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### Brief of Amici Curiae in Support of Appellant

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

SEAN O'DELL,

Appellant.

Filed *E*  
Washington State Supreme Court  
FEB 12 2015  
*bjh*  
Ronald R. Carpenter  
Clerk

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON  
FOR ISLAND COUNTY

The Honorable Vicki I. Churchill, Judge  
Superior Court Cause No. 12-1-0011102

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**BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLANT**

**SUBMITTED BY THE WASHINGTON DEFENDER  
ASSOCIATION, BLACK PRISONERS CAUCUS, COLUMBIA  
LEGAL SERVICES, THE AMERICAN CIVIL LIBERTIES UNION  
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## **I. INTERESTS OF AMICI CURIAE**

The Amici refer the Court to their Motion for Leave to File Amici Curiae Brief where the interests of the Amici are described.

## **II. STATEMENT OF THE CASE**

The following facts are discussed in the parties' briefs and supporting documents. Sean O'Dell was just 10 days past his 18<sup>th</sup> birthday on the date of the crime for which he was convicted, rape of a child in the second degree. At sentencing, Mr. O'Dell asked the court to impose an exceptional sentence below the standard range based on his young age at the time of the offense. The trial court denied his request. The Court of Appeals affirmed, holding that *State v. Ha'mim*, 132 Wn.2d 834, 940 P.2d 633 (1997), precluded a departure based on age at the time of the offense. *State v. O'Dell*, 180 Wn. App. 1044 (April 28, 2014) (unpublished).

## **III. ISSUE TO BE ADDRESSED BY AMICI**

Whether the Sentencing Reform Act, supported by current scientific and legal views regarding youth, allows a court to consider youth as an offender-specific trait which mitigates culpability, when considering a request for an exceptional sentence downward.

## **IV. INTRODUCTION**

Recent neuroscience and precedent from the United States Supreme Court demonstrate that young people have different

characteristics relevant to mitigation which should be considered during criminal sentencing. While not all youth will be eligible for a downward departure, the Sentencing Reform Act, RCW 9.94A.535(1)(e), grants courts the authority to consider whether a particular defendant's youth mitigated his individual culpability for a crime, even if, like Mr. O'Dell, the young person has reached his 18th birthday.

In the last decade, the United States Supreme Court has handed down four landmark decisions profoundly altering the treatment of youth in the criminal justice system: *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L. Ed. 2d 1 (2005) (abolishing the death penalty for all youth under the age of 18);<sup>1</sup> *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L. Ed. 2d 825 (2010) (life without parole sentences for youth who commit non-homicide crimes ruled unconstitutional); *J.D.B. v. North Carolina*, \_\_\_ U.S. \_\_\_, 131 S.Ct. 2394, 180 L. Ed. 2d 310 (2011) (holding that the *Miranda* custody take into account the age of a juvenile); and *Miller v. Alabama*, \_\_\_ U.S. \_\_\_, 132 S.Ct. 2455, 183 L. Ed. 2d 407 (2012) (mandatory life without parole sentence for juveniles convicted of homicide crimes is unconstitutional). Each of these cases was premised on

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<sup>1</sup> The Court had previously abolished the death penalty for juveniles under 16 at the time of the crime. *Thompson v. Oklahoma*, 487 U.S. 815, 108 S. Ct. 2687, 101 L.Ed.2d 702 (1998).

the scientific fact that adolescents as a group are neurologically, significantly different than adults and therefore generally less culpable for their crimes.

As the United States Supreme Court recognized in these cases, neurological development affects how young people think and act. That development impacts their understanding of consequences, their abilities to control their emotions, the relative influence of peers, and their decision-making. Recent neuroscience has proven that these transformational processes continue well into a young person's twenties. These scientific facts render many youth less culpable than adults due to the innate qualities of their age and the manner in which those qualities affect them.

Undoubtedly, a defendant's youth will not always result in a downward departure – youth is not an excuse for criminal behavior. However, it is relevant to a young person's culpability for a particular crime and to the proportionality of the sentence.

Proportionate punishment for culpable behavior lies at the core of the criminal justice system generally, and the Sentencing Reform Act (SRA) specifically. *See* RCW 9.94A.010. The SRA allows a court to grant an exceptional sentence downward when “[t]he defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her

conduct to the requirements of the law, was significantly impaired.” RCW 9.94A.535(1)(e).

This case illustrates this point. Because Mr. O’Dell was 10 days beyond his 18<sup>th</sup> birthday at the time of the offense, his possible sentence went from a maximum sentence of 36 weeks as a juvenile to a potential life sentence. Nonetheless, the sentencing court felt that it could not consider Mr. O’Dell’s youth or the science discussed herein when it sentenced him. In fact, the SRA grants courts the discretion to evaluate the particular individual circumstances in cases like Sean O’Dell’s in order to reach a decision that reflects modern science and achieves a proportionate, just outcome.

In the past, Washington courts have rejected the argument that youth is a valid mitigating factor in cases that predate the scientific breakthroughs in juvenile neuroscience discussed herein and the *Roper/Graham/Miller* line of cases. *See e.g., Ha’ mim* 132 Wn.2d at 836 (young age at time of offense not a valid basis for a downward departure). This Court should reexamine those holdings and reach a result more in keeping with the language and intent of the SRA and one that accommodates modern science and more recent legal thinking.

While a defendant’s youth and its impact on his culpability for a particular crime is one factor that courts should be able to consider during

sentencing, there are others as well. As the United States Supreme Court has recognized, a defendant's intellectual disability may require a lesser sentence than would otherwise be imposed. *See e.g. Atkins v. Virginia*, 536 U.S. 304, 319-21, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002) (death penalty may not be imposed upon person with intellectual disabilities and IQ of 70 or below). The SRA reflects this principle and allows courts the discretion necessary to reach a proportionate and just sentence in particular circumstances.

In this brief, amici first offer an examination of the effects of youthfulness on culpability. Second, amici show how the SRA allows youth to be considered at sentencing on a case by case basis. Third, amici discuss how other individual attributes, like the presence of an intellectual disability, should also be the basis for a downward departure in particular circumstances.

## V. ARGUMENT

### A. Until Their Mid-Twenties, Youth Act Differently Than Older Adults Because Their Brains Are Different.

The developing structures and processes within the adolescent brain explain what every parent knows: young people are more reckless and more susceptible to negative social pressures than they will be when they reach full adulthood. Magnetic resonance imaging and other modern

technologies that allow neuroscientists to explore the inner workings of the human brain have proven that neurological development continues well into a person's twenties.<sup>2</sup> While the rate at which this natural developmental occurs and the impact it has varies from young person to young person, this on-going development changes youth as a group from foolhardy, risk-seeking teenagers into mature, more centered adults. As explained by the American Medical Association: "Adolescents' behavioral immaturity mirrors the anatomical immaturity of their brains. To a degree never before understood, scientists can now demonstrate that adolescents are immature not only to the observer's naked eye, but in the very fiber of their brains."<sup>3</sup>

1. *Changes in the Brain Change Behavior.*

Neurological maturity requires the normal development of a number of different regions and systems within the human brain.<sup>4</sup> Two

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<sup>2</sup> Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, 1021 Ann. N.Y. Acad. Sci. 77 (2004); Nitin Gogtay et al., *Dynamic Mapping of the Human Cortical Development During Childhood Through Early Adulthood*, 101 Proc. Nat'l Acad. Sci. 8174, 8177 (2004); cf., *Roper*, 543 U.S. at 574.

<sup>3</sup> Brief for the American Medical Association et al., as *Amici Curiae* in Support of Respondent at 10, *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>4</sup> The American Medical Association and the American Psychological Association both filed amici curiae briefs in the United States Supreme Court during the pendency of the *Miller* decision. These two briefs discuss the relevant psychosocial research and the science of juvenile brain development in significant detail. See Brief for the American Psychological Association et al., as *Amici Curiae* in Support of Petitioners, *Miller v. Alabama*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 2455 (2012) (hereinafter "APA Brief"); also, Brief for

structures have particular relevance to questions of criminal culpability, the limbic system and the prefrontal cortex. The limbic system, which includes the amygdala and the nucleus accumbens, is associated with emotional and motivational processes and the “fight or flight” response.<sup>5</sup> The prefrontal cortex controls the “executive functions,” including emotional regulation, impulse control, working memory, risk assessment and the ability to evaluate future consequences.<sup>6</sup> When fully developed, it modulates impulsive behavioral urges emanating from the amygdala and other structures of the limbic system.<sup>7</sup> The structures of the limbic system lie deep within the brain and develop earlier and at a faster rate than does the pre-frontal cortex.<sup>8</sup>

Through adolescence and into early adulthood, the brain undergoes a thinning process or “pruning”. Redundant and cumbersome neural connections within the brain’s gray matter begin to close down, channeling electrical brain activity into fewer and stronger neural

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the American Medical Association et al., as *Amici Curiae* in Support of Neither Party, *Miller v. Alabama*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 2455 (2012) (hereinafter “AMA Brief”).

<sup>5</sup> Abigail A. Baird et al., *Functional Magnetic Resonance Imaging of Facial Affect Recognition in Children and Adolescents*, 38 *J. Am. Acad. Child & Adolescent Psychiatry* 1, 1 (1999).

<sup>6</sup> Elizabeth Sowell et al., *In Vivo Evidence for Post-Adolescent Brain Maturation in Frontal and Striatal Regions*, 2 *Nature Neurosci.* 859, 860 (1999).

<sup>7</sup> B.J. Casey & Kristina Caudle, *The Teenage Brain: Self Control*, 22(2) *Current Direct. In Psych. Sci.* 82-87, 84 (2013).

<sup>8</sup> Alexandra O. Cohen & B.J. Casey, *Rewiring Juvenile Justice: The Intersection of Developmental Neuroscience and Legal Policy*, 18 *Trends in Cog. Sci.* 63, 63 (Feb. 2014).



pathways.<sup>9</sup> This pruning process occurs first in areas associated with the limbic system and only later in the pre-frontal cortex, one of the last regions to develop.<sup>10</sup>

A second process aids the development of these stronger, more efficient pathways. Fatty, white matter called myelin begins to surround these developing pathways insulating them and allowing electrical impulses to accelerate and flow more smoothly between regions of the brain.<sup>11</sup> As these processes of pruning and myelination continue through adolescence and into adulthood, the prefrontal cortex exercises more control over the earlier developing, lower level regions of the brain.

The dynamic nature of this development accounts for a great deal of the behavioral changes youth exhibit as they age.<sup>12</sup> Until fully reaching mature adulthood, young people's behavior and decision making are more heavily influenced by the amygdala and other more primitive neurological regions.<sup>13</sup> A youth's reliance on these earlier developing regions results in

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<sup>9</sup> Sarah Durston et al., *Anatomical MRI of the Developing Human Brain: What Have We Learned?* 40 *Am. Acad. Child & Adolescent Psychiatry* 1012, 1014 (2001).

<sup>10</sup> Cohen & Casey, *supra* n. 8, at 63.

<sup>11</sup> Elkhonon Goldberg, *The Executive Brain: Frontal Lobes & The Civilized Mind*, 144 (Oxford Univ. Press 2001).

<sup>12</sup> See Neir Eshel et al., *Neural Substrates of Choice Selection in Adults and Adolescents*, 45 *Neuropsychologia* 1270, 1270-1271 (2007); Kathryn Modecki, *Addressing Gaps in the Maturity of Judgment Literature: Age Differences and Delinquency*, 32 *Law & Hum. Behav.* 78, 79-80 (2008).

<sup>13</sup> Cohen & Casey, *supra* n. 8, at 64.

an imbalance of the neurotransmitters that regulate pleasure and the desire for rewards, dopamine and serotonin.<sup>14</sup> Higher dopamine levels produce correspondingly stronger desires for immediate pleasure and gratification, while their less developed neurological structures make youth less able to resist these heightened urges.

The areas of the brain that regulate cognition and logic develop relatively early in adolescence.<sup>15</sup> However, social and emotional maturity continue to develop well into early adulthood with the developing pre-frontal cortex.<sup>16</sup> In other words, teenagers have the neurological foundation to support logical, rational thinking, but lack self-restraint and the ability to fully comprehend consequences, especially in emotionally-charged settings.<sup>17</sup>

Until full neurological maturity, young people in general have less ability to control their emotions, clearly identify consequences, and make

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<sup>14</sup> Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 Ann. Rev. Clinical Psychol. 47, 54 (2008).

<sup>15</sup> See Thomas Grisso et al., *Juveniles' Competence to Stand Trial*, 27 Law & Hum. Behav. 333-334 (2003); Daniel Keating, *Cognitive and Brain Development*, in *Handbook of Adolescent Psychology* 45, 64 (Richard Lerner & Laurence Steinberg eds., 2d ed. 2004).

<sup>16</sup> See Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence*, 18 Behav. Sci. & L. 741, 756, 758. (2000).

<sup>17</sup> *Id.* at 743-745; Bonnie Halpern-Felsher & Elizabeth Cauffman, *Costs and Benefits of a Decision: Decision-Making Competence in Adolescents and Adults*, 22 J. Applied Developmental Psychol., 264-271 (2001).

reasoned decisions than they will when they enter their late twenties and beyond.

2. *Neurological development explains young people's observable behaviors and in appropriate circumstances mitigates their culpability.*

Psychological studies and controlled observations of young people's behavior demonstrate that the same impulses to explore and experiment that allow youth to learn also compel them towards risky, sensation-seeking behaviors. Adolescents score significantly lower than adults on assessments measuring "impulse control" and "suppression of aggression."<sup>18</sup> Even youth who have developed cognitive abilities similar to adults do not have the same ability to self-regulate their behaviors, modulate their emotions or weigh the consequences of their actions.<sup>19</sup>

The science proves that youth reduces culpability and is therefore relevant to the sentence imposed upon an individual defendant. "[T]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside." *Roper*, 543 U.S. at 570 (quoting *Johnson v. Texas*, 509 U.S. 350,

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<sup>18</sup> Cauffman & Steinberg, *supra* n.16 at 748-49, 754 & tbl. 4; see also, Laurence Steinberg et al., *Age Differences in Sensation Seeking and Impulsivity as Indexed in Behavior and Self-Report*, 44 *Developmental Psychol.* 1764, 1774-76 (2008).

<sup>19</sup> APA Brief at 8; also, Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 *Ann. Rev. Clinical Psychol.* 47, 55-56 (2008).

368, 113 S.Ct. 2658, 125 L. Ed. 2d 290 (1993)). And so, young people must be treated differently in some circumstances. “An offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed.” *Graham*, 560 U.S. at 76. However, these transitory characteristics do not require that all young people be treated differently in all circumstances.

Rather, the Supreme Court has acknowledged that the relevance of a defendant's age to a crime will vary by crime and by individual. *Cf. Miller*, 132 S.Ct. 2467 (requiring courts to consider “the character and record of the individual offender or the circumstances of the offense,” and “the possibility of compassionate or mitigating factors,” including a defendant's age, before sentencing a youth to life without parole). This is a stance supported by the science.<sup>20</sup> However, the science also justifies allowing a court to grant a young person an exceptional sentence downward when it is warranted, even for an 18 year old or older defendant.

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<sup>20</sup> B.J. Casey & Kristina Caudle, *The Teenage Brain: Self Control*, 22(2) *Current Direct. In Psych. Sci.* 82-87, 83 (2013) (noting that though as a group adolescents show poor self-control, there exist “striking differences” between individual adolescents in emotional regulation and decision-making).

3. *Neurological development continues far beyond a person's eighteenth birthday.*

Eighteen does not represent a neurological milestone of any consequence. The pruning and myelination processes continue well into a young person's mid-twenties.<sup>21</sup> As the United States Supreme Court has recognized, a young person like Sean O'Dell who was only 10 days beyond his 18th birthday on the day of his crime is no more neurologically developed than a young person 10 days short of her 18th birthday.

Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach.

*Roper*, 543 U.S. at 574. Long standing legal and societal views of early adulthood track these biological facts.<sup>22</sup>

According to recent findings, the human brain does not reach full maturity until at least the mid-20s...[T]he rental car companies have it right. The brain isn't fully mature at

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<sup>21</sup> Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, 1021 *Ann. N.Y. Acad. Sci.* 77 (2004); Nitin Gogtay et al., *Dynamic Mapping of the Human Cortical Development During Childhood Through Early Adulthood*, 101 *Proc. Nat'l Acad. Sci.* 8174, 8177 (2004); *see generally*, *Brain Changes*, MIT Young Adult Development Project, <http://hrweb.mit.edu/worklife/youngadult/brain.html> (2008); National Public Radio, *Brain Maturity Extends Well Beyond Teen Years* (2011) found at <http://www.npr.org/templates/story/story.php?storyId=141164708> (last visited January 26, 2015); Lucy Wallis, *Is 25 the New Cut-Off Point for Adulthood*, *BBC News Magazine* (September 23, 2013) found at <http://www.bbc.com/news/magazine-24173194> (last visited January 26, 2015).

<sup>22</sup> *See* Petitioner's Suppl. Brief at 10-11 (discussing legal and social limitations on behavior of young people before they turn 21).

16, when we are allowed to drive, or at 18, when we are allowed to vote, or at 21, when we are allowed to drink, but closer to 25, when we are allowed to rent a car.<sup>23</sup>

Until a person reaches his mid-twenties, neurological immaturity limits a young person's ability to control his emotions, consider consequences and make reasoned decisions. And though brain development plays out in different ways with different people, the biological facts and the SRA support an exceptional sentence downward in some instances.

B. The SRA Permits Trial Courts The Discretion To Grant An Exceptional Sentence Downward Because Of A Defendant's Youth.

The SRA is a grid sentencing system, where the sentence is generally determined based on the seriousness of the offense and the defendant's criminal history. RCW 9.94A.530. While the legislature intended to provide more structure to criminal sentencing when it passed the SRA, it also ensured that trial courts retained the discretion to impose a sentence outside of the standard range in appropriate circumstances. "The purpose of [the SRA] is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders

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<sup>23</sup> MIT Young Adult Development Project, *Brain Changes*, <http://hrweb.mit.edu/worklife/youngadult/brain.html> (2008).

*which structures, but does not eliminate, discretionary decisions affecting sentences*". RCW 9.94A.010 (emphasis added).

A trial court may impose a sentence outside the standard range for an offense, "if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence." RCW 9.94A.535. The SRA provides a non-exhaustive list of 10 statutory mitigating factors which justify a departure from the standard range. *Id.*; see also, *State v. Vermillion*, 66 Wn. App. 332, 832 P.2d 95 (1992). Among these, RCW 9.94.535(1)(e) provides that lessened capacity to appreciate the wrongfulness of one's behavior or to conform it to the law is a mitigating factor. In drafting RCW 9.9A.935(1)(e), the Legislature contemplated that offender-specific traits could mitigate the sentence.

As the foregoing discussion of the attributes of youth makes clear, age may mitigate the culpability of individual defendants. The SRA's language allows courts to consider these neurological and physiological realities when sentencing a young person.<sup>24</sup>

In considering an exceptional sentence outside the range, the statute only requires the sentencing court to consider the purposes of the

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<sup>24</sup> Serious constitutional questions would arise if the SRA did not allow courts to consider age as a mitigating factor in appropriate circumstances. *Cf. Miller*, 132 S. Ct. at 2469; *JDB*, 131 U.S. at 2406 (finding that federal Constitution requires courts to consider age when sentencing children to life without parole and when determining whether an interrogation is custodial under *Miranda*).

SRA, and whether the circumstances of the particular case are “substantial and compelling,” thus taking the case out of the realm of the “typical” case. It is not the contention of *amici* that all or any personal circumstances are valid mitigating factors. Instead, *amici* contend that circumstances, like a defendant’s young age, which mitigate culpability should be considered in determining whether an exceptional sentence is appropriate.

This case provides one illustration why trial courts must have broader discretion to consider personal circumstances relating to the culpability of the individual defendant during sentencing. Here, a young man who had just turned 18 was convicted of rape of a child in the second degree, facing a lengthy prison commitment pursuant to the standard range. With no criminal history and no other current offenses, had the offense occurred 11 days earlier, the presumptive disposition in juvenile court would have been 15 to 36 weeks. RCW 13.40.0357. But 10 days after his 18th birthday, the standard range presumptive sentence is 78 to 102 months (6.5 years to 8.5 years).

Furthermore, the presumptive sentence is merely a minimum term. Given his crime, Mr. O’Dell faces a maximum sentence of life in prison. RCW 9.94A.507(3)(requiring imposition of minimum term and statutory maximum term of life upon conviction for certain sex offenses, including



rape of a child in the second degree). Thus, with the passage of 11 days, an adolescent went from a maximum sentence of 36 weeks in a juvenile facility to a potential life sentence, without being given an opportunity to ask the trial court to consider his young age at sentencing.

Science has demonstrated that the adolescent brain is not fully developed at age 18, a developmental immaturity that leads some young people to make different decisions than they will as fully mature adults. And while a sentence within the SRA guidelines may be appropriate for some young defendants, requiring courts to always ignore youth and barring a mitigated sentence in every circumstance fails to serve the goals of the SRA.

C. Washington Courts Should Also Have The Discretion To Consider Other Individual Personal Characteristics, Like Intellectual Disability, That Significantly Mitigate A Defendant's Culpability.

Similarly, other personal traits, like intellectual disability, may also significantly reduce an individual defendant's culpability such that a court must consider them in order to reach a just and proportionate sentence. The United States Supreme Court has recognized this principle. *See e.g., Atkins*, 536 U.S. 304. The reasoning underlying *Miller* and its predecessors mirrors that the Court used in *Atkins* when it barred the execution of intellectually disabled people with IQ's below 70.

[P]ersons [with intellectual disabilities] frequently know the difference between right and wrong and are competent to stand trial. Because of their impairments, however, by definition they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others. There is no evidence that they are more likely to engage in criminal conduct than others, but there is abundant evidence that they often act on impulse rather than pursuant to a premeditated plan, and that in group settings they are followers rather than leaders. *Their deficiencies do not warrant an exemption from criminal sanctions, but they do diminish their personal culpability.*

*Id.* at 318 (emphasis added).

Very recently, in this context, the Court has endorsed the notion that strict line drawing may create constitutional problems when criminal sentencing is involved. In *Hall v. Florida*, \_\_\_ U.S. \_\_\_, 134 S. Ct. 1986, 1993, 188 L. Ed. 2d 1007 (2014), the Court barred states from employing a strict cut off of 70 IQ because “the reality that an individual's intellectual functioning cannot be reduced to a single numerical score.” Thus, just as neurological maturity is not reached at 18, intellectual functioning cannot be conclusively established by a single measure. A sentencing scheme which precludes consideration of personal traits by setting strict, universally applicable lines, ignores all of this.

Other sources also support granting courts such discretion. For example, the American Bar Association Standards instructs sentencing

courts to include personal circumstances of a defendant when determining whether mitigating circumstances justify a departure from the guidelines.

**Standard 18-6.3** Using presumptive sentences: mitigating and aggravating factors and personal characteristics of individual offenders; criminal history

(a) In determining the sentence of an offender, a sentencing court should consider first the level of severity and the types of sanctions that are consistent with the presumptive sentence. The court should then consider any modification indicated by factors aggravating or mitigating the gravity of the offense or the degree of the offender's culpability, by personal characteristics of an individual offender that may be taken into account, or by the offender's criminal history.

*The ABA Criminal Justice Section Standards on Sentencing Standard 18-*

6.3. Like youth, other personal traits may significantly impact an individual defendant's culpability; a principle the SRA explicitly acknowledges. Judicial discretion should not be limited when it conflicts with one of the SRA's stated purposes.

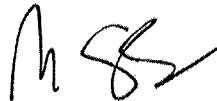
## VI. CONCLUSION

The SRA mandates that a defendant's culpability be considered in determining a fair sentence that is just and proportional to the crime. Brain development research proves that many youth, including some young adults, do not have the same capacity for reasoned decision making as fully mature adults. In appropriate circumstances, these biological facts are relevant to a particular individual's culpability for a particular crime.

The SRA and science both require that courts be able to consider such individual circumstances as a basis to grant an exceptional sentence downward.

RESPECTFULLY SUBMITTED this 30th day of January, 2015.

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**CERTIFICATE OF SERVICE**

I certify that I served a copy of the foregoing Brief of Amici Curiae in Support of Appellant, and Motion for Leave to File Amici Brief, upon them by electronic mail on the 30th day of January, 2015, at their email addresses as follows:

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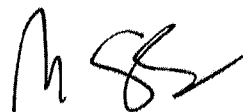
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I further certify that on January 30, 2015, I served a copy of the foregoing Brief of Amici Curiae in Support of Appellant, and Motion for Leave to File Amici Brief, by electronic mail and first class mail, postage prepaid, upon David Carman, Deputy Prosecuting Attorney for Island County, at the following addresses:

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I certify under penalty of perjury that the foregoing is true and correct.

DATED this 30<sup>th</sup> day of January, 2015.



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NICHOLAS B. STRALEY, WSBA #25963

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**Subject:** State v. O'Dell, No. 90337-9 Motion for Leave to File Amici Curiae Brief and Brief of Amici Curiae

Dear Clerk,

Attached for filing in Case No. 90337-9, State v. O'Dell are the:

- **MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF APPELLANT**
- **BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLANT**

These documents are submitted by the Washington Defender Association, Black Prisoners Caucus, Columbia Legal Services, the American Civil Liberties Union of Washington, TeamChild, The Korematsu Center for Law and Equality, the Center for Youth & Justice, and the Washington Association of Criminal Defense Attorneys.

Attorney Nicholas B. Straley, WSBA #25963 of Columbia Legal Services presents this motion and brief for filing on behalf of amici. Below is my contact information. Please contact me if you have any questions.



Sincerely,

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