laws to reduce the number of youths that end up in the adult system. *Id.* Twelve states have made changes to their laws that allow age to be considered at sentencing. *Id.* Eleven states have enacted laws limiting the detention of youths in adult jails. *Id.* Five states have raised the age of criminal majority, increasing the number of young people eligible to stay in juvenile court. *Id.*

The Centers for Disease Control and Prevention (CDC) has also found transfer increases violence, causes harm to young people and threatens public safety. Robert Hahn et al., *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the*

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Doc. CCPR/C/USA/CO/4, at 9–10 (2014); *Juvenile Justice Standards: Standards Relating to Transfer Between Courts* §§ 1.1(C) & cmt., 2.2(C) & cmt. (Am. Bar Ass'n 1980); Am. Psychiatric Ass'n, *Adjudication of Youths as Adults in the Criminal Justice System: Position Statement* 1 (2006); Comm. on Juvenile Justice Reform, Am. Acad. of Child & Adolescent Psychiatry, *Recommendations for Juvenile Justice Reform* 15 (Louis J. Kraus & William Arroyo eds., 2d ed. 2005); Council of Juvenile Corr. Adm'rs, *Waiver and Transfer of Youths to Adult Systems* 1 (2009); Nat'l Ass'n of Ctys., *American County Platform & Resolutions, 2009-2010*, at 13 (2009); Am. Bar Ass'n, Index to ABA Criminal Justice Policies, By Meeting, Available at [http://www.americanbar.org/groups/criminal\\_justice/policy/index\\_aba\\_criminal\\_justice\\_policies\\_by\\_meeting.html](http://www.americanbar.org/groups/criminal_justice/policy/index_aba_criminal_justice_policies_by_meeting.html).

<sup>10</sup> [http://www.ncsl.org/documents/cj/Juvenile\\_Justice\\_Trends.pdf](http://www.ncsl.org/documents/cj/Juvenile_Justice_Trends.pdf).

*Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services, Mortality & Morbidity Wkly. Rep.*, Nov. 30, 2007, at 1.<sup>11</sup> These studies “found an undesirable effect in which transferred juveniles committed more subsequent violent or general crime than retained juveniles.” *Id.* Overall, the studies showed a relative 34 percent increase in subsequent crimes for transferred youths. *Id.* The report found that “to the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good,” and that “the use of transfer laws and strengthened transfer policies is counterproductive to reducing juvenile violence and enhancing public safety. *Id.* at 10.

Other research confirms these findings. *See Redding*, at 1. The Department of Justice report concluded that transfer laws have little or no specific deterrent effect. The report cited six major studies showing that youths convicted in criminal court have higher recidivism rates than their counterparts in juvenile court. *Id.* at 6.

Washington’s auto decline law is no different than the policies discussed above which have reduced public safety rather than improved it

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<sup>11</sup> This review examined every study on transfer policies that had been published in an academic journal or conducted by a government agency and compared outcomes for children in the juvenile system with those transferred to the adult system. <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>.



by subjecting more youth to the adult criminal justice system. As noted in the amicus memorandum in support of review, when asked to assess whether automatic decline resulted in reduced recidivism, the Washington State Institute for Public Policy found that declining youth to adult court is associated with an increase in recidivism. Elizabeth Drake, *The Effectiveness of Declining Juvenile Court Jurisdiction of Youthful Offenders*, 9 (2013).

- ii. Washington should reject the harmful racial bias underlying its automatic decline law.

Washington's auto decline law creates significant racial disparity, consistent with studies showing at least implicit bias in that African American youth are viewed as "less innocent" than their white counterparts, as discussed in the amicus brief supporting review.<sup>12</sup> In contrast, evidence establishes there is less racial disparity for youth who are declined through discretionary procedures; thus, the state's interests in reducing discriminatory treatment of youth support a right to a decline hearing prior to adult prosecution of juveniles.

Moreover, the origins of the auto-decline law reflect false and offensive racial stereotypes. When the statute was adopted in 1994 and

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<sup>12</sup> Citing *inter alia* Sentencing Guidelines Commission, *Disproportionality and Disparity in Juvenile Sentencing*, 4 (2007), and Dr. Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children* (2014), <http://www.apa.org/news/press/releases/2014/03/black-boys-older.aspx> (summary).

amended in 1997, it was a product of fears about juvenile “super-predators” who allegedly were about to cause a huge crime wave. These fears had an explicitly racial overtone. The proponent of the “super-predator” theory, John Dilulio, in 1996 published an article entitled “My Black Crime Problem and Ours,” which targeted African American juveniles as the prime candidates to become super-predators.<sup>13</sup> Though Dilulio has since conceded that his prediction was wrong, his views were widely accepted by state legislatures that passed harsh juvenile transfer and sentencing laws. *See* Lara A. Bazelon, *Note: Exploding the Superpredator Myth: Why Infancy is the Preadolescent’s Best Defense in Juvenile Court*, 75 N.Y.U. LAW REV. 159 (2000). Auto decline laws were premised on the view that “super-predator” youth could never change, warranting lengthy prison terms, exactly what has happened to Zion and Treson, and exactly the principles now rejected in *Graham*, *Miller* and *Montgomery*.

Those cases and the others cited in this brief support a return to Washington’s pre-1994 system, which required holding a hearing before transfer to adult court. If a right to a decline hearing is recognized,

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<sup>13</sup> <http://www.city-journal.org/html/my-black-crime-problem-and-ours-11773.html>

prosecutors can still pursue some cases in adult court; they must simply prove a justification for it.<sup>14</sup>

#### E. CONCLUSION

“There can be no keener revelation of a society’s soul than the way in which it treats its children.” Nelson Mandela, *Launch of the Nelson Mandela Children’s Fund* (May 08, 1995).<sup>15</sup> Science and the law now agree that automatically treating youth like adults is harmful and unconstitutional. Due process requires the right to a hearing to consider the individual circumstances of a youth before subjecting individuals like Zyion and Treson to the lifelong and debilitating consequences of adult court. Because the automatic decline statute fails to provide for an opportunity for the court to consider these factors, the Court should find the automatic decline law to be in violation of Zyion and Treson’s due process rights.

DATED this 9th day of September 2016.

Respectfully submitted,



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<sup>14</sup> Even if a case remains in juvenile court, juvenile prison sentences up to age 21 are available. RCW 13.40.300.

<sup>15</sup>[http://db.nelsonmandela.org/speeches/pub\\_view.asp?pg=item&ItemID=NMS250&txtstr=Mahla](http://db.nelsonmandela.org/speeches/pub_view.asp?pg=item&ItemID=NMS250&txtstr=Mahla).

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