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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

M.S.,

Petitioner.

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*AMICUS CURIAE* BRIEF OF JUVENILE LAW CENTER IN  
SUPPORT OF PETITIONER M.S.

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## **IDENTITY AND INTEREST OF *AMICUS CURIAE***

The identity and interest of *amicus curiae* are set forth in the accompanying Motion for Leave to File an *Amicus Curiae* Brief.<sup>1</sup>

## **INTRODUCTION**

The United States and Washington Supreme Courts have established in a series of cases that youth must receive adequate notice of the facts establishing the elements of the crime with which they are charged, as well as facts establishing exceptional sentences. M.S. did not receive such constitutionally sufficient notice, in violation of his due process rights. *Amicus curiae* urges this Court to grant the relief requested by Petitioner and reverse his manifest injustice sentence.

## **STATEMENT OF THE CASE**

*Amicus curiae* adopt the Statement of the Case as set forth by Appellant.

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<sup>1</sup> Though this case has not been consolidated with *State v. D.L.*, No. 96143-3, because both present common questions regarding due process rights to notice of facts supporting a manifest injustice sentence, amicus submits substantially the same brief in both matters.

## **ARGUMENT**

M.S. was only sixteen years old when he agreed to a deferred disposition leading to a gross misdemeanor violation. At the time he entered into this agreement, M.S. anticipated he would be subject to a standard range sentence. However, the court subsequently sentenced him to a manifest injustice sentence based on aggravating factors that are not identified in Washington's Juvenile Justice Act and that he had no notice of at the time he made his agreement. M.S.'s sentence was twelve times longer than the maximum standard range. The lack of notice of these aggravating factors violated M.S.'s constitutional rights and renders his manifest injustice sentence unconstitutional.

### **I. DUE PROCESS REQUIRES THAT YOUTH IN THE JUVENILE JUSTICE SYSTEM RECEIVE NOTICE OF AGGRAVATING FACTORS THAT MAY LEAD TO MANIFEST INJUSTICE SENTENCES**

#### **A. Youth Have A Constitutional Right To Notice Based On The Due Process Guarantees Of The Fourteenth Amendment**

The United States Constitution guarantees the right of individuals to be informed of the "nature and cause of the accusation" against them. U.S. Const. amend. VI; Const. art. I, § 22. Youth in the juvenile justice system have the same right to notice as adults. *In re Gault*, 387 U.S. 1, 20, 33, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967). In *Gault*, the United States Supreme Court established that to comply with due process requirements, youth must be given

notice “sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded,” and that the notice must “set forth the alleged misconduct with particularity.” 387 U.S. at 33. *Gault* further establishes a robust notice requirement by explaining that due process of law requires that the notice given to youth be the sort “which would be deemed constitutionally adequate in a civil or criminal proceeding.” *Id.* See also RCWA 13.40.140(7) (All parties before the juvenile court have “the right to adequate notice.”).

**B. A Youth’s Constitutional Right To Notice In Juvenile Justice Proceedings Extends To Notice Of Aggravating Factors Lengthening The Youth’s Sentence**

The United States Supreme Court has required due process protections when aggravating factors increase a defendant’s punishment beyond statutory maximums. See *Apprendi v. New Jersey*, 530 U.S. 466, 476, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). In *Apprendi*, the Supreme Court held that any facts establishing such aggravating factors<sup>2</sup> must be submitted to the jury and proved beyond a reasonable doubt. *Id.* The Court explained that facts extending a defendant’s sentence beyond what could be established by a jury must be treated akin to the elements of an offense

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<sup>2</sup> Facts regarding prior convictions do not have to be submitted to the jury to be proven beyond a reasonable doubt. *Apprendi*, 530 U.S. at 476. Such prior convictions are not at issue in this case.

rather than mere sentencing factors that require fewer procedural protections. *Id.* at 494.

The State's briefs incorrectly contend that the protections of *Apprendi* do not apply to youth in the juvenile justice system because they are not entitled to jury trials. The State misses the point of *Apprendi* and its progeny; the Court's reasoning in these cases articulates broad due process protections regarding the use of aggravating factors to enhance sentences that must apply with equal force to youth in the juvenile justice system.

The Supreme Court stated that the holding in *Apprendi* is based on both the Fourteenth Amendment right to due process and the Sixth Amendment right to trial by jury. 530 U.S. at 476. *Apprendi* follows from an earlier Supreme Court decision in which the Court held that with regard to federal laws, the Fifth Amendment's Due Process Clause and the Sixth Amendment's notice and jury trial guarantees require that facts that "increase[ ] the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt." *Id.* (quoting *Jones v. United States*, 526 U.S. 227, 243, 119 S. Ct. 1215, 143 L. Ed. 2d 311 (1999)). *Apprendi* holds that the Fourteenth Amendment requires the same answer when a state statute is involved. 530 U.S. at 476.

In holding that adequate due process protections had not been provided to the defendant in *Jones*, the Court specifically addressed the

insufficient notice he received of the factors that led to his lengthy sentence. *Jones* 526 U.S. at 230. The Court found fault that Jones's indictment made no reference to the sections of the federal statute allowing longer penalties for the crime he was charged with, and alleged no facts supporting the lengthier sentence. *Id.* To correct this shortcoming, the Supreme Court held that the Sixth Amendment's right to notice requires facts that function as elements of an offense, including facts that increase the maximum penalty a defendant can receive, be presented to the defendant in the indictment. *Id.* at 232, 252.

The *Apprendi* decision is further clarified in *Blakely v. Washington*, where the Supreme Court again found the defendant's exceptional sentence to be unconstitutional because the facts supporting the sentence were neither admitted by the petitioner nor found by a jury. 542 U.S. 296, 303-04, 313-14, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). Like the deferred disposition agreement at issue in M.S.'s case, the petitioner in *Blakely* also agreed to a guilty plea agreement in which the State recommended a sentence within the standard range. *Id.* at 298-99. However, the judge rejected the State's recommendation and imposed an exceptional sentence on the additional grounds that the petitioner had acted with deliberate cruelty. *Id.* at 298.

In invalidating the exceptional sentence, the Supreme Court reiterated the broad due process requirements for exceptional sentences



established in *Jones* and *Apprendi*. 542 U.S. at 301-02. The Court cited two tenets of common-law criminal jurisprudence as the basis for *Apprendi*: the right to a jury trial and that “an accusation which lacks any particular fact which the law makes essential to the punishment is . . . no accusation within the requirements of the common law, and it is no accusation in reason.” *Id.* at 301-02 (alteration in original) (quoting 1 J. BISHOP, CRIMINAL PROCEDURE § 87, p. 55 (2d ed. 1872)). The second tenet highlights that accusations that do not provide notice of the particular facts that are essential to a sentence are outside the requirements of the law.

The Washington Supreme Court, upon consideration of the United States Supreme Court decisions in *Apprendi* and *Blakely*, similarly requires notice of aggravating factors. *See, e.g., State v. Recuenco*, 163 Wn.2d 428, 433-34, 180 P.3d 1276 (2008) (en banc) (explaining that defendants must have notice of sentencing enhancements that describe an increase beyond the maximum authorized statutory sentence); *State v. McEnroe*, 181 Wn.2d 375, 385, 333 P.3d 402 (2014) (en banc) (finding that although states can use their own charging procedures and documents in regard to aggravating factors, they are bound by constitutional guarantees including notice); *State v. Siers*, 174 Wn.2d 269, 277, 274 P.3d 358 (2012) (en banc) (explaining that defendants must receive notice of aggravating circumstances prior to the proceeding in which the State seeks to prove

those circumstances to a jury to allow the defendant the opportunity to mount an adequate defense).

Taken together, the United States Supreme Court and Supreme Court of Washington cases establish due process protections, including the right to notice, regarding aggravating factors extending maximum sentences. Importantly, these cases recognize the need for due process protections separate and apart from those that emanate from the right to trial by jury. To comport with the rules established by these cases, states, including Washington, must provide notice to defendants of facts establishing exceptional sentences before imposing such sentences.

The Fourteenth Amendment extends this right of notice to youth in the juvenile justice system. As explained in Section IA, the Supreme Court has established a constitutional right under the Due Process Clause of the Fourteenth Amendment to notice for youth in the juvenile justice system. *In re Gault*, 387 U.S. at 33. *Gault* clarified that even in the juvenile justice system, notice must comply with the constitutional requirements of civil and criminal courts. *Id.* Thus, the notice requirements for aggravating factors in criminal courts established by the United States Supreme Court in *Apprendi* and *Blakely*, as well as the notice rights established by this Court, apply equally to youth, including M.S. As M.S. did not receive the

required notice before his manifest injustice sentence was imposed, his sentence is unconstitutional.

## **II. PROVIDING YOUTH WITH CONSTITUTIONALLY SUFFICIENT NOTICE DOES NOT RUN COUNTER TO THE REHABILITATIVE GOALS OF THE JUVENILE JUSTICE SYSTEM**

The State's brief expresses concern that providing notice of aggravating factors to youth in the juvenile justice system will hinder its rehabilitative goals. The State contends that providing notice of aggravating factors would be overwhelming to juveniles in open court without leading to a more knowing or intelligent plea. (State's Supplemental Brief 17).

The State's concerns regarding rehabilitation do not outweigh the constitutional protections regarding notice owed to youth in the juvenile justice system. First, while rehabilitation is one goal of Washington's juvenile justice system, it also serves to hold youth accountable for offenses and provide punishment for their criminal behavior. RCW 13.40.010(2). Due process protections are vital to ensure that accountability and punishment in the juvenile justice system are carried out in constitutionally appropriate ways.

Second, rehabilitation and due process are neither mutually exclusive nor in conflict. Indeed, the Supreme Court in *Gault* directly addressed the tension between preserving the rehabilitative characteristics of the juvenile justice system and providing youth with procedural

protections, and found that “the observance of due process standards . . . will not compel the States to abandon or displace any of the substantive benefits of the juvenile process.” *In re Gault*, 387 U.S. at 21. Due process requirements do not impede the rehabilitation purpose of the juvenile court. *Id.* at 22-24, 26-27.

In subsequent cases, the Supreme Court has analyzed whether the extension of additional due process rights would counteract the rehabilitative nature of the juvenile justice system. In *In re Winship*, the Supreme Court held that the Due Process Clause protects youth in the juvenile justice system from being found delinquent without proof beyond a reasonable doubt, again rejecting arguments that the heightened burden of proof would destroy the beneficial aspects of the juvenile process. 397 U.S. 358, 366-67, 90 S. Ct. 1068. 25 L. Ed. 2d 368 (1970).

Further, *Winship* clarified that even if judicial intervention would be in the child’s best interest, that would not justify finding that the child violated a criminal law or confining the child without the procedural protection afforded by a beyond reasonable doubt burden of proof. *Id.* at 367. Thus, the Supreme Court has upheld due process protections, even if it may prevent the court from providing the most rehabilitative treatment to a child.

As discussed in Section I, the Supreme Court has already established in *Gault* that youth in the juvenile justice system are entitled to the same notice requirements as adult criminal defendants. *In re Gault*, 387 U.S. at 33. The Supreme Court has specifically considered the consequences of providing youth with the same right to notice as adults and found no conflict with the unique goals of the juvenile justice system. Providing proper notice to youth will not run afoul of the rehabilitative purpose of the juvenile justice system.

### CONCLUSION

*Amicus* respectfully urges the Court to grant the relief requested by Petitioner.

Respectfully Submitted,

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