No. 100222-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Personal Restraint of

RAYMOND MAYFIELD WILLIAMS,

Petitioner.

MEMORANDUM OF *AMICI CURIAE* JUVENILE LAW CENTER, KING COUNTY DEPARTMENT OF PUBLIC DEFENSE, CENTER FOR CIVIL AND HUMAN RIGHTS AT GONZAGA LAW, CENTER FOR CHILDREN AND YOUTH JUSTICE, CHOOSE 180, COLLECTIVE JUSTICE, COLUMBIA LEGAL SERVICES, EL CENTRO DE LA RAZA, FREEDOM PROJECT, TEAMCHILD, THE WAY TO JUSTICE, AND URBAN IMPACT IN SUPPORT OF MOTION FOR DISCRETIONARY REVIEW

Marsha L. Levick
PA Bar No. 22535
Riya Saha Shah
PA Bar No. 200644
JUVENILE LAW CENTER
1800 JFK Blvd., Ste. 1900B
Philadelphia, PA 19103
Tel: (215) 625-0551
mlevick@jlc.org

Katherine Hurley
WSBA No. 37863
La Rond Baker, WSBA No. 43610
KING COUNTY DEPARTMENT
OF PUBLIC DEFENSE
710 2nd Ave., Suite 200
Seattle, WA 98104
Tel: (206) 477-8700 ext. 78744
katherine.hurley@kingcounty.gov

Mary Pat Treuthart, PA Bar No. 29088
CENTER FOR CIVIL AND
HUMAN RIGHTS AT GONZAGA LAW
721 N. Cincinnati St., P.O. Box 3528
Spokane, WA 99220
Tel: (509) 313-3756
treuthart@gonzaga.edu

Counsel for *Amici Curiae*

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IDENTITY AND INTEREST OF *AMICI CURIAE*

The identity and interest of *Amici Curiae* are set forth in the accompanying Motion for Leave to File Memorandum of *Amici Curiae*.

STATEMENT OF THE CASE

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

ARGUMENT

At age 16, Raymond Williams was charged with Burglary in the First Degree and prosecuted in adult court under the declination statute. Subsequently, Williams was sentenced to life without the possibility of parole (LWOP or life sentence) under the Persistent Offender Accountability Act (POAA). In order for a court to impose a life sentence, the sentencing court was required to prove that Williams had three separate and distinct convictions, each of which constituted a strike under the POAA.

The sentencing court relied upon Williams' Burglary in the First Degree—an offense that occurred when he was just 16 years old—as one of the three strike convictions. (*See* Pet'r's Mot. for Discretionary Rev. at 3; ACLU Amicus Brief at 4-11.) Relying on youthful conduct to prosecute youth in adult court and impose a sentence of life without the possibility of parole—without regard for the neurodevelopmental differences in young people's brains that make them categorically less culpable and more capable of rehabilitation—is particularly pernicious because Black youth, Indigenous youth, and youth of color are disproportionately declined into the adult criminal legal system. Because of the racially disproportionate rates of decline, review is warranted under the substantial public interest criterion. *See* RAP 13.4(b)(4); (Pet'r's Reply in Support Mot. for Discretionary Rev. at 14-16.)

I. PREDICATING MANDATORY LIFE WITHOUT PAROLE SENTENCES ON YOUTHFUL OFFENSES RUNS AFOUL OF CONSTITUTIONAL PROTECTIONS

A. The Constitution Requires Courts To Treat Youth Differently Than Adults When Imposing Punishment

The Court has held that the Constitution demands that because "'children are different,' . . . 'criminal procedure laws' must take the defendants' youthfulness into account." *State v. Houston-Sconiers*, 188 Wn.2d 1, 9, 391 P.3d 409 (2017). *In re Pers. Restraint of Domingo-Cornelio,* 196 Wn.2d 255, 265, 474 P.3d 524 (2020) (when sentencing an individual for childhood conduct, "sentencing courts *must* consider youth and *must* have discretion to impose any exceptional sentence downward based on youth"), *cert. denied sub nom. Washington v. Domingo-Cornelio*, 141 S. Ct. 1753 (2021); *In re Pers. Restraint of Ali*, 196 Wn.2d 220, 234, 474 P.3d 507 (2020) (when sentencing an individual for childhood conduct, court has "absolute discretion to impose *any* sentence below the applicable SRA range and

sentence enhancements"), *cert. denied sub nom. Washington v. Ali*, 141 S. Ct. 1754 (2021); *In re Pers. Restraint of Monschke*, 197 Wn.2d 305, 312, 329, 482 P.3d 276 (2021) (individual variability in maturation rates and relationship between maturity and culpability renders mandatory LWOP unconstitutional for those at least up to 20 years old); *State v. Bassett*, 192 Wn.2d 67, 78, 428 P.3d 343 (2018) ("This court has 'repeated[ly] recogni[zed] that the Washington State Constitution's cruel punishment clause often provides greater protection than the Eighth Amendment.'" (alterations in original) (quoting *State v. Roberts*, 142 Wn.2d 471, 506, 14 P.3d 713 (2000))).

The Court's determination of constitutional protections echoes the United States Supreme Court's well-established precedent that the developmental differences between youth and adults have constitutional significance. *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 for crimes committed as children 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 imposing life without parole sentences on children convicted of non-homicide offenses is unconstitutional); *J.D.B. v. North Carolina*, 564 U.S. 261, 271-72, 131 S. Ct. 2394, 180 L. Ed. 2d. 310 (2011) (holding that a child's age must be taken into account for the purposes of the *Miranda* custody test); *Miller v. Alabama*, 567 U.S. 460, 465, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) (holding that a mandatory life without parole sentence imposed on a young person convicted of homicide is unconstitutional); *Montgomery v. Louisiana*, 577 U.S. 190, 208-09, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016) (underscoring *Miller*'s holding and deeming it retroactive).

Taken together, these cases establish that courts must treat young people and their actions differently from their adult counterparts especially when imposing punishment.

B. Strikes Resulting From Declines Into Adult Court Often Serve As The Basis Of A Life Without Possibility Of Parole Sentence

Under the plain language of the POAA, an individual who receives three strike offenses is labeled a "persistent offender" and must be sentenced to life without the possibility of parole. RCWA 9.94A.030(37); RCWA 9.94A.570. Any conviction for an offense designated as a "most serious offense" received in adult criminal court is considered a strike offense. RCWA 9.94A.030(34), (37). Although adjudications in juvenile court do not count as strikes, an offense committed by a child can be considered a strike if the child is tried as an adult. RCWA 9.94A.030(34). *See also State v. Saenz*, 175 Wn.2d 167, 175, 283 P.3d 1094 (2012) (en banc). Thus, in situations where one or more of the three (3) strikes are from a conviction in adult court caused by declination, the POAA imposes mandatory life without parole based on juvenile conduct. Such extreme punishment for youthful actions violates the United States Supreme Court's holdings that such a sentence

is limited to those youth who have committed homicide *and* whose crime reflects permanent incorrigibility, *see Montgomery*, 136 S. Ct. at 734 (quoting *Miller*, 567 U.S. at 479-80), as well as the Washington Supreme Court's holding that life without parole sentences imposed on youth are categorically cruel under Article I, Section 14 of the Washington Constitution, *see Bassett*, 192 Wn.2d at 90-91.

The constitutional defect of imposing a life sentence for youthful actions is not cured because some of the offenses may have occurred when the individual was over the age of 18. Even when, as here, the second and third strikes took place during adulthood, the initial offense is a necessary predicate to the imposition of the life without parole sentence. The POAA requires three convictions before characterization as a persistent offender, meaning that the first and second strike offenses—not just the final offense—also serve as the basis for the ultimate sentence. *See State v. Rivers*, 129 Wn.2d 697, 714, 921 P.2d 495 (1996) (en banc); *see also State v. Manussier*, 129 Wn.2d 652,

677, 921 P.2d 473 (1996) (en banc). Put simply, under the POAA, individuals like Mr. Williams would not be subject to a life without parole sentence *but for* an offense they committed as a child, directly contradicting the Washington Supreme Court's holding that juvenile conduct is categorically *ineligible* for such a sentence. *See Bassett*, 192 Wn.2d at 90-91.

II. THIS COURT SHOULD GRANT REVIEW BECAUSE YOUTH OF COLOR ARE DISPROPORTIONATELY SUBJECT TO POAA PROSECUTION BASED ON JUVENILE OFFENSES THAT ARE DECLINED

Washington's decline statute disproportionately affects youth of color, as compared to their white counterparts. *See* Heather D. Evans & Steven Herbert, *Juveniles Sentenced as Adults in Washington State, 2009–2019,* 4 (2021), https://www.opd.wa.gov/documents/00866-2021_AOCreport.pdf.

A punitive trend in the 1990s revealed a collective national strategy to transfer young people who committed serious delinquency offenses to adult court if they were deemed incapable of being rehabilitated in the juvenile system. Vincent

Southerland, *Youth Matters: The Need to Treat Children Like Children,* 27 J. Civ. Rts. & Econ. Dev. 765, 768-69 (2015). This same period gave rise to the "super predator" myth, which invigorated a societal fear that certain juveniles were incapable of controlling their behavior and sought to engage in criminal activity with impunity and without remorse. John DiLulio, *The Coming of the Super—Predators* Weekly Standard (Nov. 27, 1995), https://www.washingtonexaminer.com/weekly-standard/the-coming-of-the-super-predators. Unsurprisingly, the term "super predator" effectively became a "dog whistle" for young Black males. Kenneth B. Nunn, *The End of Adolescence: The Child as Other: Race and Differential Treatment in the Juvenile Justice System,* 51 DePaul L. Rev. 679, 712 (2002).

A. Racial Disparities Are Evident In The Prosecution Of Youth In Adult Court Nationawide

The decision whether to prosecute a child in adult criminal court has ramifications that can resonate for decades—and perhaps even for life. Racial disparities have long plagued the

juvenile legal system across the United States. Black youth were twice as likely to be in the juvenile court system than their white peers. *See* Charles Puzzanchera, et. al., *Juvenile Court Statistics 1997*, OJJDP 26, Table 42 (2000) (123.7 for Black youth compared to 50.8 for white youth). Likewise, Black youth were more likely to be waived to adult court in 1997 than white youth. *Id.*

The racial disparities in decline have been well-established. Mark Soler, *Missed Opportunity: Waiver, Race, Data, and Policy Reform*, 71 La. L. Rev. 17, 19-22 (2010) (summarizing national studies that show racial differences at the point of transfer). One researcher noted that Black youth "were disproportionately caught in the net of adult prosecution and adjudication" as compared to their proportion in population. Jolanta Juszkiewicz, Campaign for Youth Justice, *To Punish a Few: Too Many Youth Caught in the Net of Adult Prosecution* 36 (2007), https://www.njjn.org/uploads/digital-library/To-Punish-A-Few-CYJ-10.07.pdf. For example, nationally, 47.3 percent of

youth who are prosecuted in adult court are Black, although Black youth comprise only 14 percent of the total youth population. *See* Nat'l Ass'n of Social Workers, *The Color of Youth Transferred to Adult Criminal Justice System: Policy & Practice Recommendations* 1 (2017), https://www.socialworkers.org/LinkClick.aspx?fileticket=30n7g-nwam8%3D&portalid=0. Across Washington state, in 2012, Black youth comprised only 6% of the juvenile population but they accounted for 31% of the transfers to adult court. *The Task Force on Race and the Criminal Justice System, Juvenile Justice and Racial Disproportionality* 12 (2012).

Race disproportionality plays a role from the beginning stages of the juvenile court process because "delinquency cases involving white youth were less likely to be handled formally (48%) than those involving [B]lack youth (60%)." Sarah Hockenberry & Charles Puzzanchera, *Juvenile Court Statistics 2019* 58 (June 2021), https://www.ojjdp.gov/ojstatbb/njcda/pdf/jcs2019.pdf. Cases involving Black youth were more likely to be

declined to adult court than those involving white youth in all categories except public order but including property crimes. *Id.*

B. Racial Disparities Are Evident In The Prosecution Of Youth In Adult Court In Washington State

One research study reveals that between 2009-2019, 78,849 Washington children were prosecuted in adult court through the decline process, and the racial disparity in these declinations is startlingly apparent. Evans & Herbert, *supra*, at 17.

> Among juveniles sentenced as adults through the auto decline process, Latinx children are adjudicated as adults at rate 4.9 times the rate of White children; that is, the rate of Latinx children being sentenced as adults is 386% higher than the rate for White children. Black children are adjudicated as adults through auto decline hearings at a rate that is 25.8 times or 2,484% higher than the rate of White children, Asian children at a rate 1.4 times that of White children, and American Indian children at a rate 5.2 times the rate of White children.

Id. at 20. After analyzing the findings, Evans and Herbert conclude that:

> given that differences in criminal histories explain less than one percent of the variance in discretionary, auto, and absence of declines, criminal history does not explain the over-representation of youth of color in the juvenile justice system, nor in the selection of discretionary decline cases. Furthermore, this analysis shows that youth of color are, to an extraordinary degree, disproportionally over-represented among juveniles adjudicated as adults through the discretionary decline process, even when type of offense is accounted for in the analysis.

Id. at 32. Not only are the conviction rates higher, but the sentencing procedures tend to treat Black and Brown youth harsher. Black youth are more likely than any other group to be convicted of a felony with 1 or more misdemeanors, the most common offense being burglary. Stephanie Cross, *Juvenile Justice Standardized Report: Education and Workforce Outcomes of Juvenile Justice Participants in Washington State* 11 (2016), https://erdc.wa.gov/publications/justice-program-outcomes/juvenile-justice-standardized-report. The stark racial disproportionality in declinations further supports this Court's

determining that strike offenses declined into adult court should not be relied upon to impose a life sentence under the POAA.

CONCLUSION

For the foregoing reasons, *Amici* urge this Court to grant review of Mr. Williams petition.

Respectfully Submitted,

/s/ Marsha L. Levick
Marsha L. Levick, PA Bar No. 22535
Riya Saha Shah, PA Bar No. 200644
JUVENILE LAW CENTER
1800 JFK Blvd., Ste. 1900B
Philadelphia, PA 19103
Tel: (215) 625-0551
Fax: (215) 625-2808
mlevick@jlc.org
rshah@jlc.org

/s/ Katherine Hurley
Katherine Hurley
WSBA No. 37863
La Rond Baker
WSBA No. 43610
KING GOUNTY DEPARTMENT
OF PUBLIC DEFENSE
710 2nd Ave., Suite 200
Seattle, WA 98104
Tel: (206) 477-8700 ext. 78744
Katherine.hurley@kingcounty.gov
lbaker@kingcounty.gov

/s/ Mary Pat Treuthart
Mary Pat Treuthart, PA Bar No. 29088
CENTER FOR CIVIL AND
HUMAN RIGHTS AT GONZAGA LAW
721 N. Cincinnati St., P.O. Box 3528
Spokane, WA 99220
Tel: (509) 313-3756
treuthart@gonzaga.edu

Counsel for Amici Curiae

Dated: November 23, 2021

CERTIFICATE OF COMPLIANCE

I certify under RAP 18.17(b) that, excluding appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, signature blocks, and pictorial images, the word count of this document is 2,060 words, as calculated by the word processing software used.

/s/ Marsha L. Levick
Marsha L. Levick

CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on November 23, 2021, the foregoing 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 Philadelphia, Pennsylvania this 23rd day of November, 2021.

/s/ Marsha L. Levick
Marsha L. Levick

JUVENILE LAW CENTER

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