

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
2/13/2018 10:51 AM  
BY SUSAN L. CARLSON  
CLERK

No. 94973-5

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

---

STATE OF WASHINGTON,

Respondent,

vs.

TYLER WATKINS,

Appellant.

---

**CORRECTED BRIEF OF *AMICI CURIAE*  
CREATIVE JUSTICE,  
COMMUNITY PASSAGEWAYS, and  
GLOVER EMPOWER-MENTORING PROGRAM**

---

Nikkita R. Oliver, WSBA No.  
49734  
Creative Justice c/o 4Culture,  
Heidi Jackson  
101 Prefontaine Pl S  
Seattle WA 98104  
Telephone: (206) 296-7580  
[Nikkita.oliver@gmail.com](mailto:Nikkita.oliver@gmail.com)

Aimee Sutton, WSBA No. 34508  
The Marshall Defense Firm  
1001 Fourth Avenue, Floor 44  
Seattle, WA 98154  
Telephone: (206)-826-1400  
[aimee@marshalldefense.com](mailto:aimee@marshalldefense.com)

*Counsel for Amici Curiae*

**TABLE OF CONTENTS**

I. IDENTITY AND INTERESTS OF AMICI CURIAE ..... 1

II. STATEMENT OF THE CASE..... 1

III. ISSUE ADDRESSED..... 1

IV. ARGUMENT ..... 1

**A.** Automatic Decline Disproportionately and Negatively  
    Impacts Communities of Color ..... 2

        1. Automatic Decline is Historically Rooted in the  
        Racist “Super-Predator” Myth. .... 2

        2. Automatic Decline Disproportionately Impacts  
        Black and Brown Youth..... 7

        3. Prosecutorial Discretion in Decline is  
        Disproportionately Exercised Against Youth of  
        Color ..... 10

**B.** Automatic Decline Is Contrary to the Public Interest in  
    Juvenile Rehabilitation and Public Safety. .... 11

        1. Automatic Decline Increases the Likelihood of  
        Recidivism ..... 11

        2. Juveniles Often Struggle to Navigate Adult  
        Court ..... 12

        3. The Adult System Lacks the Rehabilitative and  
        Supportive Services Youth Most Need..... 13

        4. Being Prosecuted as an Adult has Harmful  
        Psychological Impacts ..... 15

V. CONCLUSION..... 16

## TABLE OF AUTHORITIES

### **Statutes**

Laws of 1994, Ch. 7 .....	5
Laws of 1994, Ch. 7, s. 519 .....	3
Laws of 1997, Ch. 291 s. 65 .....	2
Laws of 1997, Ch. 338, s. 7 .....	3
RCW 13.04.030 .....	1, 3

### **Other Authorities**

Amicus Curiae Brief of Jeffrey Fagan, et. al in Support of Petitioners, <i>Miller v. Alabama</i> , No. 10-9647, 567 U.S. 460, 132 S. Ct. 2455, 183 L.Ed. 2d 407 (2012) .....	4, 6
Campaign for Youth Justice, <i>Key Facts: Youth in the Justice System</i> , 5 (2016) .....	14, 15
Carly Dierkhising, <i>Trauma Histories Among Justice-Involved Youth: Findings from the National Child Traumatic Stress Network</i> , 4 Eur. J. Psychotramatology, 10 (2013) .....	14
Children’s Law Center, Inc., <i>Falling Through the Cracks: A new Look at Ohio Youth in the Adult Criminal Justice System</i> , 1 (2012), .....	12
Dr. Philip Atiba Goff et al., <i>The Essence of Innocence: Consequences of Dehumanizing Black Children</i> , 106 J. of Personality and Soc. Psych. 526, 526-45 (2014) .....	10
Elizabeth Becker, <i>As Ex-Theorist on Young ‘Superpredators,’ Bush Aide Has Regrets</i> , N.Y. Times, Feb. 9, 2001 .....	6
Elizabeth Drake, <i>The Effectiveness of Declining Juvenile Court Jurisdiction of Youthful Offenders</i> at 1, 9 (2013) .....	11
Final Bill Report, Engrossed Second Substitute House Bill 2319 Partial Veto, 53 <sup>rd</sup> Leg., 1 <sup>st</sup> Spec. Sess. (Wash. 1994) .....	6
Human Rights Watch, <i>The Rest of Their Lives: Life Without Parole for Juvenile Offenders in the United States</i> , 45 (2005) .....	13

Jason J. Washburn et. al., <i>Psychiatric Disorders among Detained Youth: A Comparison of Youth Processed in Juvenile Court and Adult Criminal Court</i> , 59 <i>Psychiatric Services</i> 965, 972 (2008) .....	12
John J DiIulio, <i>The Coming of the Super-Predators</i> , <i>THE WEEKLY STANDARD</i> , 1995 .....	4
John J. DiIulio, Jr., <i>Rethinking Crime—Again</i> , <i>Democracy Journal</i> , Spring 2010.....	6
John. J. DiIulio, <i>My Black Crime Problem and Ours</i> , <i>CITY JOURNAL</i> (Spring 1996) .....	4
King County Prosecuting Attorney, <i>Juvenile Justice Annual Report: Automatic Adult Jurisdiction 2016 Decisions</i> (Feb. 2017).....	11
Laura Myers, <i>The Rise of ‘The Young and the Ruthless’: Juvenile-Crime Report Finds America’s Children More Violent, More Victimized</i> , <i>Seattle Times</i> , Sept. 7, 1995, at A5.....	3
Lynn Chancer, <i>Before and After the Central Park Jogger: When Legal Cases Become Social Causes</i> , 4 <i>CONTEXTS</i> 38–42, 38-42 (2005) .....	4
Magda Stouthamer-Loeber et al., <i>Desistance From Persistent Serious Delinquency in the Transition to Adulthood</i> , 16 <i>Development and Psychopathology</i> 891 (2004).....	6
Malcom Young and Jenni Gainsborough, <i>Prosecuting Juveniles in Adult Court: An Assessment of Trends and Consequences</i> , <i>The Sentencing Project</i> , 7-8 (January 2000).....	12
Mark Soler, <i>Missed Opportunity: Waiver, Race, Data, and Policy Reform</i> , 71 <i>Yale L. Rev.</i> 17, 17-33 (2010) .....	10
Nick Straley, <i>Miller’s Promise: Re-Evaluating Extreme Criminal Sentences for Children</i> . 89 <i>Wash. L. Rev.</i> 963, 1007 (2014) .....	3
Robert J. Sampson & John H. Laub, <i>Crime and Deviance over the Life Course: The Saliency of Adult Social Bonds</i> , 55 <i>Am. Soc. Rev.</i> 609, 625 (1990).....	6
See Charles Puzzanchera & Benjamin Adams, <i>Off. of Juv.Just. and Delinq. Prevention, U.S. Dep’t of Just., Juvenile Arrests 2009</i> 8 (2011) 5, 6	
See, e.g., Michelle Deitch, <i>et. al</i> , <i>Juveniles in the Adult Criminal Justice System in Texas</i> , vi. (March 2011).....	12

Shay Bilchik, Off. of Juv. Just. and Delinq. Prevention, U.S. Dep't of Just., NCJ 178993, <i>Challenging the Myths 2</i> (2000),.....	5
The Fair Punishment Project, <i>The “Superpredator” Myth and The Rise of the JWLOP</i> (April 12, 2016),.....	3
The Haywood Burns Institute, <i>Stemming the Rising Tide: Racial &amp; Ethnic Disparities in Youth Incarceration &amp; Strategies for Change</i> , at 1, 15 (2015).....	12
The Pew Charitable Trusts, <i>Re-Examining Juvenile Incarceration</i> (April 2015).....	7
Wash. Sentencing Guidelines Comm'n, <i>Disproportionately and Disparity in Juvenile Sentencing</i> , 4 (2007).....	9

**I. IDENTITY AND INTERESTS OF AMICI CURIAE**

The identity and interests of *amici curiae* are set forth in the accompanying Motion for Leave to File an *Amici Curiae* Brief.

**II. STATEMENT OF THE CASE**

Amici adopt the Statement of the Case as set forth by Appellant Tyler Watkins.

**III. ISSUE ADDRESSED**

Whether the “automatic decline” statute (RCW 13.04.030), which requires prosecution in the adult system of youth charged with certain crimes, creates and perpetuates harmful racial disparities, negatively impacts youth, and undermines the public interests in safety and the rehabilitation of juveniles.

**IV. ARGUMENT**

Washington’s automatic decline statute is historically rooted in a racist “super predator” myth and perpetuates racial disproportionality in the criminal court system; automatic decline also prevents juveniles from accessing developmentally appropriate services necessary for rehabilitation and restoration to community, and leaves young people with the weight of long lasting harm, trauma and collateral consequences. For these reasons, and for the reasons set forth in the brief of appellant Tyler

Watkins, this Court should strike down Washington’s automatic decline statute as unconstitutional.

**A. Automatic Decline Disproportionately and Negatively Impacts Communities of Color**

Both automatic and discretionary decline disproportionately impact youth of color, who are more likely to be transferred to adult court.

Indeed, the entire automatic decline system is rooted in harmful and racist mythologies about black and brown youth.

*1. Automatic Decline is Historically Rooted in the Racist “Super-Predator” Myth.*

Washington’s juvenile justice system initially provided for only limited and individualized transfer of youth to adult court. The decline hearing process established by the 1977 Juvenile Justice Act maintained judicial discretion in deciding which cases were so extreme they need to be tried in adult court. Laws of 1997, Ch. 291 s. 65.<sup>1</sup> The law mandated a decline hearing for certain crimes, but gave discretion to trial court judges to determine if the decline should actually occur. *Id.* This was done with the understanding that a juvenile would only be sent to adult court “upon a finding that the declination would be in the best interest of the juvenile or the public.” *Id.*

---

<sup>1</sup> Available at <http://leg.wa.gov/CodeReviser/documents/sessionlaw/1977ex1c291.pdf>

In 1994, the Washington State Legislature passed an amendment to RCW 13.04.030 to allow for automatic decline of juveniles age 16 or 17 who were charged with certain enumerated offenses. Laws of 1994, Ch. 7, s. 519.<sup>2</sup> This bill was brought before the Legislature during a time marked by extreme public hysteria built upon the mythical concept of the youth “super predator”—an allegedly amoral, repeat and violent juvenile offender whose behavior can only be curbed by harsher sentencing.<sup>3</sup> Later, in 1997, the legislation was expanded to cover lesser offenses as well. Laws of 1997, Ch. 338, s. 7.<sup>4</sup>

In the late 1980s and early 1990s, academics and the media described the rising rates of youth crime as the product of societal shifts and violence in the media.<sup>5</sup> This led to a shift in the view of youth offenders, who went from being seen as children to being seen as “super

---

<sup>2</sup> Available at [http://lawfilesex.leg.wa.gov/biennium/1993-94/Pdf/Bills/Session%20Laws/House/2319-S2.SL.pdf?cite=1994 sp.s. c 7 § 519](http://lawfilesex.leg.wa.gov/biennium/1993-94/Pdf/Bills/Session%20Laws/House/2319-S2.SL.pdf?cite=1994%20sp.s.%20c%207%20%26%20%24%20519) (last visited January 2018).

<sup>3</sup> The Fair Punishment Project, *The “Superpredator” Myth and The Rise of the JWLOP* (April 12, 2016), Available at <http://fairpunishment.org/the-superpredator-myth-and-the-rise-of-jwlop/>.

<sup>4</sup> Available at <http://lawfilesex.leg.wa.gov/biennium/1997-98/Pdf/Bills/Session%20Laws/House/3900-S3.SL.pdf> (last visited January 2018).

<sup>5</sup> See Nick Straley, *Miller’s Promise: Re-Evaluating Extreme Criminal Sentences for Children*, 89 Wash. L. Rev. 963, 1007 (2014) (describing a 462 percent increase in the number of crime stories aired by major television news); see also Laura Myers, *The Rise of ‘The Young and the Ruthless’: Juvenile-Crime Report Finds America’s Children More Violent, More Victimized*, Seattle Times, Sept. 7, 1995, at A5 (predicting an approaching tsunami of youth crime, because “[t]he children are poorer. There are more minorities. And they have more guns.”).



predators.” This directly resulted in more punitive laws regarding youth offenders across the United States.<sup>6</sup>

The “super-predator” myth carries a clear racial undertone. At the time of its inception, the highly publicized crimes that had taken over the public imagination were only crimes allegedly committed by black men.<sup>7</sup> These highly racialized and dangerous misconceptions were the product of fear mongering and racially biased media practices. Such fears were crystalized in the infamous article by John DiIulio entitled “The Coming of the Super-Predators.” The term “super-predator” was defined by DiIulio as crime-prone juveniles “who have absolutely no respect for human life and no sense of the future” and whose natural instinct is to commit crime.<sup>8</sup> DiIulio wrote a follow-up article entitled “My Black Crime Problem and Ours”<sup>9</sup> in which he specifically targets black juvenile youth as the prime candidates to become super-predators. The national hysteria and

---

<sup>6</sup> See Amicus Curiae Brief of Jeffrey Fagan, et. al in Support of Petitioners, *Miller v. Alabama*, No. 10-9647, 567 U.S. 460, 132 S. Ct. 2455, 183 L.Ed. 2d 407 (2012), available at <https://eji.org/sites/default/files/miller-amicus-jeffrey-fagan.pdf> (last visited January 2018) (discussing efforts by state legislatures to adopt tough on juvenile crime legislation “in an environment of hysteria” around the juvenile “superpredator”).

<sup>7</sup> Lynn Chancer, *Before and After the Central Park Jogger: When Legal Cases Become Social Causes*, 4 CONTEXTS 38–42, 38-42 (2005), available at [http://www.vonsteuben.org/ourpages/auto/2013/4/16/56167528/before%20\\_%20after%20the%20central%20park%20jogger.pdf](http://www.vonsteuben.org/ourpages/auto/2013/4/16/56167528/before%20_%20after%20the%20central%20park%20jogger.pdf) (last visited Jul 2016) .

<sup>8</sup> John J DiIulio, *The Coming of the Super-Predators*, THE WEEKLY STANDARD, 1995, <http://www.weeklystandard.com/the-coming-of-the-super-predators/article/8160>.

<sup>9</sup> John. J. DiIulio, *My Black Crime Problem and Ours*, CITY JOURNAL (Spring 1996) available at <http://www.city-journal.org/html/my-black-crime-problem-and-ours-11773.html>.

unreasonable fear of black youth gave way to the highly racialized “super-predator” myth, fueling the introduction of automatic decline statutes across the United States.

Washington’s first automatic decline statute was passed as part of a 1994 omnibus bill (“1994 Violence Reduction Programs Act”); which included rehabilitative and crime prevention programs, firearms regulations, attempts to reduce violence in the media, and more stringent punitive sentencing for certain enumerated juvenile crimes. Laws of 1994, Ch. 7.<sup>10</sup> Unlike the 1977 law mandating decline hearings, these laws did not allow for judicial discretion or for consideration for individual circumstances. Instead, the 1994 automatic decline statute established that youth offenders ages 16 or 17 who were charged with certain offenses would automatically be sent to adult court.

The language of the 1994 automatic decline bill was clearly tied to the national conversation surrounding the “super-predator”. Despite the fact that youth violence had peaked in 1993 (the year before) and was, by 1994, at the start of a slow decline,<sup>11</sup> the authors of House Bill 2319 said

---

<sup>10</sup> Available at [http://lawfilesextd.leg.wa.gov/biennium/1993-94/Pdf/Bills/Session%20Laws/House/2319-S2.SL.pdf?cite=1994 sp.s. c 7 § 519](http://lawfilesextd.leg.wa.gov/biennium/1993-94/Pdf/Bills/Session%20Laws/House/2319-S2.SL.pdf?cite=1994%20sp.s.%20c%207%20%26%20%24).

<sup>11</sup> See Charles Puzzanchera & Benjamin Adams, Off. of Juv. Just. and Delinq. Prevention, U.S. Dep’t of Just., *Juvenile Arrests 2009* 8 (2011), available at [www.ojjdp.gov/pubs/236477.pdf](http://www.ojjdp.gov/pubs/236477.pdf); see also Shay Bilchik, Off. of Juv. Just. and Delinq. Prevention, U.S. Dep’t of Just., NCJ 178993, *Challenging the Myths 2* (2000), available at [www.ncjrs.gov/pdffiles1/ojjdp/178993.pdf](http://www.ncjrs.gov/pdffiles1/ojjdp/178993.pdf) (finding that youth crime rates in the 1990s were consistent with rates of prior generations).

“youth violence is increasing at an alarming rate.” The bill report, like the national narrative, utilized terms such as “tidal wave,” “epidemic,” and “unprecedented.”<sup>12</sup>

Now, it is widely documented that automatic decline laws were created on the basis of misinformation. The first element of misinformation was the concept of the rising rates of juvenile crime. While juvenile crime peaked in 1993, it went down steadily until the year 2000 to rates lower than that of 1985.<sup>13</sup> Secondly, after the 1990s the “super-predator” myth was dismissed as false by the scientific community and even by DiIulio himself.<sup>14</sup> Research shows that most antisocial youth outgrow their deviant behavior, not by isolation or punitive measures, but rather the support of specific environmental impacts such as employment.<sup>15</sup>

---

<sup>12</sup> Final Bill Report, Engrossed Second Substitute House Bill 2319 Partial Veto, 53<sup>rd</sup> Leg., 1<sup>st</sup> Spec. Sess. (Wash. 1994), available at <http://app.leg.wa.gov/documents/billdocs/1993-94/htm/bill%20reports/house/2319-s2.fbr.htm>.

<sup>13</sup> Puzzanchera, supra n. 11.

<sup>14</sup> Fagan, et. al, supra n. 6 at 32; see also John J. DiIulio, Jr., *Rethinking Crime—Again*, Democracy Journal, Spring 2010, at 46, 52–53; Elizabeth Becker, *As Ex-Theorist on Young ‘Superpredators,’ Bush Aide Has Regrets*, N.Y. Times, Feb. 9, 2001, at A19; Fagan, et. al, supra n. 6 at 35 (noting that “[e]mpirical studies show that the legislative changes undertaken by certain states were not causally responsible for the decline in juvenile homicide rates.”)

<sup>15</sup> See Magda Stouthamer-Loeber et al., *Desistance From Persistent Serious Delinquency in the Transition to Adulthood*, 16 Development and Psychopathology 891 (2004); Robert J. Sampson & John H. Laub, *Crime and Deviance over the Life Course: The Salience of Adult Social Bonds*, 55 Am. Soc. Rev. 609, 625 (1990) (showing both incremental and abrupt change in delinquent behavior when youths are exposed to conventional social activities of stable employment and marriage).

Furthermore, automatic decline laws do not accomplish their stated purpose. Harsher sentencing is not a deterrent to youth and it does not decrease recidivism.<sup>16</sup> In fact, harsh sentences increases recidivism and racial disproportionality, perpetuating the negative impacts of the “super-predator” myth on communities of color.

2. *Automatic Decline Disproportionately Impacts Black and Brown Youth*

Both automatic decline and discretionary decline are disproportionately used in cases involving youth of color, leading to their disproportionate representation in the adult criminal justice system. Youth of color are not only more likely to be transferred to adult court, but are also more likely to be sentenced in adult court.

Data from Washington State Department of Social and Health Services reveals an alarming over-representation of youth of color adjudicated in adult court. Between 2010 and 2014, of the juveniles charged and sentenced in adult criminal court 26.2% were white non-Hispanic and 68.5% were youth of color.<sup>17</sup> The disparity, illustrated in the following charts, is stark:

---

<sup>16</sup> The Pew Charitable Trusts, *Re-Examining Juvenile Incarceration* (April 2015), available at <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/04/reexamining-juvenile-incarceration>.

<sup>17</sup> Washington State Dep’t of Soc. & Health Services *Annual Report: Data Analysis Juvenile Transfers to Adult Court*, Annual Report 1, 146 (2014). available at [https://www.dshs.wa.gov/sites/default/files/JJRA/pcjj/documents/decline\\_Final.pdf](https://www.dshs.wa.gov/sites/default/files/JJRA/pcjj/documents/decline_Final.pdf).

**TABLE 65**  
**Juveniles Charged and Sentenced in Adult Criminal Court \***  
**by Race/Ethnicity from FY 2010-2014**

Race/Ethnicity	2010		2011		2012		2013		2014		5-Year Total	5-Year % of Total
	#	%	#	%	#	%	#	%	#	%	#	%
Asian/Pacific Islander (non-Hispanic) **	4	2.5%	9	7.2%	8	6.7%	2	1.8%	1	1.4%	24	4.1%
Black (non-Hispanic) **	59	36.4%	29	23.2%	43	35.8%	28	24.8%	29	40.8%	188	31.8%
Native American (non-Hispanic) **	2	1.2%	3	2.4%	3	2.5%	2	1.8%	3	4.2%	13	2.2%
White (non-Hispanic) **	41	25.3%	38	30.4%	24	20.0%	33	29.2%	19	26.8%	155	26.2%
Hispanic (of any race)	42	25.9%	41	32.8%	37	30.8%	43	38.1%	17	23.9%	180	30.5%
Race & Ethnicity Unknown	14	8.6%	5	4.0%	5	4.2%	5	4.4%	2	2.8%	31	5.2%
<b>TOTAL</b>	<b>162</b>		<b>125</b>		<b>120</b>		<b>113</b>		<b>71</b>		<b>591</b>	<b>100.0%</b>
<b>Total Number of Minority Youth</b>	<b>107</b>	<b>66.0%</b>	<b>82</b>	<b>65.6%</b>	<b>91</b>	<b>75.8%</b>	<b>75</b>	<b>66.4%</b>	<b>50</b>	<b>70.4%</b>	<b>405</b>	<b>68.5%</b>

**TABLE 66**  
**Juveniles Charged and Sentenced in Adult Criminal Court \***  
**by Race/Ethnicity and Type of Transfer or Waiver from FY 2010-2014**

Race/Ethnicity	2010				2011				2012			
	Auto		Disc		Auto		Disc		Auto		Disc	
	# of Cases	% of Total	# of Cases	% of Total	# of Cases	% of Total	# of Cases	% of Total	# of Cases	% of Total	# of Cases	% of Total
Asian/Pacific Islander (non-Hispanic) **	3	4.1%	1	1.1%	7	13.5%	2	2.7%	5	8.9%	3	4.7%
Black (non-Hispanic) **	33	45.2%	26	29.2%	13	25.0%	16	21.9%	27	48.2%	16	25.0%
Native American (non-Hispanic) **	1	1.4%	1	1.1%	1	1.9%	2	2.7%	0	0.0%	3	4.7%
White (non-Hispanic) **	15	20.5%	26	29.2%	10	19.2%	28	38.4%	5	8.9%	19	29.7%
Hispanic (of any race)	19	26.0%	23	25.8%	18	34.6%	23	31.5%	17	30.4%	20	31.3%
Race & Ethnicity Unknown	2	2.7%	12	13.5%	3	5.8%	2	2.7%	2	3.6%	3	4.7%
<b>TOTAL</b>	<b>73</b>		<b>89</b>		<b>52</b>		<b>73</b>		<b>56</b>		<b>64</b>	

**LEGEND:**

Auto = Exclusive Original Adult Criminal Court Jurisdiction (Auto decline)  
 Disc = Discretionary decline of jurisdiction = transferred by the Juvenile Court to Adult Criminal (Superior) Court following a discretionary or mandatory hearing

Race/Ethnicity	2013				2014				TOTAL 5-Year Period			
	Auto		Disc		Auto		Disc		Auto		Disc	
	# of Cases	% of Total	# of Cases	% of Total	# of Cases	% of Total	# of Cases	% of Total	# of Cases	% of Total	# of Cases	% of Total
Asian/Pacific Islander (non-Hispanic) **	0	0.0%	2	3.7%	0	0.0%	1	3.0%	15	5.5%	9	2.9%
Black (non-Hispanic) **	24	46.2%	14	25.9%	19	50.0%	10	30.3%	116	42.8%	82	26.2%
Native American (non-Hispanic) **	0	0.0%	3	5.6%	1	2.6%	2	6.1%	3	1.1%	11	3.5%
White (non-Hispanic) **	11	21.2%	17	31.5%	9	23.7%	10	30.3%	50	18.5%	100	31.9%
Hispanic (of any race)	16	30.8%	17	31.5%	9	23.7%	8	24.2%	79	29.2%	91	29.1%
Race & Ethnicity Unknown	1	1.9%	1	1.9%	0	0.0%	2	6.1%	8	3.0%	20	6.4%
<b>TOTAL</b>	<b>52</b>		<b>54</b>		<b>38</b>		<b>33</b>		<b>271</b>		<b>313</b>	

Washington’s Sentencing Guidelines Commission also found youth of color are disproportionately over-represented in both automatic and discretionary decline.<sup>18</sup> The Commission found disproportionate over-representation of several communities of color. Notably, as shown below, black youth are affected at one of the highest rates.<sup>19</sup>

Race/Ethnicity	Automatic		Discretionary	
	Total	Ratio	Total	Ratio
African American (Black)	17	10.31	8	5.27
Asian	3	1.13	0	0
Caucasian (White)	15	0.49	23	0.81
Latino	2	0.42	3	0.68
Native American	1	1.117	1	1.27

Youth of color are overwhelmingly over-represented in those transferred to adult court. The continued implementation of automatic decline and reliance upon the adult system to rehabilitate youth harms and negatively impacts youth of color and communities of color.

---

<sup>18</sup>Wash. Sentencing Guidelines Comm’n, *Disproportionately and Disparity in Juvenile Sentencing*, 4 (2007), available at [http://www.cfc.wa.gov/PublicationSentencing/DisparityDisproportionality/Juvenile\\_DisparityDisproportionality\\_FY2007.pdf](http://www.cfc.wa.gov/PublicationSentencing/DisparityDisproportionality/Juvenile_DisparityDisproportionality_FY2007.pdf).

<sup>19</sup> *Id.*

3. *Prosecutorial Discretion in Decline is Disproportionately Exercised Against Youth of Color*

Under Washington law, prosecutors have the sole discretion to charge a young person with an offense that triggers automatic decline. In some instances, prosecutors choose to charge youth referred for offenses that trigger decline with other offenses that would allow the case to proceed in juvenile court. Evidence indicates that discretion may be exercised disproportionately in favor of white youth. This may be due in part to implicit bias. A 2014 American Psychological Association study revealed that by the age of ten black boys are perceived to be older and less innocent than their white counterparts.<sup>20</sup> This may lead to higher rates of black youth adjudicated and sentenced in adult courts (even where the same crime is allegedly committed).

Studies have demonstrated that youth of color are overwhelmingly and disproportionately transferred to the adult system throughout the country.<sup>21</sup> In King County, of the 2016 cases referred for a charge that would have triggered automatic decline, only 33.3% of the cases involving

---

<sup>20</sup> Dr. Philip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. of Personality and Soc. Psych. 526, 526-45 (2014), available at <https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf>

<sup>21</sup> See, e.g., Mark Soler, *Missed Opportunity: Waiver, Race, Data, and Policy Reform*, 71 Yale L. Rev. 17, 17-33 (2010), [http://www.cclp.org/wp-content/uploads/2016/06/8-Soler\\_Missed\\_Opportunity-2.pdf](http://www.cclp.org/wp-content/uploads/2016/06/8-Soler_Missed_Opportunity-2.pdf); Laura Ridolfi, et al, *The Prosecution of Youth as Adults: A County Level Analysis of Prosecutorial Direct File in California and Its Disparate Impact on Youth of Color* (2016), available at [http://www.cjcj.org/uploads/cjcj/documents/the\\_prosecution\\_of\\_youth\\_as\\_adults.pdf](http://www.cjcj.org/uploads/cjcj/documents/the_prosecution_of_youth_as_adults.pdf)

white youth were charged as automatic decline offenses. A smaller percentage of white youth with eligible referrals were charged with crimes that trigger decline than Black youth (39.4% of eligible referrals charged to trigger decline), Asian/Pacific Islander youth (55.6% of eligible referrals charged to trigger decline), Latino youth (63.6% of eligible referrals charged to trigger decline) and Native American youth (50% of eligible referrals charged to trigger decline).<sup>22</sup>

**B. Automatic Decline Is Contrary to the Public Interest in Juvenile Rehabilitation and Public Safety.**

*1. Automatic Decline Increases the Likelihood of Recidivism*

The automatic decline statute is associated with increased recidivism. In December 2013, the Washington State Institute for Public Policy researched the impact of automatic decline upon recidivism and found juveniles who are automatically declined have higher rates of recidivism than those who remain in the juvenile court.<sup>23</sup> Research in other jurisdictions also reveals that young people whose cases are transferred from juvenile court to adult court have an increased likelihood

---

<sup>22</sup> King County Prosecuting Attorney, *Juvenile Justice Annual Report: Automatic Adult Jurisdiction 2016 Decisions* (Feb. 2017), available at <https://www.documentcloud.org/documents/4116690-KCPAO-Juvenile-Justice-Annual-Report-Automatic.html>

<sup>23</sup> Elizabeth Drake, *The Effectiveness of Declining Juvenile Court Jurisdiction of Youthful Offenders* at 1, 9 (2013), available at [http://www.wsipp.wa.gov/ReportFile/1544/Wsipp\\_The-Effectiveness-of-Declining-Juvenile-Court-Jurisdiction-of-Youth\\_Final-Report.pdf](http://www.wsipp.wa.gov/ReportFile/1544/Wsipp_The-Effectiveness-of-Declining-Juvenile-Court-Jurisdiction-of-Youth_Final-Report.pdf)



of recidivism when compared to young people with similar offenses whose cases remained in juvenile court.<sup>24</sup> Youth tried in adult court commit new offenses sooner and at higher rates.<sup>25</sup> The continued use of automatic decline and reliance upon the adult system to rehabilitate juvenile offenders does not decrease recidivism. In fact, automatic decline increases the likelihood of recidivism and acts against public interest.

## 2. *Juveniles Often Struggle to Navigate Adult Court*

The juvenile justice system was created over 100 years ago with the intention of providing age appropriate adjudication, care and rehabilitative opportunities for youth as opposed to punishment.<sup>26</sup> An overwhelming amount of research shows the adult criminal justice system incapable and ill-equipped to effectively serve the needs of juveniles at all stages of the process.<sup>27</sup> The adult criminal system was never intended to

---

<sup>24</sup> Children's Law Center, Inc., *Falling Through the Cracks: A new Look at Ohio Youth in the Adult Criminal Justice System*, 1 (2012), available at [http://www.campaignforyouthjustice.org/documents?FR\\_OH\\_0512.pdf](http://www.campaignforyouthjustice.org/documents?FR_OH_0512.pdf).

<sup>25</sup> Jason J. Washburn et. al., *Psychiatric Disorders among Detained Youth: A Comparison of Youth Processed in Juvenile Court and Adult Criminal Court*, 59 *Psychiatric Services* 965, 972 (2008), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2718561/>.

<sup>26</sup> The Haywood Burns Institute, *Stemming the Rising Tide: Racial & Ethnic Disparities in Youth Incarceration & Strategies for Change*, at 1, 15 (2015), available at [https://www.burnsinstitute.org/wp-content/uploads/2016/05/Stemming-the-Rising-Tide\\_FINAL.pdf](https://www.burnsinstitute.org/wp-content/uploads/2016/05/Stemming-the-Rising-Tide_FINAL.pdf)

<sup>27</sup> See, e.g., Michelle Deitch, et. al, *Juveniles in the Adult Criminal Justice System in Texas*, vi. (March 2011), available at <https://lbj.utexas.edu/sites/default/files/file/news/juvenilestexas--final.pdf> (finding that adults prisons and jails are ill-equipped to serve juveniles); Malcom Young and Jenni Gainsborough, *Prosecuting Juveniles in Adult Court: An Assessment of Trends and Consequences*, The Sentencing Project, 7-8 (January 2000), available at <https://www.prisonpolicy.org/scans/sp/juvenile.pdf> (discussing the ways in which youth

serve youth. The juvenile criminal legal system was designed to address, albeit in a system with its own problems, the unique social, psychological, and neurological needs of juveniles. The juvenile criminal legal system, more intentionally than the adult criminal legal system, attempts to provide youth with the opportunity to rehabilitate, change their behavior, obtain educational opportunities, and remain a part of society at-large ready to participate as productive citizens.

Youth who are declined often struggle to function in adult courts with adult criminal procedure. Amici spoke with several individuals currently incarcerated in Washington who were declined as juveniles and who expressed an inability to navigate the adult justice system. Their individual perspectives provide insight into why this is so.

3. *The Adult System Lacks the Rehabilitative and Supportive Services Youth Most Need*

Youth are excellent candidates for rehabilitation and restoration to community because of their forming identities and ability to learn new skills and find new values.<sup>28</sup> Neurological research shows that youth act more irrationally and with less maturity than adults because their long-

---

are disadvantaged at all stages of the adult criminal process, from arrest to plea negotiations to sentencing).

<sup>28</sup> Human Rights Watch, *The Rest of Their Lives: Life Without Parole for Juvenile Offenders in the United States*, 45 (2005), available at <https://www.hrw.org/sites/default/files/reports/TheRestofTheirLives.pdf>.

term decision-making faculties having not yet reached full maturation.<sup>29</sup> Furthermore, adolescent thinking is present-oriented; meaning children and youth are neurologically incapable of accurately considering and determining future outcomes of present decisions.<sup>30</sup> While youth are more likely to make risky decisions, they are also more likely to respond to correction and therefore are more likely to respond well to rehabilitative programs and opportunities designed for their age group and developmental level.

Youth who are declined often have histories marked by trauma and struggle, making appropriate and rehabilitative services all the more important. Compared to their peers, youth who are justice involved are more likely to have a history of disrupted education, behavior issues at school, learning disabilities, running away from home or being kicked out, housing vulnerability, witnessing community violence, exposure to violence as a victim of physical abuse, past use of alcohol and drugs, and family conflict.<sup>31</sup> Most youth in adult jails and prisons are denied educational and rehabilitative services.<sup>32</sup> Not having access to these

---

<sup>29</sup> *Id.* at 46.

<sup>30</sup> *Id.*

<sup>31</sup> Carly Dierkhising, *Trauma Histories Among Justice-Involved Youth: Findings from the National Child Traumatic Stress Network*, 4 *Eur. J. Psychotramatology*, 10 (2013), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3714673/>.

<sup>32</sup> Campaign for Youth Justice, *Key Facts: Youth in the Justice System*, 5 (2016), available at

services severely stunts the youths' growth and development and the likelihood of successful rehabilitation and restoration to community.

4. *Being Prosecuted as an Adult has Harmful Psychological Impacts*

Placing youth in the adult justice system exposes them to serious risk of harm. Youth held in adult jails and prisons are often placed in isolation or solitary confinement to keep them safe.<sup>33</sup> This is does irreversible harm to the youth. Isolation or solitary confinement can produce traumatic consequences such as depression and suicide. Most youth held in isolation are locked down for 23 hours a day in a tiny cell with no natural light. Many youth begin to develop anxiety and paranoia; which can further exacerbate pre-existing mental health issues. Youth held in adult jails and prisons are 36 times more likely to commit suicide than youth held in juvenile detention facilities.<sup>34</sup> Most adult jails and prisons do not have the services necessary to meet the needs of youth who have mental health issues, learning disabilities, or substance abuse issues.<sup>35</sup>

---

<http://www.campaignforyouthjustice.org/images/factsheets/KeyYouthCrimeFactsJune72016final.pdf>.

<sup>33</sup> Campaign for Youth Justice, *supra* n. 32, at 5.

<sup>34</sup> *Id.* at 6.

<sup>35</sup> *Id.* at 6.

V. CONCLUSION

Youth who are automatically declined are exposed to adult consequences from the moment they enter the adult system. The adult system's perils include potentially lengthy sentences, more severe collateral consequences, and less rehabilitative opportunities. The effect of adjudicating youth in a system designed for adults is less community safety and more racial disparity in the justice system.

RESPECTFULLY SUBMITTED this 25th day of January, 2018.

By /s/ Nikkita R. Oliver

Nikkita R. Oliver, WSBA No. 49734  
Creative Justice c/o 4Culture, Heidi Jackson  
101 Prefontaine Pl S  
Seattle WA 98104  
Telephone: (206) 292-7580

Aimee Sutton, WSBA No. 34508  
The Marshall Defense Firm  
1001 Fourth Avenue, Floor 44  
Seattle, WA 98154  
Telephone: (206)-826-1400  
[aimee@marshalldefense.com](mailto:aimee@marshalldefense.com)

*Attorneys for Amici Curiae*

///

///

///

## DECLARATION OF SERVICE

I hereby certify that on this 13<sup>th</sup> day of February, 2018, I caused to be served, the foregoing *Corrected Brief of Amici Curiae* to the parties below via e-service through the Court Portal:

Travis Stearns  
Washington Appellate Project  
[wapofficemail@washapp.org](mailto:wapofficemail@washapp.org)  
[travis@washapp.org](mailto:travis@washapp.org)  
*Counsel for Appellant*

Mary Kathleen Webber  
Snohomish County Prosecutor's Office  
[kwebber@co.snohomish.wa.us](mailto:kwebber@co.snohomish.wa.us)  
[diane.kremenich@snoco.org](mailto:diane.kremenich@snoco.org)  
*Counsel for Respondent*

  
Tracey McDonald, Legal Assistant

**THE MARSHALL DEFENSE FIRM, P.S.**

**February 13, 2018 - 10:51 AM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 94973-5  
**Appellate Court Case Title:** State of Washington vs. Tyler William Watkins  
**Superior Court Case Number:** 16-1-02005-9

**The following documents have been uploaded:**

- 949735\_Other\_20180213104745SC364602\_2997.pdf  
This File Contains:  
Other - Corrected Brief of Amici Curiae  
*The Original File Name was FINAL CORRECTED Watkins Community Orgs Brief 021218.pdf*

**A copy of the uploaded files will be sent to:**

- Jim.Whisman@kingcounty.gov
- LSimonsen@ccyj.org
- diane.kremenich@snoco.org
- george.yeannakis@opd.wa.gov
- hillary@defensenet.org
- kwebber@co.snohomish.wa.us
- mlevick@jlc.org
- nick.allen@columbialegal.org
- nikkita.oliver@gmail.com
- sara.zier@teamchild.org
- travis@washapp.org
- tweaver@tomweaverlaw.com
- vhernandez@aclu-wa.org
- wapofficemail@washapp.org

**Comments:**

---

Sender Name: Tracey McDonald - Email: tracey@MarshallDefense.com

**Filing on Behalf of:** Aimee Marie Sutton - Email: aimee@marshalldefense.com (Alternate Email: )

Address:  
1001 Fourth Avenue  
44th Floor  
Seattle, WA, 98154  
Phone: (206) 826-1400 EXT 1521

**Note: The Filing Id is 20180213104745SC364602**