

**NO. 41842-8**

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, APPELLANT

v.

DAKOTA PENA-GAROUTTE, RESPONDENT

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Appeal from the Superior Court of Pierce County  
The Honorable Kitty-Ann van Doorninck, Judge

No. 09-8-01677-9

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**REPLY BRIEF OF APPELLANT**

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A. ISSUE PRESENTED.

Did the trial court act without statutory authority when it dismissed a deferred disposition when the respondent failed to pay a single dollar of restitution?

B. STATEMENT OF THE CASE.

Appellant's Statement of the Case may be found in the Appellant's Opening Brief.

C. ARGUMENT.

1. THE DEFERRED DISPOSITION STATUTE  
REQUIRES ENTRY OF DISPOSITION UPON A  
SHOWING OF RESPONDENT'S FAILURE TO  
COMPLY WITH THE TERMS OF THE DEFERRAL

The deferred disposition statutory language is clear: the plain meaning mandates imposition of restitution and full payment of restitution before a juvenile may receive the benefit of a deferred disposition.

"Payment of restitution under RCW 13.40.190 shall be a condition of community supervision under this section." RCW 13.40.127(5)<sup>1</sup>. The use of the word "shall" in a statute imposes a mandatory requirement unless a

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<sup>1</sup> The complete language of RCW 13.40.127 can be found in Appendix A.

contrary legislative intent is apparent. *State v. Q.D.*, 102 Wn.2d 19, 29-30, 685 P.2d 557 (1984), citing *State v. Bryan*, 93 Wn.2d 177, 183, 606 P.2d 1228 (1980).

Beyond simply requiring that restitution be ordered, the deferred disposition statute also mandates that full payment of restitution is required before there can be a successful completion of the deferred disposition. RCW 13.40.127(9) “At the conclusion of the period set forth in the order of deferral and **upon a finding by the court of full compliance with** conditions of supervision and **payment of full restitution**, the respondent's conviction shall be vacated and the court shall dismiss the case with prejudice.” RCW 13.40.127(9) (emphasis added). The plain language of the statute requires full payment of restitution before the respondent's conviction may be vacated and the case dismissed.

The respondent ignores the language within RCW 13.40.127(9), and focuses on the definition of “disposition” within RCW 13.40.127(7). The respondent argues that because a dismissal is a final resolution, it qualifies as a disposition within RCW 13.40.127(7). This interpretation requires the court to find that the legislative intent was to provide respondents with the benefits of a successfully completed deferred disposition regardless of whether a juvenile complies with the mandatory condition that restitution be fully paid. This is an absurd result.

The Washington Supreme Court held “that an unambiguous statute is not subject to judicial construction” and courts may not “add to or subtract from the clear language of a statute . . . unless the addition or subtraction of language is imperatively required to make the statute rational.” *State v. Watson*, 146 Wn.2d 947, 955, 51 P.3d 66 (2002). Statutes should not be interpreted in ways that result “in unlikely, absurd, or strained consequences.” *Id.*

If the respondent can get the benefit of having the conviction vacated and the case dismissed without a finding of full compliance, then section nine is superfluous. Furthermore, this interpretation makes five other sections within the Juvenile Justice Act (JJA) ambiguous.<sup>2</sup>

“Disposition” is a term of art, and means a juvenile sentence for a criminal offense. RCW 13.40.130(2)<sup>3</sup> (“If the respondent pleads guilty, the court may proceed with disposition or may continue the case for a dispositional hearing.”)

In addition to RCW 13.40.130, which specifically refers to disposition as sentence, Attachment A lists out five more JJA provisions addressing the meaning of disposition. RCW 13.40.150 sets out the procedure and the factors to be considered during a disposition hearing.

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<sup>2</sup> The complete language of these five JJA provisions can be found in Appendix B: RCW 13.40.150, 13.40.160, 13.40.165, 13.40.180, 13.40.185, and 13.40.190.

RCW 13.40.160 sets out the standard ranges for disposition orders and the rights of appeal. RCW 13.40.165 sets out the chemical dependency disposition alternative. RCW 13.40.167 sets out the mental health disposition alternative. RCW 13.40.180 sets out the presumption that multiple terms imposed for multiple offenses shall run consecutive. RCW 13.40.185 sets out the conditions when a juvenile is sent to a juvenile rehabilitation administration facility. RCW 13.40.190 sets out the procedure for imposing restitution as a condition of disposition. Every single statute included in Attachment A refers to disposition as sentence, none of these JJA sections equate disposition with dismissal.

Additionally, the Juvenile Court Rules (JuCR) also expressly refer to “disposition” as sentence. Specifically, JuCR 7.12<sup>4</sup> governs the procedure at a “Disposition Hearing.” JuCR 7.12(b) actually cites to the court rule for adult sentencing hearings: “At the conclusion of the disposition hearing, the court shall, in accordance with CrR 7.2(b), advise the juvenile of the right to appeal, including when applicable the right to appeal a sentence based upon a finding of manifest injustice.” CrR 7.2(b) is the adult court rule which provides the “Procedure at Time of Sentencing.”

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<sup>3</sup> The complete language of RCW 13.40.130 can be found in Appendix C.

<sup>4</sup> The complete language of JuCR 7.12 can be found in Appendix D.

Assuming that a dismissal with prejudice could be considered a disposition under the terms of the JJA, the respondent further argues that the mandatory requirement that restitution be fully paid is actually discretionary because the courts have broad discretion to set the conditions of supervision. To support this argument, the respondent relies on the Division One Court of Appeals decision in *State v. J.A.*, 105 Wn. App. 879, 20 P.2d 487 (2001).

In *J.A.*, the juvenile violated the deferred disposition condition of community supervision requiring law abiding behavior during the deferral period. *Id.* This Court previously considered the holding in *J.A.* and found 1) the plain language of RCW 13.40.127 is clear and 2) there are limits to the trial court's discretion. *State v. I.K.C.*, 160 Wn. App. 660, 668-69, 248 P.3d 145 (2011):

it is clear that the plain language of the deferred disposition statute does not allow a juvenile court to impose any conditions that the court deems appropriate. Rather, the statute allows the court to place the juvenile under "community supervision" and impose "any conditions of supervision that it deems appropriate." RCW 13.40.127(5).

Just as community supervision is a mandatory requirement, so is full payment of restitution. RCW 13.40.127(5); RCW 13.40.127(9).

Finally, the respondent's argument that dismissal was appropriate "because it stopped the state's losses from endless and useless future court

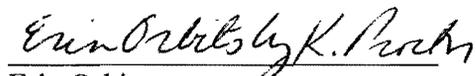
dates” assumes the respondent would never be able to pay a single dollar of restitution and completely ignores the impact on the only innocent party in this case: the victims. Brief of Respondent, page 7.

D. CONCLUSION.

The State respectfully requests that the Court reverse the trial court’s dismissal of the deferred disposition, revoke the deferred disposition for failure to pay a single dollar of restitution, and remand this case for imposition of sentence.

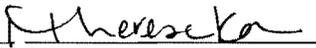
DATED: October 3, 2011.

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Certificate of Service:

The undersigned certifies that on this day she delivered by  U.S. mail and/or ABC-LMI delivery to the attorney of record for the respondent and respondent c/o his or her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

10.3.11   
Date Signature

## **APPENDIX “A”**



West's Revised Code of Washington Annotated Currentness  
Title 13. Juvenile Courts and Juvenile Offenders (Refs & Annos)  
Chapter 13.40. Juvenile Justice Act of 1977 (Refs & Annos)  
→ **13.40.127. Deferred disposition**

(1) A juvenile is eligible for deferred disposition unless he or she:

- (a) Is charged with a sex or violent offense;
- (b) Has a criminal history which includes any felony;
- (c) Has a prior deferred disposition or deferred adjudication; or
- (d) Has two or more adjudications.

(2) The juvenile court may, upon motion at least fourteen days before commencement of trial and, after consulting the juvenile's custodial parent or parents or guardian and with the consent of the juvenile, continue the case for disposition for a period not to exceed one year from the date the juvenile is found guilty. The court shall consider whether the offender and the community will benefit from a deferred disposition before deferring the disposition.

(3) Any juvenile who agrees to a deferral of disposition shall:

- (a) Stipulate to the admissibility of the facts contained in the written police report;
- (b) Acknowledge that the report will be entered and used to support a finding of guilt and to impose a disposition if the juvenile fails to comply with terms of supervision; and
- (c) Waive the following rights to: (i) A speedy disposition; and (ii) call and confront witnesses.

The adjudicatory hearing shall be limited to a reading of the court's record.

(4) Following the stipulation, acknowledgment, waiver, and entry of a finding or plea of guilt, the court shall defer entry of an order of disposition of the juvenile.

(5) Any juvenile granted a deferral of disposition under this section shall be placed under community supervision. The court may impose any conditions of supervision that it deems appropriate including posting a probation bond. Payment of restitution under RCW 13.40.190 shall be a condition of community supervision under this section.

The court may require a juvenile offender convicted of animal cruelty in the first degree to submit to a mental health evaluation to determine if the offender would benefit from treatment and such intervention would promote the safety of the community. After consideration of the results of the evaluation, as a condition of community supervision, the court may order the offender to attend treatment to address issues pertinent to the offense.

(6) A parent who signed for a probation bond has the right to notify the counselor if the juvenile fails to comply with the bond or conditions of supervision. The counselor shall notify the court and surety of any failure to comply. A surety shall notify the court of the juvenile's failure to comply with the probation bond. The state shall bear the burden to prove, by a preponderance of the evidence, that the juvenile has failed to comply with the terms of community supervision.

(7) A juvenile's lack of compliance shall be determined by the judge upon written motion by the prosecutor or the juvenile's juvenile court community supervision counselor. If a juvenile fails to comply with terms of supervision, the court shall enter an order of disposition.

(8) At any time following deferral of disposition the court may, following a hearing, continue the case for an additional one-year period for good cause.

(9) At the conclusion of the period set forth in the order of deferral and upon a finding by the court of full compliance with conditions of supervision and payment of full restitution, the respondent's conviction shall be vacated and the court shall dismiss the case with prejudice, except that a conviction under RCW 16.52.205 shall not be vacated.

(10)(a) Records of deferred disposition cases vacated under subsection (9) of this section shall be sealed no later than thirty days after the juvenile's eighteenth birthday provided that the juvenile does not have any charges pending at that time. If a juvenile has already reached his or her eighteenth birthday before July 26, 2009, and does not have any charges pending, he or she may request that the court issue an order sealing the records of his or her deferred disposition cases vacated under subsection (9) of this section, and this request shall be granted. Nothing in this subsection shall preclude a juvenile from petitioning the court to have the records of his or her deferred dispositions sealed under RCW 13.50.050 (11) and (12).

(b) Records sealed under this provision shall have the same legal status as records sealed under RCW 13.50.050.

CREDIT(S)

[2009 c 236 § 1, eff. July 26, 2009; 2004 c 117 § 2, eff. July 1, 2004; 2001 c 175 § 3; 1997 c 338 § 21.]

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## **APPENDIX “B”**

**C**

West's Revised Code of Washington Annotated Currentness

Title 13. Juvenile Courts and Juvenile Offenders (Refs & Annos)

Chapter 13.40. Juvenile Justice Act of 1977 (Refs & Annos)

→ **13.40.150. Disposition hearing--Scope--Factors to be considered prior to entry of dispositional order**

(1) In disposition hearings all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though such evidence may not be admissible in a hearing on the information. The youth or the youth's counsel and the prosecuting attorney shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports when such individuals are reasonably available, but sources of confidential information need not be disclosed. The prosecutor and counsel for the juvenile may submit recommendations for disposition.

(2) For purposes of disposition:

(a) Violations which are current offenses count as misdemeanors;

(b) Violations may not count as part of the offender's criminal history;

(c) In no event may a disposition for a violation include confinement.

(3) Before entering a dispositional order as to a respondent found to have committed an offense, the court shall hold a disposition hearing, at which the court shall:

(a) Consider the facts supporting the allegations of criminal conduct by the respondent;

(b) Consider information and arguments offered by parties and their counsel;

(c) Consider any predisposition reports;

(d) Consult with the respondent's parent, guardian, or custodian on the appropriateness of dispositional options under consideration and afford the respondent and the respondent's parent, guardian, or custodian an opportunity to speak in the respondent's behalf;

(e) Allow the victim or a representative of the victim and an investigative law enforcement officer to speak;

(f) Determine the amount of restitution owing to the victim, if any, or set a hearing for a later date not to exceed one hundred eighty days from the date of the disposition hearing to determine the amount, except that the court may continue the hearing beyond the one hundred eighty days for good cause;

(g) Determine the respondent's offender score;

(h) Consider whether or not any of the following mitigating factors exist:

(i) The respondent's conduct neither caused nor threatened serious bodily injury or the respondent did not contemplate that his or her conduct would cause or threaten serious bodily injury;

(ii) The respondent acted under strong and immediate provocation;

(iii) The respondent was suffering from a mental or physical condition that significantly reduced his or her culpability for the offense though failing to establish a defense;

(iv) Prior to his or her detection, the respondent compensated or made a good faith attempt to compensate the victim for the injury or loss sustained; and

(v) There has been at least one year between the respondent's current offense and any prior criminal offense;

(i) Consider whether or not any of the following aggravating factors exist:

(i) In the commission of the offense, or in flight therefrom, the respondent inflicted or attempted to inflict serious bodily injury to another;

(ii) The offense was committed in an especially heinous, cruel, or depraved manner;

(iii) The victim or victims were particularly vulnerable;

(iv) The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;

(v) The current offense included a finding of sexual motivation pursuant to RCW 13.40.135;

(vi) The respondent was the leader of a criminal enterprise involving several persons;

(vii) There are other complaints which have resulted in diversion or a finding or plea of guilty but which are not included as criminal history; and

(viii) The standard range disposition is clearly too lenient considering the seriousness of the juvenile's prior adjudications.

(4) The following factors may not be considered in determining the punishment to be imposed:

(a) The sex of the respondent;

(b) The race or color of the respondent or the respondent's family;

(c) The creed or religion of the respondent or the respondent's family;

(d) The economic or social class of the respondent or the respondent's family; and

(e) Factors indicating that the respondent may be or is a dependent child within the meaning of this chapter.

(5) A court may not commit a juvenile to a state institution solely because of the lack of facilities, including treatment facilities, existing in the community.

CREDIT(S)

[1998 c 86 § 1; 1997 c 338 § 24; 1995 c 268 § 5; 1992 c 205 § 109; 1990 c 3 § 605; 1981 c 299 § 12; 1979 c 155 § 67; 1977 ex.s. c 291 § 69.]

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Title 13. Juvenile Courts and Juvenile Offenders (Refs & Annos)

Chapter 13.40. Juvenile Justice Act of 1977 (Refs & Annos)

→ **13.40.160. Disposition order--Court's action prescribed--Disposition outside standard range--Right of appeal--Special sex offender disposition alternative**

(1) The standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357.

(a) When the court sentences an offender to a local sanction as provided in RCW 13.40.0357 option A, the court shall impose a determinate disposition within the standard ranges, except as provided in subsection (2), (3), (4), (5), or (6) of this section. The disposition may be comprised of one or more local sanctions.

(b) When the court sentences an offender to a standard range as provided in RCW 13.40.0357 option A that includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement, except as provided in subsection (2), (3), (4), (5), or (6) of this section.

(2) If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option D of RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230 by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230.

(3) If a juvenile offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9A.030, and has no history of a prior sex offense, the court may impose the special sex offender disposition alternative under section 3 of this act.

(4) If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose the disposition alternative under RCW 13.40.165.

(5) If a juvenile is subject to a commitment of 15 to 65 weeks of confinement, the court may impose the disposition alternative under RCW 13.40.167.

(6) When the offender is subject to a standard range commitment of 15 to 36 weeks and is ineligible for a suspended disposition alternative, a manifest injustice disposition below the standard range, special sex offender disposition alternative, chemical dependency disposition alternative, or mental health disposition alternative, the court in a county with a pilot program under \*RCW 13.40.169 may impose the disposition alternative under \*RCW 13.40.169.

(7) RCW 13.40.193 shall govern the disposition of any juvenile adjudicated of possessing a firearm in violation of RCW 9A.41.040(2)(a)(iii) or any crime in which a special finding is entered that the juvenile was armed with a firearm.

(8) RCW 13.40.308 shall govern the disposition of any juvenile adjudicated of theft of a motor vehicle as defined under RCW 9A.56.065, possession of a stolen motor vehicle as defined under RCW 9A.56.068, taking a motor vehicle without permission in the first degree under RCW 9A.56.070, and taking a motor vehicle without permission in the second degree under RCW 9A.56.075.

(9) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(10) Except as provided under subsection (3), (4), (5), or (6) of this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the court shall not suspend or defer the imposition or the execution of the disposition.

(11) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

#### CREDIT(S)

[2011 c 338 § 2, eff. July 22, 2011; 2007 c 199 § 14, eff. July 22, 2007. Prior: 2004 c 120 § 4, eff. July 1, 2004; 2004 c 38 § 11, eff. July 1, 2004; prior: 2003 c 378 § 3, eff. July 27, 2003; 2003 c 53 § 99, eff. July 1, 2004; 2002 c 175 § 22; 1999 c 91 § 2; prior: 1997 c 338 § 25; 1997 c 265 § 1; 1995 c 395 § 7; 1994 sp.s. c 7 § 523; 1992 c 45 § 6; 1990 c 3 § 302; 1989 c 407 § 4; 1983 c 191 § 8; 1981 c 299 § 13; 1979 c 155 § 68; 1977 ex.s. c 291 § 70.]

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Title 13. Juvenile Courts and Juvenile Offenders (Refs & Annos)

Chapter 13.40. Juvenile Justice Act of 1977 (Refs & Annos)

→ **13.40.165. Chemical dependency disposition alternative**

(1) The purpose of this disposition alternative is to ensure that successful treatment options to reduce recidivism are available to eligible youth, pursuant to RCW 70.96A.520. The court must consider eligibility for the chemical dependency disposition alternative when a juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, other than a first time B+ offense under chapter 69.50 RCW. The court, on its own motion or the motion of the state or the respondent if the evidence shows that the offender may be chemically dependent or substance abusing, may order an examination by a chemical dependency counselor from a chemical dependency treatment facility approved under chapter 70.96A RCW to determine if the youth is chemically dependent or substance abusing. The offender shall pay the cost of any examination ordered under this subsection unless the court finds that the offender is indigent and no third party insurance coverage is available, in which case the state shall pay the cost.

(2) The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of drug-alcohol problems and previous treatment attempts, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the examiner's information.

(3) The examiner shall assess and report regarding the respondent's relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(a) Whether inpatient and/or outpatient treatment is recommended;

(b) Availability of appropriate treatment;

(c) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;

(d) Anticipated length of treatment; and

(e) Recommended crime-related prohibitions.

(4) The court on its own motion may order, or on a motion by the state or the respondent shall order, a second

examination. The evaluator shall be selected by the party making the motion. The requesting party shall pay the cost of any examination ordered under this subsection unless the requesting party is the offender and the court finds that the offender is indigent and no third party insurance coverage is available, in which case the state shall pay the cost.

(5)(a) After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this chemical dependency disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section.

(b) If the court determines that this chemical dependency disposition alternative is appropriate, then the court shall impose the standard range for the offense, or if the court concludes, and enters reasons for its conclusion, that such disposition would effectuate a manifest injustice, the court shall impose a disposition above the standard range as indicated in option D of RCW 13.40.0357 if the disposition is an increase from the standard range and the confinement of the offender does not exceed a maximum of fifty-two weeks, suspend execution of the disposition, and place the offender on community supervision for up to one year. As a condition of the suspended disposition, the court shall require the offender to undergo available outpatient drug/alcohol treatment and/or inpatient drug/alcohol treatment. For purposes of this section, inpatient treatment may not exceed ninety days. As a condition of the suspended disposition, the court may impose conditions of community supervision and other sanctions, including up to thirty days of confinement, one hundred fifty hours of community restitution, and payment of legal financial obligations and restitution.

(6) The drug/alcohol treatment provider shall submit monthly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may impose sanctions pursuant to RCW 13.40.200 or revoke the suspension and order execution of the disposition. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

(7) For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the offense charged. "Victim" may also include a known parent or guardian of a victim who is a minor child or is not a minor child but is incapacitated, incompetent, disabled, or deceased.

(8) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(9) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

(10) A disposition under this section is not appealable under RCW 13.40.230.

CREDIT(S)

[2004 c 120 § 5, eff. July 1, 2004; 2003 c 378 § 6, eff. July 27, 2003. Prior: 2002 c 175 § 23; 2002 c 42 § 1; 2001 c 164 § 1; 1997 c 338 § 26.]

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Title 13. Juvenile Courts and Juvenile Offenders (Refs & Annos)

Chapter 13.40. Juvenile Justice Act of 1977 (Refs & Annos)

→ **13.40.185. Disposition order--Confinement under departmental supervision or in juvenile facility, when**

(1) Any term of confinement imposed for an offense which exceeds thirty days shall be served under the supervision of the department. If the period of confinement imposed for more than one offense exceeds thirty days but the term imposed for each offense is less than thirty days, the confinement may, in the discretion of the court, be served in a juvenile facility operated by or pursuant to a contract with the state or a county.

(2) Whenever a juvenile is confined in a detention facility or is committed to the department, the court may not directly order a juvenile into a particular county or state facility. The juvenile court administrator and the secretary, assistant secretary, or the secretary's designee, as appropriate, has the sole discretion to determine in which facility a juvenile should be confined or committed. The counties may operate a variety of detention facilities as determined by the county legislative authority subject to available funds.

CREDIT(S)

[1994 sp.s. c 7 § 524; 1981 c 299 § 15.]

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Title 13. Juvenile Courts and Juvenile Offenders (Refs & Annos)

Chapter 13.40. Juvenile Justice Act of 1977 (Refs & Annos)

→ **13.40.190. Disposition order--Restitution for loss or damage--Modification of restitution order**

(1)(a) In its dispositional order, the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent. In addition, restitution may be ordered for loss or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which, pursuant to a plea agreement, are not prosecuted.

(b) Restitution may include the costs of counseling reasonably related to the offense.

(c) The payment of restitution shall be in addition to any punishment which is imposed pursuant to the other provisions of this chapter.

(d) The court may determine the amount, terms, and conditions of the restitution including a payment plan extending up to ten years if the court determines that the respondent does not have the means to make full restitution over a shorter period. For the purposes of this section, the respondent shall remain under the court's jurisdiction for a maximum term of ten years after the respondent's eighteenth birthday and, during this period, the restitution portion of the dispositional order may be modified as to amount, terms, and conditions at any time. Prior to the expiration of the ten-year period, the juvenile court may extend the judgment for the payment of restitution for an additional ten years. If the court grants a respondent's petition pursuant to RCW 13.50.050(11), the court's jurisdiction under this subsection shall terminate.

(e) Nothing in this section shall prevent a respondent from petitioning the court pursuant to RCW 13.50.050(11) if the respondent has paid the full restitution amount stated in the court's order and has met the statutory criteria.

(f) If the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution.

(g) At any time, the court may determine that the respondent is not required to pay, or may relieve the respondent of the requirement to pay, full or partial restitution to any insurance provider authorized under Title 48 RCW if the respondent reasonably satisfies the court that he or she does not have the means to make full or partial restitution to the insurance provider and could not reasonably acquire the means to pay the insurance provider the restitution over a ten-year period.

(2) Regardless of the provisions of subsection (1) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the disposition order for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

(3) If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments.

(4) For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the offense charged. "Victim" may also include a known parent or guardian of a victim who is a minor child or is not a minor child but is incapacitated, incompetent, disabled, or deceased.

(5) A respondent under obligation to pay restitution may petition the court for modification of the restitution order.

#### CREDIT(S)

[2010 c 134 § 1, eff. June 10, 2010; 2004 c 120 § 6, eff. July 1, 2004. Prior: 1997 c 338 § 29; 1997 c 121 § 9; 1996 c 124 § 2; 1995 c 33 § 5; 1994 sp.s. c 7 § 528; 1987 c 281 § 5; 1985 c 257 § 2; 1983 c 191 § 9; 1979 c 155 § 69; 1977 ex.s. c 291 § 73.]

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## **APPENDIX “C”**

**C**

West's Revised Code of Washington Annotated Currentness

Title 13. Juvenile Courts and Juvenile Offenders (Refs & Annos)

Chapter 13.40. Juvenile Justice Act of 1977 (Refs & Annos)

→ **13.40.130. Procedure upon plea of guilty or not guilty to information allegations--  
-Notice--Adjudicatory and disposition hearing--Disposition standards used in sentencing**

- (1) The respondent shall be advised of the allegations in the information and shall be required to plead guilty or not guilty to the allegation(s). The state or the respondent may make preliminary motions up to the time of the plea.
- (2) If the respondent pleads guilty, the court may proceed with disposition or may continue the case for a dispositional hearing. If the respondent denies guilt, an adjudicatory hearing date shall be set. The court shall notify the parent, guardian, or custodian who has custody of a juvenile described in the charging document of the dispositional or adjudicatory hearing and shall require attendance.
- (3) At the adjudicatory hearing it shall be the burden of the prosecution to prove the allegations of the information beyond a reasonable doubt.
- (4) The court shall record its findings of fact and shall enter its decision upon the record. Such findings shall set forth the evidence relied upon by the court in reaching its decision.
- (5) If the respondent is found not guilty he or she shall be released from detention.
- (6) If the respondent is found guilty the court may immediately proceed to disposition or may continue the case for a dispositional hearing. Notice of the time and place of the continued hearing may be given in open court. If notice is not given in open court to a party, the party and the parent, guardian, or custodian who has custody of the juvenile shall be notified by mail of the time and place of the continued hearing.
- (7) The court following an adjudicatory hearing may request that a predisposition study be prepared to aid the court in its evaluation of the matters relevant to disposition of the case.
- (8) The disposition hearing shall be held within fourteen days after the adjudicatory hearing or plea of guilty unless good cause is shown for further delay, or within twenty-one days if the juvenile is not held in a detention facility, unless good cause is shown for further delay.
- (9) In sentencing an offender, the court shall use the disposition standards in effect on the date of the offense.

(10) A person notified under this section who fails without reasonable cause to appear and abide by the order of the court may be proceeded against as for contempt of court. In determining whether a parent, guardian, or custodian had reasonable cause not to appear, the court may consider all factors relevant to the person's ability to appear as summoned.

CREDIT(S)

[1997 c 338 § 22; 1981 c 299 § 10; 1979 c 155 § 65; 1977 ex.s. c 291 § 67.]

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Title 13. Juvenile Courts and Juvenile Offenders (Refs & Annos)

Chapter 13.40. Juvenile Justice Act of 1977 (Refs & Annos)

→ **13.40.180. Disposition order--Consecutive terms when two or more offenses--Limitations**

Where a disposition is imposed on a youth for two or more offenses, the terms shall run consecutively, subject to the following limitations:

(1) Where the offenses were committed through a single act or omission, omission, or through an act or omission which in itself constituted one of the offenses and also was an element of the other, the aggregate of all the terms shall not exceed one hundred fifty percent of the term imposed for the most serious offense;

(2) The aggregate of all consecutive terms shall not exceed three hundred percent of the term imposed for the most serious offense; and

(3) The aggregate of all consecutive terms of community supervision shall not exceed two years in length, or require payment of more than two hundred dollars in fines or the performance of more than two hundred hours of community restitution.

CREDIT(S)

[2002 c 175 § 24; 1981 c 299 § 14; 1977 ex.s. c 291 § 72.]

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## **APPENDIX “D”**

**C**

West's Revised Code of Washington Annotated Currentness

Part IV Rules for Superior Court

▣ Juvenile Court Rules (JuCr)

▣ Title VII. Juvenile Offense Proceedings in Juvenile Court

→ **RULE 7.12 DISPOSITION HEARING**

**(a) Time.** A disposition hearing shall be held if the juvenile has pleaded guilty or has been found guilty by the court. The hearing may be held immediately following the juvenile's plea of guilty or immediately following the adjudicatory hearing if found guilty by the court. The disposition hearing may be continued for a period of up to 14 days after the plea or the conclusion of the hearing if the juvenile is held in detention, or 21 days after the plea or the conclusion of the hearing if the juvenile is not held in detention. Either time may be extended by the court for good cause shown. Notice of a continued hearing shall be given to all parties in accordance with rule 11.2.

**(b) Conduct of Hearing.** The court shall conduct the hearing in accordance with RCW 13.40.150. At the conclusion of the disposition hearing, the court shall, in accordance with CrR 7.2(b), advise the juvenile of the right to appeal, including when applicable the right to appeal a sentence based upon a finding of manifest injustice.

**(c) Criminal History--Definition.** In determining the standard range of disposition for a juvenile, the juvenile's criminal history includes any criminal complaint alleging an offense and resulting in one of the following prior to the commission of the current offense:

(1) A finding made prior to July 1, 1978, that the juvenile committed an offense, if the allegation was required to be proven beyond a reasonable doubt or if the juvenile admitted the allegation; or

(2) A conviction or a plea of guilty on or after July 1, 1978; or

(3) Violations, as defined by RCW 13.40.020, committed on or after July 1, 1998.

**(d) Criminal History--Multiple Charges.** If the juvenile has been convicted of two or more charges arising out of the same course of conduct, then only the highest charge is counted as criminal history. If the juvenile has been convicted of two or more charges that did not arise out of the same course of conduct, then all of the charges count as criminal history, even though the charges may have consolidated into a single disposition order.

**(e) Disposition Based Upon Finding of Manifest Injustice.** If the court imposes a sentence based upon a find-

ing of manifest injustice, the disposition order shall set forth those portions of the record material to the disposition.

**(f) Disposition Requiring Detention in a State-Operated Juvenile Detention Facility.** If the court imposes a sentence requiring commitment to the Division of Juvenile Rehabilitation of the Department of Social and Health Services for detention, the copy of the disposition order sent to the Division shall be accompanied by a statement of the criminal history relied upon by the sentencing court.

**(g) Judgment and Sentence.** For every disposition order entered pursuant to a juvenile court offense adjudication or deferred adjudication, the court entering the order shall forward to the Sentencing Guidelines Commission the information contained in the order and such criminal history, demographic, and other information as the Office of the Administrator for the Courts may prescribe. The Administrator for the Courts, at the direction of the Supreme Court, and after consulting with the Sentencing Guidelines Commission, shall determine the method for transmitting this information from the court to the Commission.

CREDIT(S)

[Amended effective September 1, 1987; amended July 11, 1996, effective upon publication in Washington Reports advance sheet; effective September 1, 1999.]

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# PIERCE COUNTY PROSECUTOR

**October 03, 2011 - 12:07 PM**

## Transmittal Letter

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Court of Appeals Case Number: 41842-8

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Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

 Brief: Reply

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

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Response to Personal Restraint Petition

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