

NO. 05-20-00920-CV

In the Fifth Court of Appeals for the State of Texas

IN THE MATTER OF J.R.

On Direct Appeal from the trial court in cause numbers JD-20-00313-X, 305th
Judicial District Court, the Honorable Cheryl Lee Shannon, presiding.

**BRIEF OF JUVENILE LAW CENTER AND LONESTAR JUSTICE
AS *AMICI CURIAE* IN SUPPORT OF APPELLANT J.R.**

ACCELERATED APPEAL

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TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS:

NOW COMES Juvenile Law Center and Lone Star Justice Alliance to submit this brief in support of the Appellant in the above-captioned case:

INTEREST AND IDENTITY OF *AMICI CURIAE*¹

Juvenile Law Center Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children’s unique developmental characteristics, and reflective of international human rights values. Since its founding, Juvenile Law Center has represented hundreds of young people and filed influential amicus briefs in state and federal cases across the country.

Lone Star Justice Alliance (LSJA) is a Texas nonprofit organization committed to reforming the juvenile justice system in accordance with the recognized science of adolescent development. Through research, alternatives-to-

¹ Pursuant to Rule 11(c), TEX. R. APP. PROC., no person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

incarceration pilot programs, litigation, advocacy, and community engagement, LSJA seeks to replace the current, punitive approach to juvenile behavior with one guided by public health principles. It is LSJA's overriding goal to realize a juvenile justice system in Texas that accounts for the distinctive attributes of youth and children's unique capacity for reform, thereby insuring both public safety and just outcomes for all children.

SUMMARY OF THE ARGUMENT

The question before this Court is whether Texas can waive a young person into the adult criminal legal system without adherence to legislatively and judicially required procedural protections. In determining whether to transfer a young person to adult court, the court must undertake an analysis that includes an evaluation of the individual's sophistication and maturity. This analysis is insufficient absent consideration of current developmental scientific research, including the documented effects of peer pressure on a young person. While the court below did indeed consider the influence of J.R.'s peers in this case, it noted that it counseled in favor of J.R.'s sophistication and maturity. Yet, developmental research concludes that the susceptibility to peer influence is one of the hallmark characteristics of youth. When determining the plain meaning of sophistication and maturity, documented differences in adolescent development that are part of national legal discourse must be acknowledged, therefore ensuring that children will be treated as

children, that they will be given the full benefit of a juvenile justice system, and that they will be spared the often irreversible and disproportionate harms that come from sentencing and incarcerating children as adults.

If the court below conducted a thorough evaluation of J.R.’s sophistication and maturity consistent with the guidance set forth in *Moon v. State*, 410 S.W.3d 366 (Tex. App.—Houston [1st Dist.] 2013), *aff’d*, 451 S.W.3d 28, 47, 49 (Tex. Crim. App. 2014), and developmental science, it would have found that J.R. did not meet the standard of sophistication and maturity required to be prosecuted as an adult.

ARGUMENT

I. DEVELOPMENTAL SCIENCE INFORMS THE PLAIN MEANING OF “SOPHISTICATED AND MATURITY”

A. Established Developmental And Scientific Research Must Inform The “Sophistication And Maturity” Analysis

In *Kent v. United States*, the United States Supreme Court’s landmark ruling concerning the prosecution of children in criminal court, the Court appended a policy memorandum relied upon by the judges of the D.C. Juvenile Court that included specific factors for consideration in the transfer decision, including “[t]he sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.” 383 U.S. 541, 565-67, app. (1966). Accordingly, because many states have included “sophistication and maturity” as a relevant factor in the transfer decision since *Kent*,

forensic psychologists have developed guidelines on how to conduct such assessments to ensure that the assessments reflect current knowledge. See Anne-Marie R. Leistico and Randall T. Salekin, *Testing the Reliability and Validity of the Risk, Sophistication-Maturity, and Treatment Amenability Instrument (RST-i): An Assessment Tool for Juvenile Offenders*, 2 INT’L J. FORENSIC MENTAL HEALTH 101, 102-03 (2003) (describing how psychologists developed a set of guidelines for juvenile assessments “[u]sing the information cited in *Kent*,” including “three core psychological constructs that are relevant to the assessment of juveniles facing transfer” including: risk, sophistication-maturity, and treatment amenability).

Researchers and scholars agree that psychological assessments of “sophistication and maturity” depend on a comprehensive and nuanced understanding of adolescent development. Psychologists recognize that youth “mature” at different rates and that maturity may also depend upon context and circumstances. Consequently, experts in the forensic assessment of juvenile defendants recommend that evaluators describe an individual youth’s development across several dimensions. Thomas Grisso, *Clinicians’ Transfer Evaluations: How Well Can They Assist Judicial Discretion?*, 71 LA. L. REV. 157, 183-84 (2010). Psychologists evaluating youth for transfer typically focus on three components of sophistication and maturity: autonomy, cognitive capacities, and emotional maturity. See Randall T. Salekin & Ross D. Grimes, *Clinical Forensic Evaluations for*

Juvenile Transfer to Adult Criminal Court, in LEARNING FORENSIC ASSESSMENT 313, 314 (Rebecca Jackson ed., 2008). Autonomy concerns a youth's development of identity, self-reliance, and ability to make decisions; cognitive capacities include an understanding of behavioral norms, awareness of the wrongfulness of crimes, ability to identify alternatives, and anticipation of short- and long-term consequences in decision making; and emotional maturity relates to a youth's ability to delay gratification, self-regulate emotions, and control his or her impulses. *Id.* at 332. As such, one state supreme court has held that the analysis of sophistication and maturity must determine whether a young person "possesses sufficient adult-like intellectual, social and emotional capabilities to have an adult-like understanding of the significance of his or her conduct, including its wrongfulness and its consequences for the youth, the victim, and others." *See In re J. C. N. -V.*, 380 P.3d 248, 268 (Or. 2016) (reversing lower court holding that analysis of sophistication and maturity only required awareness of physical nature and criminality of conduct at issue). Such a comprehensive approach to assessing youth sophistication and maturity allows experts to identify the factors most relevant when youth are presented with a decision, including "the nature and degree of youths' planning and foresight, their behavioral intentions, their understanding of societal norms and morals, and their decision-making patterns." Anne-Marie R.

Iselin et al., *Maturity in Adolescent and Young Adult Maturity: The Role of Cognitive Control*, 33 L. & HUM. BEHAV. 455, 456, 466 (2009).

B. A Plain Meaning Analysis Of “Sophistication And Maturity” Requires Acknowledgment Of The Effects Of Peer Pressure

A *pro forma* waiver using boilerplate language does not sufficiently analyze J.R.’s sophistication and maturity under § 54.02 and *Moon*, where the Texas Court of Criminal Appeals affirmed that juvenile court judges must explain their deliberative process for transferring a young person out of juvenile court on the record. *See Moon v. State*, 451 S.W.3d 28, 49 (Tex. Crim. App. 2014). This rule ensures that juvenile court judges adequately consider evidence for the waiver and also provides appellate courts adequate information to review transfer decisions. *Id.*

Rather than a *pro forma* waiver, the court should have completed an adequate analysis that accounted for J.R.’s unique factors and the offenses with which he has been charged. While this Court’s precedent does not treat “sophistication and maturity” as a term of art but applies the plain meaning of the words, *see Davis v. State*, Nos. 05-16-01341-CR, 05-16-01342-CR, 05-16-01343-CR, 2018 Tex. App. LEXIS 5920, at *8 (Tex. App.—Dallas July 31, 2018, no pet.), the commonly understood and documented effects of peer influence must be considered when determining an adolescent’s sophistication and maturity. Notwithstanding an ability to understand right from wrong, adolescents generally do not have the same capacity as an adult to appreciate the long-term consequences of their decisions and are easily

influenced by their peers. *Graham v. Florida*, 560 U.S. 48, 78 (2010). See also Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 15, 20 (2008).

A wealth of research in social science literature exists regarding the susceptibility of teenagers to peer pressure, however, the behavioral realities of a young person's age are "what 'any parent knows'—indeed, what any person knows—about children generally." *J.D.B. v. North Carolina*, 564 U.S. 261, 273 (2011) (quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005)). See also Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1012 (2003); RICHARD J. BONNIE ET AL., REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 91 (2013) ("[A]dolescents have a heightened sensitivity to proximal external influences, such as peer pressure and immediate incentives, relative to adults."). "Peer influence affects adolescent judgment both directly and indirectly. In some contexts, adolescents make choices in response to direct peer pressure to act in certain ways. More indirectly, adolescents' desire for peer approval—and fear of rejection—affect their choices, even without direct coercion." Steinberg & Scott, *Less Guilty by Reason of Adolescence*, *supra*, at 1012.

These effects are particularly pronounced in certain settings. Studies reveal that adolescents are more vulnerable to peer influence and likely to experience a greater reduction in self-control and impulsivity and greater decision-making deficits in excited emotional states than are adults in similar situations. Empirical studies in behavioral psychology and neuroscience continue to confirm that impulsive risk-taking is heightened under peer influence, a salient factor in risky behavior among adolescents, but less so among adults. *See, e.g.,* Ashley R. Smith et al., *Peers Increase Adolescent Risk Taking Even When The Probabilities of Negative Outcomes Are Known*, 50 DEV. PSYCHOL. 1, 2 (2014); Christopher N. Cascio et al., *Buffering Social Influence: Neural Correlates of Response Inhibition Predict Driving Safety in The Presence of a Peer*, 27 J. COGNITIVE NEUROSCI. 83, 89 (2015); Nancy Rhodes et al., *Risky Driving Among Young Male Drivers: The Effects of Mood And Passengers*, TRANSP. RES. 65, 72- 75 (2014); Anouk de Boer et al., *An Experimental Study of Risk Taking Behavior Among Adolescents: A Closer Look at Peer and Sex Influences*, J. EARLY ADOLESCENCE 1, 2 (2016). Adolescents' risk-taking behavior in the presence of their peers coincides with "increased activation of brain regions specifically associated with the prediction and valuation of rewards, including the ventral striatum and orbitofrontal cortex." Smith et al., *supra*, at 1. In other words, adolescents perceive higher reward, and thus have greater incentive than adults to take risks in front of their peers.

Context also plays a crucial role in transfer evaluations, as it affects how youth demonstrate their autonomy, cognitive capacity, and emotional maturity. *See* Salekin & Grimes, *supra*, at 327 (describing a model of maturity that includes youths’ “developmental status, the environment in which they currently live, any potential psychopathology, and the context or situation in which they make decisions”). Distinguishing between “hot” and “cold” decision-making contexts is key: “cold” refers to decision-making in non-emotional situations and allows for more cognitive consideration and rational thought, while “hot” refers to situations where emotions run high and peers are present. *See* Sarah-Jayne Blakemore and Trevor W. Robbins, *Decision-Making in the Adolescent Brain*, 15 NATURE NEUROSCIENCE 1184, 1187-88 (2012). Given the increased value adolescents place on peer approval, “hot” contexts often result in an overreliance on socio-emotional processing that cannot be regulated because of youths’ still- developing executive functioning abilities. *See id.* at 1184.

In this case, J.R.’s association with older individuals who engage in criminal activity was evidence of his sophistication. (Appellant’s Opening Br. 50 (citing CR 46.)) Wielding this as a sword against him rather than as evidence of his compromised judgment and reasoning, the court improperly denied not only what “any parent knows,” but also what scientific research has conclusively shown about young people—that they act differently when with peers. The court failed to

understand and apply the research on the impact of peer pressure on teenagers like J.R. Indeed, while J.R.'s psychological evaluation emphasized his learning disabilities, low academic performance, and various psychological and mental disorders, it nevertheless concluded that his sophistication and maturity levels appeared to be commensurate to his same-aged peers. (Appellant's Opening Br. 15 (citing CR 34-38.)) The waiver had a notable lack of analysis around situations where "emotions run high" that involve peers, and how the capacity of a young person to process the social and emotional context of such situations is essential to a sophistication and maturity analysis. To adequately and thoroughly meet the requirements of a waiver hearing under the tenets of *Moon*, further consideration of the social situation J.R. was in at the time of his offense was necessary for a complete analysis of his sophistication and maturity.

C. The Analysis Of "Sophistication And Maturity" That Does Not Properly Consider Evidence Against Waiver Will Result In A Disproportionate Number Of Black And Brown Youth Transferred To Adult Court, Restricting The Promise Of Access To Equal Justice

The weight of history, the super-predator myth, and the influence of stereotypes within the media prompt many individuals, often subconsciously, to associate Black children with crime, violence, and dangerousness. See Michael Tonry, *The Social, Psychological, and Political Causes of Racial Disparities in the American Criminal Justice System*, 39 CRIME & JUST. 273, 281-83 (2010) (describing psychological research indicating the ways in which Blackness is

associated with crime, danger, and more severe punishments); *see also* Aliya Saperstein & Andrew M. Penner, *The Race of a Criminal Record: How Incarceration Colors Racial Perceptions*, 57 SOC. PROBS. 92, 96 (2010) (summarizing studies showing people’s associating Blackness with criminality). These implicit biases impact the behaviors of decision-makers in the legal system. Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1209–17 (2009) (finding that trial judges hold implicit biases along racial lines that can affect their judicial decision-making). As such, there is a vital need for procedural protections—such as the complete analysis and documentation required under *Moon*—to ensure fair and just access to the legal system for children of all races and ethnicities. In Texas, the requirement that consideration of a young person’s maturity for a transfer waiver be thoroughly documented is especially important given that implicit racial biases can specifically impact assessments of the “maturity” of Black and Brown youth. Elizabeth S. Scott & Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799, 810 (2003). These biases lead to Black children being “adultified,” meaning that they are perceived as older than their actual age. Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCHOL. 526, 539-540 (2014). This skewed perception ascribes culpability to Black children, and the players in the legal system see them as more responsible for

their actions than their white peers. *Id.* at 539. Without appropriate safeguards, Black children are more readily excluded from the protection of the juvenile court system. *See id.* at 527.

The racial disparities among youth prosecuted in adult court and subject to adult punishments cast a long shadow over this nation’s commitment to equal justice. The U.S. Supreme Court has expressed concern about the role of race in our criminal justice system, noting the “imperative to purge racial prejudice from the administration of justice.” *See, e.g., Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 867 (2017) (“It must become the heritage of our Nation to rise above racial classifications that are so inconsistent with our commitment to the equal dignity of all persons.”); *Buck v. Davis*, 137 S. Ct. 759, 778 (2017) (“Discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice.” (quoting *Rose v. Mitchell*, 443 U.S. 545, 555 (1979))).

Notably, *Miller v. Alabama* and *Montgomery v. Louisiana* made clear that the legal system should reserve the harshest punishments for the “rare,” “uncommon” and irreparably corrupt child. *Miller v. Alabama*, 567 U.S. 460, 479-80 (2012) (quoting *Roper*, 543 U.S. at 573); *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016) (quoting *Miller*, 567 U.S. at 479-80). Yet, the harshest punishments—those applied in the adult criminal justice system—are levied disproportionately against youth of color. Nationally, 47.3 percent of youth who are transferred to adult court

are Black despite Black youth making up only 14 percent of the total youth population. *See* NAT'L ASS'N OF SOCIAL WORKERS, THE COLOR OF YOUTH TRANSFERRED TO THE ADULT CRIMINAL JUSTICE SYSTEM: POLICY & PRACTICE RECOMMENDATIONS 1 (2017), http://cfyj.org/images/pdf/Social_Justice_Brief_Youth_Transfers.Revised_copy_09-18-2018.pdf.

While the overall number of waived cases has steadily declined, data shows that the percentage of cases involving Black youth waived into adult court has steadily increased. U.S. DEPT. OF JUSTICE, JUVENILE JUSTICE STATISTICS: NATIONAL REPORT SERIES FACT SHEET 3 (2021), <https://ojjdp.ojp.gov/publications/delinquency-cases-waived-2018.pdf> (among the total number of cases waived over three years, the percentage of cases involving Black youth steadily increased from 39% in 2015 to 52% in 2018, while cases involving white youth waived decreased from 45% to 32% in the three-year period). Once in adult criminal court, further proof of racial harm is apparent: Black children receive harsher sentences than their white peers who are prosecuted as adults. *See* NAT'L COUNCIL ON CRIME & DELINQUENCY, AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF YOUTH OF COLOR IN THE JUSTICE SYSTEM 37 (2007), http://www.nccdglobal.org/sites/default/files/publication_pdf/justice-for-some.pdf.

Completing and documenting a comprehensive analysis of each individual child before transferring them into the adult legal system is an opportunity to remedy the current transfer laws that disproportionately subject Black and Brown children to the harshest punishments and provides an opportunity to address—and substantially diminish—the destructive treatment of young people from historically harmed communities.

II. THE JUVENILE COURT’S TRANSFER OF A YOUNG PERSON INTO THE ADULT SYSTEM IS A CRITICAL DECISION THAT REQUIRES THOROUGH PROCEDURAL PROTECTION

A. *Moon’s* Procedural Protections Function To Recognize The Constitutionally Relevant Ways In Which Children Differ From Adults

If followed correctly, *Moon’s* procedural guidance, that juvenile court judges must explain their deliberative process for transferring a young person out of juvenile court on the record, should limit the number of young people being charged in the adult criminal justice system. *See Moon*, 451 S.W.3d at 49. *Cf. Miller*, 567 U.S. at 480 (requiring that courts “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison”).

Moon follows over a decade of U.S. Supreme Court decisions reaffirming the principle that youth are developmentally different from adults and that these differences compel a distinct application of certain constitutional guarantees, particularly in the justice system. *See, e.g., Roper*, 543 U.S. at 578 (barring the death

penalty for individuals who committed murder as juveniles under the Eighth Amendment's prohibition against cruel and unusual punishment); *Graham*, 560 U.S. at 82 (barring life without parole sentences on juveniles convicted of non-homicide offenses under the Eighth Amendment); *J.D.B.*, 564 U.S. at 271-72 (holding that a child's age must be considered for the purposes of the *Miranda* custody test); *Miller*, 567 U.S. at 489 (barring mandatory life without parole sentence for juveniles convicted of homicide under the Eighth Amendment). The rule also reinforces the United States Supreme Court's holding in *Kent v. United States* that courts must consider the documented developmental differences between adolescents and adults in prosecuting youth in the adult legal system and crafting appropriate punitive sanctions therein. *Kent*, 383 U.S. at 557 (requiring due process during transfer of youth to adult criminal system). The procedural protections set forth in these cases and underscored by *Moon* ensure that youth will not be subject to adult punishments when there is insufficient evidence to support the criteria of Texas' statute.

B. Transferring Youth To Adult Court Contradicts The Rehabilitative Aims Of The Juvenile Court And Imposes Harmful Consequences

The trial court's failure to undertake and document a full analysis of all factors outlined in *Moon* denied J.R. access to the resources of the juvenile court, a system that is premised on allowing young people to outgrow their offending behavior and develop into successful adults if they are provided with rehabilitative services and protected from the harsh consequences of the adult system. *See* FRANKLIN E.

ZIMRING, AMERICAN JUVENILE JUSTICE 35-39 (2005); *see also* David S. Tanenhaus, *The Evolution of Juvenile Courts in the Early Twentieth Century: Beyond the Myth of Immaculate Conception*, in A CENTURY OF JUVENILE JUSTICE 42, 42-69 (Margaret K. Rosenheim, et al., eds., 2002). Juvenile courts were specifically established to emphasize rehabilitation over punishment, given youth's unique capacity for change.

Moreover, the majority of youth who have engaged in criminal conduct as teens desist from further offending as they mature into adulthood. *See, e.g.*, MODELS FOR CHANGE, RESEARCH ON PATHWAYS TO DESISTANCE: DECEMBER 2012 UPDATE 3, <http://www.modelsforchange.net/publications/357> (finding that, of the more than 1,300 serious offenders studied for a period of seven years, only approximately 10% report continued high levels of antisocial acts). One study found that “the original offense . . . has little relation to the path the youth follows” as they grow older. *Id.* at 4. When given a chance, most youth become productive and law-abiding citizens, even without any interventions. Marsha Levick et al., *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment Through the Lens of Childhood and Adolescence*, 15 U. PA. J. L. & SOC. CHANGE 285, 297 (2012). As young people grow, their self-management skills, long-term planning, judgment and decision-making, regulation of emotion, and evaluation of risk and reward likewise improve. *See* Steinberg & Scott, *Less Guilty by Reason of Adolescence supra*, at 1011-13. As

a result, “[f]or most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled.” *Id.* at 1014.

Keeping youth who engage in criminal conduct in juvenile court decreases the likelihood of recidivism—a positive outcome for both the individual and the community. Youth prosecuted as adults are 34 percent more likely to recidivate than youth tried in juvenile court for similar offenses. CHILDREN’S LAW CENTER, INC., FALLING THROUGH THE CRACKS: A NEW LOOK AT OHIO YOUTH IN THE ADULT CRIMINAL JUSTICE SYSTEM 1 (2012), <https://static1.squarespace.com/static/571f750f4c2f858e510aa661/t/57d97b37d2b8578c2ccbe572/1473870660296/Falling-Through-The-Cracks-A-New-Look-at-Ohio-Youth-in-the-Adult-Criminal-Justice-System-May-2012.pdf>; *see also* Jason J. Washburn et al., *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59 PSYCHIATRIC SERV. 965, 972 (2008) (“Available evidence indicates that transferred youths reoffend more quickly and are more likely to engage in violent crimes after release than youths processed in the juvenile justice system.”).

Adult facilities also cannot meet the physical needs of adolescents. Because adult facilities are designed to house adults rather than children, they are less equipped to provide adolescents with adequate nutrition, dental and vision care, and physical activity. NEELUM ARYA ET AL., CAMPAIGN FOR YOUTH JUSTICE, JAILING

JUVENILES: THE DANGERS OF INCARCERATING YOUTHS IN ADULT JAILS IN AMERICA
6-7 (2007),

http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf. Accordingly, researchers report that “many youth in adult jails sleep in excess of 15 hours a day [and] do not receive adequate nutrition or exercise.” THE CAMPAIGN FOR YOUTH JUSTICE, THE CONSEQUENCES AREN’T MINOR: THE IMPACT OF TRYING YOUTH AS ADULTS AND STRATEGIES FOR REFORM 7 (2007) [hereinafter THE CONSEQUENCES AREN’T MINOR],

http://www.campaignforyouthjustice.org/images/nationalreports/consequencesarentminor/CFYJNR_ConsequencesMinor.pdf. The Supreme Court has recognized in *Kent v. United States* that transfer to an adult facility also has the potential to impose “tremendous consequences” on children. 383 US at 554 (finding that in juvenile court, the young person gets the benefit of a system designed to rehabilitate, educate, and guide, whereas in the adult criminal justice system the young person faces the severe harms of incarceration with adults); *see also* THE CONSEQUENCES AREN’T MINOR, *supra*, at 6-7.

1. Children Incarcerated In Adult Facilities Are At A High Risk Of Physical And Sexual Harm

Because children in adult facilities may be incarcerated with older and more physically developed inmates, they are at high risk for physical and sexual violence.

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 1, 18 (Patricia Puritz, Alycia Capozello & Wendy Shang eds., 1997). Often the youngest members of the prison population face physical and sexual abuse and even death. See THE CONSEQUENCES AREN'T MINOR, *supra*, at 7, 9. Youth in adult facilities are five times more likely to be sexually assaulted while incarcerated and two times more likely to be assaulted with a weapon than are youth in the juvenile justice system. RICHARD E. REDDING, U.S. DEP'T OF JUSTICE, JUVENILE TRANSFER LAWS: AN EFFECTIVE DETERRENT TO DELINQUENCY? 7 (2010), <https://www.ojp.gov/pdffiles1/ojjdp/220595.pdf>. According to the U.S. Department of Justice's Bureau of Statistics, in 2006, 13 percent of sexual assault victims in adult jails were children under 18, although such children were only about one percent of the total population in adult jails. ALLEN J. BECK ET AL., U.S. DEP'T OF JUSTICE, SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2006 35 (2007), <https://www.bjs.gov/content/pub/pdf/svrca06.pdf>; MELISSA SICKMUND, U.S. DEP'T OF JUSTICE, JUVENILES IN CORRECTIONS 35 (2004), <https://www.ojp.gov/pdffiles1/ojjdp/202885.pdf>. Because data on rape and assault of children in adult prisons are often limited to self-reports, the actual rates may be much higher. Vincent Schiraldi & Jason Zeidenberg, *The Risks Juveniles Face When They Are Incarcerated With Adults* 1-2 (1997),

http://www.justicepolicy.org/images/upload/97-02_REP_RiskJuvenilesFace_JJ.pdf.

2. Children Incarcerated In Adult Facilities Do Not Receive Adequate Mental Health Treatment

Adult facilities lack sufficient services to address the mental health needs of children. Researchers estimate that children in adult facilities have rates of psychiatric disorders two to three times those of incarcerated adults. *See Washburn et al., supra*, at 969-70. The lack of developmentally-appropriate mental health programming in adult facilities compounds these needs. *Id.* at 968-70; THE CONSEQUENCES AREN'T MINOR, *supra*, at 7. Children incarcerated in adult facilities are also eight to thirty-six times more likely to commit suicide than children in juvenile facilities. ARYA ET AL., *supra*, at 4; THE CONSEQUENCES AREN'T MINOR, *supra*, at 42. Notably, even a short period of adult incarceration can be life-threatening for a child; nearly one-quarter of suicide attempts occur on the first or second day of adult incarceration. WASHINGTON COALITION FOR THE JUST TREATMENT OF YOUTH, A REEXAMINATION OF YOUTH INVOLVEMENT IN ADULT CRIMINAL JUSTICE SYSTEM IN WASHINGTON: IMPLICATIONS OF NEW FINDINGS ABOUT JUVENILE RECIDIVISM AND ADOLESCENT BRAIN DEVELOPMENT 7 (2009), https://www.njjn.org/uploads/digital-library/resource_970.pdf.

3. Education Services Are Severely Lacking For Children In Adult Facilities

Children incarcerated in adult prisons frequently do not attend school or receive educational services. According to the U.S. Department of Justice, forty percent of adult jails do not have any educational services for incarcerated youth. LIZ RYAN, CAMPAIGN FOR YOUTH JUSTICE, YOUTH IN ADULT COURTS 10 (2012), http://www.campaignforyouthjustice.org/images/policybriefs/policyreform/FR_YACJS_2012.pdf. Additionally, despite the high prevalence of learning disorders and other disabilities among children tried as adults, only eleven percent of adult prisons nationwide report providing special education services. *Id.* They are also frequently deprived of vocational programming and life skills development. LONN LANZAKADUCE ET AL., JUVENILE TRANSFER TO CRIMINAL COURT STUDY: FINAL REPORT 30 (2002), <https://www.prisonpolicy.org/scans/juveniletransfers.pdf>.

PRAYER

For these reasons, *amici* respectfully request that this Court vacate the certification order.

Respectfully submitted,

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I certify that on February 18, 2021, a true and correct copy of this brief was served on counsel for all parties, per Rule 9.5 of the Texas Rules of Appellate Procedure. Service was accomplished via electronic delivery as follows:

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Rules 9.4 and 11 of the Texas Rules of Appellate Procedure. It was prepared on a computer using 14-point Times New Roman type. It contains 5,096 words. This certification is based on the word count of the program used to prepare the document.

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