

No. 94973-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TYLER WATKINS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR SNOHOMISH COUNTY
COA No. 76205-2-I

AMICI CURIAE BRIEF OF JUVENILE LAW CENTER AND
TEAMCHILD IN SUPPORT OF APPELLANT, TYLER WATKINS'
MOTION TO TRANSFER CASE TO SUPREME COURT

Marsha L. Levick
PA Bar # 22535
Juvenile Law Center
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
Tel: (215) 625-0551
Fax: (215) 625-2808
mlevick@jlc.org

George Yeannakis, WSBA# 5481
TeamChild
1225 South Weller Street
Suite 420
Seattle, WA 98144
Tel: (206) 322-2444
Fax: (206) 381-1742
George.yeannakis@teamchild.org

Counsel for *Amici Curiae*

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

IDENTITY AND INTEREST OF AMICUS CURIAE..... 1

STATEMENT OF THE CASE..... 1

ARGUMENT 1

I. THE CONSTITUTIONALITY OF THE AUTOMATIC
DECLINE STATUTE IS RIPE FOR RECONSIDERATION
BY THIS COURT IN LIGHT OF TRANSFORMATIVE
PRECEDENT IN THE UNITED STATES AND
WASHINGTON SUPREME COURTS ARTICULATING
THAT YOUTH CANNOT BE MANDATORILY
TREATED AS ADULTS 2

A. The United States Supreme Court Has Repeatedly Held
That Children Are Different In Constitutionally Relevant
Ways 3

B. The Washington Supreme Court Recognizes The Special
Protections Required For Youth In The Justice System..... 7

C. Existing Washington Precedent Evaluating The
Constitutionality Of The Automatic Decline Statute
Conflicts With Current Jurisprudence On Youth In The
Justice System 9

II. THIS COURT SHOULD GRANT REVIEW TO STRIKE
DOWN THE AUTOMATIC DECLINE STATUTE AS
VIOLATIVE OF PROCEDURAL DUE PROCESS
GUARENTEED BY THE FIFTH AND FOURTEENTH
AMENDMENTS TO THE U.S. CONSTITUTION 10

A. The Automatic Decline Statute Fails The *Mathews v.*
Eldridge Procedural Due Process Analysis..... 11

1. Youth have a significant interest in remaining in the
juvenile justice system 12

2.	The automatic decline statute erroneously deprives juveniles of their interest in remaining in the juvenile justice system without providing any procedural protections before subjecting them to adult prosecution	15
3.	No government interests are diminished in providing a hearing before prosecuting juveniles in adult court.....	16
B.	The Automatic Decline Statute Conflicts With The United States Supreme Court’s Requirements For Transfer Hearings Set Forth In <i>Kent v. U.S.</i>	18
	CONCLUSION.....	19

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re Boot</i> , 130 Wn.2d 553, 925 P.2d 964 (1996).....	9
<i>Cleveland Bd. of Educ. v. Loudermill</i> , 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985).....	16
<i>Eddings v. Oklahoma</i> , 455 U.S. 104, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982).....	3
<i>Goldberg v. Kelly</i> , 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970).....	12
<i>Graham v. Florida</i> , 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d. 825 (2010).....	2, 3, 5
<i>J.D.B. v. North Carolina</i> , 564 U.S. 261, 131 S. Ct. 2394, 180 L. Ed. 2d. 310 (2011).....	2
<i>Kent v. United States</i> , 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966).....	11, 18, 19
<i>Mathews v. Eldridge</i> , 424 US. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).....	11, 12, 15, 16
<i>Miller v. Alabama</i> , 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).....	2, 4, 5, 6
<i>Montgomery v. Louisiana</i> , ___ U.S. ___, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016).....	4
<i>Roper v. Simmons</i> , 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005).....	2, 5

<i>Stanford v. Kentucky</i> , 492 U.S. 361, 109 S. Ct. 2969, 106 L. Ed. 2d. 306 (1989).....	9
<i>State v. Chavez</i> , 163 Wn.2d 262, 180 P.3d 1250 (2008).....	13
<i>State v. Houston-Sconiers</i> , 188 Wn.2d 1, 391 P.3d 409 (2017).....	2, 3, 7, 10
<i>State v. Maynard</i> , 183 Wn.2d 253, 351 P.3d 159 (2015).....	8, 13, 14
<i>State v. O’Dell</i> , 183 Wn.2d 680, 358 P.3d 359 (2015).....	8
<i>State v. Ramos</i> , 187 Wn.2d 420, 387 P.3d 650 (2017).....	14
<i>State v. Rice</i> , 98 Wn.2d 384, 655 P.2d 1145 (1982).....	13
<i>State v. Saenz</i> , 175 Wn.2d 167, 283 P.3d 1094 (2012).....	12
Statutes	
RCW 13.04.030	1, 11, 16, 17
RCW 13.40.110	17
RCW 13.40.127	13
RCW 13.50.260	13
Other Authorities	
CAMPAIGN FOR YOUTH JUSTICE, <i>The Consequences Aren’t Minor: The Impact of Trying Youth as Adults and Strategies for Reform 7</i> (2007)	15

Jason J. Washburn <i>et al.</i> , <i>Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court</i> , 59 PSYCHIATRIC SERVICES 965 (2008)	14
Marty Beyer, <i>Experts for Juveniles At Risk of Adult Sentences in MORE THAN MEETS THE EYE: RETHINKING ASSESSMENT, COMPETENCY AND SENTENCING FOR A HARsher ERA OF JUVENILE JUSTICE</i> (P. Puritz, A. Capozello & W. Shang eds., 2002).....	15
Richard E. Redding, <i>Juvenile Transfer Laws: An Effective Deterrent to Delinquency?</i> , JUVENILE JUSTICE BULLETIN, June 2010	15
WASHINGTON STATE DEPARTMENT OF SOCIAL & HEALTH SERVICES, <i>Juvenile Justice Evidence Based Programs</i> (last visited Sept. 15, 2016)	13

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.

STATEMENT OF THE CASE

Amici curiae adopt the Statement of the Case as set forth by Appellant Tyler Watkins.

ARGUMENT

This Court should grant swift review of this case to strike down Washington's automatic decline statute¹, which requires the transfer of youth to the adult criminal justice system without procedural protections. The statute deprives youth of the due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. Under this unconstitutional scheme, youth are charged as adults without an individualized consideration of the attributes and characteristics of youth, their capacity for reform and rehabilitation, and the circumstances of the alleged crime. Striking down the automatic decline statute will ensure all youth receive appropriate procedures before they lose the protections of the juvenile justice system.

¹ RCW 13.04.030(1)(e)(v).

I. THE CONSTITUTIONALITY OF THE AUTOMATIC DECLINE STATUTE IS RIPE FOR RECONSIDERATION BY THIS COURT IN LIGHT OF TRANSFORMATIVE PRECEDENT IN THE UNITED STATES AND WASHINGTON SUPREME COURTS ARTICULATING THAT YOUTH CANNOT BE MANDATORILY TREATED AS ADULTS

A decade of Supreme Court decisions has emphasized the principle that youth are developmentally different from adults and that these differences are relevant to their constitutional rights, particularly in the justice system. *See, e.g., Roper v. Simmons*, 543 U.S. 551, 578, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (holding that imposing the death penalty on individuals convicted as juveniles violates the Eighth Amendment’s prohibition against cruel and unusual punishment); *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); and *Miller v. Alabama*, 567 U.S. 460, 465, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) (holding that mandatory life without parole sentence for juveniles convicted of homicide is unconstitutional). This Court, in *State v. Houston-Sconiers*, likewise explained that because “‘children are different’ under the Eighth Amendment . . . ‘criminal

procedure laws’ must take the defendants’ youthfulness into account.” 188 Wn.2d 1, 9, 391 P.3d 409 (2017). Taken together, the United States and Washington Supreme Court cases articulate a vitally important right—youth cannot automatically be treated like their adult counterparts. Criminal procedure laws, such as Washington’s automatic decline statute, that mandatorily treat youth as adults, are unconstitutional.

A. The United States Supreme Court Has Repeatedly Held That Children Are Different In Constitutionally Relevant Ways

A fundamental tenet of modern United States Supreme Court jurisprudence as well as commonsense understanding is that “youth is more than a chronological fact”—it is a “time and condition of life” marked by particular behaviors, perceptions, and vulnerabilities. *Eddings v. Oklahoma*, 455 U.S. 104, 115, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982). These distinctions are also supported by a significant body of developmental research and neuroscience demonstrating significant psychological and physiological differences between youth and adults. *See, e.g., Graham*, 560 U.S. at 68 (“developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”). As developmental research and neuroscience have deepened the understanding of the defining characteristics of youth, the United States Supreme Court has repeatedly emphasized three categorical

distinctions between youth and adults: lack of maturity, susceptibility to outside influences, and capacity for change. *See Montgomery v. Louisiana*, ___ U.S. ___, 136 S. Ct. 718, 733, 193 L. Ed. 2d 599 (2016) (quoting *Miller*, 567 U.S. at 471). Although most of the Supreme Court’s juvenile justice jurisprudence involve youth sentencing matters, the caselaw is based upon these more widely-applicable categorical distinctions. The distinctions indicate that children are “constitutionally different from adults” and require special consideration to properly effectuate children’s rights throughout the criminal justice system. For example, in *J.D.B. v. North Carolina*, the Supreme Court relied on its reasoning in *Roper* and *Graham* regarding the immaturity and vulnerability of children to hold that a child’s age must inform whether they were in custody for purposes of the administration of *Miranda* warnings. The unique traits of children and adolescents necessitate an individualized assessment of “an offender’s age and the wealth of characteristics and circumstances attendant to it” before exposing youth to the punishments of the adult criminal justice system. *Miller*, 567 U.S. at 476.

“First, children have a ‘lack of maturity and an underdeveloped sense of responsibility,’ leading to recklessness, impulsivity, and heedless risk-taking.” *Montgomery*, 136 S. Ct. at 733 (quoting *Miller*, 567 U.S. at 471). The immaturity “often result[s] in impetuous and ill-considered

actions and decisions.” *Roper*, 543 U.S. at 569 (quoting *Johnson v. Texas*, 509 U.S. 350, 367, 113 S. Ct. 2658, 125 L. Ed. 2d. 290 (1993)). Second, youth are highly susceptible to external pressures. As the Supreme Court has explained, “children ‘are more vulnerable . . . to negative influences and outside pressures,’ including from their family and peers; they have limited ‘contro[l] over their own environment’ and lack the ability to extricate themselves from horrific, crime-producing settings.” *Miller*, 567 U.S. at 471, (alterations in original) (quoting *Roper*, 543 U.S. at 569). Finally, youthful offenders have a greater capacity for change than adults because adolescence is a transitional phase. “[A] child’s character is not as ‘well formed’ as an adult’s; his traits are ‘less fixed’ and his actions less likely to be ‘evidence of irretrievabl[e] deprav[ity].” *Id.* (second and third alterations in original) (quoting *Roper*, 543 U.S. at 570). As a result, “a greater possibility exists that a minor’s character deficiencies will be reformed.” *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 570). Youths’ ability to reform shows that they are particularly amenable to the rehabilitative goals of the juvenile justice system. Each of these developmental characteristics leads to the diminished culpability of juvenile defendants and means that their “conduct is not as morally reprehensible as that of an adult.” *Roper*, 543 U.S. at 570 (quoting

Thompson v. Oklahoma, 487 U.S. 815, 835, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (1988) (plurality opinion)).

In addition to identifying the categorical differences between children and adults, the Supreme Court's decisions also recognize that children differ from one another, necessitating an individualized approach to sentencing. In *Miller*, the Court specifically noted six such characteristics that should be considered in light of the differences between children: (1) the youth's chronological age related to "immaturity, impetuosity, and failure to appreciate risks and consequences," (2) the juvenile's "family and home environment that surrounds him," (3) the circumstances of the offense, including extent of participation in the criminal conduct, (4) the impact of familial and peer pressures, (5) the effect of the offender's youth on his ability to navigate the criminal justice process, and (6) the possibility of rehabilitation 567 U.S. at 477-78. Taking note of these individualized considerations was integral to the Supreme Court's rejection of mandatory life without parole for juveniles in *Miller*. The hallmark features of youth demand individualized consideration when children are subject to the criminal justice system.

B. The Washington Supreme Court Recognizes The Special Protections Required For Youth In The Justice System

Following the Supreme Court’s lead, this Court has also recognized the special status youth have in the criminal justice system and has altered criminal procedure laws in light of the unique characteristics of youth. In *State v. Houston-Sconiers*, this Court held that sentencing courts in Washington must have absolute discretion in sentencing juveniles who have been declined to adult court, including discretion to depart from otherwise “mandatory” sentencing enhancements, because the Eighth Amendment requires courts to consider the youthfulness of juvenile defendants during sentencing. 188 Wn.2d at 9. While this Court did not reach the issue of whether automatic decline is unconstitutional in *Houston-Sconiers*, it referenced *amici’s* oral argument reasoning that “children have a right not to be automatically treated as adults,” *Houston-Sconiers*, 188 Wn.2d at 27 n.11, and did not “foreclose consideration of such an argument in the future.” *Id.* The Court further recognized that the cases upholding the constitutionality of automatic decline are of limited precedential value in this rapidly changing legal landscape. *Id.* at 26.

Prior to *Houston-Sconiers*, in 2015, in *State v. O’Dell*, the Court held that trial courts have discretion to consider a defendant’s youth as a mitigating factor justifying a departure from a standard range sentence,

even when the youth is over eighteen at the time of the offense. *State v. O'Dell*, 183 Wn.2d 680, 696, 358 P.3d 359 (2015) (en banc). Also in 2015, in *State v. Maynard*, this Court required the prosecutor to offer a deferred disposition plea bargain, even though juvenile court jurisdiction had lapsed before Mr. Maynard had an opportunity to take advantage of the offer. *State v. Maynard*, 183 Wn.2d 253, 256, 351 P.3d 159 (2015) (en banc) (juvenile court jurisdiction lapsed due to ineffective assistance of counsel when defense counsel failed to notice Mr. Maynard's pending 18th birthday and failed to extend jurisdiction). No deferred disposition is available in adult court, yet Mr. Maynard was given the benefit of a juvenile court disposition in adult superior court.

The holdings of the United States and Washington Supreme Courts establish that children cannot automatically be subject to the same criminal rules and procedures as adults. Children are developmentally different from adults, and these differences must be accounted for in our criminal laws. Washington's automatic decline statute, which mandatorily subjects a class of children to the adult justice system, cannot withstand constitutional scrutiny under this emerging jurisprudence.

C. Existing Washington Precedent Evaluating The Constitutionality Of The Automatic Decline Statute Conflicts With Current Jurisprudence On Youth In The Justice System

The Washington Supreme Court previously addressed the constitutionality of the automatic decline statute in 1996 in *In re Boot*, 130 Wn.2d 553, 925 P.2d 964 (1996) (en banc). In *Boot*, two youth charged as adults argued the statute violated equal protection, the Eighth Amendment's cruel and unusual punishment clause, and procedural and substantive due process. The Court rejected each of these arguments and upheld automatic decline as constitutional. *In Re Boot* was decided a decade before the emerging juvenile jurisprudence outlined above and therefore has limited precedential value.

The *Boot* Court relied on *Stanford v. Kentucky*, 492 U.S. 361, 109 S. Ct. 2969, 106 L. Ed. 2d. 306 (1989), *abrogated by Roper v. Simmons*, 543 U.S. 551 (2005), to justify automatic decline, finding that because the Eighth Amendment did not preclude the death penalty for children who were sixteen and seventeen years old at the time of their crime, it did not require hearings for youth that same age who were automatically declined to adult court. *In re Boot*, 130 Wn.2d at 571 (first citing *Stanford v. Kentucky*, 492 U.S. 361, then citing *State v. Furman*, 122 Wn.2d 440, 456, 858 P.2d 1092 (1993) (en banc)). *Stanford* was abrogated by *Roper v.*

Simmons, which explicitly overturned *Stanford* and abolished the death penalty for all juveniles, relying on the Eighth Amendment and scientific research concerning adolescent development. Importantly, this Court has already acknowledged that *In Re Boot* stands in “tension” with recent Supreme Court precedent. *Houston-Sconiers*, 188 Wn.2d at 26.

Because *In Re Boot* was decided before *Roper v. Simmons* and its progeny, and did not take into consideration the aforementioned constitutionally relevant differences between adults and children, its conclusions regarding the constitutionality of Washington’s automatic decline statute can no longer be considered controlling precedent.

II. THIS COURT SHOULD GRANT REVIEW TO STRIKE DOWN THE AUTOMATIC DECLINE STATUTE AS VIOLATIVE OF PROCEDURAL DUE PROCESS GUARENTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION

The U.S. Supreme Court’s rejection of sentencing and other justice system practices which fail to account for the developmental differences between children and adults weaken substantially all criminal laws that preclude individualized considerations of these defining characteristics of youth. Just as mandatory sentencing schemes offend this emerging jurisprudence, the mandatory prosecution of certain classes of children as adults likewise runs afoul of the Court’s holdings. In accordance with this case law, children today have a right to not automatically be treated as

adults, *see supra* Part I, based solely on their age and the offense with which they have been charged. This right heightens their interest in treatment as juveniles in the juvenile justice system. Washington's automatic decline statute violates due process by mandating that certain youth automatically be treated as adults. RCW 13.04.030(1)(e)(v). The statute exposes youth to the harsh consequences of the adult criminal justice system and often results in lengthy pre-trial detention in an adult facility with limited resources to properly support and protect children, without any individualized determination of the youth's suitability for prosecution as an adult, amenability to treatment as a juvenile, or culpability prior to sentencing.

This statutory scheme contravenes due process principles by creating an unconstitutional presumption that youth are as morally culpable as adults, contrary to *Roper*, *Graham* and *Miller*, and for failing to comply with the due process requirements of *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), and *Kent v. United States*, 383 U.S. 541, 554, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966).

A. The Automatic Decline Statute Fails The *Mathews v. Eldridge* Procedural Due Process Analysis

In *Mathews v. Eldridge*, the United States Supreme Court outlined three distinct factors to analyze the sufficiency of procedural due process:

(1) “the private interest that will be affected by the official action;” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” 424 U.S. at 335.

1. Youth have a significant interest in remaining in the juvenile justice system

Significant procedural protections are required for private interests that would condemn recipients “to suffer grievous loss” upon deprivation of the right. *See Goldberg v. Kelly*, 397 U.S. 254, 263, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). In assessing private interests, courts must review the “degree of potential deprivation” that would be created if the interest was lost. *Mathews*, 424 U.S. at 341.

The automatic decline statute deprives youth of their right to remain in the juvenile justice system and condemns youth to suffer the grievous loss of the juvenile justice system’s substantial protections. 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)

(en banc). The Washington Supreme Court has repeatedly recognized the importance of this distinction and emphasized the benefits a juvenile receives by remaining in juvenile court. *See, e.g., State v. Rice*, 98 Wn.2d 384, 393, 655 P.2d 1145 (1982) (en banc) (explaining that the Juvenile Justice Act emphasizes a rehabilitative ideal while the adult system does not place such importance on rehabilitation); *Maynard*, 183 Wn.2d at 259-60 (recognizing that juvenile court offers important benefits including less stigma and less harsh punishments).

The important differences between adult and juvenile court are not limited to the potential length of confinement or type of facility in which the youth will serve time if convicted of a crime. *See State v. Chavez*, 163 Wn.2d 262, 271, 180 P.3d 1250 (2008) (en banc). Youth tried in juvenile court may seek a deferred disposition for eligible offenses. RCW 13.40.127; have their records sealed, RCW 13.50.260(1), (4); and participate in rehabilitation programs. *See, e.g., WASHINGTON STATE DEPARTMENT OF SOCIAL & HEALTH SERVICES, Juvenile Justice Evidence Based Programs* (last visited Sept. 15, 2016).²

Youth who are prosecuted and sentenced as adults face much harsher direct consequences and will live with the stigma of an adult

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

felony conviction. *Maynard*, 183 Wn.2d at 259-60 (citing *State v. Dixon*, 114 Wn.2d 857, 860, 792 P.2d 137 (1990) (en banc)). Moreover, adult court prosecution will likely lead to a longer sentence. Although this Court's recent decisions in *O'Dell* and *Houston-Sconiers* provide trial courts the authority to individualize or reduce sentences for youth convicted as adults, there is no guarantee that a child will receive a lesser sentence than an adult. *See, e.g., State v. Ramos*, 187 Wn.2d 420, 429, 387 P.3d 650 (2017) (following appeal and remand, the trial court at a resentencing hearing under *Miller v. Alabama* imposed an 85-year sentence on Mr. Ramos, convicted of four counts of murder committed at age 14), *pet. for cert. docketed, Ramos v. Washington*, No. 16-3963 (May 26, 2017).

Trying youth in the adult system also implicates safety interests of youth and their communities. Youth transferred to the adult system “reoffend more quickly and are more likely to engage in violent crimes after release than youths processed in the juvenile justice system.” Jason J. Washburn *et al.*, *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59 PSYCHIATRIC SERVICES 965, 972 (2008). Youth are less likely to receive age-appropriate treatment and education in adult facilities, as adult corrections personnel lack the specialized training to meet the educational

and mental health needs of young people, and adult facilities cannot provide the necessary programs, classes, or activities to address their rehabilitative potential. CAMPAIGN FOR YOUTH JUSTICE, *THE CONSEQUENCES AREN'T MINOR: THE IMPACT OF TRYING YOUTH AS ADULTS AND STRATEGIES FOR REFORM* 7 (2007). Youth incarcerated in adult prisons are also extraordinarily vulnerable to victimization. See Marty Beyer, *Experts for Juveniles At Risk of Adult Sentences in MORE THAN MEETS THE EYE: RETHINKING ASSESSMENT, COMPETENCY AND SENTENCING FOR A HARSHER ERA OF JUVENILE JUSTICE* 18-20 (P. Puritz, A. Capozello & W. Shang eds., 2002). One study showed that youth in adult facilities were five times more likely to be sexually assaulted while incarcerated and two times more likely to be assaulted with a weapon than were youth in the juvenile justice system. Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, JUVENILE JUSTICE BULLETIN, June 2010, at 7.

2. The automatic decline statute erroneously deprives juveniles of their interest in remaining in the juvenile justice system without providing any procedural protections before subjecting them to adult prosecution

Courts must review the “fairness and reliability” of the existing procedures in place before rights are terminated to determine whether additional procedural safeguards are necessary. *Mathews*, 424 U.S. at 343.

The “nature of the relevant inquiry” is central to the evaluation of whether sufficient process was provided. *Id.* Further, an essential procedure required before deprivation of a significant interest is a “notice and opportunity for hearing appropriate to the nature of the case.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S. Ct. 652, 94 L. Ed. 865 (1950)). In Mr. Watkin’s case, the procedural protections and procedures were not merely inadequate, they were entirely absent prior to his prosecution in the adult criminal justice system. The automatic decline statute allows for automatic, unreviewable and irreversible prosecution in the adult system without any individualized determination or hearing. In the instant case, the juvenile court declined jurisdiction solely based on the charges brought by the prosecutor. RCW 13.04.030(1)(e)(v). The statutory scheme gives disproportionate weight to the prosecutor’s discretion and provides no inquiry into whether prosecution in the adult system is appropriate under the circumstances for this particular child.

3. No government interests are diminished in providing a hearing before prosecuting juveniles in adult court

The final *Mathews* consideration looks to the government and public interests implicated in providing due process. 424 U.S. at 347. Such

interests include the administrative burden and societal costs associated with additional hearings. *Id.* Providing individualized transfer hearings places minimal burden on the state, because such hearing procedures are already required for other juvenile defendants. Washington has two additional mechanisms for transferring youth to the adult criminal system; both methods require a hearing before transfer. *See* RCW 13.40.110(1) and (2). Pursuant to these provisions, youth may be transferred to the adult justice system based on prosecutorial discretion or because they have been charged with certain crimes, *id.*, but before the transfer, the court must conduct a hearing and consider the “relevant reports, facts, opinions, and arguments” presented by the youth and make a determination about transfer that would be in the best interest of the juvenile and the public. RCW 13.40.110(1) and (3). Because the hearing procedures are already in place, applying these same procedures to other juvenile defendants imposes limited additional burden on the state. Further, providing hearings before transfer increases the likelihood that juveniles will remain in the juvenile justice system, which serves the public interest by decreasing recidivism and violence against juveniles.

B. The Automatic Decline Statute Conflicts With The United States Supreme Court’s Requirements For Transfer Hearings Set Forth In *Kent v. U.S.*

In *Kent v. United States*, the United States Supreme Court explained that the liberty interests at stake in the transfer of a youth from juvenile to adult criminal court are “critically important” and called for heightened protections before juveniles could be prosecuted in the adult system. 383 U.S. at 553-54. The Court concluded that a child could not be “deprived of the special protections and provisions” of the juvenile court system without a hearing, effective representation from counsel, or a statement of reasons. *Id.* The Supreme Court referenced in its appendix to the *Kent* decision several factors that must be considered, including: (1) the seriousness of the offense and whether the protection of the community requires waiver, (2) “[w]hether the alleged offense was committed in an aggressive, violent, premeditated or willful manner,” (3) whether the offense was against persons or property, (4) “[t]he prosecutive merit of the complaint,” (5) the desirability of trial and disposition in one court if there are adult associates of the crime (6) “[t]he sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living,” (7) “[t]he record and previous history of the juvenile,” and (8) “[t]he prospects

for adequate protection of the public and the likelihood of reasonable rehabilitation.” 383 U.S. at 565-67.

The automatic decline statute does not allow for consideration of any of these factors—unjustly leaving the decision of whether a child should be prosecuted in the adult system solely in the purview of the prosecuting attorney in the exercise of his charging function.

CONCLUSION

This Court should grant direct review in *State v. Watkins* and determine that the automatic decline statute is unconstitutional in light of current jurisprudence and developmental research. It is no longer acceptable for Washington courts to automatically treat children like adults based solely on their age and the offense with which they have been charged by the prosecutor, without any individualized consideration of the youth or the circumstances of the alleged offense.

Respectfully Submitted,

/s/Marsha L. Levick
Marsha Levick
PA Bar # 22535
Juvenile Law Center
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
Tel: (215) 625-0551
Fax: (215) 625-2808
mlevick@jlc.org

/s/ George Yeannakis
George Yeannakis, WSBA# 5481
TeamChild
1225 South Weller St., Ste 420
Seattle, WA 98144
Tel: (206) 322-2444
Fax: (206) 381-1742
george.yeannakis@teamchild.org

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