

IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,)	Washington County Circuit
)	Court No. 17CR36419
Plaintiff-Respondent)	
Respondent on Review)	CA A166286
)	
v.)	S068987
)	
ZACHAREY NATHANIEL ISAAC)	
REASONER, aka Zachery)	
Nathaniel Isaac Reasoner,)	
)	
Defendant-Appellant)	
Petitioner on Review.)	

BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER,
NATIONAL JUVENILE DEFENDER CENTER,
AND OREGON JUSTICE RESOURCE CENTER
IN SUPPORT OF PETITIONER ON REVIEW

Petition for Review of Decision of the Court of Appeals
On Appeal from a Judgment of the Washington County Circuit Court
Honorable RICARDO J. MENCHACA, Judge

Opinion Filed July 8, 2021
Before Lagesen, Presiding Judge, and DeVore, Judge, and Kistler, Senior
Judge. Opinion authored by Kistler, S.J.

Amici Curiae intend to file a brief on the merits if review is allowed.

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IDENTITY AND INTEREST OF AMICI

Juvenile Law Center advocates for rights, dignity, equity, and opportunity for young people 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 young people advance racial and economic equity and are rooted in research, consistent with the unique developmental characteristics of youth and young adults, and reflective of international human rights values. Juvenile Law Center has represented hundreds of young people and filed influential amicus briefs in state and federal cases across the country.

The **National Juvenile Defender Center** (NJDC) was created to ensure excellence in juvenile defense and promote justice for all children. NJDC responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. NJDC gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. NJDC provides support to public defenders, appointed counsel, child advocates, law school clinical programs, and non-profit law

centers to ensure quality representation and justice for youth in urban, suburban, rural, and tribal areas. NJDC also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination. NJDC has participated as *Amicus Curiae* before the United States Supreme Court, as well as federal and state courts across the country.

The **Oregon Justice Resource Center (OJRC)** is a non-profit organization in Portland, Oregon. It works to dismantle systemic discrimination in the legal system by promoting civil rights and by enhancing the quality of legal representation to historically underrepresented communities. OJRC promotes these goals in many different ways, including through the work of its Youth Justice Project, which aims to empower young people, keep them out of Oregon's criminal system, and protect them from excessive punishments.

Amici support the Appellant's Petition for Review of the decision of the Court of Appeals in *State v. Reasoner*, 313 Or App 139, 495 P3d 686 (2021) because this case is one of national importance involving the constitutional application of a statute that subjects youth to the harsh consequences of the adult criminal justice system in racially disproportionate ways. *Amici* include state and national organizations who advocate on behalf of youth in the juvenile and criminal justice systems and who urge this Court to grant Mr. Reasoner's petition for review.

ARGUMENT

Mr. Reasoner was 16 years old when charged with two misdemeanors involving a motor vehicle. Pursuant to a blanket waiver order under ORS 419C.370, his case was automatically transferred to the adult criminal system. Without a hearing before a juvenile court judge, the adult criminal court retained jurisdiction over Mr. Reasoner's case and convicted him. The Court of Appeals affirmed the criminal court's decision and Mr. Reasoner seeks review by this court. In support of Mr. Reasoner's petition, *amici curiae* underscore that ORS 419C.370 is unconstitutional because it fails to provide youth with due process while exposing them to severe consequences of adult court. Furthermore, the statute has a disproportionate impact on Black Oregonians.

I. THIS COURT SHOULD GRANT REVIEW BECAUSE MANDATORY PROSECUTION IN ADULT COURT UNDER ORS 419C.370 EXPOSES YOUTH TO SEVERE CONSEQUENCES

In *Kent v. United States*, 383 US 541, 554, 86 S Ct 1045, 16 L Ed 2d 84 (1966), the United States Supreme Court recognized that transfer to adult court has the potential to impose “tremendous consequences” on children. *See also* The Campaign for Youth Justice, *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform* 6–7 (2007), http://www.campaignforyouthjustice.org/images/nationalreports/consequencesarentminor/CFYJNR_ConsequencesMinor.pdf (accessed November 2, 2021). Consequently, *Kent* required heightened procedural protections when

transferring a child to adult court prosecution. *Kent*, 383 US at 553–54. The Supreme Court reasoned that because transfer of a youth from juvenile court to adult criminal court imposes a significant deprivation of liberty, it warrants substantial due process protection. *Id.* at 554. The Court found it “clear beyond dispute that the waiver of jurisdiction is a ‘critically important’ action determining vitally important statutory rights of the juvenile,” and thus it must “satisfy the basic requirements of due process and fairness,” including an individualized assessment of the youth’s amenability to juvenile court jurisdiction. *Id.* at 553, 556.

The Oregon legislature structured its waiver provisions to recognize differences between young adolescents, older adolescents, and adults. *See* ORS 419C.005; ORS 419C.349; ORS 419C.352. Indeed, legislative debate surrounding the 1985 amendments to the Oregon statutory waiver criteria make clear that legislators and experts alike intended that the grounds for waiver should result in only a small number of youth transferred to adult criminal court each year. *See State v. J.C.N.-V.*, 268 Or App 505, 555, 342 P3d 1046 (2015) (Egan, J., dissenting) (providing history); *see also* House Floor Debate, June 18, 1985, Reel 25, Track II (statement of Rep. Jim Hill).

However, a blanket waiver like that imposed under ORS 419C.370 contradicts this intention. This Court has previously held that prior to waiver “a juvenile court must find that the youth 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.” *Matter of J.C.N.-V.*, 359 Or 559, 597, 380 P3d 248 (2016). Yet, the blanket waiver provision denies any opportunity for a determination of the youth’s suitability for prosecution in adult court. Likewise, because it is effectuated differently from county to county, it perverts the core mission of juvenile courts, ignores precedent, and leads to arbitrary outcomes and due process violations. Depending on which county a child lives in, a youth who is charged with a homicide offense is afforded a hearing in juvenile court, and a youth alleged to have taken his neighbor’s car does not.

Blanket waiver under ORS 419C.370 is also contrary to Oregon’s well-settled commitment to youth justice. Shortly after the creation of the first juvenile court in 1899, Oregon followed with the establishment of its own juvenile court system in 1907. Fifty years later, it reformed its juvenile court act, making clear that juvenile courts are *sui generis* for youth. *See* Or Laws 1959, ch 432 § 2. Indeed, that same year, the original concept of waiver of youth charged with motor vehicle offenses grew from the commitment to courts of specialization. There were no specialized juvenile traffic courts outside Multnomah County. Therefore, juvenile courts in other parts of the state felt ill-equipped to handle these cases, which pushed them into adult criminal courts. *See* Ralph M. Holman,

Oregon's New Juvenile Code, 39 Or Law Rev 305, 312–13 (1960). Because blanket waiver procedures can be imposed differently across the state, there remains inconsistency in how vehicle-involved offenses are prosecuted. But, in one case, the Court of Appeals relied on Oregon's history of protecting children in the court system in a case involving the possession of a fictitious driver's license. *See In the Matter of Williams*, 55 Or App 951, 958, 640 P2d 675 (1982) ("It is significant that the juvenile court system is generally considered to be more favorable to a child than is the adult court system, because in the former the welfare of the child is the highest concern.") The *Williams* court thus reasoned that the case should have been filed directly in juvenile court rather than criminal court because it was "good sense and consistent with the statutory scheme." *Id.*

Oregon's commitment to youth justice and to keeping most youth in juvenile court and providing them with rehabilitative programming is supported by research, which shows that young people fare much better in juvenile court and are less likely to reoffend.

A. Youth Waived To Adult Court Are More Likely To Reoffend

Proponents of transfer laws rely on deterrence as a key justification for the prosecution of children as adults. *See* Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, JUVENILE JUSTICE BULLETIN, June 2010 1, <https://ojp.gov/pdffiles1/ojjdp/220595.pdf> (accessed November 2, 2021). Yet research fails to support this policy goal. *Id.* Nationally, there is no

correlation, let alone causation, between transfer laws and reductions in juvenile violent crime rates. Justice Policy Institute and Campaign for Youth Justice, *The Child Not the Charge: Transfer Laws Are Not Advancing Public Safety* 12 (2020) https://campaignforyouthjustice.org/images/child_not_the_charge_report5.26_2.pdf (accessed November 2, 2021). Indeed, trying youth in the adult system also increases the risk of reoffending, thus jeopardizing public safety. Youth transferred to the adult system “reoffend more quickly and are more likely to engage in violent crimes after release than youths processed in the juvenile justice system.” Jason J. Washburn *et al.*, *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59 PSYCHIATRIC SERVICES 965, 972 (2008). The increase in recidivism for transferred youth may result from a lack of age-appropriate treatment, programming and education while youth are on adult probation, as adult corrections personnel do not have the specialized training to meet the educational and mental health needs of young people. *See* Campaign for Youth Justice, *The Consequences Aren’t Minor: The Impact of Trying Youth as Adults and Strategies for Reform* 7.

Studies consistently showed higher recidivism rates for transferred youth compared to peers retained in the juvenile system. Youth prosecuted as adults are 34 percent more likely to reoffend than youth tried in juvenile court for similar offenses. *See* 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> (accessed November 2, 2021). See also Edward P. Mulvey and Carol A. Schubert, *Transfer of Juveniles to Adult Court: Effects of a Broad Policy in One Court* 7 (2012), <http://www.ojjdp.gov/pubs/232932.pdf> (accessed November 2, 2021) (describing studies across the country that found recidivism rates to be higher for youth tried in adult court).

This finding is true even for transferred youth who were sentenced to adult probation. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* 6. Another report concluded that among youth who did not experience any incarceration for their crimes, transferred youth were thirty-nine percent more likely to be arrested again later for a violent offense than youth retained in the juvenile court system. Centers for Disease Control and Prevention, *Effects on Violence and Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services*, 56 *MMWR* 2007 RR-9 6 (2007), <https://www.cdc.gov/mmwr/PDF/rr/rr5609.pdf> (accessed November 2, 2021). Thus, merely *processing* a child in the adult justice system can result in an increase in recidivism.

B. Waived Youth Are At Risk Of Harm

Maintaining jurisdiction in the juvenile court system protects young people from the harsh realities of adult prosecution. When young people are prosecuted in the adult court system, numerous negative consequences attach. Not only are young people subject to longer sentences in adult court, adult criminal records can only be expunged in very limited circumstances, creating lifelong barriers to education, employment, and secure housing. *See* ORS 137.225. Youth transferred out of juvenile court may also face harsh and developmentally inappropriate financial consequences.¹ As recognized by a member of the Oregon Legislative Assembly when it enacted Senate Bill 817 this past summer, eliminating all fees, fines, and court costs in the juvenile delinquency system, “juvenile fees burden vulnerable families, are expensive to collect, and have long-term negative consequences.” Floor letter by Sen. Prozanski,

¹ These consequences may even be unconstitutional. In the instant case, for example, the \$17,195.75 restitution obligation may violate the constitutional bar on Excessive Fines because Zachary is indigent, as evidenced by his assignment of a public defender in the case below. US Const Amend VIII; Or Const, Art 1, § 16; *see also* *Timbs v. Indiana*, ___ US ___, 139 S Ct 682, 689, 203 L Ed 2d 11 (2019); *Paroline v. United States*, 572 US 434, 456, 134 S Ct 1710, 188 L Ed 2d 714 (2014) (indicating Court would likely treat restitution under the Excessive Fines clause). Likewise, it results in harsher consequences to indigent youth than those of means, “contrary to the fundamental fairness required by the Fourteenth Amendment.” *Bearden v. Georgia*, 461 US 660, 672–73, 103 S Ct 2064, 76 L Ed 2d 221 (1983). Finally, the Supreme Court has repeatedly noted that the Constitution provides special protection to young people due to their distinct characteristics. *See, e.g., Roper v. Simmons*, 543 US 551, 569–70, 125 S Ct 1183, 161 L Ed 2s 1 (2005).

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/FloorLetter/3286>

(accessed November 2, 2021). Yet children who are subject to blanket waiver face unique harms when saddled with fines, fees, and restitution, including obstacles to obtaining employment, economic and family stress, bad credit history at a time of emerging adulthood, and even increased recidivism, according to criminology research. *See generally* Alex R. Piquero & Wesley G. Jennings, *Research Note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 *Youth Violence & Juv Just* 325 (2017); Jessica Feierman *et al.*, *Debtors' Prison For Kids? The High Cost Of Fines And Fees In The Juvenile Justice System* (2016), <http://debtorsprison.jlc.org/documents/jlc-debtors-prison.pdf> (accessed November 2, 2021). While the trial court waived other fines and monetary obligations in this case, it imposed \$17,195.75 in restitution, implicating these concerns.

Children tried as adults frequently do not attend school or receive educational services. According to the U.S. Department of Justice, forty percent of local adult jails do not have any educational services for incarcerated youth. *See* Liz Ryan, *Youth in The Adult Criminal Justice System*, 35 *Cardozo L Rev* 1167, 1179 (2014) (citing Caroline Wolf Harlow, U.S. Dept. of Justice Bureau of Justice Statistics Special Report, *Education and Correctional Populations* (2003), currently available at <https://bjs.ojp.gov/content/pub/pdf/ecp.pdf>

(accessed November 2, 2021)). 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. *See* Council of State Governments, *Locked Out: Improving Educational and Vocational Outcomes for Incarcerated Youth* 3 (2015), https://csgjusticecenter.org/wp-content/uploads/2020/01/LOCKED_OUT_Improving_Educational_and_Vocational_Outcomes_for_Incarcerated_Youth.pdf (accessed November 2, 2021).

These concerns persist for youth on adult probation.

Although Oregon law protects youth subject to blanket waiver from incarceration in adult facilities (*see* ORS 419C.130(2); ORS 137.124(6), (8)), the risk of increased recidivism for youth tried in adult court means that they may subsequently face incarceration with adults. Children incarcerated with adults may be subject to 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 19 (P. Puritz, A. Capozello & W. Shang eds, 2002).

Youth in adult facilities, as compared to those in juvenile facilities, are more likely to be sexually assaulted, more likely to commit suicide, and nearly

twice as likely to be beaten by staff or attacked with a weapon by a peer. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* 7. A 2011 report revealed that 66 percent of youth 16 and 17 years old who reported being sexually abused while in prison were victimized more than once. Justice Policy Institute and Campaign for Youth Justice, *The Child Not the Charge: Transfer Laws Are Not Advancing Public Safety* 14. 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. See Allen J. Beck *et al.*, U.S. Dept. of Justice Bureau of Justice Statistics Special Report, *Sexual Violence Reported by Correctional Authorities, 2006* 35 (2007), <https://bjs.ojp.gov/content/pub/pdf/svrca06.pdf> (accessed November 2, 2021); Melissa Sickmund, U.S. Dept. of Justice Juvenile Offenders and Victims National Report Series Bulletin 18 (2004), <https://www.ojp.gov/pdffiles1/ojjdp/202885.pdf> (accessed November 2, 2021). Because data on rape and assault of children in adult prisons are often limited to children's self-reports, researchers estimate that the actual rates may be much higher. Vincent Schiraldi and Jason Zeidenberg, *The Risks Juveniles Face When They Are Incarcerated With Adults* 2 (1997), http://www.cjcj.org/uploads/cjcj/documents/the_risks.pdf (accessed November 2, 2021). Children incarcerated in adult facilities are also eight to 36 times more

likely to commit suicide than children in juvenile facilities. Campaign for Youth Justice and Neelum Arya, *Jailing Juveniles: The Dangers of Incarcerating Youths in Adult Jails in America* 4 (2007), <http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/C FYJ-Jailing Juveniles Report 2007-11-15.pdf> (accessed November 2, 2021); Campaign for Youth Justice, *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform* 42.

Researchers estimate that children in adult facilities have rates of psychiatric disorders two to three times those of incarcerated adults. The lack of developmentally-appropriate mental health programming in adult facilities compounds these needs. Washburn *et al.*, 59 PSYCHIATRIC SERVICES at 968–70; Campaign for Youth Justice, *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform* 7. Furthermore, adult facilities fail to 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. *Jailing Juveniles: The Dangers of Incarcerating Youths in Adult Jails in America* 6–7. 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.” Campaign for Youth Justice, *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform* 7. In contrast, Oregon’s

juvenile facilities are uniquely equipped to meet youths' needs and are best “able to provide interventions and education that work best for their future.” See Campaign for Youth Justice, *Misguided Measures: The Outcomes and Impacts of Measure 11 on Oregon's Youth* 54 (2011), [https://safetyandjustice.org/wp-content/uploads/2016/12/Misguided Measures.pdf](https://safetyandjustice.org/wp-content/uploads/2016/12/Misguided%20Measures.pdf) (accessed November 2, 2021) (quoting Deschutes County Community Justice Director, Ken Hales).

II. THIS COURT SHOULD GRANT REVIEW BECAUSE ORS 419C.370 DISPROPORTIONATELY RESULTS IN CRIMINAL PROSECUTION OF BLACK YOUTH

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 America's 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://www.campaignforyouthjustice.org/images/pdf/Social Justice Brief Youth Transfers.Revised copy 09-18-2018.pdf](http://www.campaignforyouthjustice.org/images/pdf/Social_Justice_Brief_Youth_Transfers.Revised_copy_09-18-2018.pdf) (accessed November 2, 2021). In Multnomah County, the disparities are likewise stark: the number of Black youth transferred to the adult court system in 2018 was more than three times the number of waived white youth. Oregon Youth Authority, *Data and Evaluation Report: Racial and Ethnic Disparities Relative Rate Index (RRI)* 10 (2018),

<https://www.oregon.gov/oya/jjis/Reports/2018MultnomahRRI.pdf> (accessed November 2, 2021).

This disproportionate targeting is the entry point for individuals from communities that have been historically and continuously marginalized. Over-policing of Black and Brown communities and racially motivated targeting is one of the greatest drivers of racial disparities in the criminal system. Increased interactions with police result in those same community members being subject to harsh punishments without evaluating the effects of racial profiling. ORS 419C.370 funnels Black teen drivers—who are at greater risk of being stopped by law enforcement and charged with vehicle-related offenses—directly into the adult criminal court system.

A. Black Youth Are More Likely To Be Subject To Traffic Stops

Traffic stops are the most common interaction between citizens and police. Each year, law enforcement stops approximately 20 million drivers. Emma Pierson *et al.*, *A large-scale analysis of racial disparities in police stops across the United States*, *Nat Hum Behav* 4, 736 (2020), <https://doi.org/10.1038/s41562-020-0858-1> (accessed November 2, 2021). Using minor violations or broken taillights as a pretext to pull drivers over, *id.* at 741–42, police often use these

stops to search vehicles, exposing drivers to additional charges.² Pretextual stops disproportionately target racial minorities. Charles Epps and Steven Maynard-Moody, “Driving While Black,” *Washington Monthly* (Jan/Feb 2014), <https://washingtonmonthly.com/magazine/janfeb-2014/driving-while-black/> (accessed November 2, 2021) (young Black men were more than twice as likely as young white men to be subject to a pretextual stop; 28 percent versus 12.5 percent). For nearly thirty years, “Driving While Black” has been in the common American lexicon as shorthand for law enforcement’s racial profiling of Black drivers. David Kocieniewski and Robert Hanley, “An Inside Story of Racial Bias and Denial; New Jersey Files Reveal Drama Behind Profiling,” *The New York Times* (Dec. 3, 2000), <https://www.nytimes.com/2000/12/03/nyregion/inside-story-racial-bias-denial-new-jersey-files-reveal-drama-behind-profiling.html> (accessed November 2, 2021). It is well-known that Black and Brown drivers are more commonly stopped by police for traffic violations. *See* President Barack

² To reduce the number of traffic stops resulting in arrest of Black drivers, Philadelphia City Council recently prohibited stopping drivers for minor violations. Sean Collins Walsh, “Philly has become the first big city to ban minor traffic stops said to criminalize ‘driving while Black’,” *The Philadelphia Inquirer* (Oct. 14, 2021), <https://www.inquirer.com/news/philadelphia-city-council-isaiah-thomas-police-driving-while-black-20211014.html> (accessed November 2, 2021). Virginia also recently passed a law finding that minor violations cannot be the primary reason police stop a driver. Simone Weichselbaum, Emily R. Siegel and Andrew Blankstein, “Police face a ‘crisis of trust’ with Black motorists. One state's surprising policy may help” *NBC News* (Oct. 7 2021), <https://www.nbcnews.com/news/us-news/traffic-stops-are-flashpoint-policing-america-reformers-are-winning-big-n1280594> (accessed November 2, 2021).

Obama, Press Conference (July 22, 2009), (“[T]here is a long history in this country of African-Americans and Latinos being stopped by law enforcement disproportionately. That’s just a fact.”),

[https://obamawhitehouse.archives.gov/realitycheck/the_press_office/News-](https://obamawhitehouse.archives.gov/realitycheck/the_press_office/News-Conference-by-the-President-July-22-2009)

[Conference-by-the-President-July-22-2009](https://obamawhitehouse.archives.gov/realitycheck/the_press_office/News-Conference-by-the-President-July-22-2009) (accessed November 2, 2021).

Research confirms this universal understanding. Police use their traffic enforcement authority disproportionately against racial minorities. *See, e.g.,* Kenneth J. Novak and Mitchell B. Chamlin, *Racial Threat, Suspicion, and Police Behavior: The Impact of Race and Place in Traffic Enforcement*, 58 *Crim & Delinq* 275, 277 (2012) (“There is little doubt that racial minorities are disproportionately stopped by the police. * * * [A]ll the published research to date * * * demonstrates some level of disparity.”); Robin Shepard Engel and Jennifer M. Calnon, *Examining the Influence of Drivers’ Characteristics During Traffic Stops with Police: Results from a National Survey*, 21 *Just Q* 49, 55 (March 2004) (“Nearly all of the publicly available reports and studies that we are aware of reveal disparities in the percentages of minority citizens who are stopped, cited, searched, or arrested as compared to selected benchmarks.”).

Data in Oregon, and specifically in Portland, further demonstrates this truth. In 2020, Portland Police Bureau data shows that Black drivers accounted for 17 percent of all traffic stops but Black Oregonians make up only 5.8 percent of the city’s population. Portland Police Bureau Strategic Services Division,

Stops Data Collection 2020 Annual Report (August 3, 2021), <https://www.portlandoregon.gov/police/article/785420> (accessed November 2, 2021); *see also* Latisha Jensen, “Black Portlanders Are Still Disproportionately Stopped While Driving and Walking,” *Willamette Week* (August 26, 2020), <https://www.wweek.com/news/2020/08/26/black-portlanders-are-still-disproportionately-stopped-while-driving-and-walking/> (accessed November 2, 2021).

B. When Stopped, Black Youth Are More Likely To Be Searched And Subject To Prosecution For Motor Vehicle-Involved Charges

Once stopped, Black drivers are more likely to be subject to further investigation or searches. Pierson *et al.*, *A large-scale analysis of racial disparities in police stops across the United States*, *Nat Hum Behav* at 736–745 (Black drivers were searched about 1.5 to 2 times as often as white drivers, while they were less likely to be carrying drugs, guns, or other illegal contraband compared to their white peers); *see also* Baumgartner, Christiani, Epp *et al.*, *Racial Disparities in Traffic Stop Outcomes*, 9 *Duke F L & Soc Change* 21, 33 (2017).

In Portland, Black drivers are searched twice as frequently as white drivers, even though those searches were less likely to produce any kind of contraband, including alcohol, drugs, or weapons. Portland Police Bureau Strategic Services Division, *Stops Data Collection: 2013 Annual Report* (January 5, 2015) 8,

<https://www.portlandoregon.gov/police/article/514465> (accessed November 2, 2021). Data from 2012-2016 shows a steep decline in searches overall, but racial disparities persist. Portland Police Bureau Strategic Services Division, Stops Data Collection: 2016 Annual Report (June 25, 2018) 13, <https://www.portlandoregon.gov/police/article/689285> (accessed November 2, 2021). A blanket waiver policy seemingly eliminates the possibility of individual bias creeping into decision-making by removing discretion and individualized decision making. However, the racial disparities exist at the front end. Police unfairly and discriminatorily target Black drivers, including Black teen drivers. When stopped, Black youth are more likely to be searched and charged with vehicle-related offenses. ORS 419C.370 requires their prosecution in adult court and exacerbates the racial disparities in existence in Oregon's mass incarceration system.

CONCLUSION

For the foregoing reasons, *Amici Curiae* respectfully request that this Court grant the petition for review and reverse the decisions of the Circuit Court and Court of Appeals.

Respectfully submitted this 4th day of November, 2021.

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