

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR \_\_\_\_\_ COUNTY**

STATE OF WASHINGTON, )  
 ) NO.  
 )  
 ) Plaintiff, )  
 )  
 ) vs. ) MOTION AND CERTIFICATION  
 ) FOR APPOINTMENT OF EXPERT  
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 ) Defendant. )  
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**I. MOTION**

The defendant, \_\_\_\_\_, by and through his/ her attorney,  
\_\_\_\_\_, moves the Court for an order appointing  
\_\_\_\_\_, to perform expert services in this matter at public expense.

This motion is based upon CrR 3.1(f), the Sixth and Fourteenth Amendments to the United States Constitution, Article 1 §§3, 12 and 22 (Amend.10) of the Washington Constitution, and the Certification of Counsel which follows.

**II. CHILDREN ARE DIFFERENT; THEY MUST BE TREATED DIFFERENTLY IN THE COURTS WHEN TRIED AS ADULTS.**

Since 2005, the United States Supreme Court has handed down several landmark decisions which profoundly alter the treatment of juveniles in the criminal justice system. In 2005, the Court decided *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), abolishing the death penalty for all juveniles. Five years later in *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), the Court struck down mandatory life sentences for

1 youth who commit non-homicide crimes. In *J.D.B. v. North Carolina*, 564 U.S. 261, 131 S.Ct.  
2 2394, 180 L.Ed.2d 310 (2012), the Court held that a child's age properly informs the *Miranda*  
3 custody analysis, so long as the child's age was known to the officer at the time of questioning,  
4 or would have been objectively apparent to a reasonable officer. Then, in *Miller v. Alabama*,  
5 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), the Court held that a mandatory life  
6 without parole sentence for juveniles convicted of homicide crimes is unconstitutional. Finally,  
7 in *Montgomery v. Louisiana*, \_\_\_ U.S. \_\_\_, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016), the Court held  
8 that its ruling in *Miller* constituted a new substantive constitutional rule that is retroactive on  
state collateral review.

9 The Washington Supreme Court has adopted the holdings and analyses set forth in  
10 these cases. See, e.g., *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015), *State v. Houston-*  
11 *Sconiers*, 188 Wn.2d 1, 391 P.3d 409, 418-20 (2017). In *State v. O'Dell*, the Court held that trial  
12 courts have discretion to depart from the standard range sentence based on the defendant's  
13 young age and corresponding lack of developmental maturity, even though the defendant was  
14 over 18 at the time of his offense. But youth status alone is not enough, there must be a nexus  
15 between the age of the defendant, his developmental immaturity and the circumstances of the  
16 crime. In *State v. Houston-Sconiers*, the Court held that trial courts have full discretion to  
17 depart when sentencing youth, even from mandatory sentencing provisions such as firearm and  
18 deadly weapons enhancements. *State v. Houston-Sconiers*, 188 Wn.2d at 7. The Court noted  
19 that children are different from adults, and those differences put into doubt the  
20 constitutionality of their mandatory adult sentence ranges. *Id.*, 391 P.3d at 420, citing *Miller v.*  
*Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 2461-62, 183 L. Ed. 2d 407 (2012).

21 In accordance with *Miller*, we hold that sentencing courts must have complete  
22 discretion to consider mitigating circumstances associated with the youth of any  
juvenile defendant, even in the adult criminal justice system, regardless of  
whether the juvenile is there following a decline hearing or not.

23 *Id.* The Court went on:

24 *Miller* requires such discretion and provides the guidance on how to use it. It  
25 holds that in exercising full discretion in juvenile sentencing, the court must

1 consider mitigating circumstances related to the defendant's youth - including  
2 age and its "hallmark features," such as the juvenile's "immaturity, impetuosity,  
3 and failure to appreciate risks and consequences." *Miller*, 132 S.Ct. at 2468. It  
4 must also consider factors like the nature of the juvenile's surrounding  
5 environment and family circumstances, the extent of the juvenile's participation  
6 in the crime, and "the way familial and peer pressures may have affected him [or  
7 her]." *Id.* And it must consider how youth impacted any legal defense, along  
8 with any factors suggesting that the child might be successfully rehabilitated.

9 *Id.* at 8.

10 In each of these cases the courts recognize, based upon the scientific research into  
11 adolescent brain development, that teenagers have diminished decision making capacity  
12 compared to adults. For example, adolescents are different because they are young and their  
13 brains are still developing. *Miller*, 132 S.Ct. at 2464. The research shows that young children,  
14 such as \_\_\_\_\_[defendant], who experience trauma are at particular risk because  
15 their rapidly developing brains are very vulnerable. *See, e.g.,* Frank W. Putnam, *The Impact of*  
16 *Trauma on Child Development*, 57 *Juvenile and Family Court Journal*, Issue 1, at pp. 1-11  
17 (January 2006).

18 III. AN EXPERT IS NECESSARY TO INVESTIGATE AND PRESENT EVIDENCE CONNECTING  
19 THE DEFENDANT'S YOUTH AND LACK OF FULL MATURITY TO THE CIRCUMSTANCES  
20 OF THE CRIME.

21 [Defendant – use full name] is a child, \_\_\_\_\_ years old at the time of the incident. The  
22 assistance of an expert is necessary to effectively demonstrate that [Defendant] was not  
23 fully mature at the time of this incident and that his lack of full maturity played a significant  
24 role in this incident.

25 Counsel will require the assistance of a forensic psychologist who specializes in  
adolescent development and who is familiar with scientific research conducted in recent  
years and relied upon by the United States and Washington Supreme Courts in the recent  
opinions cited herein.

1 A forensic psychologist familiar with the scientific research will be able to interview  
2 \_\_\_\_\_[defendant- first name only], speak to his close and extended family, friends  
3 and other members of his community, school or mental health counselors, religious leaders,  
4 teachers, and employers. An expert can review relevant records to determine if issues of  
5 neglect, abuse or other trauma, have been present in [defendant – use first name]’s life, or  
6 determine if [defendant] has a mental impairment or illness or intellectual disability. An  
7 expert will be able to inform counsel and the court about the circumstances of the crime  
8 and any role \_\_\_\_\_ ’s (defendant, first name) lack of full developmental maturity  
9 may have been involved, and/or [also the necessary interventions, supports and resources  
10 \_\_\_\_\_ (defendant- first name) will need to be successful going forward]

10 IV. CONCLUSION

11 For the foregoing reasons, the defense requests the assistance of an expert in this matter.

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13 DATED this \_\_\_\_\_ day of

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16 Attorney for  
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II. DECLARATION OF COUNSEL

1. I am the appointed counsel of record for the defendant, \_\_\_\_\_, and am familiar with the records and files herein.

2. The State charged [Defendant, use first name] with \_\_\_\_\_. [insert procedural status here:- This matter [proceeded to/is scheduled for] trial on [date]. The jury convicted \_\_\_\_\_ (defendant, use first name) of the crime(s) of \_\_\_\_\_ in the \_\_\_\_ degree. The Standard Range for these offenses is \_\_\_\_\_ weeks/months. \_\_\_\_\_ (defendant, use first name) was just \_\_\_\_ years old at the time of the [alleged] incident.

3. Expert services in this case are required for purposes of [investigating the crime to determine if there is [evidence that challenges the alleged elements of (mens rea or accomplice liability or the defense(s) of \_\_\_\_\_ or relevant to search/seizure issue \_\_\_\_\_ or investigating mitigating circumstances for sentencing].

4. Such services are necessary to an adequate defense in this case because \_\_\_\_\_ is a still a child [insert age at time of crime] or [is a young adult, who was still very much a child at the time of his crime, much like Mr. O'Dell]. The qualities and attributes of youth that courts have recognized as [mitigating are present in this case.] [Defendant, use first name] [insert relevant attributes of youth you can tie to this case – youth have bad judgement/poor decision making skills, especially under pressure, impulsive behavior, fail to think about the consequences of conduct/didn't meant to cause harm, poor at assessing risk.

4. I have discussed the requirements of the case with [Dr. \_\_\_\_] and believe that [he/she] is qualified to provide the services required. She specializes in [working with adolescents who have experienced trauma.] Based on [my previous experience working with [Dr. \_\_\_\_], as well as discussions with other attorneys who have worked with her in similar cases in the past], my discussions with [Dr. \_\_\_\_], about this case, and a review of the attached curriculum vitae, I believe she is qualified to assist counsel in this case.

1           5. [Dr. \_\_\_\_] is available to provide the required services in a timely fashion for a fee of  
2 \$\_\_\_\_\_/hour, such fee to include a review of the files and other materials, any  
3 necessary interviews with or evaluations of \_\_\_\_\_; consultations  
4 with counsel, interviews with opposing counsel and preparation of a materials for the court.  
5 Other services, including travel, would be available for an additional fee of \$30 /hour and will  
6 be requested separately as provided for experts in \_\_\_\_\_ County. I understand that the fee  
7 or fees stated reflect the expert’s usual and customary rates for such services, and anticipate  
8 that the total fee in this matter would not exceed \$\_\_\_\_\_.

9           6. [Defendant]’s financial inability to obtain the services indicated is established by the  
10 \_\_\_\_\_ County Department of Public Defense.

11           SIGNED and DATED in Seattle, Washington this \_\_\_\_\_ day of \_\_\_\_\_, 2017

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13 Attorney for \_\_\_\_\_

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