

No. 93900-4

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE DETENTION OF:

TROY BELCHER,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

**MOTION FOR LEAVE TO FILE
AMICI CURIAE BRIEF**

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The Washington Association of Criminal Defense Lawyers (“WACDL”) American Civil Liberties Union (“ACLU”) respectfully request request that this court permit it to file an amicus brief pursuant to RAP 10.6.

A. DISCUSSION

1. Applicant’s Interest and the Person or Group Applicant Represents

The applicants, Amy Muth and Prachi Dave are attorneys licensed to practice law in this state and to bring this motion on behalf of WACDL. Ms. Muth is an experienced criminal defense attorney who has had multiple amicus briefs previously filed with this Court accepted. Ms. Dave is a staff attorney with the ACLU and has also had multiple amicus briefs accepted for filing with this Court.

WACDL was formed to improve the quality and administration of justice. A professional bar association founded in 1987, WACDL has over 1,000 members – private criminal defense lawyers, public defenders, and related professionals – committed to preserving fairness and promoting a rational and humane criminal justice system. WACDL joins this brief as a part of its mission to promote justice and protect individual constitutional rights.

The ACLU is a statewide, nonpartisan, nonprofit organization of

over 50,000 members and supporters dedicated to the preservation of civil liberties, including the rights of youth charged with criminal offenses. The ACLU strongly supports consideration of individual circumstances and the exercise of judicial discretion in deciding whether youth should be subjected to adult proceedings and sentences. The ACLU has participated in numerous cases involving these issues.

This Court's decision in this case has potentially far-reaching implications to 71.09 civil commitment practice in this State.

2. Applicant's Familiarity with the Issues

Ms. Muth and Ms. Prachi are experienced appellate lawyers. In preparing the amicus brief, they reviewed petitioner's brief, respondent's brief, and the briefing filed by both parties in the Court of Appeals. They are familiar with the issues and the arguments presented by both parties.

3. Issues Address by Amicus

The accompanying brief urges this Court to find that juvenile sexual misconduct alone is insufficient to deprive a person of liberty indefinitely under RCW 71.09. While studies involving juvenile brain development have been used more in the criminal sentencing context, there is no reason why they should not be considered with equal force where any liberty interest is at stake. Juveniles do not have the maturity or volitional controls that adults have, and because their brains are in a

transitory state, the state cannot show that their conduct renders them dangerous so that civil commitment is warranted. In order to satisfy due process, there must be a showing of adult sexual misconduct as a prerequisite to civil commitment.

4. Reasons for Additional Argument

WACDL and ACLU believe that the resolution of this issue will have far-reaching consequences for individuals whose detention is sought under RCW 71.09. The Amicus Brief cites to several social science studies which address the role that juvenile brain development plays in juvenile offending, and in turn, assessing dangerous. The brief discusses the importance of accurately identifying the dangerous offender, and explains why that task cannot be carried out with regard to juvenile misconduct.

WACDL and ACLU also believe that additional briefing is necessary to expand the argument that the differences in juveniles' brains should be taken into account when they face a deprivation of liberty under RCW 71.09. Those differences have been accounted for in the criminal context in cases like *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015) and *State v. Houston-Sconiers*, ___ Wn.2d ___, 391 P.3d 409 (2017), but have not been extended to sentencing proceedings. This brief provides

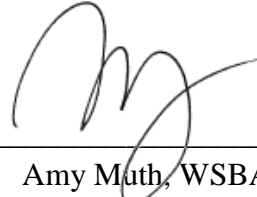
additional argument on why the analysis should turn on the deprivation of liberty itself, and not the form that it takes.

B. CONCLUSION

For these reasons, WACDL respectfully requests that the Court grant this motion to file an amicus brief and to accept the accompanying brief for consideration in this case.

Respectfully submitted this 15th day of May, 2017.

By: _____



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DECLARATION OF SERVICE

I, Amy I. Muth, declare as follows:

On May 1, 2017, I served a true and correct copy of Motion for Leave to File Amicus Curiae Brief and Declaration of Service via electronic mail, addressed as follows:

1. Travis Stearns, Washington Appellate Project

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2. Sarah Sappington, Attorney General's Office

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3. Prachi V. Dave, American Civil Liberties Union

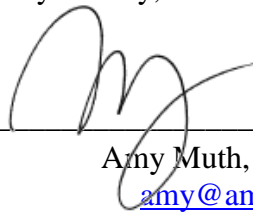
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4. Andrea R. Vitalich, King County Prosecuting Attorney's Office

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Respectfully submitted this 15th day of May, 2017.

By:  _____

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