

# THE JUVENILE OFFENDER SYSTEM IN WASHINGTON STATE 2021 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 19<sup>th</sup> 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.<sup>2</sup>

Beginning in the 19<sup>th</sup> 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.<sup>3</sup> Eventually these early forms of juvenile dockets and institutions led the way to the development of separate courts devoted entirely to juvenile cases.<sup>4</sup> The first juvenile court was established by statute in Illinois back in 1899 and juvenile courts are now common in all states today.<sup>5</sup>

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.<sup>6</sup> As such, the juvenile courts were created with the intention of protecting the interests of juveniles rather than prosecuting them in the same manner as adults.<sup>7</sup> The first statute creating a

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<sup>2</sup> See, *State v. S.J.C.*, 183 Wn.2d 408, 414-15, 352 P.3d 749 (2015) (citations omitted).

<sup>3</sup> *Id* at 415.

<sup>4</sup> *Id*.

<sup>5</sup> See, *In Re Gault*, 387 U.S. 1, 14, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).

<sup>6</sup> See, *S.J.C.* at 415.

<sup>7</sup> *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).

juvenile court in Washington State was enacted in 1913 and underwent no significant changes until enactment of the JJA in 1977.<sup>8</sup>

Today, juvenile courts in Washington State are a statutory division of superior court in general.<sup>9</sup> 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 primary focus in the adult system is punishment. On the other hand, the juvenile offender system treats juveniles differently by focusing on accountability *and rehabilitation* as equally important objectives.<sup>10</sup> A system based on rehabilitation and reduced punishment has to do with the fact children are less criminally culpable than adults.<sup>11</sup> They lack maturity and have an underdeveloped sense of responsibility.<sup>12</sup> They are deserved of less punishment than adults based on their distinct attributes, even when they commit terrible crimes.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> Those statutory guidelines establish a range of age-appropriate sentences for juvenile offenders, including various sanctions and conditions promoting accountability and rehabilitation.<sup>16</sup>

## 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.

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<sup>8</sup> S.J.C. at 415; See also, *Barr* at 89.

<sup>9</sup> 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).

<sup>10</sup> 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].

<sup>11</sup> *State v. Bassett*, 192 Wn.2d 67, 87, 428 P.3d 343 (2018).

<sup>12</sup> *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).

<sup>13</sup> *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).

<sup>14</sup> See, *Bassett* at 87 [further citations omitted].

<sup>15</sup> RCW 13.40.0357.

<sup>16</sup> *Id.*; *State v. Duncan*, 90 Wn. App. 808, 812, 960 P.2d 941, review denied, 136 Wn.2d 1015, 966 P.2d 1278 (1998).

## 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.<sup>17</sup> However, unlike adults, juvenile suspects will soon have a right to speak to an attorney prior to giving a statement or consenting to a search at the request of law enforcement. Beginning in January of 2022, law enforcement contacts with suspects under the age of 18 may be limited in instances where the contact would statutorily require the suspect waive constitutional rights.<sup>18</sup> This will restrict law enforcement's ability to obtain statements where the youth is either in custody or being detained based on probable cause they are involved in a criminal offense.<sup>19</sup> It will also restrict the ability of law enforcement to request any youth consent to a search of his or her belongings, regardless of their involvement in a possible offense.<sup>20</sup>

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 16- or 17-year-old 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.<sup>21</sup>

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. The decision to file criminal charges is always the responsibility of the prosecuting attorney's office, usually the "juvenile division" of that office.<sup>22</sup>

## PROBABLE CAUSE HEARING

Like adults, when a young offender is arrested and taken to juvenile detention a judge must decide whether probable cause for the arrest exists within 48 hours of the arrest in order to keep the youth in custody.<sup>23</sup> 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.<sup>24</sup>

In the unlikely event a judge finds probable cause does not exist, the young offender must be released from custody.<sup>25</sup> 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.<sup>26</sup>

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<sup>17</sup> RCW 13.40.040(1).

<sup>18</sup> See, ESHB 1140, Ch. 328, 67<sup>th</sup> Legislature, Laws of 2021, effective January 1, 2022, requiring law enforcement provide access to counsel before a suspect under age 18 waives his or her constitutional rights, primarily before giving statements or agreeing to a search.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> See, RCW 13.04.030(1)(e)(iii)&(v).

<sup>22</sup> See, RCW 13.40.070.

<sup>23</sup> JuCR 7.3(a).

<sup>24</sup> See, JuCR 7.3(b); and, *State v. Dion*, 131 Wn. App. 739, 733, 129 P.3d 805, affirmed, 160 Wn.2d 605 (2007).

<sup>25</sup> RCW 13.40.040(2).

<sup>26</sup> RCW 13.40.040(5).

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.<sup>27</sup> Otherwise the youth must be released from custody unconditionally. A detention hearing must take place within 72 hours after filing charges if the juvenile remains in custody.<sup>28</sup> The purpose of the detention hearing is so the juvenile court can decide whether the juvenile needs to be held in detention further.<sup>29</sup>

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.<sup>30</sup> 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.<sup>31</sup> The court will usually arraign the youth at the first court appearance. Should the youth fail to appear for court an arrest warrant can only be issued if probable cause for the offense is found and there is a finding that the individual circumstances of the failure to appear pose a serious threat to public safety.<sup>32</sup> Where no threat to public safety exists, the only remedy for non-appearance will be a re-summons, or to wait until the youth is arrested and in custody for a new offense.

It is worth noting juvenile offenders may not be brought before the juvenile court in any form of restraint unless the court first orders the restraint after consideration of several factors.<sup>33</sup>

### **DIVERSION**

Juvenile diversion is a statutorily authorized method of handling a minor juvenile offense without prosecution in juvenile court.<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup> The diversion unit may also refer the juvenile to community-based programs, restorative justice programs, mediation, or victim offender reconciliation programs.<sup>37</sup>

Cases referred to diversion must meet the minimum standard of probable cause prior to being referred.<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup>

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<sup>27</sup> JuCR 7.3(c), and, RCW 13.40.050(1)(a).

<sup>28</sup> RCW 13.40.050(1)(b).

<sup>29</sup> *Id.*

<sup>30</sup> RCW 13.40.100(1).

<sup>31</sup> RCW 13.40.100(2); JuCR 7.16.

<sup>32</sup> JuCR 7.5(b); RCW 13.40.040(1)(a).

<sup>33</sup> JuCR 1.6.

<sup>34</sup> RCW 13.40.080; *State v. Ford*, 99 Wn. App. 682, 686, 995 P.2d 93 (2000).

<sup>35</sup> *State v. S.H.*, 102 Wn. App. 468, 477, 8 P.3d 1058 (2000).

<sup>36</sup> See, RCW 13.40.080(2); and, *State v. Michaelson*, 124 Wn.2d 364, 365, 878 P.2d 1206 (1994).

<sup>37</sup> RCW 13.40.070(11), and, RCW 13.40.080(10)&(14).

<sup>38</sup> RCW 13.40.080(1).

<sup>39</sup> RCW 13.40.020(11).

<sup>40</sup> RCW 13.40.580.

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, voyeurism in the second degree, or certain cases involving distribution of teenage pornography, the deputy prosecutor may be statutorily required to refer the case to juvenile diversion.<sup>41</sup> 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.<sup>42</sup> Two exceptions will not allow for any diversion: Any juvenile charged with: (1) A sex offense; or, (2) A violent offense.<sup>43</sup> The exception for violent offenses, however, does not include Assault in the Second Degree and Robbery in the Second Degree, both which may still be diverted.<sup>44</sup> 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.

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.<sup>45</sup> The juvenile retains various due process rights, including the right to seek the advice of legal counsel prior to entering a diversion contract.<sup>46</sup> Diversion is not a requirement and may be rejected, either by the juvenile, or the diversion authority.<sup>47</sup> If rejected, the matter is referred back to the juvenile court.<sup>48</sup> Functionally speaking, this means the case goes back to the prosecutor's office for formal filing with the juvenile court.<sup>49</sup>

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.<sup>50</sup> 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 owing.<sup>51</sup> 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.<sup>52</sup>

There is an automatic extension of juvenile court jurisdiction in the event the juvenile turns eighteen after entering the diversion contract.<sup>53</sup> 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.<sup>54</sup> 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.<sup>55</sup>

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<sup>41</sup> JuCR 6.1; RCW 13.40.070(6)&(7).

<sup>42</sup> JuCR 6.1; RCW 13.40.070(8).

<sup>43</sup> RCW 13.40.070(5).

<sup>44</sup> *Id.*

<sup>45</sup> See generally, RCW 13.40.080; JuCR 6.4.

<sup>46</sup> RCW 13.40.080(7)&(13).

<sup>47</sup> RCW 13.40.080(6)&(13); RCW 13.40.070(5)(b).

<sup>48</sup> *Id.*

<sup>49</sup> RCW 13.40.070(5)(b).

<sup>50</sup> RCW 13.40.080(2).

<sup>51</sup> RCW 13.40.080(5).

<sup>52</sup> RCW 13.40.080(16).

<sup>53</sup> RCW 13.40.080(5)(a)&(15).

<sup>54</sup> RCW 13.40.020(8)(b).

<sup>55</sup> *State v. Haaby*, 51 Wn. App. 771, 774, 755 P.2d 189 (1988).

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.<sup>56</sup> 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.<sup>57</sup>

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.<sup>58</sup> Diversion agreements remain valid unless and until a formal hearing is held and a judge orders the diversion terminated.<sup>59</sup> 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.<sup>60</sup> A juvenile must be present at any termination hearing.<sup>61</sup> 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.<sup>62</sup>

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.<sup>63</sup>

### **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.<sup>64</sup> The deputy prosecutor may then choose to file a document called the “Information”, with the juvenile court charging the alleged offense or offenses.<sup>65</sup> The Information provides the juvenile written notice of charge or charges filed against them.<sup>66</sup> Prior to filing, the deputy prosecutor must ensure the charge or charges are supported by sufficient evidence or “probable cause.”<sup>67</sup> 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.<sup>68</sup> However, a juvenile’s criminal conduct can never be the basis for both a new charge and a violation of probation.<sup>69</sup>

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<sup>56</sup> RCW 13.40.080(14); *State v. W.S.*, 40 Wn. App. 835, 837, 700 P.2d 1192 (1985).

<sup>57</sup> See, 13.40.265(2)(a), and, Op.Atty.Gen., 1990, No. 10.

<sup>58</sup> RCW 13.40.080(7)(e)&(13); JuCR 6.6.

<sup>59</sup> RCW 13.40.080(7)(c); JuCR 6.6.

<sup>60</sup> Procedurally the termination motion can be withdrawn, and the court case number dismissed as a completed diversion.

<sup>61</sup> RCW 13.40.080(7); JuCR 6.6(e).

<sup>62</sup> RCW 13.40.080(5)&(15); JuCR 6.6(a).

<sup>63</sup> See, RCW 13.40.300(4).

<sup>64</sup> RCW 13.40.070(1)&(5)(d).

<sup>65</sup> RCW 13.40.070(3); JuCR 7.1.

<sup>66</sup> RCW 13.40.070(4).

<sup>67</sup> RCW 13.40.070(1)(b).

<sup>68</sup> RCW 13.40.070(3).

<sup>69</sup> *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).

### 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.<sup>70</sup> 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.<sup>71</sup> This is sometimes referred to as the superior court’s general jurisdiction.<sup>72</sup> General jurisdiction or the court’s authority to hear a case is constitutional and can never be altered by legislative action or statute.<sup>73</sup> However, the legislature is given authority to establish statutory procedures regulating how the superior court exercises its general jurisdiction in certain cases, such as those involving juvenile offenders.<sup>74</sup>

#### THE “NATURE” OF JUVENILE COURT JURISDICTION

In Washington State, juvenile courts are a statutory *division* of superior court.<sup>75</sup> The Washington State Legislature has sole power to define the scope of that statutory division.<sup>76</sup> 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.<sup>77</sup> 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.<sup>78</sup>

Though by statute the juvenile courts have “exclusive original jurisdiction” over juvenile offender 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.<sup>79</sup> A juvenile court judge’s power and authority to hear juvenile cases derives from the superior court’s general constitutional jurisdiction; not from statute.<sup>80</sup> Similarly, jurisdiction to render judgment against a juvenile is derivative of the adult superior court’s constitutional jurisdiction to act.<sup>81</sup>

The Washington State Constitution grants general jurisdiction over the superior court to hear and determine cases regardless of age.<sup>82</sup> 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.<sup>83</sup> Put another way, juvenile court jurisdiction is *statutory and procedural*,

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<sup>70</sup> *State v. Werner*, 129 Wn.2d at 493, citing, *State ex rel. McGlothorn v. Sup. Ct.*, 112 Wn. 501, 505, 192 P. 937 (1920).

<sup>71</sup> Washington State Constitution, Article IV, §6; RCW 2.08.010; *Dillenburg v. Maxwell*, 70 Wn.2d 331, 341, 413 P.2d 940 (1966).

<sup>72</sup> *State v. Golden*, 112 Wn. App. 68, 71, 47 P.3d 587, review denied, 148 Wn.2d 1005 (2003).

<sup>73</sup> *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).

<sup>74</sup> *Posey(II)* at 135-36.

<sup>75</sup> RCW 13.04.021; *Posey (II)* at 137; *Werner*, at 492.

<sup>76</sup> *State v. Watkins*, 191 Wn.2d 530, 546, 423 P.3d 830 (2018).

<sup>77</sup> RCW 13.04.030(1)(e); *Posey (II)* at 137.

<sup>78</sup> *Posey (II)* at 138.

<sup>79</sup> *Posey (II)* at 140.

<sup>80</sup> *Id.*

<sup>81</sup> *State v. Golden*, 112 Wn. App. at 74.

<sup>82</sup> Washington State Constitution, Article IV, §6; RCW 2.08.010; *Dillenburg* at 341.

<sup>83</sup> 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).