No. 97517-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

SEBASTIAN GREGG,
Petitioner.

BRIEF OF FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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IDENTITY AND INTEREST OF AMICUS CURIAE

The identity and interest of the Fred T. Korematsu Center for Law and Equality are set forth in its motion for leave to file, submitted contemporaneously with this brief.

INTRODUCTION

Courts impose or modify procedural safeguards when prior rulings fail to remedy constitutional violations. *See, e.g.*, *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1985) (setting as a floor certain procedural safeguards after recognizing that its pronouncement 105 years earlier in *Strauder v. West Virginia*, 100 U.S. 303, 10 Otto 303, 25 L. Ed. 664 (1880), had failed to halt the practice of race discrimination against jurors even after numerous later court decisions); GR 37 (revising procedures to govern the exercise of peremptory challenges when this Court recognized that the *Batson* framework was inadequate); *State v. Jefferson*, 192 Wn.2d 225, 249-50, 429 P.3d 467 (2018) (revising third step of *Batson* framework, recognizing that that framework failed to eradicate the "evil of racial discrimination" in jury selection).

Children sentenced in adult court must not bear the burden to prove what is already accepted: that they are inherently less culpable than their adult counterparts.[1] But a child who is charged, tried, and convicted

[1] *State v. Bassett*, 192 Wn.2d 67, ¶ 35, 428 P.3d 343 (2018) (children's lessened culpability makes them less deserving of the most severe punishments).

as an adult is sentenced according to the presumption that children should receive the same punishment as adults, both with respect to the SRA standard range as well as to any applicable enhancements. "Adult crime, adult time" was the mantra that led to auto-decline in 1994 and its expansion in 1997.[2] This mantra was carried forward in the 2005 revision to RCW 9.94A.390(1), codified as RCW 9.94A.535(1), which established a preponderance of evidence standard that placed upon the defendant the burden of proving mitigating circumstances before an exceptional sentence below the standard range can be granted.

However, this presumption when applied to children—"adult crime, adult time" unless proven otherwise—is inconsistent with the heightened protection that children are entitled to in sentencing under article I, section 14. A child is inherently less culpable than his adult counterparts and is entitled to a presumption of a mitigated sentence, both with respect to the standard range and any applicable enhancements, unless the Court determines that the child is as culpable as an adult who commits a similar offense. It defies logic to say that a child is less culpable than an adult but to leave intact a sentencing scheme that subjects the child to the same punishment as the adult unless the child is able to persuade the

[2] *See* RCW 13.04.030(1)(e)(iv) (1994) (establishing auto-decline—exclusive jurisdiction of adult court for enumerated offenses committed by 16 and 17-year olds); RCW 13.04.030(1)(e)(iv) (1997) (expanding list of offenses subject to auto-decline).

sentencing court otherwise. Logic, fairness, and article I, section 14 of the Washington Constitution dictate that the existing presumption be flipped.

SUMMARY OF ARGUMENT

Though *State v. Houston-Sconiers* was a significant step toward ensuring that sentencing courts exercise their discretion to treat children differently than adults,[3] this discretion is not being exercised as the Court intended in *Houston-Sconiers*. Both a changed legal landscape and new data require the Court to consider whether article I, section 14 mandates a presumption that children are entitled to mitigated sentences.

Since *Ramos* held that the Eighth Amendment did not require the State to prove that a standard range sentence is appropriate,[4] this Court's interpretation of both the Eighth Amendment and article I, section 14 have changed dramatically. Since *Ramos* was decided, this Court has expanded the protections afforded to youth in a number of contexts beyond the narrow issue presented in that case. Nor has the *Ramos* Court's assumption that most children would receive a sentence below the standard range due to their youth come to pass. 187 Wn.2d ¶¶ 18, 32. And indeed, Caseload Forecast Council data gathered after *Houston-Sconiers*

[3] 188 Wn.2d 1, 21, 391 P.3d 409 (2017) (requiring that "[t]rial courts . . . consider mitigating qualities of youth at sentencing and . . . have discretion to impose any sentence below the otherwise applicable SRA range and/or sentence enhancements.").
[4] *State v. Ramos*, 187 Wn.2d 420, 445, 387 P.3d 650 (2017), *as amended* (Feb. 22, 2017), *reconsideration denied* (Feb. 23, 2017), *cert. denied*, 138 S. Ct. 467, 199 L. Ed. 2d 355 (2017).

suggests the overwhelming majority of children convicted in adult court do not receive mitigated sentences.

Flipping the presumption is necessary because *Houston-Sconiers* did not directly alter the presumption of adult-equivalent culpability that exists when a child is declined into adult court. Instead of placing the burden on children to prove their own diminished culpability under RCW 9.94A.535(1), a sentencing court must begin with a rebuttable presumption that children are entitled to a mitigated sentence, both with respect to the standard range and any applicable enhancements. Flipping the presumption of adult-equivalent culpability that inheres in auto-decline brings the promise of *Houston-Sconiers* into alignment with the heightened protection of article I, section 14.

Finally, flipping the presumption is also sensible because it is more likely to ensure the constitutional treatment of children than will the status quo, which leaves this Court as the final arbiter as to whether a sentencing court erred in its consideration and weighting of the mitigating circumstances associated with youth.

ARGUMENT

I. Advances in This Court's Juvenile Sentencing Jurisprudence and New Sentencing Data Require Revisiting the Necessity of a Presumption of Mitigation for Children Sentenced in Adult Court.

This Court has made great strides in ensuring fairness and proportionality in sentencing that better align legitimate penological goals with what is known about adolescent brain development as it relates to culpability and capacity to change. However, the grant of total discretion to impose a sentence below the standard SRA range established in *Houston-Sconiers*, 188 Wn.2d at ¶ 39, left open the question of whether placing the burden on the child under RCW 9.94A.535(1)[5] is constitutional, given this Court's other juvenile sentencing decisions recognizing that children are less culpable than their adult counterparts.

Because of recent advances in this Court's juvenile sentencing jurisprudence under article I, section 14, and because new sentencing data demonstrates that most children are still subjected to adult equivalent sentencing, additional procedural safeguards are required to ensure sentencing in accordance with the diminished culpability of youth.

A. Developments in juvenile sentencing law compel the establishment of additional safeguards to ensure that children are sentenced according to their diminished culpability.

Whether a presumption of mitigation on the basis of youth is constitutionally required under article I, section 14 is an open question.

[5] It is notable that the defendant's burden of proving mitigation established in RCW 9.94A.535(1), which does not differentiate between children and adults, was enacted in 2005, right as sweeping changes in juvenile sentencing began to occur based on the diminished culpability of youth. *See Roper v. Simmons*, 543 U.S. 551, 570-71, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005).

While in *Ramos* this Court considered whether the state should bear the burden of proving that a standard range sentence is justified in juvenile sentencing, it held—provisionally—only that Mr. Ramos had not established that the Eighth Amendment requires the burden to shift to the State, not that the defendant is constitutionally required to carry the burden. *Ramos*, 187 Wn.2d at 445 ("*at this time* we cannot hold that the SRA's allocation of the burden of proof for exceptional sentencing is constitutionally impermissible as applied to juvenile homicide offenders" (emphasis added)).

Even if *Ramos* is viewed as having considered and decided this question, the legal landscape in this area has changed dramatically in the interim. Since *Ramos* was decided, this Court has expanded the protections afforded to youth in a number of contexts beyond the narrow issue presented in that case. *Compare id.* at 434 (holding *Miller* hearing is required before imposing de facto life sentence) *with Houston-Sconiers*, 188 Wn.2d at 21 (holding courts *must* consider mitigating qualities of youth in all juvenile sentencing cases and that courts have complete discretion to depart from standard ranges and mandatory enhancements), *State v. Gilbert*, 193 Wn.2d 169, 176, 438 P.3d 133 (2019) (holding the complete discretion to depart from mandatory sentencing provisions is not confined to, and does not exclude, certain types of sentencing hearings),

and *Bassett*, 192 Wn.2d at 82 (holding article I, section 14 provides heightened protection in the juvenile sentencing context). Given these advances in the jurisprudence, the question the Court now faces is necessarily different than in *Ramos*. The intervening precedent compels a conclusion that a presumption of mitigation is now constitutionally required under both the Eighth Amendment, as applied in the juvenile sentencing context by this Court, and even if not under the Eighth Amendment, then under article I, section 14.

This conclusion is also compelled by information now available suggesting that courts are not giving adequate consideration to the mitigating qualities of youth. *Cf. State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018) (new facts permitted reconsideration of the death penalty). The Court in *Ramos* concluded that through the course of a *Miller* hearing most youth would be able to establish that a mitigated sentence is appropriate. *Ramos*, 187 Wn.2d at 443. Operating under this assumption, the Court declined to find that placing the burden on the defendant to prove mitigation created an unacceptable risk of unconstitutional sentences. *Id.* at 445. However, as suggested by data published by the Caseload Forecast Council, the predicted outcomes have not materialized. Instead, it appears most juveniles sentenced in adult court are not treated as inherently less culpable at sentencing.

B. Caseload Forecast Council data suggests that even after *Houston-Sconiers*, the prediction in *Ramos* that most children would receive mitigated sentences has not come to pass.

The prediction in *Ramos* that most children would receive mitigated sentences has not come to pass. In the context of juvenile homicide offenders, this Court noted that "most [ ] offenders…will be able to meet their burden of proving an exceptional sentence below the standard range is justified." *Ramos*, 187 Wn.2d at 443. Nothing indicates that this Court's observation would not also apply to juveniles charged with non-homicide offenses; yet it appears that the vast majority of children declined and sentenced in adult court since *Houston-Sconiers* have not received exceptional sentences below the standard range.

Since the Court's decision in *Houston-Sconiers*, in fiscal years 2018 and 2019 (July 1, 2017 – June 30, 2019), 109 children were declined to adult court.[6] Though declination is tracked by the Washington Caseload Forecast Council, the Council does not report on whether these children received sentences within the standard range or exceptional sentences below or above the standard range. The Council separately tracks exceptional sentences and reports that during this same period, 22

[6] Washington Caseload Forecast Council, Statistical Summary of Adult Felony Sentencing Fiscal Year 2018, 71 (2018) (71 children declined to adult court); Washington Caseload Forecast Council, Statistical Summary of Adult Felony Sentencing Fiscal Year 2019, 71 (2019) (38 children declined to adult court).

individuals received mitigated sentences based on their age.[7] This reported figure could include children, young adults (following *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015)), or elderly offenders. Even if all 22 were children,[8] the most conservative assumption (that all receiving mitigated sentences based on age were children), less than a quarter of declined youth have received exceptional sentences downward based on age since *Houston-Sconiers* was decided.

The observed results following *Houston-Sconiers* suggest strongly that lower courts are struggling to conform their sentencing practices to the new constitutional requirements resulting from the factual predicate that children are different from adults and have inherently diminished culpability. Even with the caveats regarding the uncertainty about the numerator and denominator, the most conservative reading of the data, that all 22 receiving mitigated sentences were children, the vast majority of children are not receiving mitigated sentences, and the results are nowhere near the "most" predicted by the *Ramos* Court who would receive exceptional sentences below the SRA.

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[7] Washington Caseload Forecast Council, Statistical Summary of Adult Felony Sentencing Fiscal Year 2018, at 62 (2018) (8 received mitigated exceptional sentences based on defendant's age); Washington Caseload Forecast Council, Statistical Summary of Adult Felony Sentencing Fiscal Year 2019, at 63 (2019) (14 received mitigated exceptional sentences based on defendant's age).

[8] It is not possible to make a perfect comparison of the data sets because declination and sentencing do not necessarily take place during the same fiscal year.

II. Article I, Section 14 Requires a Presumption of Mitigation for Juvenile Offenders to Account for Their Inherently Diminished Culpability.

The premise that children who have been declined are subject to adult sentences unless they can prove mitigating circumstances associated with their youth is incompatible with children's categorically diminished culpability. To subject juveniles to the same sentence as adults absent evidence that they acted with adult-equivalent culpability is cruel under article I, section 14, which provides heightened protection whenever a child is sentenced in adult court for any crime, not just aggravated murder. *Bassett*, 192 Wn.2d at 82 (holding that article I, section 14 affords heightened protection in the juvenile sentencing context).

A presumption that youth is mitigating with respect to both standard range sentencing and any applicable enhancements is necessary for two reasons. First, the possibility of different treatment under *Houston-Sconiers* does not alter the statutory presumption of adult-equivalent culpability created by auto-decline. Second, a presumption that youth are entitled to a mitigated sentence is necessary to counterbalance the risk of adult-equivalent sentencing.

A. Children who are automatically declined to adult court are presumed equally culpable to adults and are subjected to adult punishment as a matter of course.

Because "children are less criminally culpable than adults,"

Bassett, 192 Wn.2d at 90,[9] when children are declined (automatically or not) and convicted in adult court, their sentences should reflect their diminished culpability. In recognition of this well-established principle, this Court has continued to develop its juvenile justice jurisprudence to enhance protections for juveniles beyond the floor of the Eighth Amendment. *See Gilbert*, 193 Wn.2d at 175-76 (holding that any sentencing scheme that precludes consideration of youth is constitutionally infirm, regardless of the type of sentencing hearing or the mandatory nature of the sentencing provision); *Bassett*, 192 Wn.2d at 82, 90 (determining that article I, section 14 affords heightened protection in the juvenile sentencing context and categorically barring juvenile life without parole under article I, section 14); *Houston-Sconiers*, 188 Wn.2d ¶ 39 ("Trial courts must consider mitigating qualities of youth at sentencing and must have discretion to impose any sentence below the otherwise applicable SRA range and/or sentence enhancements."); *cf. O'Dell*, 183 Wn.2d at 691-96 (relying on psychological and neurological studies to

[9] The three most significant gaps between adults and children that diminish the culpability of youth are: 1) juveniles' lack of maturity and underdeveloped sense of responsibility which leads to recklessness, impulsivity, and needless risk-taking; 2) juveniles' increased vulnerability to negative influences and outside pressures, limited control over their environment, and lack the ability to extricate themselves from horrific and crime producing settings; and 3) juveniles' less-fixed character traits which lead to actions that are less likely to be evidence of irretrievable depravity. *Roper*, 543 U.S. at 569-70. Due to that lessened culpability, children are categorically "less deserving of the most severe punishments." *Bassett*, 192 Wn.2d at 87 (quoting *Graham v. Florida*, 560 U.S. 48, 68, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010)).

hold that age may be a mitigating factor even for defendants over 18).

Auto-decline, however, remains a procedure that does not recognize this diminished culpability, counteracting the many safeguards this Court has created at the sentencing phase for juvenile offenders. This Court recognized that the auto-decline statute requires children to "face[] very adult consequences….without any opportunity for a judge to exercise discretion about the appropriateness of such transfers." *Houston-Sconiers*, 188 Wn.2d at 8. If a juvenile age 16 or older is charged with murder, or a number of other felony offenses, his case comes under the exclusive jurisdiction of the adult court system where the imbedded protections of the juvenile justice system are no longer available. RCW 13.04.030(1)(e)(v). Under these circumstances, there is no hearing or opportunity for the court to consider whether the child and the community would be better served by retaining the case in juvenile court. *See id.*

In contrast, children sentenced in juvenile court have the benefit of a system designed to respond to their needs, in part by providing punishment "commensurate with [their] age, crime, and criminal history," RCW 13.40.010(2)(d), and specifically geared to providing rehabilitation and necessary treatment for juvenile offenders. RCW 13.34.010(2)(f)-(g).

The auto-decline statute and its presumption of adult-equivalent culpability based solely on the crime and the age of the defendant stands

in tension with what this Court has repeatedly recognized: that youth matters on a constitutional level and that "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Houston-Sconiers*, 188 Wn.2d at 8 (quoting *Graham*, 560 U.S. at 76). While *Houston-Sconiers* and *Gilbert* give sentencing courts discretion to depart from adult sentencing schemes, significant barriers to robust consideration of youthfulness at sentencing remain. This includes the burden RCW 9.94A.535(1) places on the child to establish "mitigating circumstances…by a preponderance of the evidence."

B. A presumption at sentencing that youth mitigates culpability is necessary to counterbalance both the presumption of adult-equivalent culpability created by auto-decline and the continuing risk of over-punishment.

The paradigm of exceptional sentencing imbedded in RCW 9.94A.535(1) is inconsistent with the diminished culpability of children, as mitigation based on youth should be the rule, not the exception. RCW 9.94A.535(1) is designed to account for the exceptional adult who may deserve a sentence below the standard range—and who *should* bear the burden to show that they are, in fact, an outlier. But it is the exceptional child who will be deemed equally culpable to an adult, thereby deserving a standard range sentence and any applicable enhancements. *See Miller v. Alabama*, 567 U.S. 460, 479, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012)

(noting that propriety of harsh sentences for youth will be uncommon given diminished culpability and heightened capacity for change).

The presumption that a child is entitled to a mitigated sentence both with respect to the standard range and any applicable enhancements, unless proven otherwise, is necessary to counterbalance the risk of over-punishment created by auto-decline. This Court considered and upheld the constitutionality of the auto-decline framework in *State v. Watkins*, 191 Wn.2d 530, 423 P.3d 830 (2018), reasoning that the discretion to depart from the SRA established in *Houston-Sconiers* provides sufficient protection to ensure that children in adult court are sentenced in accordance with their culpability. *Id.* at 545-46 (because adult courts can consider mitigation related to youth, auto-decline does not violate "right to be punished in accordance with [ ] culpability"). However, the protection afforded by this discretion has proved insufficient. A presumption of adult-equivalent culpability is still imposed whenever a juvenile's case is heard in adult court.

Placing the burden to establish mitigating circumstances related to youthfulness on the child allocates the entire risk of sentencing error to the child, *see* RCW 9.94A.535(1), and increases the risk that the child will be subject to a sentence that does not advance legitimate penological objectives. Nowhere is this more pronounced than in the cases with

mandatory enhancements, as no culpability inquiry is required before imposing those enhancements. *See* RCW 9.94A.533. And before *Houston-Sconiers*, judges had no room to use their discretion in applying these enhancements. *See Houston-Sconiers*, 188 Wn.2d at 8 ("[defendants] received lengthy adult firearm sentence enhancements… without any opportunity for a judge to exercise discretion about the appropriateness of that sentence increase[.]"). And after, it appears that judges continue to impose the enhancements as if they still were mandatory.

The presumption that a child should receive a mitigated sentence also accounts for the risk that trial courts will view mitigating evidence in disparate ways. *See Roper*, 543 U.S. at 558-59, 573-74. This Court has recognized that sentencing courts may erroneously view mitigating factors as aggravators. *Bassett*, 192 Wn.2d at 89. This risk manifests in different ways. Sentencing courts sometimes make "imprecise and subjective judgements…regarding transient immaturity and irreparable corruption." *Id.* In *Bassett*, the judge concluded that Mr. Bassett's homelessness at the time of his crime was evidence of advanced maturity, rather than evidence that the "instability and insecurity of homelessness caused Bassett to have less control over his emotions and actions." *Id.* And when presented with evidence of rehabilitation—reflecting children's greater capacity for change—the judge concluded that Mr. Bassett's infraction-free record

from the last twelve years did not "carr[y] much weight" because "prisoners have some incentive to follow the rules." *Id.* (alterations in original).

Mr. Gregg's sentence is a stark reminder that courts are not giving adequate mitigating weight to youth. The sentencing judge in Mr. Gregg's case held an evidentiary hearing over several days during which he received evidence and heard hours of testimony related to Mr. Gregg's mitigating circumstances related to youth. RP at 676. Even so, the sentencing judge in this case declined to recognize Mr. Gregg's inherently diminished culpability and gave him the standard range sentence requested by the prosecution. RP at 688 (finding no substantial and compelling reasons to go below standard range); *id.* at 711 (imposing state-recommended sentence).

The presumption that a child should receive an exceptional sentence is also required to counteract the risk that a child's effort to obtain that exceptional sentence can be negated by a trial court's unrelenting focus on the facts of the crime. The Supreme Court recognized the "unacceptable likelihood," *Roper*, 543 U.S. at 573, that the inevitably heinous nature of any particular crime would swallow whole any mitigating arguments based on the youth of the offender, necessitating categorical protections, *id.* at 573-74. Stated differently, the Supreme

Court in *Roper* and *Graham* decided that it could not leave it to the discretion of a sentencing court to impose on children, respectively, the death penalty or life without parole for non-homicide crimes. *See id.* at 572-74; *Graham*, 560 U.S. at 74-75. And this Court in *Bassett* held that article I, section 14 did not permit sentencing courts, though explicitly authorized to do so by the legislature, to exercise their discretion and impose on children a sentence of life without parole. 192 Wn.2d at 88-90. Whenever a child is sentenced, the sentence—whether it involves a maximum, minimum, or a mandatory term—must conform to the heightened protection afforded children under article I, section 14. *Cf. id.* ¶¶ 25, 44 (sentencing of juvenile offenders must conform to article I, section 14).

Finally, this Court implicitly endorsed the necessity of a presumption in *Ramos*, reasoning that "where a juvenile offender…proves that his or her crimes reflect transient immaturity, the juvenile has necessarily proved that there are substantial and compelling reasons for an exceptional sentence downward." 187 Wn.2d at 436. Because all children are inherently less culpable than their adult counterparts, *supra* at 11, n.9, their crimes also necessarily reflect that transient immaturity that *Ramos* recognized as forming the basis of entitlement to mitigation.

The only viable way to address this failure of sentencing courts to

fully embrace this Court's mandate to provide greater protection under article I, section 14 is to find that youth is presumptively mitigating, unless the Court determines that the child is equally culpable to a similarly situated adult. Such a procedural safeguard is consistent with "the States' sovereign administration of their criminal justice systems." *Montgomery v. Louisiana*, __ U.S. __, 136 S. Ct. 718, 735, 193 L. Ed. 2d 599 (2016), *as revised* (Jan. 27, 2016) (internal citation omitted). As discussed in the Introduction, when previous procedural safeguards have proven inadequate in other contexts, this Court has implemented additional safeguards. *See, e.g.*, *Jefferson*, 192 Wn.2d 225 (modifying *Batson*); *City of Seattle v. Erickson*, 188 Wn.2d 721, 398 P.3d 1124 (2017) (same); GR 37 (same).

III. A Rebuttable Presumption of Mitigation Strongly Promotes Judicial Efficiency.

A presumption that a juvenile sentenced in adult court merits a departure below the standard range and/or minimum also ensures this Court will not be the ultimate arbiter of the sufficiency of mitigation evidence. In *Ramos*, this Court explicitly acknowledged that it "cannot reweigh the [mitigation] evidence on review," 187 Wn.2d at 453. But this Court's docket is filled with cases asking this Court to do precisely that. The promise of *Houston-Sconiers*, that sentencing courts would exercise

their discretion in favor of children and consistently sentence children in accordance with their diminished culpability, and the prediction in *Ramos* that most, if not all, children would be able to demonstrate entitlement to mitigation, has not come to pass. Absent a presumption that children are entitled to a mitigated sentence based on youth, this Court will continually have to examine individualized mitigation evidence on a case-by-case basis. This will require the Court to step out of its role as a reviewer to weigh the evidence to determine whether a sentencing court erred in declining to impose a mitigated sentence.

Inherently diminished culpability means just that—diminished culpability. If courts fail to recognize this and continue sentencing children as if they were as culpable as adults, justifying the adult sentences through conclusory statements that youth was considered and weighed, this Court must, if it chooses not to be the final arbiter on a case-by-case basis whether youth was properly considered, put into place presumptions as additional procedural safeguards. As discussed above, this would not be the first time this Court has done this when the previous procedural safeguards proved unable to adequately safeguard constitutional rights. *See Jefferson*, 192 Wn.2d at 249-50 (modifying *Batson*'s step 3). The constitutional right of children to be protected against cruel punishment, brought to the fore when children in adult court are presumed to be as

culpable as adults, requires a recalibration of procedures when children are sentenced in adult court. Or, this Court can decide to address the legality of children's sentences on a case-by-case basis. Prudence suggests that a procedural safeguard is the wiser course; fairness and the U.S. and Washington Constitutions demand it.

CONCLUSION

Amicus respectfully requests that the Court continue to build on Washington's juvenile justice jurisprudence by implementing additional safeguards to realize the promise of *Houston-Sconiers* and the heightened protection against cruel punishment: that the diminished culpability of youth is accounted for in not only some cases, but in all cases.

DATED this 10th day of January 2020.

Respectfully Submitted: [10]

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[10] We acknowledge the contributions of Catherine Bentley, Shelby Bowden, and Kristen Schmit, students in the Korematsu Center Civil Rights Clinic.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on January 10th, 2020, the forgoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Seattle, Washington, this 10th day of January, 2020.

/s/ Melissa R. Lee
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