THE JUVENILE OFFENDER SYSTEM IN WASHINGTON STATE 2019 EDITION

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I. INTRODUCTION & BRIEF HISTORY

Juvenile justice in Washington State is primarily governed by statute, otherwise known as the Juvenile Justice Act of 1977 (hereinafter referred to as the JJA), which establishes a system of accountability and rehabilitation for juvenile offenders. The JJA is codified in the Revised Code of Washington (hereinafter referred to as "RCW") under Title 13, primarily RCW 13.40. In addition to Title 13, there are specific process rules for juvenile cases found in the Juvenile Court Rules (JuCR).

Prior to the 19th century, juveniles charged with criminal offenses were processed in ordinary criminal courts, though age was considered in determining their capability or capacity to commit an offense, as well as to mitigate the harsh realities of adult prosecution and sentencing.[1]

Beginning in the 19th century, various juvenile specific dockets and institutions developed to account for the unique characteristics of juvenile offenders, though institutionalization did not always provide for constitutional due process.[2] Eventually these early forms of juvenile dockets and institutions led the way to the development of separate courts devoted entirely to juvenile cases.[3] The first juvenile court was established by statute in Illinois back in 1899 and juvenile courts are now common in all states today.[4]

Washington State created juvenile courts in 1905 under the premise most juvenile offenders have more in common with dependent and neglected children than with adult criminals.[5] As such, the juvenile courts were crated with the intention of protecting the interests of juveniles rather than prosecuting them in the same manner as adults.[6] The first statute creating a juvenile court in Washington State was enacted in 1913 and underwent no significant changes until enactment of the JJA in 1977.[7]

Today, juvenile courts in Washington State are a statutory division of superior court in general.[8] The intent of the juvenile offender system is different than the adult offender system. The adult system focuses primarily on protecting society and holding criminals accountable by punishing them, usually through more severe punishments than juveniles. Though some rehabilitative programming may be involved with adult offenders, the focus is punishment. On the other

[1] See, *State v. S.J.C.*, 183 Wn.2d 408, 414-15, 352 P.3d 749 (2015) (citations omitted).
[2] *Id* at 415.
[3] *Id*.
[4] See, *In Re Gault*, 387 U.S. 1, 14, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).
[5] See, *S.J.C.* at 415.
[6] *Barr v. Snohomish County Sheriff,* 4 Wn. App. 2d 85, 89, 419 P.3d 867 (citations omitted), *reversed on other grounds*, 193 Wn.2d 330, 440 P.3d 131 (2019).
[7] *S.J.C.* at 415; See also, *Barr* at 89.
[8] RCW 13.04.021(1); *In Re Dalluge*, 152 Wn.2d 772, 779, 100 P.3d 279 (2004), citing, *State v. Werner*, 129 Wn.2d 485, 492, 918 P.2d 916 (1996).

hand, the juvenile offender system treats juveniles differently by focusing on accountability *and rehabilitation* as equally important objectives.[9] A system based on rehabilitation and reduced punishment has to do with the fact children are less criminally culpable than adults.[10] They lack maturity and have an underdeveloped sense of responsibility.[11] They are deserved of less punishment than adults based on their distinct attributes, even when they commit terrible crimes.[12] Even when tried as adults for the most heinous crimes, including aggravated murder, children under the age of 18 cannot be sentenced to death, nor to life without the possibility of parole.[13]

Therefore, in Washington State juvenile offenders are sentenced according to a uniform set of statutory guidelines in Title 13, which account for both the seriousness of the offense committed and the history of the child's prior offenses, if any.[14] Those statutory guidelines establish a range of age appropriate sentences for juvenile offenders, including various sanctions and conditions promoting accountability and rehabilitation.[15]

II. GETTING A JUVENILE CASE TO COURT

The following is a brief description of the general process followed in which a person under the age of 18 is accused of committing an offense is brought before the juvenile justice system. Like adults, this process begins with law enforcement investigating an incident and filing a report with the prosecutor's office. From there the case proceeds to various stages of action depending on the facts, severity of offense, and age of the offender.

LAW ENFORCEMENT CONTACT & ARREST

Like adults, law enforcement may arrest a person under 18 years old if they have probable cause to believe the child committed an offense, or, upon a valid arrest warrant.[16] In most circumstances, a person under the age of 18 arrested for an alleged offense is referred to the juvenile court. In rare instances, a person age 16 or 17 arrested and charged with a "licensing" offense, or, a very serious crime will fall under adult court jurisdiction and will be considered for prosecution as an adult despite their young age.[17]

Following arrest, the young offender can either be taken to the local juvenile detention facility or released to the custody of his/her parents or legal guardians. At the time of arrest and entry into detention, the young offender may or may not be formally charged by the prosecutor's office.

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[9] See, RCW 13.40.010(2); *State v. Chavez*, 163 Wn.2d 262, 267-68, 180 P.3d 1250 (2008), citing, *State v. Posey (I)*, 161 Wn.2d 638, 645, 167 P.3 560 (2007); and, *State v. Weber*, 159 Wn.2d 252, 283-84, 149 P.3d 646 (2006) [further citations omitted].
[10] *State v. Bassett*, 192 Wn.2d 67, 87, 428 P.3d 343 (2018).
[11] *Id*, citing, *Graham v. Florida*, 560 U.S. 48, 68, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), quoting, *Roper v. Simmons,* 543 U.S. 551, 569-570, 125 S. Ct. 1183, 161 L. Ed 2d 1 (2005).
[12] *State v. Bassett,* 192 Wn.2d at 88, citing, *State v. Ramos*, 187 Wn.2d 420, 438, 387 P.3d 650, cert. denied, 138 S. Ct. 467 (2017), quoting, *Miller v. Alabama*, 567 U.S. 460, 472, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).
[13] See, *Bassett* at 87 [further citations omitted].
[14] RCW 13.40.0357.
[15] Id; *State v. Duncan,* 90 Wn. App. 808, 812, 960 P.2d 941, review denied, 136 Wn.2d 1015, 966 P.2d 1278 (1998).
[16] RCW 13.40.040(1).
[17] See, RCW 13.04.030(1)(e)(iii)&(v).

The decision to file criminal charges is always the responsibility of the prosecuting attorney's office, usually the "juvenile division" of that office.[18]

PROBABLE CAUSE HEARING

Like adults, when a young offender is arrested and taken to juvenile detention a judge must make a determination of probable cause within 48 hours of the arrest in order to keep the youth in custody.[19] If the arrest occurs on a weekend or holiday, when court is not in session, probable cause is usually done by means of a telephonic hearing between a member of the prosecutor's office and a superior court judge. The young offender is not present during these telephonic hearings which are often recorded by electronic means.[20]

In the unlikely event a judge finds probable cause does not exist, the young offender must be released from custody.[21] Otherwise, the court will order the youth to either remain in custody or be released pending further arraignment. Upon release, the youth is usually ordered to release under the supervision of a parent or guardian and under compliance with necessary conditions, including a promise to return to court for further proceedings.[22]

After the initial finding of probable cause, charges must be filed within 72 hours of the youth's arrest and detention, excluding weekends and holidays.[23] Otherwise the youth must be released from custody unconditionally. A youth not arrested or taken to detention can be notified to appear for legal action at a later date, usually by mail or by personal service of a summons.[24] If summonsed to appear for court, the youth will be asked to appear along with his or her parent/guardian, and, notice of the formal charge or charges will be included with the summons.[25] If the youth fails to appear for court an arrest warrant can be issued if probable cause for the offense is found.[26]

It is worth noting juvenile offenders may not be brought before the juvenile court in any form of restraint unless the court has previously ordered restraint after consideration of several factors.[27]

DIVERSION

If the offense is an infraction, misdemeanor, or gross misdemeanor, and the youth has never been in trouble with law before, or the offense involves prostitution or voyeurism in the second degree, the deputy prosecutor may be statutorily required to refer the case to juvenile diversion.[28] Even if not required, the deputy prosecutor still retains discretion to refer a charge to juvenile diversion in most cases, regardless of a juvenile's prior history.[29] There are two

[18] See, RCW 13.40.070.
[19] JuCR 7.3(a).
[20] See, JuCR 7.3(b); and, *State v. Dion*, 131 Wn. App. 739, 733, 129 P.3d 805, affirmed, 160 Wn.2d 605 (2007).
[21] RCW 13.40.040(2).
[22] RCW 13.40.040(5).
[23] JuCR 7.3(c), and, RCW 13.40.050(1)(a).
[24] RCW 13.40.100(1).
[25] RCW 13.40.100(2).
[26] JuCR 7.5(b); RCW 13.40.040(1)(a).
[27] JuCR 1.6.
[28] JuCR 6.1; RCW 13.40.070(6)&(7).
[29] JuCR 6.1; RCW 13.40.070(8).

exceptions where diversion is not available for any juvenile charged with: (1) A Sex Offense; or, (2) A Violent Offense, except for Assault in the Second Degree and Robbery in the Second Degree, which may still be diverted.[30] Otherwise the statutory requirements for diversion leave much to the discretion of the prosecuting attorney. Because of the widespread discretion involved, it is recommended the prosecutor have a set of local guidelines for what cases are appropriate for diversion.

Juvenile diversion is a statutorily authorized method of handling a minor juvenile offense without prosecution in juvenile court.[31] Diversion is designed to deflect juveniles away from the formal court process in order to reach a speedy and efficient resolution of a case and keep juvenile offenders out of institutional court prosecution.[32] Diversion is essentially a contract or agreement requiring a juvenile offender fulfill certain community based sanctions and conditions, usually in the form of community service work, counseling, and restitution.[33] The diversion unit may also refer the juvenile to community-based programs, restorative justice programs, mediation, or victim offender reconciliation programs.[34]

Cases referred to diversion must meet the minimum standard of probable cause prior to being referred.[35] After establishing probable cause the offense is referred to a juvenile diversion "unit", which essentially consists of a counselor or group of volunteer citizens on a juvenile diversion board.[36] In addition to a diversion unit, some counties may have a local "youth court" where youth volunteers, i.e., similar age peers, set the terms of a diversion contract after hearing the case in a model court-like setting.[37]

The diversion process takes place outside of a juvenile courtroom and judge, and involves advising a juvenile of the alleged offense and providing the opportunity to enter a diversion contract if appropriate.[38] The juvenile retains various due process rights, including the right to seek the advice of legal counsel prior to entering a diversion contract.[39] Diversion is not a requirement and may be rejected, either by the juvenile, or the diversion authority.[40] If rejected, the matter is referred back to the juvenile court.[41] Functionally speaking, this means the case goes back to the prosecutor's office for formal filing with the juvenile court.[42]

If accepted, the juvenile continues with diversion by completing sanctions and conditions meant to hold them accountable for their wrongdoing and teach them not to repeat the behavior. Sanctions and conditions in diversion are strictly community based and never include detention.[43] Once entered, a diversion "contract" must be completed within six months, except an additional six months can be added if necessary to pay off any restitution that remains

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[30] RCW 13.40.070(5).
[31] RCW 13.40.080; *State v. Ford*, 99 Wn. App. 682, 686, 995 P.2d 93 (2000).
[32] *State v. S.H.*, 102 Wn. App. 468, 477, 8 P.3d 1058 (2000).
[33] See, RCW 13.40.080(2); and, *State v. Michaelson*, 124 Wn.2d 364, 365, 878 P.2d 1206 (1994).
[34] RCW 13.40.070(11), and, RCW 13.40.080(10)&(14).
[35] RCW 13.40.080(1).
[36] RCW 13.40.020(11).
[37] RCW 13.40.580.
[38] See generally, RCW 13.40.080; JuCR 6.4.
[39] RCW 13.40.080(7)&(13).
[40] RCW 13.40.080(6)&(13); RCW 13.40.070(5)(b).
[41] Id.
[42] RCW 13.40.070(5)(b).
[43] RCW 13.40.080(2).

owing.[44] In the case a juvenile is unable to pay the monetary restitution; the diversion unit is allowed to convert the monetary amount to community service later.[45] There is an automatic extension of juvenile court jurisdiction in the event the juvenile turns eighteen after entering the diversion contract.[46] Upon completing the diversion agreement, the case is over and shows on the criminal record as a completed diversion. Diversions count as criminal history; but are not considered a "conviction" or "adjudication" of the case.[47] For kids who commit crimes under the age of 12, diversions do not require a finding of capacity (a finding the child knew the act was wrong). However, if the diversion is for an offense committed under the age of 12, the diversion will not count as criminal history without a court finding capacity.[48]

In some instances where an offense does not involve physical harm or high dollar damage, the diversion counselor can impose a "*counsel and release*" instead of a diversion, basically admonishing the child for the behavior and imposing any necessary treatment or counseling, instead of sanctions.[49] Because counsel and release does not involve a diversion agreement, it is not considered to have the same status and effect as a standard diversion.[50]

In the event the juvenile fails to complete a diversion agreement, the matter is returned to the prosecutor's office for formal charging in juvenile court, along with a formal notice and motion to terminate the diversion.[51] Diversion agreements remain valid unless and until a formal hearing is held and a judge orders the diversion terminated.[52] Theoretically, even if not completed in a timely manner, a diversion agreement remains subject to completion prior to termination provided there is no concern for the timeliness of completion.[53] A juvenile must be present at any termination hearing.[54] In the event the juvenile has since turned 18 years old, the notice and motion to terminate diversion is still filed with the juvenile court.[55]

Upon reaching the age of 21, juvenile court jurisdiction presumptively ends for purposes of terminating a diversion agreement but the diversion itself remains criminal history until sealed or destroyed by further court process to be discussed later.[56]

THE FORMAL CHARGING PROCESS

In instances where the case is not appropriate for diversion, or, where diversion is rejected or incomplete, a juvenile is referred to the juvenile court by the prosecuting attorney.[57] The deputy prosecutor may then choose to file a document called the "Information", with the juvenile court charging the alleged offense or offenses.[58] The Information provides the juvenile written notice

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[44] RCW 13.40.080(5).
[45] RCW 13.40.080(16).
[46] RCW 13.40.080(5)(a)&(15).
[47] RCW 13.40.020(8)(b).
[48] *State v. Haaby*, 51 Wn. App. 771, 774, 755 P.2d 189 (1988).
[49] RCW 13.40.080(14); *State v. W.S.*, 40 Wn. App. 835, 837, 700 P.2d 1192 (1985).
[50] See, 13.40.265(2)(a), and, Op.Atty.Gen., 1990, No. 10.
[51] RCW 13.40.080(7)(e)&(13); JuCR 6.6.
[52] RCW 13.40.080(7)(c); JuCR 6.6.
[53] Procedurally the termination motion can be withdrawn and the court cause number dismissed as a completed diversion.
[54] RCW 13.40.080(7); JuCR 6.6(e).
[55] RCW 13.40.080(5)&(15); JuCR 6.6(a).
[56] See, RCW 13.40.300(4).
[57] RCW 13.40.070(1)&(5)(d).
[58] RCW 13.40.070(3); JuCR 7.1.

of charge or charges filed against them.[59] Prior to filing, the deputy prosecutor must ensure the charge or charges are supported by sufficient evidence or "probable cause."[60] If no probable cause exists, the case may not be referred to the juvenile court; however, the prosecutor's office can request law enforcement furnish additional investigative work in order to establish sufficient evidence to file the case at a later date.

If the juvenile is currently on probation, in lieu of filing a new charge, the prosecutor's office may choose to use the current charge as a violation of the juvenile's probation.[61] However, a juvenile's criminal conduct can never be the basis for both a new charge and a violation of probation.[62]

III. JURISDICTION OF THE JUVENILE COURT

Put simply, the term "jurisdiction" refers to a court's power and authority to hear a case and to render judgment.[63] By constitutional mandate, superior courts in Washington State have both personal and subject matter jurisdiction over anyone who commits criminal offenses in the State regardless of age.[64] This is sometimes referred to as the superior court's "general jurisdiction."[65]

General jurisdiction or authority to hear a case is constitutional and can never be altered by legislative action or statute.[66] However, the legislature is given authority to establish statutory "procedures" regulating how a superior court exercises its general jurisdiction in certain cases, such as those involving juvenile offenders.[67]

THE "NATURE" OF JUVENILE COURT JURISDICTION

In Washington State, juvenile courts are a statutory *division* of superior court.[68] The Washington State Legislature has sole power to define the scope of that statutory division.[69] Pursuant to this statutory power, juvenile courts have "exclusive original jurisdiction" to hear and determine offender cases involving "juveniles" which, in most cases, will involve persons under the age of 18 years.[70] This is often referred to as "juvenile court jurisdiction", but one needs to understand the proper nature of statutory juvenile court jurisdiction in relation to a superior court's general jurisdiction so as not to confuse the two.[71]

Though by statute the juvenile courts have "exclusive original jurisdiction" over juvenile offender

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[59] RCW 13.40.070(4).
[60] RCW 13.40.070(1)(b).
[61] RCW 13.40.070(3).
[62] *State v. Brestoff*, 1 Wn. App. 2d 923, 929-30, 407 P.3d 1195 (2018); *State v. Tran*, 117 Wn. App. 126, 134, 69 P.3d 884 (2003).
[63] *State v. Werner*, 129 Wn.2d at 493, citing, *State ex rel. McGlothern v. Sup. Ct.,* 112 Wn. 501, 505, 192 P. 937 (1920).
[64] Washington State Constitution, Article IV, §6; RCW 2.08.010; *Dillenburg v. Maxwell*, 70 Wn.2d 331, 341, 413 P.2d 940 (1966).
[65] *State v. Golden*, 112 Wn. App. 68, 71, 47 P.3d 587, review denied, 148 Wn.2d 1005 (2003).
[66] *State v. Posey (II)*, 174 Wn.2d 131, 137, 272 P.3d 840 (2012), *citing*, *Blanchard v. Golden Age Brewing Co.*, 188 Wn. 396, 418, 63 P.2d 397 (1936).
[67] *Posey(II)* at 135-36.
[68] RCW 13.04.021; *Posey (II)* at 137; *Werner*, at 492.
[69] *State v. Watkins*, 191 Wn.2d 530, 546, 423 P.3d 830 (2018).
[70] RCW 13.04.030(1)(e); *Posey (II)* at 137.
[71] *Posey (II)* at 138.

matters, the Washington State Legislature never intended to create a separate court, nor to remove the superior court's constitutional authority to hear juvenile offender cases.[72] A juvenile court judge's power and authority to hear juvenile cases derives from the superior court's general constitutional jurisdiction; not from statute.[73] Similarly, jurisdiction to render judgment against a juvenile is derivative of the adult superior court's constitutional jurisdiction to act.[74]

The Washington State Constitution grants general jurisdiction over the superior court to hear and determine cases regardless of age.[75] On the other hand, the statutory "exclusive original jurisdiction" and other portions of RCW Title 13 set forth a procedural scheme codifying the unique due process to which a "juvenile" is entitled to receive in the juvenile court division of superior court.[76] Put another way, juvenile court jurisdiction is *statutory and procedural*, whereas a superior court's general jurisdiction is *constitutional and substantive*.[77]

Based on the "procedural" scheme in RCW Title 13, a superior court is statutorily required to hold a special "juvenile session" for any "juvenile" charged with an offense.[78] However, when juvenile court jurisdiction ends, and the procedural requirements of a juvenile session are no longer available, the adult superior court still retains general constitutional jurisdiction to hear and determine what had previously been deemed a juvenile case.[79]

Therefore, the definition of "juvenile" has specific components important in determining whether a youthful offender will be allowed the procedural benefits of juvenile jurisdiction, i.e., the statutory procedures under Title 13. While we normally associate anyone under 18 as a juvenile, age is only one factor in the proper determination of juvenile court jurisdiction.

JUVENILE COURT JURISDICTION IS PROCEDURAL

There is no constitutional right to have a matter heard in juvenile court.[80] Often persons under the age of 18 are sent to adult court because they are not "juveniles" as defined by statute. This includes persons under age 18 charged with an offense for which they are not entitled "juvenile" status[81] or for which a juvenile court determines they be treated as adults regardless of the offense.[82]

However, even those deemed "juveniles" by statute may ultimately be processed, adjudicated, convicted, and sentenced in adult superior court without ever stepping foot in a juvenile designated courtroom. Adult superior court always maintains constitutional jurisdiction to hear and determine juvenile matters, including the authority to find probable cause,[83] issue warrants of arrest,[84] conduct transfer hearings,[85] adjudicate offenses,[86] impose sentences,[87] and hear

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[72] *Posey (II)* at 140.
[73] *Id*.
[74] *State v. Golden*, 112 Wn. App. at 74.
[75] Washington State Constitution, Article IV, §6; RCW 2.08.010; *Dillenburg* at 341.
[76] RCW 13.40.010; *In Re Boot*, 130 Wn.2d 553, 570, 925 P.2d 964 (1996), *citing*, *Gault*, supra; *Werner* at 492-93; *State v. J.H.*, 96 Wn. App. 167, 173, 978 P.2d 1121, review denied, 139 Wn.2d 1014 (1999).
[77] See, *Dillenburg* at 352-53.
[78] *State v. Posey (II)*, 174 Wn.2d at 136-37 [citations omitted].
[79] *Id*; *Dillenburg v. Maxwell*, 70 Wn.2d at 342; See also, *State v. Golden*, 112 Wn. App. at 73.
[80] *State v. Watkins,* 191 Wn.2d 530, 536, 423 P.3d 830 (2018), *citing In Re Boot*, supra..
[81] RCW 13.04.030(1)(e)(v); *Watkins* at 538.
[82] RCW 13.40.110; *In Re Hegney*, 138 Wn. App. 511, 530-31, 158 P.3d 1193 (2007).
[83] *State v. Werner*, 129 Wn.2d at 494-95.
[84] *Id*.

collateral motions.[88]

The constitutional error in treating a juvenile as an adult is not a court's lack of "jurisdiction" or authority to act; rather the error is a lack of providing procedural *due process*, that is, the statutory process juveniles are entitled to under the law before being treated as adults. This statutory process primarily consists of a process for transferring a juvenile to adult court if necessary.[89] So long as the adult superior court ultimately provides appropriate due process to a juvenile matter, there is nothing constitutionally deficient with the action despite being heard outside of a designated juvenile courtroom. For example, the adult superior court can impose judgment and sentence on a juvenile offender even though juvenile court jurisdiction is lost due to the passage of time.[90] This includes absolute authority for the adult superior court to impose a juvenile sentence in adult court as necessary to take into consideration the circumstances of youth and other abnormalities.[91]

Even when a juvenile is erroneously tried and convicted outside of juvenile court, the superior court is never without constitutional power to determine the case and rectify any due process irregularities which may have occurred.[92]

Judicial decline hearings will be discussed later, but failing to provide a "juvenile" with a judicial decline hearing before sending the case to adult court is the common due process irregularity violating juvenile jurisdiction's procedural mandates.[93] A less common due process irregularity concerns intentional or negligent delay in getting a case charged before a juvenile turns 18 years old, resulting in a loss of the many benefits provided by juvenile jurisdiction.[94]

Outside of procedural due process, the only remaining constitutional requirement left for processing a juvenile in adult superior court is considering a juvenile's youthful age before imposing a sentence.[95] This constitutional restraint comes from the prohibition against cruel and unusual punishment.[96]

JUVENILE COURT JURISDICTION APPLIES TO "JUVENILE" OFFENDERS

With few exceptions, a juvenile court's exclusive jurisdiction only encompasses individuals who meet the definition of a "juvenile" and can be lost when the individual no longer meets the same definition. The term "juvenile" is defined by statute.[97] The statutory definition of a "juvenile"

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[85] *Dillenburg v. Maxwell*, 70 Wn.2d at 355.
[86] *State v. Posey (II)*, 174 Wn.2d at 140; *State v. Meridieth*, 144 Wn. App. 47, 51, 180 P.3d 867, review denied, 165 Wn.2d 1003 (2008).
[87] *Posey (II)* at 141.
[88] *State v. Golden*, 112 Wn. App. at 76.
[89] *Dillenburg* at 353.
[90] See, *Posey (II)* at 139 ["*If the superior court truly lacked jurisdiction to decide Posey's case, his conviction too would have been a nullity.*" *Id*.].
[91] *State v. Bassett*, 192 Wn.2d at 81, citing, *State v. Houston-Sconiers*, 188 Wn.2d 1, 21, 391 P.3d 409 (2017); *State v. Maynard*, 183 Wn.2d 253, 263, 351 P.3d 159 (2015), *citing*, *Posey II*, supra.
[92] *Dillenburg v. Maxwell,* 70 Wn.2d at 353-55.
[93] *Dillenburg* at 356; *Meridieth* at 58.
[94] *State v. Dixon*, 114 Wn.2d 857, 865, 792 P.2d 137 (1990) [citations omitted]; *State v. Calderon*, 102 Wn.2d 348, 353, 684 P.2d 1293 (1984).
[95] *State v. Watkins*, 191 Wn.2d at 545 (other citations omitted).
[96] *Id.*
[97] RCW 13.40.020(15).

contains two basic component parts, both of which must exist simultaneously:

1) **Under Age 18**: First, the person must be under the age of 18 years old; and,

2) **Not Subject to Adult Court**: Second, the person must not be subject to adult court, either because of the offense, or, because the juvenile has already been transferred to adult court by means of a remand or declination hearing in juvenile court.

A person who maintains *both* components *at the time of filing through adjudication* meets the definition of "juvenile" and is entitled to the procedural protections and benefits of the juvenile court process.[98] Anytime a person lacks any one of the two components, they are not a "juvenile" and, with limited exceptions to be discussed later, are not entitled to juvenile court jurisdiction.

IV. WHAT CONSTITUTES A "JUVENILE"?

UNDER AGE 18

The reference point for the person's age is *time of court proceedings*; not the time of the alleged offense.[99] Regardless of a person's age at the time they offend, they will not be considered a juvenile unless they are under age 18 and remain under 18 up to and through final adjudication of a case, when they are found guilty. If a person turns 18 years old anytime prior to adjudication, without more, they lose the ability to proceed with the case in juvenile court.[100] This means a juvenile can "age out" of the juvenile system regardless of their age at the time they offend.

There are three limited exceptions allowing an individual to remain in juvenile court despite reaching the age of 18 prior to adjudication. Though an individual over the age of 18 does meet the definition of "juvenile", the juvenile court may retain an extended or "residual" juvenile jurisdiction over the case so long as the case began in juvenile court prior to age 18.

The first exception allows the juvenile court to enter a written extension order extending jurisdiction for good cause prior to age 18.[101] The second exception provides an automatic extension whenever the case is adjudicated or diverted prior to age 18 for purposes of entering a disposition order, completing a diversion agreement, or supervising the juvenile post age 18.[102] The third and last exception involves a loss of proper exclusive adult jurisdiction under RCW 13.04.030(1)(e)(v), where a youthful offender in adult court pursuant to exclusive adult jurisdiction turns 18 but is later convicted of a non-exclusive adult offense, requiring disposition in juvenile court.[103] Any one of the three exceptions will retain juvenile court jurisdiction over an individual who is no longer a juvenile due to aging out of the juvenile court system.

NOT SUBJECT TO ADULT COURT

There are three ways in which a person under 18 can be subject to adult court, and thus not a

[98] *State v. Calderon*, 102 Wn.2d at 351-52.
[99] *Id*; *State v. Ring*, 54 Wn.2d 250, 253-54, 339 P.2d 461 (1959).
[100] *Calderon* at 354.
[101] RCW 13.40.300(3)(a).
[102] RCW 13.40.080(15) and 13.40.300(3)(b)&(c);
[103] RCW 13.04.030(1)(e)(v)(C)(II) and 13.40.300(3)(d).

"juvenile" for purposes of juvenile court jurisdiction. In some instances, the type of offense can necessitate the case be heard in adult court.[104] In other instances, a juvenile court judge might decide to transfer the case to adult court for certain offenses because it is either in the best interest of the juvenile or the public.[105] The following is a brief overview of these three exceptions to juvenile court jurisdiction, wherein a person under 18 may still be subject to the jurisdiction of the adult superior court.

Licensing Offenses by 16 and 17 Year Olds

The law presumes persons old enough to be licensed for certain activities ought to be held to the same responsibility as adults licensed do the same. This philosophy is reflected in how teenagers may be treated with various license infractions and offenses.[106] Persons age 16 or 17, who commit non-felony traffic, fish, boating, or game offenses or infractions, or any civil infraction (such as tobacco possession) must be charged in the appropriate district or municipal court the same as an adult would.[107] A common example would be a 16 or 17 year old driver accused of some traffic infraction or minor driving offense. Statutorily these teens are "under adult court jurisdiction" because they are subject to the courts of limited jurisdiction and thus not "juveniles" entitled to juvenile court.[108]

However, non-license offenses which arise out of the same license violation must otherwise be filed in juvenile court and the juvenile court then retains jurisdiction over all offenses.[109] For example, the juvenile court maintains jurisdiction over a 16-year-old charged with both driving on a suspended license and being a minor possession of alcohol during the same incident. Both the driving offense and the non-driving offense are properly filed in juvenile court.

Exclusive Adult Jurisdiction

Exclusive Adult Jurisdiction is a statutory provision mandating certain serious crimes committed by individuals 16 or 17 years of age be filed directly in adult court, without any judicial determination or appearance in juvenile court.[110] Jurisdiction of the adult court is "*charge based*" meaning the offense charged dictates statutory adult court jurisdiction.[111] The statute limits these situations to a 16 or 17 year old who commits the following "enumerated" offenses:

(1) A serious violent offense as defined in RCW 9.94A.030;

(2) A violent offense as defined in RCW 9.94A.030 and the juvenile has a criminal history consisting of: (I) One or more prior serious violent offenses; (II) two or more prior violent offenses; or (III) three or more of any combination of the following offenses: Any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's thirteenth birthday and prosecuted separately; or,

(3) Rape of a child in the first degree;[112]

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[104] See, RCW 13.04.030(1)(e)(v), and, RCW 13.04.030(1)(e)(iii).
[105] RCW 13.40.110; *State v. Holland*, 98 Wn.2d 507, 516, 656 P.2d 1056 (1983).
[106] *State v. Kravchuk*, 86 Wn. App. 276, 280, 936 P.2d 1161 (1997).
[107] RCW 13.04.030(1)(e)(iii).
[108] See, RCW 13.04.030(1)(e)(iii) and 13.40.020(15).
[109] RCW 13.04.030(1)(e)(iii).
[110] RCW 13.04.030(1)(e)(v); *State v. Watkins*, 191 Wn.2d at 541.
[111] *Watkins* at 541-42; See also, *State v. Mora*, 138 Wn.2d 43, 53, 977 P.2d 564 (1999).
[112] RCW 13.04.030(1)(e)(v)(A-C).

A person who falls under exclusive adult jurisdiction is not a "juvenile" because they are "under adult court jurisdiction" by statute, and thus, are not entitled to any hearing in juvenile court.[113] However, because exclusive adult jurisdiction is "*charge based*" the defendant must be transferred to juvenile court any time the charge is no longer one of the statutory enumerated offenses, which can happen by amending the charge to a non-enumerated offense, acquittal of the enumerated offense, or guilt on a lesser non-enumerated offense.[114] This is often referred to as a loss or failure of exclusive adult jurisdiction.

If the defendant is under age 18 at the time exclusive adult jurisdiction is lost, the case goes back to juvenile court as the defendant is no longer subject to adult court and is therefore a juvenile.[115] However, even where the defendant has turned 18 at the time exclusive adult jurisdiction is lost, the residual exception or extension of juvenile court jurisdiction discussed earlier allows the juvenile court to proceed with the case despite defendant's age. Under this exception, upon loss of exclusive adult jurisdiction post age 18, the case is returned to juvenile court *for sentencing* only, including a decline hearing, where the juvenile court may transfer the case back to adult court for sentencing under adult guidelines as necessary.[116]

Finally, exclusive adult jurisdiction may be waived in favor of juvenile court if agreed by all parties, including the prosecutor and court, in which case an exclusive adult jurisdiction charge is transferred to juvenile court for adjudication and final disposition.[117]

Judicial Transfer by Decline Hearing

Even when a case is properly in juvenile court, a juvenile court judge may choose to waive juvenile jurisdiction in favor of transferring the juvenile to adult court for eventual adjudication. This process is commonly referred to as a judicial "*decline*" or "*declination*" hearing.[118] Judicial decline hearings are both authorized and limited by statute.[119] Provided a decline hearing is authorized, a juvenile court is allowed an opportunity to "*decline*" its exclusive jurisdiction over the juvenile charged with certain offenses after holding a hearing where various factors are examined in light of the case and evidence before the court.

Declination to adult court is "*person based*" jurisdiction as the decision to transfer a juvenile to adult court is based on an examination of the personal traits of the child in addition to the offense committed. Unlike exclusive adult jurisdiction, the decision whether or not to transfer the juvenile to adult court is discretionary and must consider both the juvenile and his or her conduct.[120] The juvenile court first holds a "*decline hearing*" where the court hears evidence and considers the eight *Kent* factors prior to making a final decision.[121] At the end of the decline

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[113] RCW 13.40.020(15); *Watkins* at 541; *In Re Boot*, 130 Wn.2d at 563.
[114] RCW 13.04.030(1)(e)(v)(C)(II); *In Re Dalluge*, 152 Wn.2d at 782, citing, *Mora*, 138 Wn.2d at 49.
[115] *Id.*
[116] RCW 13.40.300(3)(d); RCW 13.04.030(1)(e)(v)(C)(II).
[117] RCW 13.04.030(1)(e)(v)(C)(III).
[118] RCW 13.40.110; See, *In Re Hegney*, 138 Wn. App. at 530-31.
[119] RCW 13.40.110; See, *State v. Watkins,* 191 Wn.2d at 538 (further citations omitted).
[120] *State v. M.A.,*106 Wn. App. 493, 504, 23 P.3d 508 (2001).
[121] Based on the case *Kent v. United States*, 383 U.S. 541, 565-67, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966), where a 16-year-old was sent to adult court on charges of burglary and robbery without first being afforded a judicial hearing in juvenile court. The U.S. Supreme Court held juveniles have a right to a hearing on decline with procedural regularity sufficient to satisfy basic requirements of due process and fairness, including representation by counsel and findings made on the record. This case sets out the famous eight factors which must be examined by a juvenile court when considering jurisdictional remand

hearing the court enters findings along with its decision to either decline the matter to adult court or retain jurisdiction in juvenile court based on either the best interest of the juvenile or public.[122]

Judicial decline hearings can be requested by any party by motion, including the court, however, by statute they can only be held when:

> (1) The respondent is 15 or older at the time of proceedings and is charged with a serious violent offense as defined by RCW 9.94A.030; or,
>
> (2) The respondent is 14 years or younger at the time of proceedings and is charged with Murder in the First or Second Degree.[123]

Unless waived by the court, a judicial decline hearing is mandatory anytime the respondent is charged with escape and respondent is already serving a minimum juvenile sentence to age twenty-one.[124]

By court rule the decline hearing should be held within 14 days after the date the charging document or "Information" is filed, unless the court finds good cause to extend the hearing to a later date.[125] However, there appears to be no consequence for failing to hold the hearing within 14 days as the decline statute, RCW 13.40.110, provides a decline hearing may be held anytime prior to hearing the merits of the case.[126]

After the decline hearing, assuming juvenile court jurisdiction is retained, the matter proceeds to arraignment in juvenile court. However, if juvenile jurisdiction is declined, the case is immediately transferred to adult court, where it remains regardless of the eventual outcome of the case.[127] Provided the juvenile is later found guilty of the charge declined, or of a greater offense, the juvenile will be considered an adult for any and all cases filed after the decline regardless of the juvenile's age or offense.[128] This is often referred to as "*once declined, always declined*" and is based on the judicial determination the individual can no longer be amendable to juvenile court jurisdiction based on *Kent* factors which examined his or her personal traits in addition to the charge.[129]

Parties may always waive the necessity for a decline hearing in favor of having a case proceed in juvenile court.[130] However, caution should be taken anytime there as an agreement to waive

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of any juvenile to adult court (commonly referred to as the "*Kent*" factors). *Id.* Washington State adopted use of the *Kent* criteria in *State v. Williams*, 75 Wn.2d 604, 607, 453 P.2d 418 (1969).

[122] *Kent* at 566; *State v. Holland*, 98 Wn.2d at 516.

[123] See, RCW 13.40.110(1)(a&b).

[124] RCW 13.40.110(2).

[125] JuCR 8.1(b).

[126] RCW 13.40.110(1); See also, *State v. Kennison*, 25 Wn. App. 396, 607 P.2d 877 (1980), which discusses the purpose of the 14 day rule in JuCR 8.1 being protection of adult speedy trial. *Kennison* at 398. However, since *Kennison*, the adult speedy trial rules have been amended to exclude proceedings in juvenile court. CrR 3.3(e)(7). Since decline hearings are a proceeding in juvenile court, adult speedy trial cannot begin until the decline hearing is complete, and, therefore, there can be no adult speedy trial violation for failing to hold the decline hearing within the 14 days specified by JuCR 8.1(b).

[127] *In Re Boot*, 130 Wn.2d at 563, citing, *State v. Sharon*, 100 Wn.2d 230, 231, 668 P.2d 584 (1983).

[128] RCW 13.40.020(15); *Sharon* at 231; *State v. Oreiro*, 73 Wn. App. 868, 871, 871 P.2d 666 (1994), citing, *Sharon*, supra.

[129] *Sharon, supra.*

[130] *Dalluge,* 152 Wn.2d at 780 fn. 3; *State v. Ramos*, 152 Wn. App. 684, 691, 217 P.3d 384 (2009).

a decline hearing in favor of sending a case to adult court. Waiving the necessity for a decline hearing and sending a case to adult court by stipulation of the parties, though allowed, must be done with extreme caution.[131] The necessity for a court hearing can never be waived if the juvenile court transfers a case to adult court as opposed to retaining juvenile jurisdiction.[132] Thus, any agreed transfer to adult court should at minimum entail a court hearing involving careful warnings to the juvenile, a consideration of the *Kent* factors, and, entry of written findings by the juvenile court, providing a decline hearing by stipulated facts, though the transfer to adult court is uncontested and agreed.[133]

IV. JUVENILE CAPACITY AND COMPETENCY

Often juveniles are of such a young age they should not be considered mentally able to grasp the wrongfulness of their actions. A child's ability to understand right versus wrong in relation to their criminal conduct committed before the age of 12 years is referred to as a juvenile's "capacity" to commit an offense.[134] On the other hand, regardless of age some juveniles have mental defects which prevent them from understanding court proceedings or assisting counsel in a case. A juvenile's ability to understand what is going on in court is referred to as "competency" to stand trial and is not dependent on age.[135]

JUVENILE CAPACITY

The term "capacity" has to do with juveniles charged with committing crimes under the age of 12 years old. "Capacity" refers to a child's ability to know whether a criminal act is "wrong".[136] Juveniles under the age of 8 years do not have the legal capacity to commit a crime because the Legislature presumptively deems them incapable to know the act is wrong. Juveniles between the age of 8 years and 12 years old are presumed to lack capacity, although the presumption may be overcome by an evidentiary hearing, wherein the prosecutor presents evidence establishing the child knew the act was wrong at the time it was committed.[137] This can include evidence the child had been previously punished, admitted knowledge, attempted to keep the act a secret, and other factors relevant to the issue.[138] This hearing is commonly

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[131] *State v. Saenz*, 175 Wn.2d 167, 283 P.3d 1094 (2012).

[132] *Id.* at 175 fn. 5 (The Court notes specific language in RCW 13.40.110 providing the juvenile court "*after a decline hearing*" may order the case transferred to adult court. If the language prohibits transfer of a case to adult court unless a decline hearing is held first, then transfer to adult court is not possible if the hearing is waived).

[133] The decline statute itself, RCW 13.40.110, indicates the juvenile court "shall consider the relevant reports, facts, opinions, and arguments presented by the parties and their counsel." RCW 13.40.110(3). Nothing in the decline statute requires a contested hearing or presentation of testimony and exhibits where facts are otherwise stipulated and accepted by the court. However, the Washington State Supreme Court has expressed concern over juveniles waiving their right to a contested decline hearing and the juvenile court ordering declination absent adherence to some of the procedural due process normally required in contested hearings. See, *Saenz,* at 179-80. So while waiver in favor of declination is allowed, it should at minimum be done through a stipulated facts decline hearing with careful consideration of due process rights of the juvenile and the integrity of the declination process. *Id*.; See also, *State v. Bailey*, 179 Wn. App. 433, 442-43, 313 P.3d 483 (2013), citing, *Saenz*, supra.

[134] RCW 9A.04.050; "Capacity" is traditionally known as the "infancy" defense. *State v. Q.D.*, 102 Wn.2d 19, 22-23, 685 P.2d 557 (1984).

[135] RCW 10.77.050; *In Re Fleming*, 142 Wn.2d 853, 861-62, 16 P.3d 610 (2001) (citations omitted).

[136] 9A.04.050; *Q.D.* at 24.

[137] RCW 9A.04.050; JuCR 7.6(e).

[138] *State v. J.P.S.*¸ 135 Wn.2d 34, 38-39 (1998).

referred to as a "capacity hearing" and should be held prior to arraignment in juvenile court.[139] If the juvenile is found to not have capacity, the case must be dismissed with prejudice.[140] If capacity is found, the case proceeds to arraignment as though the juvenile were over age 12.

Once a juvenile reaches the age of 12, they are presumed to have capacity, even if their mental ability is deemed to be that of a child less than 12.[141] Juvenile "capacity" should not be confused with a juvenile's "competency", a condition examinable at any age.

JUVENILE COMPETENCY

The term "competency" has to do with a juvenile's ability to understand the nature of the charges while in court and to assist his or her attorney in their defense.[142] "Competency" refers to the mental condition of the juvenile while they are sitting in court (as opposed to when they commit the crime, which is commonly referred to as "insanity" or "diminished capacity").

The issue of competency applies to juvenile cases.[143] Competency may be raised at any time during the case process and, unlike capacity, is not limited by a juvenile's age.[144] If any party, including the court, believes there may be a problem as to a juvenile's competency, they may request a court ordered psychiatric evaluation of the juvenile.[145] A hearing is then scheduled for the court to decide if the juvenile is or is not competent to stand trial. After reviewing the psychiatric evaluation, and upon hearing testimony and argument, if necessary, the court will decide the issue. If the court determines the juvenile is competent, the case proceeds through the normal juvenile justice process. The burden of proof for finding competency is by a preponderance of evidence, and rests on the party challenging competency, even if the person has earlier been found incompetent.[146]

Upon finding a juvenile incompetent, the court must stay the offense proceedings.[147] However, during the stay, the court may order the juvenile undergo mental health treatment until competency is restored.[148] If, at any time, it becomes apparent the juvenile will not regain competency, the court may simply dismiss any charges without prejudice and either proceed with civil commitment or release the juvenile from custody with no further action.[149]

V. JUVENILE COURT ARRAIGNMENT AND PRE-ADJUDICATION

ARRAIGNMENT HEARING

The arraignment hearing comes after the initial finding of probable cause by the court and can occur either directly after finding probable cause or at a later time if deemed necessary.[150] At

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[139] JuCR 7.6(e).
[140] See, *State v. Golden*, 112 Wn. App. at 74.
[141] *State v. Jamison*, 23 Wn. App. 454, 460, *review granted and affirmed,* 93 Wn.2d 794 (1979).
[142] *In Re Fleming*, 142 Wn.2d at 861 (2001).
[143] *State v. E.C.*, 83 Wn. App. 523, 530, 922 P.2d 152 (1996).
[144] RCW 10.77.060.
[145] Id.
[146] *State v. Coley*, 180 Wn.2d 543, 555, 326 P.3d 702 (2014).
[147] RCW 10.77.084(1)(a).
[148] RCW 10.77.084-088.
[149] Id.
[150] JuCR 7.3; JuCR 7.6; and, CrR 4.1.

the arraignment, the juvenile is notified by the court of the charges and the right to be represented by an attorney, which includes having an attorney provided at public expense if he or she can not afford one.[151] The court can have the juvenile enter a plea at the arraignment, though it is possible for the court to delay entry of the plea to a later date, especially where counsel is not present.[152]

A juvenile is not allowed to enter a plea of guilty unless they are represented by counsel at the time of the plea, or, until they waive the right to counsel in writing after having been advised of that right by a lawyer, who is either retained or appointed by the court.[153] In most circumstances, the juvenile will plead not guilty at the arraignment hearing to allow for further legal consultation and to give counsel time to review the case first.

A juvenile who is detained or subject to conditions of release must be arraigned within 14 days after the information is filed.[154] A detention hearing must be held within 72 hours of charges being filed (excluding weekends and holidays) to determine if continued detention is necessary.[155]

Factors affecting a juvenile's continued detention include the serious of the charge, prior offense history, potential danger to the community, and the likelihood the juvenile will fail to appear for further court hearings.[156] Typically the court is provided information pertaining to the juvenile's lifestyle, criminal history, prior court involvement and current offenses, before making a recommendation for detention or release. The court will decide whether to release the juvenile after hearing from all parties, including the prosecutor, defense attorney, parents or guardian, and, quite possibly, even the juvenile.

SPEEDY ADJUDICATION

Like adults, juveniles charged with an offense have the right to have their case resolved by the court in a timely fashion. This is especially important where the juvenile is held in detention pending the final determination. An adjudication hearing (also know as fact-finding or trial) must be set within 30 days after the date of the arraignment hearing if the juvenile is in detention, or 60 days if the juvenile is not in detention or has been released.[157]

After the arraignment hearing, there are many activities performed in preparation for the adjudication of the case, including discovery. Like adult court, both the prosecutor and the defense are required to disclose information about the case and witnesses with each other.[158] This includes the exchange of written information about the case, disclosing who will be called as witnesses, and interviewing prospective witnesses to learn their anticipated testimony at the adjudication hearing.

In addition to discovery, there may be court hearings scheduled before adjudication. At these hearings, motions may be brought by either the prosecutor or the defense regarding the

[151] RCW 13.40.140.
[152] See, JuCR 7.6; CrR 4.1(d).
[153] JuCR 7.15.
[154] JuCR 7.6(a).
[155] RCW 13.40.050(1)(b).
[156] RCW 13.40.040(2).
[157] JuCR 7.8.
[158] JuCR 1.4(b) and CrR 4.7.

admissibility of evidence, pre-adjudication release, or other matters of concern to the attorneys or the court, including competency.

PRE-ADJUDICATION DISMISSAL OPTIONS

Prosecutors should avoid dismissing cases based on promises of "good behavior" or "stipulated orders of continuance", where the juvenile promises to stay out of trouble for a time period or agrees to complete some kind of condition, such as counseling or paying restitution, without any formal supervision. There is no statutory authority for such agreements outside the formal supervision of either diversion or the court. In addition, unlike adults, juveniles are not entitled to formally compromise misdemeanor offenses by making retribution to the victim[159]. However, two common options remain available in some instances which allow a juvenile to avoid filing and adjudication of an offense. Both options require agreement by the parties and the court.

Re-Diversion

The first is sometimes referred to as a "re-diversion" or "in-court diversion". This option essentially puts a pending court case on hold while the juvenile can either complete a previously incomplete diversion, or to enter into a diversion agreement. Upon completion of the diversion agreement, the prosecutor dismisses the court case as a completed diversion instead of a conviction or adjudication.[160]

Therapeutic Courts

The second pre-adjudication option is use of various "specialty" or "therapeutic" courts.[161] These courts take on various names and formats, however, they are meant to address a spectrum of issues in a juvenile's life, including drug addiction and mental health issues.[162]

Therapeutic courts allow the offender's case is put on hold while he or she enters into the particular specialty court established for the particular condition.[163] These courts offer intensive supervision and treatment, usually involving a team of stakeholders composed of the judge, prosecutor, defense counsel, probation, and treatment providers.[164] The juvenile waives common rights and allows the treatment court to monitor his or her conditions and progress.[165]

The court usually meets weekly and the juvenile is required to not only attend court, but to comply with necessary conditions which may include routine urinalysis, anti-abuse, treatment, and therapy.[166]

Therapeutic courts offer the benefit and incentive of pre-adjudication dismissal upon completion.[167] A graduation ceremony is commonly held at the time charges are dismissed.[168]

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[159] See, RCW 13.04.450.
[160] Though there is no statutory authority for a re-diversion, there is nothing in RCW 13.40.080 which prohibits entering or completing a diversion contract while the same matter is pending court adjudication.
[161] RCW 2.30.020(6) and 2.30.010(4).
[162] RCW 2.30.010; *State v. Sykes*, 182 Wn.2d 168, 170, 339 P.3d 972 (2014).
[163] RCW 2.30.010.
[164] See, RCW 2.30.020.
[165] *Sykes* at 172.
[166] *Id* at 173.
[167] *Id.*
[168] *Id.*

Courts are given wide discretion to create individualized therapeutic courts within their local jurisdiction.[169] Not everyone will qualify however. Those not eligible include anyone charged with a serious violent offense, sex offense, offenses involving discharge or attempted discharge of a firearm, vehicular homicide, or, an offense involving death or substantial bodily harm.[170] While most therapeutic courts are pre-adjudication; there are a few jurisdictions in Washington State which operate post-adjudication or post-disposition therapeutic courts.

While participating in therapeutic courts, a juvenile may be sanctioned for violations of the program rules.[171] Sanctions may be gradual, beginning with simple verbal admonishment, continuing to community service work, confinement, up to potential termination from the therapeutic court.[172] Upon termination the juvenile will be found guilty by bench trial based on evidence provided by the state, whereupon sentence is imposed.[173] Though most therapeutic courts offer the benefit of pre-adjudication dismissal, a court may provide other creative incentives for participation.[174]

VI. ADJUDICATION OF A JUVENILE CASE

This section discusses various ways a juvenile might be "adjudicated" guilty or not guilty.

GUILTY PLEAS

Prior to adjudication, the prosecutor and defense attorney may discuss the possibility of a negotiated case settlement. The defense attorney may seek an agreement for the juvenile to plead guilty to the original charge(s), a lesser offense, a dismissal of certain charges, or a commitment from the prosecutor not to file additional charges. In addition to those resolutions, the parties may come to some agreement on the recommended terms of the disposition or sentence.

If a plea agreement is reached, the juvenile enters a plea of guilty as agreed, and signs a form declaring he or she is knowingly giving up various rights, including the right to a fact-finding hearing and the right to cross-examine witnesses therein.[175]

As with any adjudication, victims have the right to be present at any post-plea disposition hearing and to make statements expressing their opinions about the recommended sentence. The juvenile court may consider those opinions when deciding whether to accept the recommended terms of the sentence, or, may fashion a sentence entirely on its own. Upon the acceptance of the guilty plea, the judge will enter a finding of guilt against the juvenile and the case proceeds to disposition.

NON-PLEA ADJUDICATION FACT-FINDING

If a plea agreement is not reached, the case may go to pre-adjudication fact-finding or trial. Like adult court, prosecution and defense may subpoena and call witnesses to testify; however,

[169] RCW 2.30.010(3).
[170] RCW 2.30.030(3).
[171] *State v. Sykes*, 182 Wn.2d at 173.
[172] *Id.*
[173] *Id.*
[174] See, RCW 2.30.020(6).
[175] JuCR 7.7.

unlike adult court there are no *jury* trials in juvenile court.[176] During fact-finding, all parties have the right to adequate notice and discovery, to be heard, to confront witnesses, and to have findings based solely upon the evidence presented to the juvenile court judge.[177] The judge ultimately hears determines whether or not a juvenile is guilty of committing an offense after hearing the facts and argument of counsel. The prosecution is required to prove the case beyond a reasonable doubt.[178] The rules of evidence generally apply during fact-findings.[179]

Upon being found guilty a disposition hearing must be held within 14 days if the juvenile is in custody, or 21 days if the juvenile is released or remains out of detention.[180] The disposition hearing can be extended past the required time for good cause.[181] While disposition is pending, the court may order the probation department to complete a pre-dispositional report to provide the court with more information concerning the particular juvenile.[182]

VII. JUVENILE COURT DISPOSITION

DISPOSITION HEARING

A disposition hearing establishes consequences or sanctions for the juvenile's criminal behavior. Sanctions for juvenile offenses are based upon the seriousness of the current offense and prior offense history.[183]

There are two primary sanctions for juveniles by statute. The first is called "Local Sanctions" or "LS" which allows a court to keep the offender in the local community by imposing probation, community service, a fine, and local detention. Typically, local sanctions are set by the court at amounts much less than the maximum which can be imposed.

The second type of sanction involves a commitment to a secure rehabilitation facility operated by the Department of Children, Youth, and Families Rehabilitation (also known as "D.C.Y.F. Rehabilitation"), which is the functional equivalent of a secure prison for youth.[184] There are several different D.C.Y.F. Rehabilitation facilities and group homes throughout Washington State housing juvenile offenders.[185] Some of the facilities are high security with violent offenders who might otherwise escape and pose a threat to the community. Others are for less violent youth. D.C.Y.F. Rehabilitation also operates a number of group homes to transition youth who have served lengthy commitments. Sanctions which involve a commitment to D.C.Y.F. Rehabilitation are only imposed for felony offenses or upon finding local sanctions would be "manifestly unjust" due to the juvenile's prior history or the crime. The range of commitment to D.C.Y.F. Rehabilitation is based on the seriousness of the offense and the juvenile's prior criminal record. Standard D.C.Y.F. Rehabilitation commitment ranges begin at

[176] RCW 13.04.021(2).
[177] RCW 13.40.140(7).
[178] JuCR 7.11(a).
[179] JuCR 7.11(b).
[180] JuCR 7.12(a).
[181] Id.
[182] See, RCW 13.40.150(3)(c).
[183] RCW 13.40.0357.
[184] RCW 13.40.020(13); See, RCW Title 72.05 and 72.16 through 72.20.
[185] Id.

15 to 36 weeks of confinement and go all the way up to age 21 for most juveniles.[186] For some 16 & 17-year-olds charged with robbery first degree, drive by shooting, or alleged to be armed with a firearm during a violent offense, confinement can extend past age 21 up to age 25.[187]

DISPOSITION OPTIONS

There are essentially four main types of disposition a juvenile court can impose to provide sanctions to a juvenile found guilty of an offense:

Standard Range Disposition[188]

The standard range disposition option, or "option A", is available for any juvenile disposition following adjudication. The standard range sentence is the presumptive sentence for a juvenile court and must be determined in each case regardless of whether or not it is actually imposed.[189] The standard range is often used to compare and lend guidance to the court and parties in coming to a final determination as to an appropriate disposition option, regardless of whether or not the standard range is actually imposed as a disposition.

The standard range is calculated using a statutory grid where the seriousness of the offender's current offense is compared to his or her criminal record in order to arrive at a predetermined sentence range. Standard range can involve either local sanctions or a D.C.Y.F. Rehabilitation commitment.[190]

In order to determine the standard range disposition, the juvenile court uses a grid located in RCW 13.40.0357.[191] The grid appears below:

OPTION A
JUVENILE OFFENDER SENTENCING GRID
STANDARD RANGE

CURRENT OFFENSE CATAGORY	0	1	2	3	4 or more
A++	129 to 260 weeks for all category A++ offenses				
A+	180 weeks to age 21 for all category A+ offenses				
A	103-129 weeks for all category A offenses				
A-	30-40 weeks	52–65 weeks	80–100 weeks	103–129 weeks	103–129 weeks
B++	15-36 weeks	52–65 weeks	80–100 weeks	103–129 weeks	103–129 weeks
B+	15-36 weeks	15-36 weeks	52-65 weeks	80-100 weeks	103-129 weeks
B	LS	LS	15–36 weeks	15–36 weeks	52–65 weeks
C+	LS	LS	LS	15–36 weeks	15–36 weeks
C	LS	LS	LS	LS	15–36 weeks
D+	LS	LS	LS	LS	LS
D	LS	LS	LS	LS	LS
E	LS	LS	LS	LS	LS

PRIOR ADJUDICATIONS
NOTE: References in the grid to days or weeks mean periods of confinement. "LS" means "local sanctions" as defined in RCW 13.40.020.

[186] RCW 13.35.0357.
[187] RCW 13.40.300(2).
[188] Id (a.k.a. "OPTION A").
[189] See, RCW 13.40.160.
[190] RCW 13.40.0357.
[191] Id.

The horizontal axis of the grid (bottom) denotes the number of "prior adjudications" the juvenile has on his or her criminal history.[192] For purposes of determining this number prior misdemeanors, and gross misdemeanors in the criminal history count as a quarter point (.25 points) and felonies count as a full point (1.00 points).[193] Prior adjudication means the juvenile was adjudicated of the prior offense before committing the current offense.[194] However, a pending deferred disposition does not count as "criminal history" despite there being an adjudication of the case prior to entry of the deferred.[195]

The vertical axis of the grid (far left side) is the current "offense classification" which relates to each current offense the juvenile is pending a disposition. The offense classification is determined using a list of offenses also provided alongside the grid in RCW 13.40.0357 (hereinafter "the list").[196] A short portion of the list appears below (for illustration purposes):

13.40.0357 – Juvenile Sentencing Standards

Description and Offense Category

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
	Arson and Malicious Mischief	
A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C

The center column of the list contains a description for each offense, including the corresponding RCW citation. The list contains a number of different offenses organized by type, and, there is a catch all "other" classification at the end of the list for any offenses not specifically named. Each offense is given a classification which runs from "A++" down to "E" depending on the seriousness of the crime. In some instances, the offense category will vary depending on age at the time of the offense.

The far-left column sets forth the offense classification for either a principal or accomplice to the offense. The far-right column sets forth the offense classification for anticipatory forms of the particular offense as well as bail jump from the same.

Often the offense level for juvenile disposition will mirror the criminal offense level listed for the crime itself, but not always. For instance, Residential Burglary is a class B felony offense, and is also a "B" classification for purposes of determining the current offense in the grid. However, the offense level for juvenile disposition does not always mirror the criminal offense. In some instances, the disposition classification will differ. For instance, Vehicular Homicide is a class "A" felony offense but is a "B+" classification for purposes of determining the current offense in the grid for juvenile disposition. The "+" or "++" designation next to the letter typically indicates

[192] Id.
[193] Id.
[194] RCW 13.40.0357, and, 13.40.020(8)(a).
[195] RCW 13.40.020(8)(b) and *State v. S.M.G.,* ___ Wn. App. 2d ___, ___, 444 P.3d 46 (Wn. Ct. of Appeals Div. 1, July 1, 2019 - #79039-1).
[196] RCW 13.40.0357.

a crime against persons as opposed to one involving only property.

Once the prior adjudication score is calculated, and, the offense classification determined, the standard range is then calculated using the grid. The standard range sentence is determined at the box where the prior adjudication score intersects with the current offense category.

Each box in the grid contains either a designated number of "weeks" or the initials "LS". Again, "weeks" means commitment to a facility operated by D.C.Y.F. Rehabilitation[197] and the initials "LS" denotes "Local Sanctions" or a sentence involving community-based sanctions, rehabilitation, and confinement at the local juvenile detention facility.[198]

Local sanctions are imposed at the discretion of the court within the following limitations:

(1) *0 to 12 months of Community Supervision* – This is juvenile probation and consists of community-based sanctions, community-based rehabilitation and other reporting requirements.[199]

(2) *0 to 150 hours of Community Restitution* – This is basically community service work done at public or private organizations, or work crews.[200]

(3) *0 to 30 Days of Detention* – Confinement in a local detention facility.[201]

(4) *$0 to $500 Fine* – A dollar amount which can be imposed if necessary.[202]

One exception to calculating standard range for any offense involves Escape in the First and Second Degree, both of which have a set standard range depending on the existence of prior escape crimes. Those ranges are located at the very bottom of the list. [203]

Suspended Disposition

A suspended disposition option takes a disposition and suspends imposition in favor of another disposition which is community based and usually less onerous than the one suspended. The concept is basically a *carrot and stick* approach encouraging compliance with the suspended disposition by imposing lesser sanctions with knowledge any failure to comply could result in the suspended sentence being imposed.

There are only three different types of suspended dispositions allowed by law: (a) Option B;[204] (b) CMDA or Chemical Dependency/Mental Health Disposition Alternative;[205] and (c) SSODA or special sex offender disposition alternative.[206] Outside of these three suspended options, the

[197] RCW 13.40.0357.
[198] RCW 13.40.020(18).
[199] RCW 13.40.020(5).
[200] RCW 13.40.020(4).
[201] RCW 13.40.020(6).
[202] RCW 13.40.020(3)(a).
[203] See, RCW 13.40.0357.
[204] Id at "OPTION B".
[205] Id at "CHEMICAL DEPENDENCY/MENTAL HEALTH DISPOSITION OPTION"; See also 13.40.160(4) and 13.40.165.
[206] RCW 13.40.160(3); See also, 13.40.162.

juvenile court may not suspend or defer entry of a sentence.[207]

Once imposed, the juvenile is placed onto community supervision, often in lieu of a harsher sentence, or a commitment to one of the JA institutions. If the juvenile is ever found to be out of compliance with supervision or treatment, they can either be given detention time for the violation, or, have the disposition revoked and the suspended sentence imposed altogether.

There are only three suspended disposition options available to the juvenile court. Outside of the three statutory dispositions above, a court is never allowed to suspend or defer imposition of a juvenile's sentence.[208]

Manifest Injustice Disposition

The manifest injustice is basically an exceptional sentence outside the standard range, either greater or less. This disposition option requires the court to find the standard range disposition in a case will result in a manifestly unjust sentence which means the sentence is either too lenient or too harsh given the circumstances. [209] As a result the court is allowed to deviate from the standard sentence and impose any sanction it deems appropriate from no sanction up to commitment to RA to age 21, or possibly age 25 depending on the crime and age.

The sentencing court must support its finding of manifest injustice using "factors" found in statute or in case law.[210] The disposition order must set forth those portions of the record material to the manifest findings.[211] Manifest injustice dispositions are rare and should only be imposed in the most extreme circumstances.

Deferred Disposition

The deferred disposition option allows a juvenile court to delay the final disposition in certain cases post conviction and instead impose an alternative sanction of community supervision up to 12 months and other conditions the court deems necessary, including a mental health evaluation, substance abuse assessment, and follow-up.[212] The sanctions are similar to the standard range except the court is not allowed to impose initial detention time as a sanction in deferring disposition.[213] Upon successful completion of the deferral, the case is dismissed and the conviction "vacated" from the record, except a charge of First Degree Animal Cruelty, can only be dismissed; not vacated.[214] Again, pending deferred dispositions are not considered criminal history for purposes of calculating points.[215]

Deferred disposition is not available if the juvenile is charged with a sex or violent offense,[216] has a criminal history that includes a felony,[217] or, has two or more adjudications.[218] If the

[207] RCW 13.40.160(10); *State v. Bacon*, 190 Wn.2d 458, 468, 415 P.3d 207 (2018).
[208] RCW 13.40.160(10).
[209] RCW 13.40.0357, and, RCW 13.40.160(2).
[210] See, RCW 13.40.150(h) and (i); and, *State v. Strong*, 23 Wn. App. 789, 793 (1979).
[211] JuCR 7.12(e).
[212] RCW 13.40.127(5).
[213] *State v. I.K.C.*, 160 Wn. App. 660, 669, 248 P.3d 145 (2011).
[214] RCW 13.40.127(9)(b).
[215] RCW 13.40.020(8)(b) and *State v. S.M.G.,* ___ Wn. App. 2d at ___.
[216] RCW 13.40.127(1)(a).
[217] RCW 13.40.127(1)(b).
[218] RCW 13.40.127(1)(c) [note: they do not need to be "prior" adjudications].

juvenile otherwise qualifies, they must make the motion for deferred disposition at least 14 days prior to trial, unless the time be shortened for "good cause."[219] Once the motion is made there is a *strong* presumption the juvenile be granted the deferred disposition.[220]

Failure to abide by the conditions of the deferred disposition can in a simple probation violation with up to 30 days detention time imposed, or, the court can choose to revoke the deferral completely.[221] At the end of the supervision time, if the juvenile fails to complete the deferred disposition conditions the court must revoke the deferred disposition and impose a disposition for the conviction.[222] One exception allows the court to dismiss the case if the only violation is a failure to pay restitution and the juvenile has made a "good faith" effort to pay it.[223]

FINES & FEES

Other than the standard range local sanction fine of $0 to $500, there are only two additional fines which may be imposed on a juvenile as part of a disposition order. The first is a one time DNA collection fee of $100 for the first felony or other adjudicated offense requiring it.[224] The second is the Crime Victim's Compensation fee of $100 for any disposition involving a most serious offense under RCW 9.94A.030, or, a sex offense under RCW 9A.44.[225] For other offenses involving a victim which are not most serious or sex offenses, the juvenile court may also require up to 7 hours of Crime Victim's Community Service per offense.[226]

Aside from those mentioned the juvenile court may not impose fines or fees, including crime related fines set forth in statutes outside of RCW Title 13.[227] This includes fees for publicly funded counsel.[228] Furthermore, interest and fees for collecting legal financial obligations may not be charged on juvenile cases.[229]

RESTITUTION

As part of the disposition hearing, the court will order the juvenile to pay restitution if a victim has suffered a monetary loss related to the offense.[230] Restitution is part of a juvenile's disposition order, and can include reimbursement for uncharged offenses where agreed by the parties.[231] Where agreed by the victim of the offense, the restitution amount can be converted to community service work hours based on the prevailing minimum wage.[232]

Restitution must be determined within 180 days of disposition, unless continued beyond that time for good cause.[233] In the event the restitution is not accurate at the time it is ordered, the

[219] RCW 13.40.127(2).
[220] RCW 13.40.127(2).
[221] RCW 13.40.127(7)(b).
[222] RCW 13.40.127(9)(c).
[223] RCW 13.40.127(9)(a)(iv).
[224] RCW 43.43.7541.
[225] RCW 7.68.035(1)(b)
[226] RCW 7.68.035(1)(c).
[227] RCW 13.04.450.
[228] See, RCW 13.40.145, repealed by E2SSB 5564, Ch. 265, §39(1), 64th Legislature, Laws of 2015.
[229] RCW 10.82.090 and 36.18.016.
[230] RCW 13.40.190(1).
[231] RCW 13.40.190(1)(a).
[232] RCW 13.40.190(1)(d).
[233] RCW 13.40.150(3)(f).

juvenile court is able to later modify restitution, adjusting any amounts ordered if necessary, even beyond the 180 day limit.[234] However, after the 180 day time limit, the court may not add amounts for damages not originally ordered.[235]

The court will determine the amount, terms, and conditions of a juvenile's restitution obligation, which may include a payment plan for a period up to ten years if the court determines the juvenile does not have the means to pay over a shorter time period.[236] If there are co-respondents, the court can either order the restitution be joint-and-several, or, divide the restitution amount equally between co-respondents and each will be limited to paying their separate monetary obligation.[237]

The juvenile will make restitution payments directly to the clerk of the court who will then transfer the payments to the named victim. Jurisdiction for collecting restitution remains until at least 10 years from entry of the disposition or age 28, whichever comes earlier, and may be extended further by court order.[238]

In theory, restitution is paid as a condition of probation or parole, but this will often be limited due to the juvenile's age and his or her ability to earn money to pay the amount ordered. Because juveniles generally lack the ability to pay large amounts of restitution, the juvenile court is given wide discretion to remedy the problem. For instance, completed deferred dispositions, can be dismissed and vacated despite restitution owing so long as the juvenile made a good faith effort to pay it during supervision.[239] Upon dismissal of the deferred the court simply converts any remaining restitution to a civil order.[240] And, where the court later determines there is good cause, including a juvenile's inability to pay, the restitution amount ordered may be reduced or even eliminated altogether.[241]

PROBATION (COMMUNITY SUPERVISION)

In the case of local sanctions or other non-D.C.Y.F. Rehabilitation sentence, the court has the authority to place a juvenile on probation (community supervision) for up to one year for each offense. However, the sum total of supervision in a single disposition order cannot exceed two years.[242] While under the supervision of the juvenile court, the juvenile can be required to comply with conditions, such as curfews, payment of certain fines, completion of community service, contact restrictions, school attendance, counseling, and regular contact with a juvenile probation counselor.[243] The sum total of community service in a single disposition cannot exceed 200 hours, and the fines no more than $200.[244] Unlike the adult SRA which precludes conditions unrelated to the underlying offense, juvenile courts can impose any condition of

[234] RCW 13.40.190(1)(d).
[235] See, *State v. Chipman*, 176 Wn. App. 615, 622, 309 P.3 669 (2013).
[236] RCW 13.40.190(1)(d).
[237] RCW 13.40.190(1)(f).
[238] RCW 13.40.190(1), and, *In Re Brady*, 154 Wn. App. 189, 198 (2010).
[239] RCW 13.40.127(9).
[240] Id.
[241] RCW 13.40.190(1)(g) & (5).
[242] RCW 13.40.180(1)(c).
[243] RCW 13.40.020(5).
[244] RCW 13.40.180(1)(c).

supervision necessary to carry forth the intent of the JJA, even if the condition of supervision is unrelated to the charge for which they are on probation.[245]

If the juvenile violates any condition of community supervision, the probation officer may request a hearing for the court to hear evidence and determine if a violation of probation has taken place, typically called a "modification" hearing.[246] A "motion for modification" is filed setting forth the violation and a hearing held for the court to determine the same.[247] If the juvenile is found to have violated any condition of community supervision, the Court may order the juvenile to serve up to 30 days in detention for each violation.[248] If the juvenile has more than one case, supervision time runs concurrent among separate cause numbers, so it is technically possible a juvenile who violates probation could face consecutive 30 day sentences for the same violation.[249] While generally brought in reference to a violation of supervision, a violation is not necessary in order for the juvenile court to modify terms of a juvenile's current supervision.[250]

For conditions of supervision requiring no further law violations, it is not possible to have both a new charge and a violation of supervision based on a subsequent new law violation or charge.[251] The prosecutor must first choose to either charge the new case or to have it filed as a violation before proceeding further.[252] This includes the alleged violation of law as a condition of supervision as well as any consequential violations of supervision that result from the criminal conduct.[253] An example would be violating the supervision requirement to attend school with no expulsions, where a juvenile was suspended based on criminal conduct such as possessing drugs on campus. It is not possible to file both a violation based on the expulsion and a criminal charge for possession.[254]

However, in the event a prosecutor learns a new charge is already filed as a violation, the violation may dismissed or withdrawn in favor of filing the same and prosecuting it as a new offense.[255] In addition, a new offense can be both the basis for a violation as well as revocation of a suspended sentence or deferred disposition, as motion to revoke a suspended or deferred sentence is not the same as a probation violation or modification motion.[256] However, caution should be taken anytime the conduct which is the basis for a new charge is also used to move for revocation of a deferred or suspended sentence. While the State is entitled to move for revocation and pursue a new charge based on the same conduct; the court is not bound to revoke the deferral or suspension. Should the court choose to treat the violation as a modification and impose a sanction, the new charge would arguably need to be dismissed.[257]

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[245] *State v. H.E.J.,* 102 Wn. App. 84, 87, 9 P.3d 835 (2000) [sex deviancy evaluation can be ordered even for non-sex related crime], quoting, *State v. J.H.*, 96 Wn. App. 167, 181, 978 P.2d 1121, rev. denied, 139 Wn.2d 1014, 994 P.2d 849 (1999).
[246] RCW 13.40.200.
[247] Id.
[248] Id.
[249] RCW 13.40.180(2); and, *State v. Veazie*, 123 Wn. App. 392, 401, 98 P.3d 100 (2004).
[250] *State v. Hayden,* 72 Wn. App. 27, 30, 863 P.2d 129 (1993).
[251] *State v. Tran*, 117 Wn. App. at 134.
[252] *Id* at 133, citing, *State v. Murrin*, 85 Wn. App. 754, 758, 934 P.2d 728 (1997).
[253] *State v. Brestoff*, 1 Wn. App. 2d at 929-30.
[254] See, *Id*.
[255] *State v. Zimmerman*, 130 Wn. App. 122, 126, 121 P.3d 762 (2005).
[256] *In re J.J.*, 96 Wn. App. 452, 456-57, 980 P.2d 262 (1999).
[257] Since *J.J.,* supra, was decided the deferred disposition statute, RCW 13.40.127, has been amended to allow the court to treat a motion to revoke as a 13.40.200 modification (i.e., a probation violation). Therefore, should the court hear the motion to revoke a deferred disposition or any other suspended

D.C.Y.F. REHABILITATION PAROLE (POST RELEASE)

In the case of commitment to D.C.Y.F. Rehabilitation, the juvenile will typically serve a sentence at a secure facility within the commitment time imposed by the court; however, D.C.Y.F. Rehabilitation determines the location and length of stay within the commitment time authorized.[258]

After serving time at D.C.Y.F. Rehabilitation, the juvenile is released back to the community so long as the juvenile has served at least the minimum amount of time imposed by the court, and, D.C.Y.F. Rehabilitation otherwise determines they meet the qualifications for release based on their behavior and other considerations.[259] Following the juvenile's release parole services can be provided for a period of time, but generally not unless the juvenile is screened as high risk.

VIII. POST DISPOSITION

APPEALS

At any stage of the proceeding, the juvenile has the right to appeal a "final" order of the court.[260] Through his or her attorney, the juvenile will ask an appellate court to review the case to determine if all procedures and laws were followed during the prosecution of the case and to determine if there are any evidentiary or legal problems with the finding of guilt or, in some instances, the sentence imposed. The juvenile court may allow the juvenile to remain on conditions of release pending the appeal.[261]

Through his or her attorney, the juvenile will file a written brief discussing any issues or problems with the case. The prosecutor typically handles the appeal on behalf of the State and will submit a written response brief. Cases are heard by the appropriate division of the Washington State Court of Appeals. The case may be decided summarily, or, the Court of Appeals may choose to hear oral argument prior to rendering a final decision in the case.

Any decision by the Court of Appeals may be appealed, however the Washington State Supreme Court and other high courts are not generally required to hear the appeal, and, except in very limited circumstances, may decide on discretion to deny review, effectively terminating further appeal.

SEALING AND/OR DESTRUCTION OF JUVENILE RECORDS

The disclosure and disposition of juvenile records are governed by statute. RCW Title 13.50 provides for confidentiality of most juvenile records as well as granting certain persons the right

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sentence, and, find instead to treat the motion as a violation of supervision, the State would arguably be forced to dismiss any concurrent criminal prosecution, unable to charge the underlying criminal conduct based on the same rationale as *Tran*, *Murrin*, and, *Brestoff, supra*. The court in *Brestoff* implied the JJA abhors such double jeopardy: "[I]mposing two different punishments for the same conduct is not consistent with the intent of the Juvenile Justice Act of 1977 (JJA), chapter 13.40 RCW." *Brestoff*, 1 Wn. App. 2d at 929-30.

[258] RCW 13.40.185(2).

[259] RCW 13.40.210.

[260] See generally, RAP 2.2.

[261] JuCR 7.13.

to request their juvenile files be sealed or destroyed at some point provided they meet specified conditions in statute.[262] The purpose of the sealing laws is to allow juvenile offenders to overcome prejudice resulting from their crimes and to reintegrate them back into society.[263]

The statutory scheme delineates three types of juvenile record categories:

(1) The official juvenile *court* file;

(2) The *social* file (or probation file); and,

(3) Other records of any other "*juvenile justice or care agency*" involved with the case (i.e., prosecutor, law enforcement, etc.).[264]

Unless sealed (or destroyed), only the official juvenile court file is a public record and available for public inspection.[265] All records other than the official juvenile court file are confidential and may only be released under limited circumstances.[266] Because there is a specific statute governing juvenile records, the Public Records Act does not apply to those records.[267]

Because anything in the official juvenile court file is public, prosecutors and other juvenile justice or care agencies need to be cautious to only file paperwork with the court which comports with the definition in RCW 13.50.010(1)(c), which specifically includes charging documents, motions, memorandums, briefs, notices of court, service documents, trial lists, court findings and orders, agreements, judgments, decrees, notices of appeal, as well as documents prepared by the court clerk.[268] Documents not otherwise specified should not be filed in the court file, especially documents containing sensitive and confidential information, like a psycho-sexual or mental health evaluation.[269]

In most instances a juvenile offender record can become eligible for sealing or destruction by statute.[270] Sealing means a file is removed from the record and all matters surrounding the sealed record must be treated as though the matter never occurred.[271] Sealing does not eliminate the records from existence, it only removes those records from the data and recognition by juvenile justice agencies provided no further criminal behavior occurs.[272] On the other hand, destruction means the physical file and all records are destroyed permanently without ability to retrieve the material later.[273] Most juvenile records become eligible to seal at some point.[274] Generally, only diversion records are eligible for destruction.[275]

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[262] See, RCW 13.50.260 & .270.
[263] *Barr v. Snohomish Cty. Sherriff,* 4 Wn. App. 2d at 90 (citations omitted).
[264] RCW 13.50.010(1).
[265] RCW 13.50.050(2).
[266] RCW 13.50.050(3).
[267] *State v. A.G.S.*, 176 Wn. App. 365, 369, 309 P.3d 600 (2013) [other citations omitted].
[268] RCW 13.50.010(1)(c).
[269] *State v. A.G.S.*, 182 Wn.2d 273, 279, 340 P.3d 830 (2014).
[270] See, RCW 13.50.260&.270 generally.
[271] See, RCW 13.50.260(6) and GR 15(b)(4).
[272] See, RCW 13.50.260(8).
[273] See, RCW 13.50.270 and GR 15(b)(3).
[274] See, RCW 13.50.260 and GR 15(c) generally.
[275] See, RCW 13.50.270 and GR 15(h) generally.

Destruction of Diversion Records

All diversion records now become eligible for automatic destruction at age 18 provided the diversion is completed on or after June 7, 2018 and restitution is paid.[276]

For diversions completed prior to June 7, 2018, they only become eligible for destruction under two circumstances: First, if completed between June 12, 2008 and June 7, 2008, and with no further criminal history, a single diversion automatically becomes eligible for destruction at age 18 without any action on the part of the juvenile provided the juvenile is crime free for at least two years since completing the diversion, there are no pending charges, and full restitution is paid.[277]

Second, assuming a person's criminal history consists only of diversions, then all may be eligible for destruction by motion provided certain requirements are met.[278]

Even if not eligible for destruction, juvenile diversion records become eligible to seal along with other non-diversion records at some point.

Sealing of Juvenile Offender Records including Diversions

Most juvenile diversions, deferred dispositions, and adjudications eventually become eligible for sealing by motion.[279] Most become eligible within two years, provided no further crimes have been committed and other conditions are met.[280] Serious class "A" level felonies take up to five years to become eligible,[281] and any sex offense will not become eligible unless the juvenile is no longer required to register as a sex offender.[282] Rape in the First or Second Degree, and, Indecent Liberties by actual forcible compulsion can never be sealed regardless of registration status.[283]

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[276] RCW 13.50.270(1).

[277] See RCW 13.50.050(17), Sec. 1, Chapter 221, 60th Legislature, Laws of 2008, (S.H.B. 1141), re-codified and amended at RCW 13.50.270(1). Then RCW 13.50.270(1) was amended in 2018 by Sec. 5, Chapter 82, 65th Legislature, Laws of 2018, (S.S.B. 6550), in effect making all diversions subject to auto destruction provided they are completed and restitution paid on or after June 7, 2018. This new provision effectively struck out the older language on single auto-destruction of single diversions completed between June 12, 2008 and June 7, 2018. However, replacement of the older auto-destruction language did not eliminate the promise or need to destroy single diversions completed under the terms of the older auto-destruction provision. To the contrary, The Legislature never intended to change those requirements. Further, juvenile justice agencies are legally obliged to apply the law in effect at the time the kid completed the diversion. The reason is a juvenile's right to destruction *vested* when he or she completed the single diversion between June 12, 2008 and June 7, 2018. Once completed, the juvenile's right to automatic destruction of that diversion vests under the older law, even if not yet eligible by the time the law changes. See, *State v. T.K.*, 139 Wn.2d 320, 987 P.2d 63 (1999). See also, *State v. D.S.*, 128 Wn. App. 569, 115 P.3d 1047 (2005), holding the Legislature cannot divest someone of vested sealing rights by simply amending the sealing statute to remove otherwise vested eligibility. *D.S.* at 578. The Administrative Office of the Courts has confirmed it will continue to send out notification of those single diversions completed between June 12, 2008 and June 7, 2018 which qualify for auto-destruction under the terms of the older provision.

[278] RCW 13.50.270(3)(a).

[279] RCW 13.50.260(3).

[280] RCW 13.50.260(4)(b).

[281] RCW 13.50.260(4)(a).

[282] RCW 13.50.260(4).

[283] Id.

Payment of restitution to individual victims is contemplated before a juvenile may seal his or her record by motion; however, if the only remaining restitution owed is to an insurance company, the case must still be sealed.[284]

Aside from sealing by motion, there is also an administrative, or "automatic", sealing process as well. The administrative sealing process ensures most juvenile offender dispositions are sealed automatically, without the need for the offender's presence or a motion to seal later.

First, any dismissal of a juvenile case *with prejudice* or acquittal of charges now results in immediate sealing of the records in the case.[285] This includes any deferred dispositions at the time the case is dismissed and vacated, despite language in the deferred disposition statute that might otherwise leave the case unsealed until age 18.[286] Any deferred dispositions dismissed and vacated prior to June 7, 2012, remain excluded and must be sealed by motion.[287]

Second, standard dispositions entered on or after June 12, 2014 become eligible for routine administrative sealing beginning at age 18.[288] For any juvenile offense disposition, a sealing hearing must be set at the time of the disposition hearing, regardless of the offense.[289] The sealing hearing must be scheduled to take place within thirty (30) days after the latest of the juvenile's 18th birthday, or, the end of supervision assuming that is after age 18.[290]

At the time of the administrative sealing hearing the juvenile's case must be sealed unless there is an objection made or the court finds a compelling reason not to seal.[291] In the event the case is not sealed at the administrative sealing hearing, the court must set a contested hearing and provide proper timely notice of that contested hearing to the juvenile, his or her attorney, and the victim in the case to be considered.[292] At the contested hearing the court considers any circumstances that might compel it not to seal the case, including statutory prohibitions.[293]

At the conclusion of the contested hearing, the court must enter an order sealing the case unless the court determines sealing would not be appropriate under the circumstances.[294] Circumstances will include proof at the contested hearing that the juvenile did not complete the conditions of supervision, or, that the disposition involved one of the following offenses that prohibit administrative sealing: A most serious offense as defined by RCW 9.94A.030, a sex offense under RCW 9A.44, and/or a felony drug offense that is not felony possession of a controlled substance or forged prescription.[295] Even if administrative sealing is denied, the case can still be sealed by motion later on, assuming it qualifies.[296]

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[284] Id.
[285] RCW 13.50.260(2).
[286] *State v. H.Z.-B.*, 1 Wn. App. 2d 364, 372, 405 P.3d 1022, (2017).
[287] RCW 13.50.260(4)(c).
[288] RCW 13.50.260(1).
[289] RCW 13.50.260 (2); See also, *State v. Cofield*, 1 Wn. App. 2d 49, 58, 403 P.3d 943 (2017).
[290] Id.
[291] RCW 13.50.260(1)(a); *Cofield*, 1 Wn. App. 2d at 57.
[292] RCW 13.50.260(1)(a).
[293] See, *Cofield* at 57.
[294] RCW 13.50.260(1)(d).
[295] RCW 13.50.260(1)(c)(i)&(ii); *Cofield* 1 Wn. App. 2d at 56-57.
[296] RCW 13.50.260(3).

Once a juvenile record is sealed it is treated as though it never happened.[297] However, certain identification information held by the Washington State Patrol, such as fingerprints, remains exempt from sealing and destruction.[298] In addition, commission of further offenses after sealing a case can result in the records becoming unsealed again, but in some cases they remain subject to re-sealing later.[299]

[297] RCW 13.50.260(6).
[298] RCW 13.50.050(13).
[299] RCW 13.50.260(8).