No. 95542-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

B.O.J.,

Appellant.

On Appeal from the Superior Court of the
State of Washington for King County

AMICI CURIAE BRIEF OF JUVENILE LAW CENTER, AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON, LEGAL VOICE, AND COLUMBIA LEGAL SERVICES IN SUPPORT OF APPELLANT, B.O.J.

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IDENTITY AND INTEREST OF AMICUS CURIAE

The identity and interest of *amici curiae* are set forth in the accompanying Motion for Leave to File an *Amicus Curiae* Brief.

INTRODUCTION

The ruling below contains numerous legal errors and should be reversed. First, in imposing a manifest injustice sentence far above the range for the misdemeanor offense, the juvenile court relied entirely on difficulties in B.O.J.'s past and speculation about her personal safety—rather than the nature of her crimes and whether she posed a clear danger to society. This approach improperly put B.O.J's gender and dependency status at issue in the determination of her disposition and violated both the language and purposes of the Juvenile Justice Act of 1977 (JJA). It also was counter-productive and dangerous. While manifest injustice sentences are permitted to prevent clear dangers to the community, locking B.O.J. away for a year actually creates public safety risks and also puts B.O.J. at serious risk of harm. A robust body of research demonstrates that lengthy incarceration and incarceration for minor crimes only makes it more likely a youth will reoffend. The juvenile court's misguided order does not *avoid* a "manifest injustice;" on the contrary, it undermines the purposes of the JJA and renders a profound injustice on B.O.J. herself.

STATEMENT OF THE CASE

Amici curiae adopt the Statement of the Case as set forth by Petitioner B.O.J.

ARGUMENT

The law permits a manifest injustice upward departure disposition only when the standard range "would impose a serious, and clear danger to society in light of the purposes" of the Juvenile Justice Act of 1977 (JJA). RCW 13.40.020(19). The court did not explain how B.O.J. was a danger to society.[1] Instead, the judge's reasoning in effect relied on B.O.J.'s gender and dependency status, focused on her safety rather than any danger she posed, and imposed a sentence that would harm B.O.J. and undermine public safety, all in violation of the JJA.

I. THE LANGUAGE AND LEGISLATIVE HISTORY OF THE WASHINGTON JUVENILE JUSTICE ACT WEIGHS AGAINST AN UPWARD DEPARTURE IN THIS CASE, PATRICULARLY SINCE THE TRIAL COURT RELIED ON THE PROHIBITED FACTORS OF GENDER AND DEPENDENCY STATUS

A. The JJA Prohibits Increased Incarceration Based On Gender And Dependency Status

The JJA prohibits juvenile courts from considering a youth's gender or dependency status in ordering a commitment. RCW 13.40.150(4)(a),(e).

[1] The juvenile court emphasized that it was making this decision because of "the seriousness of the services that she needs." (RP 30.)

Although the juvenile court did not explicitly state that it was incarcerating B.O.J. based on her gender or dependency status, the factors the judge relied on are precisely those which have a disproportionate impact on girls and dependent youth.

Gender disparities in juvenile justice dispositions often manifest themselves subtly—rather than explicit discrimination, girls may be penalized by well-meaning, over-protective judges, or punished for "noncompliance" like running away.[2] *See* Laura A. Barnickol, *The Disparate Treatment of Males and Females Within the Juvenile Justice System*, 2 WASH. U.J.L. & POL'Y 429, 445 (2000); (Ct. App. Op. 9.)

The number of girls in the justice system has been steadily rising. Francine T. Sherman, *Justice for Girls: Are We Making Progress?* 59

[2] Judicial discretion in sentencing has impacted girls of color particularly hard. Jyoti Nanda, *Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System*, 59 UCLA L. REV. 1502, 1508-09, 1530-31 (2012); Kim Taylor-Thompson, *Girl Talk—Examining Racial and Gender Lines in Juvenile Justice*, 6 NEV. L.J. 1137, 1137-38 (2006). Black girls are the largest growing population of girls referred to the juvenile courts and confinement. Taylor-Thompson, *supra*, at 1137-38. In 1992, black girls made up 30 percent of girls being referred to the juvenile court; by 2008 there was a 72 percent increase, with black girls occupying 35 percent of all girls' juvenile court referrals. FRANCINE T. SHERMAN, RICHARD A. MENDEL & ANGELA IRVINE, *MAKING DETENTION REFORM WORK FOR GIRLS: JDAI PRACTICE GUIDE #5*, 9-11 (2013) (citing M. Sickmund et al., Easy Access to Juvenile Court Statistics: 1985-2009, Off. Juv. Just. & Delinq. Prevention, http://www.ojjdp.gov/ojstatbb/ezajcs/asp/selection.asp). Native American girls are incarcerated five times more often than white non-Hispanic girls. *See generally* Vera Institute of Justice, Initiative to End Girls' Incarceration, https://www.vera.org/projects/the-initiative-to-end-girls-incarceration/learn-more. In Washington, youth of color are nearly twice as likely as white youth to be referred to the juvenile courts and make up 58 percent of all juveniles held in juvenile rehabilitation facilities. *See* Washington State Department of Social and Health Services, R.E.D., Racial & Ethnic Disparities, https://www.dshs.wa.gov/ra/office-juvenile-justice/red-racial-ethnic-disparities.

UCLA L. REV. 1584, 1586-87 (2012) (citing MEDA CHESNEY-LIND & LISA PASKO, THE FEMALE OFFENDER: GIRLS, WOMEN, AND CRIME 12 (2d ed. 2004)). Research demonstrates that the growing number of girls in the system is not due to increasing criminality, but rather due to a harsher system response. Wendy S. Heipt, *Girls' Court: A Gender Responsive Juvenile Court Alternative*, 13 SEATTLE J. SOC. JUST. 803, 808–09 (2015).

Although girls are being brought into the juvenile justice system for lesser offenses, their case dispositions are often as severe or more severe than their male counterparts'. *See* Barnickol, *supra*, at 438. A major driving force behind this seems to be "markers of institutional compliance and noncompliance" including probation violations and prior status offenses. RICHARD A. MENDEL, NO PLACE FOR KIDS: THE CASE FOR REDUCING JUVENILE INCARCERATION 15 (2011) [hereinafter NO PLACE FOR KIDS] (citing Lin, Jeffrey, Exploring the Impact of Institutional Placement on the Recidivism of Delinquent Youth, National Institute of Justice, 2007, www.ncjrs.gov/pdffiles1/nij/grants/217590.pdf), https://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf. Yet "despite the profound impact that they have on the risk of incarceration, these [markers of institutional non-compliance] are not very predictive of the risk of recidivism." *Id.* (alteration in original).

A marker of particular relevance to the sentencing in this case, and Washington generally, is running away. Girls run more often than boys, and they run repeatedly. Heipt, *supra*, at 813–14. Courts often perceive this as recalcitrance and become frustrated with repeated violations. *Id.* at 814. But girls most often run as a survival strategy, either to escape abusive situations or as a response to trauma. *Id. See also* Taylor-Thompson, *supra* note 2, at 1139, 1146.

Today, many judges describe the practice of detaining girls who run away or violate orders in much the same way as the pre-*Gault* courts—with best intentions to protect the girl.[3] *See In re Gault*, 387 U.S. 1, 76-77, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967). Here, the juvenile court impermissibly focused on perceived risks to B.O.J.'s safety. It reasoned that despite its

[3] This month, the National Council of Juvenile and Family Court Judges released new guidelines for juvenile court judges. The guidelines underscore the various problems with out of home placement. NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, ENHANCED JUVENILE JUSTICE GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE JUSTICE CASES, 37-38 (2018), https://www.ncjfcj.org/sites/default/files/NCJFCJ_Enhanced_Juvenile_Justice_Guidelines_Final.pdf. When the publication launched, the Council President noted data showing girls were more likely to be held in detention, and editor Jessica Pearce explained "courts are still using detention to keep kids in danger of hurting themselves, running away or being trafficked in a safe and secure place. . . . doing so takes a 'paternalistic view of kids' that keeps them safe in the short term but doesn't address long-term issues." Bianca Bruno, *New Guidelines to Highlight Alternatives to Juvenile Lock-Up*, COURTHOUSE NEWS SERVICE (Jan. 16, 2019), https://www.courthousenews.com/new-guidelines-highlight-alternatives-to-juvenile-lock-up/.

risks, incarceration was the best option for B.O.J. given the risks it imagined B.O.J. would otherwise encounter in the world:

> What do you think the chances are of [BOJ] being harmed running on the streets? Being addicted to drugs? Not being able to get a job? Not having a place to live? What are the chances of her being harmed there?

(RP 27.)

> [I]f I'm given two choices, one being her on the street and hoping for the best, and one being her in a place where she's stable and has access to treatment …then maybe some of [her] potential [can] get[] used in a positive way, which is what I'm hopeful for.

(RP 34.) *See also State v. F.T.*, 5 Wn. App. 2d 448, 456, 426 P.3d 753 (Wash. Ct. App. 2018) (classifying F.T.'s history of being sex trafficked as "an extremely dangerous adult lifestyle" that necessitated incarceration for a misdemeanor offense), *petition for review filed*, No. 96480-7 (Oct. 23, 2018), *stayed pending*, *State v. B.O.J.*, No. 95542-5. The law permits the court to impose a manifest injustice sentence when the youth poses a clear danger to society; speculating about possible risks to the youth is not a permissible reason to impose a harsher penalty. *See* RCW 13.40.020(19).

Similarly, by relying in part on B.O.J.'s 18 warrants from running away from prior placements and basing her "non-amenability" on her failure to make it to or remain in placement, the court necessarily considered B.O.J.'s status as a dependent child, in violation of RCW 13.40.150(4)(e).

(Ct. App. Op. 3; RP 30.) Research shows "significant overlaps in the risk factors in both the child welfare and juvenile justice systems;" environmental factors such as "poverty, lack of parental capacity, substance abuse, and domestic violence are all significant contributors to child abuse and neglect and delinquent behavior." Claudette Brown, *Crossing Over: From Child Welfare to Juvenile Justice*, 36 MD. B.J. 18, 22 (2003). Indeed, a third to a half of all dual-system-involved youth are girls, although girls are only a fifth to a fourth of youth involved with the juvenile justice system. DENISE HERZ ET AL., ADDRESSING THE NEEDS OF MULTI-SYSTEM YOUTH: STRENGTHENING THE CONNECTION BETWEEN CHILD WELFARE AND JUVENILE JUSTICE 2 (Mar. 2012), https://jbcc.harvard.edu/sites/default/files/addressing_the_needs_of_multi-system_youth_march_2012.pdf. Failure of the dependency system to adequately address trauma can create a dependency to delinquency pipeline. MALIKA SAADA SAAR ET AL., THE SEXUAL ABUSE TO PRISON PIPELINE: THE GIRLS' STORY 28-29 (2015), https://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_layout_web-1.pdf.

To the extent that the judge incarcerated B.O.J. longer because there were no treatment facilities properly serving her, that, too, was a prohibited consideration. RCW 13.40.150 makes clear that "[a] court may not commit a juvenile to a state institution solely because of the lack of facilities,

including treatment facilities, existing in the community." RCW 13.40.150(5).

By relying heavily on B.O.J.'s history of running away from placement to impose a year-long sentence of incarceration, and by justifying her sentence on the need to protect her from harms on the street, the juvenile court improperly held B.O.J.'s gender and dependency status against her in violation of the JJA.

B. The Legislative History Of The Juvenile Justice Act Repudiates Increased Incarceration For Treatment Purposes For A Misdemeanor Like B.O.J.'s

The legislative history underlying the Juvenile Justice Act shows that the intent was to direct use of prolonged incarceration in juvenile justice facilities for punishment only, and not treatment. *See generally* Mary Kay Becker, Washington State's New Juvenile Code: An Introduction, 14 GONZ. L. REV. 289 (1979). Prior to the enactment of the JJA, "[j]ustice was de-emphasized in order for the court to become an instrument for the diagnosis of social ailments and the delivery of social services." *Id at 291*. The drafters of the JJA sought to reduce "inequitable dispositions . . . which were hard to justify" in favor of a "a more uniform and predictable disposition system from the point of view of both the juveniles and the public." *Id*. at 295. As the Legislature began drafting the JJA, interested groups submitted examples of those "inequitable dispositions;" ironically, "numerous cases

of juveniles being committed to a juvenile institution upon conviction for a misdemeanor" were provided. Becker, *supra*, at 294-95.

In adopting the JJA, the Legislature never intended for courts to use increased incarceration in place of treatment. The JJA "move[d] away from the parens patriae doctrine of benevolent coercion." Becker, *supra,* at 307-08. Specifically, "[t]he presumptive sentencing scheme is intended to hold youngsters more accountable for their crimes by dealing with them according to the nature and frequency of their criminal acts rather than on the basis of their social background and need for treatment." *Id*. at 308. Indeed, the attorney reporting to the House Subcommittee drafting the legislation emphasized that "[t]he system does not hold youthful offenders accountable. Violent offenders often have had their cases informally adjusted, while misdemeanors and nonviolent felonies are formally adjudicated by the court." *Id.* at 299. The report further noted that "any hope for success in the area of delinquency prevention and treatment rests in the community and except for reasons [of] public safety, no juvenile offender should be removed from the community." *Id*. (alteration in original). Moreover, a key issue raised in the legislative session was the problem of significant spending on treatment without a corresponding increase in its effectiveness. *Id*. at 298 (citing S.H.R. Con. Res. 46, 44th Legis., 2d Ex. Sess. 1 (1976)).

Not only does the legislative history make clear that the Legislature intended to move away from increased incarceration justified as treatment, but also RCW 13.40.150 specifies the statutory aggravating and mitigating circumstances a court can consider in imposing a manifest injustice disposition, and as discussed above, prohibits consideration of gender, dependent status, or economic circumstances. RCW 13.40.150(3)-(4). Yet, as described in Section I(A), *supra*, in imposing the manifest injustice disposition for the purpose of providing B.O.J. with a "stable" environment, the court violated these provisions. The Legislature barred consideration of a youth's dependent status to address the risk that youth like B.O.J. would be incarcerated longer for treatment purposes. Indeed, like 43.9% of all youth referred to the juvenile justice system, B.O.J. had a history of involvement with the child welfare system. Catherine Pickard, *Prevalence and Characteristics of Multi-System Youth in Washington State*, 1 (Apr. 2014), https://www.courts.wa.gov/subsite/wsccr/docs/MultiSystemYouthInWA_Final.pdf. As a girl, she was at a "significantly higher risk of transition[] from the child welfare system to juvenile justice." *Id*. at 3.

The JJA's prohibition on considering gender in sentencing is also particularly important because the traumatic effects of incarceration are especially harsh for girls. Girls like B.O.J. with trauma histories face present

and future harms resulting from disrupted relationships and social supports, loss of control, and lack of safety. One study of girls previously incarcerated in a juvenile correctional facility found increased incidents of substance abuse, domestic-violence, suicidal ideation, and an inability to care for their children. Marty Beyer et. al., *A Better Way to Spend $500,000: How the Juvenile Justice System Fails Girls*, 18 WIS. WOMEN'S L.J. 51, 52 (2003). Particularly among girls who are trauma survivors, incarceration has been shown to exacerbate mental illnesses and trigger feelings of helplessness, leading to an increase in both suicide attempts and stress-related illnesses. JUSTICE POLICY INST., HEALING INVISIBLE WOUNDS: WHY INVESTING IN TRAUMA-INFORMED CARE FOR CHILDREN MAKES SENSE 6-7 (2010), www.justicepolicy.org/images/upload/10-07_REP_HealingInvisibleWounds_JJ-PS.pdf. *See also* Heipt, *supra*, at 818.[4]

The juvenile court's manifest injustice sentence contravenes the JJA's legislative goals and these important statutory considerations and should be reversed.

[4] Studies consistently report that "among those who are exposed to trauma, females are more likely than males to develop mental health problems as a result." Heipt, *supra*, at 824. This is due to the demonstrable differences between the way male and female brains develop, making girls more susceptible to certain mental illnesses and maladaptive responses. *Id*. at 817. For example, female adolescents have significantly higher rates of suicidal ideation and attempts than boys, both nationally and in Washington State. *Id*. at 818.

II. B.O.J.'S MANIFEST INJUSTICE DISPOSITION VIOLATES THE STATUTE BY HEIGHTENING, RATHER THAN REDUCING, THE DANGER TO SOCIETY

A manifest injustice sentence is permitted to prevent dangers to society. RCW 13.40.020(19). B.O.J.'s sentence, in contrast, is more likely to *create* a danger to society. Indeed, extensive research[5] demonstrates that incarcerating children—especially for lengthy periods of time and for minor offenses—undercuts public safety by increasing recidivism.

According to a 2016 study of Washington youths committed to JRA facilities, the 12-month disposition B.O.J. received is unlikely to reduce B.O.J.'s future recidivism. *See* Sarah Cusworth Walker & Asia Sarah Bishop, *Length of Stay, Therapeutic Change, and Recidivism for*

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[5] The United State Supreme Court has repeatedly relied on social and neuro-science research when interpreting the legal rights of children. *See, e.g.*, *Roper v. Simmons*, 543 U.S. 551, 569-74, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005); *Graham v. Florida*, 560 U.S. 48, 82, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010) (holding that it is unconstitutional to impose life without parole sentences on juveniles convicted of non-homicide offenses); *J.D.B. v. North Carolina,* 564 U.S. 261, 271-72, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011) (holding that a child's age must be taken into account for the purposes of the *Miranda* custody test); *Miller v. Alabama*, 567 U.S. 460, 465, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) (holding that mandatory life without parole sentences for juveniles convicted of homicide are unconstitutional). The Court grounded its conclusions that youth merit distinctive treatment under the law not only in "common sense," but also in scientific research.

This Court, too, has understood the importance of neuro- and social science research into the "hallmark features" of youth, and its relevance to youth's constitutional rights. *See State v. Houston-Sconiers*, 188 Wn.2d 1, 18-23, 391 P.3d 409, 418-21 (2017) (citing, e.g., *Miller* 567 U.S. at 471; *Graham v. Florida*, 560 U.S. at 68-70; *Roper v. Simmons*, 543 U.S. at 569-70). While B.O.J.'s case does not arise in the extreme context of life without parole, this Court should similarly rely on the overwhelming social science regarding the effects of incarceration on youth when viewing the manifest injustice sentence in this case.

Incarcerated Juvenile Offenders, 55 J. OFFENDER REHABILITATION 355, 371 (2016), https://www.tandfonline.com/doi/pdf/10.1080/10509674.2016.1194946?needAccess=true. The study found "no reliable relationship between the time spent in the facility and subsequent improvement in prosocial/problem-solving skills." *Id.* While skill acquisition was strongly correlated to reduced recidivism, the study found no marginal benefit to length of stay in reducing recidivism or in helping juveniles acquire skills during incarceration. *Id*. at 373. The authors examined the influence of length of stay in therapeutically-oriented institutional placements for high-risk juvenile offenders. *Id*. at 355. Evaluating the one-year felony recidivism rate for five different lengths of stay, they concluded that "[t]he recidivism rate among the five lengths of stay levels stayed consistent with a slight, nonsignificant, dip for stays lasting 9-11 months." *Id*. at 371. The authors further noted, "[t]his finding adds to a growing body of literature also failing to find any empirical support for the relationship between longer custodial sentences and reduced future offending." *Id*.

Indeed, in a leading report summarizing existing recidivism research, Richard Mendel concludes that "*the vast majority of studies find that incarceration is no more effective than probation or alternative sanctions in reducing the criminality of adjudicated youth, and a number of*

well-designed studies suggest that correctional placements actually exacerbate criminality." NO PLACE FOR KIDS, *supra*, at 11. It is well recognized that juvenile offenders generally "desist from crime as they mature." JESSICA FEIERMAN ET AL., TEN STRATEGIES TO REDUCE LENGTH OF STAY 2 (2015), www.jlc.org/resources/ten-strategies-reduce-juvenile-length-stay. In research conducted to analyze the impact of juvenile confinement on future criminality, as compared to alternative community-based treatments and punishments, incarceration showed *no gain* in averting future offending. NO PLACE FOR KIDS, *supra*, at 11.

"The research is clear: regardless of the underlying offense, incarceration beyond six months is largely ineffective at reducing recidivism." FEIERMAN, *supra*, at 2. *See also* NO PLACE FOR KIDS, *supra*, at 15 ("A longitudinal study on youth in Philadelphia and Phoenix found there is little or no marginal benefit, at least in terms of reducing future rate of offending, for retaining an individual in institutional placement longer. The analysis found essentially no difference in future offending for youth held 3–6 months vs. 6–9 months, 9–12 months, or more than 12 months." (internal quotations and citation omitted)). Moreover, research shows increased incarceration may have a counterproductive effect on future criminality. NO PLACE FOR KIDS, *supra*, at 15 ("A study of youth in California youth facilities in the early 1980s linked longer periods of

juvenile incarceration to heightened criminality in adulthood." (citing Michael E. Ezell, *Examining the Overall and Offense-Specific Criminal Career Lengths of a Sample of Serious Offenders*, 53 CRIME & DELINQUENCY 3 (2007))).

Among less-serious offenses like B.O.J.'s, the research is especially clear that incarceration actually increases recidivism. NO PLACE FOR KIDS, *supra*, at 12 ("In a recent Ohio study, low- and moderate-risk youth placed into community supervision programs proved less likely to re-offend than similar youth placed into correctional facilities and only one-fifth as likely to be incarcerated for subsequent offenses. . . . In Virginia, low-risk youth released from correctional facilities had substantially higher rearrest rates than similar youth placed on probation." (internal citations omitted)). For example, in Florida's state-wide data-driven juvenile justice reform, researchers found that upward departures in youth incarceration increased the likelihood of recidivism by at least 75 percent. RYAN C. MELDRUM, EVALUATION OF THE FLORIDA DEPARTMENT OF JUVENILE JUSTICE DISPOSITION RECOMMENDATION MATRIX: FINAL REPORT 4 (2017), http://www.djj.state.fl.us/docs/research2/disposition-matrix-2nd-validation-(8-17).pdf?sfvrsn=2. Under this evidence-based approach, B.O.J. would have received probation, day treatment or at most non-secure residential commitment, absent an upward departure.

The negative consequences of incarceration are particularly acute for young people who enter the justice system with behavioral health problems. "Far from receiving effective treatment, young people with behavioral health problems simply get worse in detention, not better." JUSTICE POLICY INST., THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES 8 (2006), http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf. As Petitioner details in her Supplemental Brief, incarceration has significant negative consequences for youth. *See* RICHARD A. MENDEL, THE ANNIE E. CASEY FOUND., JUVENILE DENTATION ALTERNATIVES INITIATIVE: PROGRESS REPORT 2014 5-6 (2014). These consequences include worsening of mental health symptoms, increased risk of suicide, increased risk of delinquency, and an increased risk of victimization, including physical and sexual abuse by staff members and/or fellow residents. JUSTICE POLICY INST., THE COSTS OF CONFINEMENT: WHY GOOD JUVENILE JUSTICE POLICIES MAKE GOOD FISCAL SENSE 17-18 (2009); Ian Lambie & Isabel Randell, *The Impact of Incarceration on Juvenile Offenders*, 33 CLINICAL PSYCHOL. REV. 448, 451-54 (2013); NO PLACE FOR KIDS, *supra*, at 6-7. This is because the experience of confinement is itself traumatic. Thalia González, *Youth Incarceration, Health, and Length of Stay*, 45 FORDHAM URB. L.J. 45, 64 (2017).

These harms are particularly acute for girls with trauma histories like B.O.J., who face present and future harms that flow from disrupted relationships and social supports, and loss of control. The idea that girls who are vulnerable with complex trauma needs are best kept safe through incarceration is exactly wrong. In fact, research demonstrates that community-based treatment, like those offered in B.O.J.'s own county as described at length in the brief submitted by The Mockingbird Society and TeamChild, is a much more effective intervention.[6] *See, e.g.*, NATIONAL

[6] Reformers are increasingly recognizing that girls' needs are best met at home and in their communities. Notably, the Vera Institute of Justice has developed a comprehensive toolkit and launched a national effort to divert girls from the justice system, reduce reliance on incarceration, and ensure a continuum of community-based services that can properly address girls' needs. Vera Institute of Justice, Initiative to End Girls' Incarceration, https://www.vera.org/projects/the-initiative-to-end-girls-incarceration/learn-more. More generally, there is a marked trend nationwide away from harmful, ineffective, expensive youth incarceration. *See generally*, SHAENA M. FAZAL, SAFELY HOME, *http://safelyhomecampaign.com/Safely-Home-Report* (2014). Jurisdictions across the country, including Alabama, Florida, Ohio, Illinois, New York, Missouri, Massachusetts, Michigan, New Jersey and others have recognized this and have shifted resources to these community-based supports with great success in reducing recidivism. *See, e.g.*, *id.* at 2, 4, 7, 8, 27, 44; *see generally* THE CENTER FOR CHILDREN'S LAW AND POLICY, IMPLEMENTATION OF NEW YORK'S CLOSE TO HOME INITIATIVE: A NEW MODEL FOR YOUTH JUSTICE 8-9 (2018), http://www.cclp.org/wp-content/uploads/2018/02/Close-to-Home-Implementation-Report-Final.pdf; Evidence Based Associates, Virginia Service Coordination, http://www.evidencebasedassociates.com/virginia-service-coordination/; Evidence Based Associates, Florida's Redirection Initiative: Using Evidence—Based Practices to Improve Juvenile Outcomes and Save Taxpayers Money, www.evidencebasedassociates.com/wp-content/uploads/2017/04/Florida-Redirection-NCJA.pdf.

For example, Wayne County, Michigan brought the number of youth in facilities from 700 to two and reduced recidivism from 56% to 16%. THE CENTER FOR CHILDREN'S LAW AND POLICY, *supra* note 6, at 9. They also reduced residential care costs from $115 million to $45 million. *Id.* A research evaluation found that 86 percent of youth who were served in a community-based program remained arrest free and 93 percent were still living in their communities upon completion of the program. NATIONAL COLLABORATION FOR YOUTH,

COLLABORATION FOR YOUTH, BEYOND BARS: KEEPING YOUNG PEOPLE SAFE AT HOME AND OUT OF YOUTH PRISONS 8 (November 2017), https://ctjja.org/wp-content/uploads/2017/11/BeyondBars.pdf.

The evidence clearly shows that the manifest injustice sentence of lengthy incarceration imposed on B.O.J. will not protect public safety—and may actually undermine it.

CONCLUSION

In an attempt to help B.O.J., the juvenile court did just the opposite; B.O.J.'s disposition violates the language of the JJA and thwarts rather than serves its goals. *Amici* urge this Court to reverse the dispositional order below.

Respectfully Submitted,

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BEYOND BARS: KEEPING YOUNG PEOPLE SAFE AT HOME AND OUT OF YOUTH PRISONS 8 (November 2017), https://ctjja.org/wp-content/uploads/2017/11/BeyondBars.pdf. A follow-up report found "6-12 months after discharge from a community-based program, 87% were still living in the community and 95% were not in secure placement." *Id*. The youth in these studies had "histor[ies] of prior out-of-home placements and were in the system for misdemeanors, status offenses and felonies." *Id*.

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