“From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”


BACKGROUND

In Spring 2016, the Board of Trustees unanimously created a task force to examine whether barriers exist in the King County juvenile justice system that contribute to disproportionate involvement by children of color, gender, income, sexual orientation, and/or disabilities. This is a report on our work, our recommendations (see page 8), and the reasons therefor.

The Task Force was charged with addressing barriers to equal justice in the juvenile court system. Children of color and their families have been subjected to institutional harms which have caused families to be separated and children to be marginalized. With the increasing knowledge base regarding juvenile brain development, the need to eliminate those barriers becomes ever more urgently recognized. The Courts have responded (see brief discussion below) but the Washington State legislature has only recently begun to take small steps (see brief legislative summary below). In addition to changes in the law itself, there is also urgent need to address implementation policies, including detention rules and practices, and truancy sanctions. Many Task Force members have direct experience with the consequences of unequal justice for juveniles, having heard their voices and stories “in the trenches” for years in the criminal justice system.

The Task Force is chaired by Nicole McGrath and Judge Anne Ellington. Members are Judge Regina Cahan, Judge Roger Rogoff, Judge Judith Ramseyer, D’Adre Cunningham, Leila Curtis, Yvonne Curtis, Sarah Elerson, Miriam Gordon, Cecelia Gregson, Jimmy Hung, Katie Hurley, Jill Malat, Stephanie Sato, and Nicole McGrath. Past members who made contributions include Rebecca Andrews, Twyla Carter, Jay Kornfeld, Carla Lee and Nicole Wagner.

Our work was greatly supported by KCBA attorney Judy Lin. We also express thanks to the leadership and support provided by KCBA Board Presidents Kim Tran, Kate Battuello and Andrew Maron, and KCBA Executive Director Andrew Prazuch.
BRIEF PROCEDURAL HISTORY

The task force held its first monthly meeting in September 2016. We began by identifying other juvenile, legal, and community stakeholders in Washington State and King County engaged in juvenile justice reform activities. It became clear the KCBA JJRTF was the only group primarily looking to review existing Washington laws and policies affecting juvenile offender, dependency foster care, and status offenders (including truancy, at-risk youth, and Child In Need of Services (CHINS) proceedings). This became our focus.

After studying the issues, we identified certain areas of priority and created sub-committees to investigate statutory, procedural and and policy changes, as well as a research committee. We examined the Juvenile Justice Act (RCW 13.40) and other statutory provisions governing dependency, foster care, and status offender proceedings such as truancy petitions.

In addition, we reviewed a number of national and state policy reports covering a wide array of juvenile justice topics, including *Juvenile Justice and Racial Disproportionality Report to Washington State Supreme Court 2012, Washington State Caseload Forecast Council Juvenile Disposition Summaries 2016 and 2017*, and *National Conference of State Legislatures Trends in Juvenile Justice State Legislation 2011-2015*.

We invited guest speakers, including the Federal Way Youth Action Team; Judge Susan Craighead, Pam Jones, Director, Juvenile Division, Department of Adult & Juvenile Detention; and Justice Bobbe Bridge, Executive Director, Center for Children & Youth Justice. When asked about the proposed recommendations under discussion, Justice Bridge stated: “Swing for the fences!”

In fall 2017, we began to identify specific recommendations and areas of compromise to suggest. In February 2018, members adopted a proposed slate of recommendations, which was submitted to the Board of Trustees for a first reading at its March 2018 meeting.
SCIENTIFIC AND LEGAL AUTHORITY FOR RECOMMENDATIONS

*Children are different.*

The Science Supports Juvenile Justice Reform

*Environmental stress.* Medical research demonstrates the harmful effects of stress. The very nature of childhood includes a lack of control over one’s environment. Whether a young person lives in a stable, secure, supportive environment or a chaotic, neglectful, restrictive one is essentially the luck of the draw. In an authoritative brief submitted by the American Medical Association and the American Academy of Child and Adolescent Psychiatry as *amicus curiae* in the case of *Roper v. Simmons*, discussed below, these organizations emphasized the harmful effects of stress on a juvenile’s decision-making:

The interplay among stress, emotions, and cognition in teenagers is particularly complex – and different from adults. Stress affects cognitive abilities, including the ability to weigh costs and benefits and override impulses with rational thought. But adolescents are more susceptible to stress from daily events than adults, which translates into further distortions of the already skewed cost-benefit analysis.¹

Stress directly affects anyone’s ability to weigh risks or to override impulses with rational thought, and juveniles are more susceptible to emotional fluctuations and stress than are adults.² This is true whatever a juvenile’s circumstances, but can be compounded when a young person lacks a support system. Many young people encountering the juvenile justice system have these challenges.

The weight of medical and social science research is indisputable and was cited with approval by the *Roper* court as characteristics which distinguish youth from adults³:

1. Juveniles generally are less mature and more irresponsible than adults based, at least in part, on incomplete brain development;

2. Juveniles are more susceptible to negative influences and outside pressures, including peer pressure; and

3. A juvenile’s character is not as well-formed as that of an adult.

4. Stress greatly compromises cognition for juveniles.

¹ See Amicus Curie Brief in Support of Respondent, Roper v. Simmons, No. 03-633.


³ See *Roper*, 543 U.S. at 569-570.
These immutable features of youth diminish a juvenile’s culpability and increase his/her potential for rehabilitation. As a consequence, they must be the foundation upon which juvenile justice policy is built.

**The Constitution Requires Juvenile Justice Reform**

United States Supreme Court decisions have been the catalyst for accelerating juvenile justice reform over the last decade:

- **Roper v. Simmons: Held**, the death penalty for juveniles constitutes cruel and unusual punishment prohibited by the Eighth Amendment: “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions”.


- **J.D.B. v. North Carolina: Held**, a juvenile’s age informs the Miranda custody analysis, so long as it was known to the officer at the time of questioning or would have been objectively apparent to a reasonable officer.

- **Miller v. Alabama: Held**, a mandatory sentence of life without parole for a juvenile convicted of a homicide crime violates the Eighth Amendment.

- **Montgomery v. Louisiana: Held**, the ruling in Miller v. Alabama constituted a new substantive constitutional rule that is retroactive on state collateral review.

In each of these cases, the Supreme Court’s decision is based on the unique characteristics of youth that distinguish young people from adults.

Several important decisions of the Washington Supreme Court explicitly endorse the same analysis:

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• *State v. O’Dell*, relying on Supreme Court findings in *Roper*, *Graham*, and *Miller*: **HELD**, youth may be considered as a mitigating factor supporting an exceptional sentence below the standard range.⁹ Studies establishing “the clear connection between youth and decreased moral culpability for criminal conduct” compelled the Court’s decision.¹⁰ The court went further, holding that considerations of youth do not end because an offender is 18: “[T]his connection may persist well past an individual’s 18th birthday,” and thus may be appropriately considered even when sentencing an adult offender:¹¹

*Age is not a per se mitigating factor automatically entitling every youthful [adult] defendant to an exceptional sentence. … But, in light of what we know today about adolescents’ cognitive and emotional development, we conclude that youth may, in fact, “relate to [a defendant’s] crime,” … and that youth can, therefore, amount to a substantial and compelling factor, in particular cases, justifying a sentence below the standard range.*¹²

• *State v. Houston-Sconiers*, March 2017: **HELD**, mandatory statutory language requiring automatic decline of juvenile jurisdiction and setting mandatory minimum sentences violate the Eighth Amendment, which is satisfied only when the juvenile court has “complete discretion” to consider the mitigating effects of youth and, when indicated, to impose any sentence below the otherwise applicable sentencing range or statutory sentence enhancements.¹³

It should be noted that Washington is one of just eleven jurisdictions in which juvenile adjudications are included as a factor in adult sentencings.¹⁴

**Racial Disparity Continues Despite Reforms**

Throughout the country, the number of juveniles transferred to adult jurisdiction for certain offenses declined dramatically from 12,800 in 1994 to 4,200 in 2014.¹⁵ Racial disproportionality, however, has *increased* over the same period. The number of juveniles housed in adult prisons and jails has declined by 64% (2,779 to 993 average per day) over the

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¹⁰ *Id.* at 695.
¹¹ *Id.*
¹² *Id.* at 695-96 (first bracket added, second bracket in original; internal citation omitted).
¹³ 188 Wash.2d 1, 21, 391 P.3d 409 (2017).
¹⁵ *Id.* at 30 (internal citation omitted).
past ten years. But the percentage of African-American youth who are transferred is the highest it has been in 30 years. Further, once in the adult system, African American youth are likely to have longer sentences than other juveniles.

Nationally, 52.5% of youth transferred to adult court are African American, even though they represent 39.5% of delinquency cases. In light of these developments, another national trend is to restore judicial discretion in when determining whether a juvenile will be prosecuted or held in the juvenile versus the adult system. This will ensure individualized decisions that reflect specific factual circumstances, not perfunctory outcomes based on static definitions of crimes and physical age.

In Washington State, the history of racial disproportionality has been found at every stage of juvenile justice proceedings, as documented in a 2012 report and presentation to the Washington State Supreme Court.

Racial Disparity in Juvenile Justice in King County

King County has long been a leader in progressive reform to divert juveniles from the criminal justice system and to offer a holistic response to criminal conduct. It now has one of the lowest urban juvenile detention rates in the nation. The average daily detention population has decreased 73% since 1998, from 187 to 51. Yet African American youth are still detained at a disproportionately higher rate than Caucasian youth.

This is an especially troubling situation. Data shows that racial minorities are adjudicated in the juvenile system at a disproportionately higher rate than their numbers in the general population.

\[16 \text{ Id. at 21.} \]
\[17 \text{ Id. at 9.} \]
\[18 \text{ Id.} \]
\[19 \text{ Id.} \]
\[20 \text{ Id. at 35.} \]
\[21 \text{ See Juvenile Justice and Racial Disproportionality Report to Washington State Supreme Court 2012} \]
\[22 \text{ 2014 King Co. Juvenile justice system data – In 2014, African-American youth represented 9.8% in King Co., but represented 42.1% of law enforcement referrals, 50.2% of filings to juvenile court, and 50.7% incarcerated in juvenile detention. See King Co. Juvenile Justice System Assessment, October 26, 2015, prepared by staff from Burns Institute, Juvenile Detention Alternatives Initiative (JDAI), and other community stakeholders.} \]
And because juvenile adjudications count toward an adult standard sentence calculation, they can dramatically increase a first-time adult offender’s sentence. The cumulative effect of this practice compounds over time, contributing to the mass incarceration of persons of color held for longer times in adult prisons. Attendant barriers (also called collateral consequences) to finding work, housing, and support follow these individuals into the community upon their release.

**KCBA Task Force Proposals**

The research and the compelling legal precedent requires us to treat juveniles more like children and less like miniature adults. Reforms are needed.

To that end, JJTF has adopted the following eleven objectives, for which it seeks endorsement of the Board of Trustees:

1. **Houston-Sconiers.** Codify the requirements set forth in *State v. Houston-Sconiers*, 188 Wn. 2d, 391 P.3d 409 (2017), in which the Supreme Court held that the constitution requires in sentencing youth, courts must exercise discretion and must consider the mitigating effects of features of youthfulness. This would ensure that courts have discretion to consider features such as immaturity, proneness to risk taking, and vulnerability to peer pressure, as well as the youth’s capacity for rehabilitation.

2. **JRA Jurisdiction.** Extend jurisdiction to age 25 for juveniles sentenced to the Juvenile Rehabilitation Administration. This would allow courts to retain jurisdiction over juveniles until the age of 25 (instead of 18) for certain crimes committed while a juvenile.

3. **Auto Decline.** Eliminate automatic decline of juvenile jurisdiction for specified offenses and leave decline decisions to judges. Present statutes require that judges automatically decline juvenile court jurisdiction when a juvenile is charged with certain offenses, which subjects the juvenile to an adult sentence range and incarceration in an adult prison. This recommendation would return discretion to judges to determine whether a juvenile should be tried as an adult or a juvenile in all cases.

4. **Juvenile priors in adult sentencing calculations.** Eliminate consideration of all nonviolent misdemeanor and felony juvenile adjudications in the calculation of adult sentencing scores, leaving to the discretion of the sentencing judge whether and how to consider juvenile offender history. Presently, juvenile offenses automatically “count” toward adult sentencing scores, which in turn automatically increases adult penalties.

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These laws pre-date current understanding of adolescent brain development. This recommendation would remove non-violent juvenile offenses from the adult offender score calculation and allow the sentencing judge to decide whether and how to consider those offenses.

5. **Sentencing alternatives.** Expand alternatives to the juvenile presumptive sentencing scheme to allow youth to be eligible for Option B and deferred disposition. Options for community-based sanctions and/or treatment allow the court to exercise its discretion to hold the juvenile accountable and to provide for rehabilitation. Option B is a treatment based suspended sentence now available only for youth sentenced to confinement. Deferred disposition occurs when the juvenile is required to perform certain tasks while under court supervision, such as avoiding contact with specified individuals, completing school requirements, making restitution, and so on. If the juvenile successfully completes such requirements, the court has discretion to dismiss the charge. These options are available only in very limited circumstances, which severely confines the court’s discretion.

6. **Sex offender registration.** Modify registration requirements for juveniles to reflect adolescent brain development and low rate of recidivism. The requirement to register as a sex offender is lifelong, for juveniles and adults alike. Registration affects the ability to find work and housing. But unlike adults, juveniles who commit sex offenses have a much lower rate of repeating such crimes. When to impose the requirement and when to terminate it should be modified.

7. **Legal Financial Obligations.** Eliminate mandatory Legal Financial Obligations imposed on juveniles at sentencing. “Legal Financial Obligations” are fines, penalties, attorney fees, and courts costs (but not restitution). Juveniles generally have no assets and cannot pay these obligations. The Legislature recently made sweeping changes to these laws as they apply to adults, in recognition of the many collateral consequences faced by adults. A review of the laws applied to juveniles is required.

8. **Diversion.** Expand options for diversion from the juvenile justice system by allowing pre-charging diversion and access to evidence-based therapeutic at the earliest possible stage of juvenile proceedings. Research shows that diversion programs are effective in diverting juveniles away from the harms of incarceration in the system. The 2018 Washington Legislature significantly expanded opportunities for diversion. Further refinements and increased availability of programs will be needed as communities and courts adopt new methods for keeping juveniles out of the criminal justice system.
9. **Eliminate the incarceration of status offenders (including truancy (Becca), at risk youth (ARY), Child in Need of Services (CHINS), and dependency matters).** Youth who are truant from school or have other social issue before the courts, and who do not comply with court orders (such as to attend school), can be incarcerated for up to 7 days for contempt of court. This serves no valid purpose and has the unintended but predictable consequence of introducing such youth to others who have committed crimes.

10. **Contact with in-custody juveniles.** Change policies and practices to allow more opportunities for families, including minors, to visit and otherwise contact juveniles in custody at juvenile detentions and JR facilities. Youth in custody currently are subject to restrictive visiting policies which limit physical contact with family members and caregivers, and often prevent contact with family members who are juveniles. These policies are inconsistent with the research, which shows that juveniles with strong family ties and engagement are less likely to reoffend. The system historically has implemented these practices which disproportionally separates and harms the familial ties of families of color. Such contacts should be encouraged and facilitated.

11. **Self-images for sexual exploitation (teen sexting).** Support the 2018 Senate Bill 6566, which would allow diversion of eligible juveniles who take self-images for purposes of sexual exploitation. It is common nowadays for adolescents to explore their sexuality and share intimate photos. SB 6566 would recognize that by providing certain limited protections from criminal prosecution for juveniles in such circumstances.

**Note re: 2018 Washington Legislative Session**

Juvenile justice bills regarding juvenile offender, dependency foster care, and status offenders (including truancy) were proposed during the short session of the 2018 Washington State legislative session. Bills addressed areas such as auto decline, extension of juvenile jurisdiction either based upon youth’s age and/or nature of the offense, expanding juvenile diversion agreements, juvenile records, teen sexting, abolishing use of incarceration as sanction in truancy proceedings, and updates to the Extended Foster Care provisions.

Only a handful of bills were enacted: SB 6160 (modifying the auto decline law), E2SB 1783 (legal financial obligations), SB 6222 (extended foster care) and SB 6550 (juvenile diversion agreements). These do not change our recommendations.

**CONCLUSION**

The JJTRF respectfully asks the Board of Trustees to adopt its recommendations and authorize the pursuit of these objectives on behalf of the King County Bar Association.