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No. 23041-4-III

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

DANIEL ALFRED POSEY, JR.,

Appellant.

On Appeal from the Yakima County Superior Court
Cause No. 03-1-00820-1
The Honorable Susan L. Hahn, Judge

SUPPLEMENTAL BRIEF OF APPELLANT

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I. QUESTIONS PRESENTED

1. Does the Legislature's 2005 amendment to RCW 13.04.030 apply to Daniel Posey's appeal?
2. Is the Legislature's 2005 amendment to RCW 13.04.030 retroactive?
3. What meaning should be given to the terms "disposition" and "remaining charges", as they are used in the 2005 amendment to RCW 13.04.030?

II. SUPPLEMENTAL STATEMENT OF THE CASE

The complete procedural history and facts relevant to this appeal are set forth in full in the Opening Brief of Appellant, and are hereby incorporated by reference.

In his Opening Brief, Daniel argued: that the adult court lacked jurisdiction to sentence Daniel after he was acquitted of the enumerated crimes that automatically transferred his case from juvenile to adult court; and that Daniel's equal protection and due process rights were violated when he was sentenced following conviction for nonenumerated crimes, without first having the benefit of a decline hearing.

Subsequently, the 2005 Washington State Legislature amended RCW 13.04.030 to provide for a juvenile offender's return

to juvenile court for disposition if the juvenile is convicted of only nonenumerated crimes. This court has now requested additional briefing regarding the application of this amendment to Daniel's appeal.

III. SUPPLEMENTAL ARGUMENT & AUTHORITIES

The juvenile courts in Washington State are vested with exclusive jurisdiction to handle matters involving juvenile defendants. RCW 13.04.030(1). An adult court obtains jurisdiction over juvenile defendants in two ways. The first is after a decline hearing in which the juvenile court transfers jurisdiction over the juvenile to the adult court. Decline of jurisdiction may only be ordered "upon a finding that the declination would be in the best interest of the juvenile or the public." RCW 13.40.110.

The second way, called automatic decline, is if the juvenile is charged with committing certain serious felonies. The version of RCW 13.04.030 in effect when Daniel was charged and tried, enumerates the offenses that give rise to automatic decline, and states:

Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings . . . [r]elating to juveniles alleged or found to have committed offenses . . . unless . . . [t]he juvenile is sixteen or seventeen years old and

the alleged offense is . . . [a] serious violent offense as defined in RCW 9.94A.030[.] In such a case the adult criminal court shall have exclusive original jurisdiction.

RCW 13.04.030(1)(e)(v)(A).

Recently, in *State v. Manro*, 125 Wn. App. 165, 104 P.2d 708 (2005), Division 1 rejected arguments similar to those made by Daniel in his appeal. The court found that "jurisdiction attaches when certain enumerated offenses are charged. The outcome of the prosecution has no affect on jurisdiction." 125 Wn. App. at 174. The *Manro* court also rejected the defendant's equal protection and due process claims. 125 Wn. App. at 175-76.

In response to the *Manro* decision, the State Legislature passed Substitute House Bill 2061. See Laws of 2005, ch. 238 (attached in Appendix A); SHB 2061 House Bill Report at 2 (citing the *Manro* holding) (attached in Appendix B). That bill amended RCW 13.04.030 to read as follows:

(I) In such a case the adult criminal court shall have exclusive original jurisdiction, except as provided in (e)(v)(E)(II) of this subsection.

(II) The juvenile court shall have exclusive jurisdiction over the disposition of any remaining charges in any case in which the juvenile is found not guilty in the adult criminal court of the charge or charges for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense that is not

also an offense listed in (e)(v) of this subsection. The juvenile court shall enter an order extending juvenile court jurisdiction if the juvenile has turned eighteen years of age during the adult criminal court proceedings pursuant to RCW 13.40.300. However, once the case is returned to juvenile court, the court may hold a decline hearing pursuant to RCW 13.40.110 to determine whether to retain the case in juvenile court for the purpose of disposition or return the case to adult criminal court for sentencing.

Laws of 2005, ch. 238 (underlined text indicates statutory language added by the amendment). The effective date of the amendment is July 24, 2005. *Id.*

A. DOES THE 2005 AMENDMENT APPLY TO DANIEL'S CASE?

The first question is whether the 2005 amendment to RCW 13.04.030 applies to Daniel's appeal. The short answer is yes. The amendment is retroactive, and the amendment shows that the interpretation of the statute urged by Daniel in his opening brief is the correct interpretation.

1. THE AMENDMENT IS RETROACTIVE

In general, a statutory amendment is presumed to operate prospectively and not retroactively. See *In re Pers. Rest. of Shepard*, 127 Wn.2d 185, 193, 898 P.2d 828 (1995); *Lynce v. Mathis*, 519 U.S. 433, 439, 117 S. Ct. 891, 895, 137 L. Ed. 2d 63 (1997). Nonetheless, an amendment to a statute will be applied

retroactively if: (1) the legislature so intended; (2) it is curative; or (3) it is remedial. See *State v. Cruz*, 139 Wn.2d 186, 191, 985 P.2d 384 (1999) (citing *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 460, 832 P.2d 1303 (1992)). In this case, the 2005 amendment is retroactive because the Legislature intended retroactivity, and because it is remedial.¹

i. The Legislature Intended the Amendment to Be Retroactive

The Legislature's intent to retroactively apply the 2005 amendment can be inferred from the general purpose of the act itself. *F.D. Processing*, 119 Wn.2d at 460 (the Legislature's intent as to the retroactive application of a statute may be determined by Legislative history). A review of the legislative history and reports pertaining to the 2005 amendment show that the Legislature intended this amendment to clarify what it believed was already the law, and therefore intended it to apply retroactively.

For example, in the HB 2061 House Bill Report, it states:

The substitute [bill] clarifies that if the juvenile is found not guilty of the charge for which he or she was

¹ Although the Legislature repeatedly states that it is intending to correct or cure the misinterpretation of the statute, the amendment probably cannot be a "curative" retroactive amendment. A curative amendment will only be given retroactive effect if it does not contravene any judicial construction of the statute. See *F.D. Processing*, 119 Wn.2d at 461. This amendment does contravene the *Manro* court's interpretation of the statute.

transferred, the juvenile court will have jurisdiction over any remaining charges for purposes of disposition.

HB 2061 House Bill Report at 2 (attached in Appendix C).² The Report also includes a summary of the testimony in favor of the bill:

With the current interpretation of the law the juvenile might be convicted and sentenced in adult court on a charge that wasn't one that originally required transfer. We want to provide clarifying information to the court to send these cases back to juvenile court. The bill clarifies what a lot of people thought was the law. We don't want kids convicted of offenses as adults for crimes that never even required transfer. People were shocked by the court case that interpreted the statute to require this result.

HB 2061 House Bill Report at 3; see also SHB 2061 House Bill Report at 2-3. The Senate Bill Report summarizes the testimony in favor of the amendment as follows:

Keeping juveniles in the juvenile justice system allows creative intervention at the juvenile justice level. The bill corrects the court's misinterpretation of the existing statute.

SHB Senate Bill Report at 2.

Before *Manro*, the Legislature believed that the statute would be interpreted to require transfer back to the juvenile court when a juvenile is convicted of only nonenumerated crimes after automatic

² Legislative reports are relevant to determining legislative intent regarding retroactivity. *McGee Guest Home, Inc. v. DSHS*, 142 Wn.2d 316, 325, 12 P.3d 144 (2000).

transfer. The legislative history of the amendment clearly shows that the Legislature always intended for the statute to be applied in this way. Upon learning of the *Manro* court's contrary interpretation of the statute, the Legislature immediately sought to clarify its intent.

From the above comments, it is clear that the purpose of the amendment was to ensure that adult trial courts sent juveniles in Daniel's situation back to juvenile court for disposition. This is what the Legislature always intended to occur. The Legislature clearly states that the amendment is intended to "clarify" the court's "misinterpretation" of the existing statute. By enacting the amendment, the Legislature was only adding more specific language to explain what the procedure should be.

The Legislature also makes it clear that it did not and does not want juveniles to be treated as adults and sentenced as adults for nonenumerated crimes, unless they first have a decline hearing. The Legislature clearly wants juveniles in situations like Daniel's to receive the treatment and rehabilitation they need through juvenile disposition, unless the court specifically finds that adult sentencing standards are appropriate. The Legislature never intended otherwise, and there is no reason to believe that the Legislature

wants the amendment to apply only prospectively.

Considering that the primary purpose of the original act was to ensure that juveniles receive appropriate punishment and rehabilitation, the intent to retroactively apply the amendment can be reasonably inferred. A contrary interpretation would only exacerbate the problems and confusion that the amendment was enacted to alleviate.

ii. *The Savings Clause of RCW 10.01.040 Does Not Defeat Retroactivity*

The State may argue that the savings clause of RCW 10.01.040 prohibits retroactive application of the 2005 amendment. Such an argument would be incorrect.

It was a well-settled rule at common law that, where a statute is repealed, it is regarded as though it had never existed regarding all pending litigation. *State v. Grant*, 89 Wn.2d 678, 682, 575 P.2d 210 (1978); *State v. Zornes*, 78 Wn.2d 9, 12, 475 P.2d 109 (1970). The Legislature in 1901 enacted a savings clause, which provides,

No offense committed and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, unless a contrary intention is expressly declared in the repealing act, and no prosecution for any offense,

or for the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, but the same shall proceed in all respects, as if such provision had not been repealed, unless a contrary intention is expressly declared in the repealing act. Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act, and every such amendatory or repealing statute shall be so construed as to save all criminal and penal proceedings, and proceedings to recover forfeitures, pending at the time of its enactment, unless a contrary intention is expressly declared therein.

RCW 10.01.040.

This savings clause was enacted to prevent technical abatements that would excuse offenders from punishment altogether. See *State v. Hanlen*, 193 Wash. 494, 496, 76 P.2d 316 (1938) (the savings statute "reflects a legislative intent to preserve the integrity of criminal statutes and the penalties prescribed therein with respect to offenses committed and prosecutions pending under the previously-existing statute notwithstanding their repeal by subsequent legislative enactments in the absence of legislative intention expressed to the contrary"). Consequently, the savings clause has not been interpreted as a bar precluding application of

new sentencing legislation to pending cases where the amendment mitigates the authorized terms of punishment but continues to proscribe the same conduct. See e.g., *State v. Wiley*, 124 Wn.2d 679, 686-88, 880 P.2d 983 (1994); *Addleman v. Board of Prison Terms*, 107 Wn.2d 503, 510, 730 P.2d 1327 (1986); *State v. Heath*, 85 Wn.2d 196, 198, 532 P.2d 621 (1975).

In fact, where the new legislation reduces a penalty for a crime, it is generally presumed that the Legislature intended retroactive application. As noted in *Heath*,

An additional reason for holding the legislation to operate retroactively is that it, in effect, reduced the penalty for a crime. When this is so, the legislature is presumed to have determined that the new penalty is adequate and that no purpose would be served by imposing the older, harsher one. This rule has even been applied in the face of a statutory presumption against retroactivity and the new penalty applied in all pending cases. *In re Estrada*, 63 Cal.2d 740, 48 Cal.Rptr. 172, 408 P.2d 948 (1965); *People v. Oliver*, 1 N.Y.2d 152, 151 N.Y.S.2d 367, 134 N.E.2d 197 (1956).

85 Wn.2d at 198.

Additionally, when an ameliorative statute takes the form of a reduction in punishment for a particular crime, there is no ex post facto violation resulting from application of the new, more lenient law. See *In re Pers. Rest. of Powell*, 117 Wn.2d 175, 184-85, 814

P.2d 635 (1991) (in this context, the ex post facto clauses only prevent retroactive application of increases in punishment).

Retroactive application of the 2005 amendment to Daniel makes sense under this standard because it would possibly, but not necessarily, reduce his sentence. It would certainly not increase his sentence. But it would insure, as the Legislature intended, that he receive the *appropriate* sentence.

Finally, even if Washington's savings clause was interpreted to generally bar retroactive application of the new legislation, even where ameliorative, the statute nevertheless provides for an exception for situations such as here, i.e. where the Legislature has expressed a retroactive intent. RCW 10.01.040. As discussed above, the Legislature clearly expressed its retroactive intent.

iii. The Amendment is Remedial

A remedial change is one that relates to practice, procedures, or remedies, and does not affect a substantive or vested right. *Cruz*, 139 Wn.2d at 192 (citing *F.D. Processing*, 119 Wn.2d at 462-63); see also *Collins v. Youngblood*, 497 U.S. 37, 45, 110 S. Ct. 2715, 111 L. Ed. 2d 30 (1990) (term "procedural" refers to changes in the procedures by which a criminal case is adjudicated as opposed to changes in substantive law of crime);

State v. Ward, 123 Wn.2d 488, 498 n. 5, 869 P.2d 1062 (1994) (change in sections of RCW dealing with criminal or civil procedure is presumed to be a procedural change, while change in criminal code is assumed to be a substantive change).

The amendment in question here affects procedural rights. As currently written, the statute provides a procedure by which a juvenile must have a decline hearing before the juvenile court can transfer jurisdiction to adult court for trial and punishment for non-enumerated crimes. The amendment merely clarifies that this decline hearing procedure should also be used if a juvenile is acquitted of enumerated crimes and convicted of only nonenumerated crimes. Under either version of the statute, a juvenile offender convicted of nonenumerated crimes will have the benefit of a decline hearing before being sentenced as an adult. Because the amendment effects only procedural rights and not substantive rights, the amendment is remedial and therefore retroactive. *Cruz*, 139 Wn.2d at 191.

Moreover, where a statute is remedial, and its purpose would be furthered by retroactive application, the presumption against retroactivity is reversed. *Heath*, 85 Wn.2d at 198 (citing *Snow's Mobile Homes, Inc. v. Morgan*, 80 Wn.2d 283, 291, 494

P.2d 216 (1972); *Pape v. Department of Labor and Indus.*, 43 Wn.2d 736, 264 P.2d 241 (1953)). As discussed in detail above, retroactive application would further the Legislature's intent in enacting the original statute and the amendment, and the presumption against retroactivity should not apply.

Because the law is retroactive, it applies to Daniel's case. See e.g. *In re Pers. Rest. of Stewart*, 115 Wn. App. 319, 339-40, 75 P.3d 521 (2003) (retroactive amendments are generally effective from the original date of the statute). Under the explicit terms of the amendment, if a case was automatically transferred to the adult court for trial, the adult court loses jurisdiction when the juvenile is convicted only of nonenumerated offenses. Therefore, the adult court did not have jurisdiction to sentence Daniel under the adult sentencing guidelines.

2. THE LEGISLATIVE INTENT OF THE AMENDMENT CLARIFIES THE LEGISLATIVE INTENT OF THE ORIGINAL STATUTE

When called upon to interpret a statute, the court's primary obligation is to give effect to the Legislature's intent. *Lacey Nursing Ctr. v. Dep't of Revenue*, 128 Wn.2d 40, 53, 905 P.2d 338 (1995). In his opening brief, Daniel argued that the legislative intent of the then-existing RCW 13.04.030 supported interpreting the statute to

require jurisdiction to be transferred back to the juvenile court after acquittal on enumerated offenses. The *Manro* court rejected a similar argument, and instead found that the legislative intent supported an interpretation that jurisdiction attaches when enumerated crimes are charged, and does not change depending on the outcome of the trial. 125 Wn. App. at 174.

However, as evidenced by the 2005 amendment and its legislative history, the *Manro* court was incorrect.³ The 2005 amendment and Legislative history of the amendment clearly show that the Legislature always intended for juveniles like Daniel to be returned to juvenile court, and the Legislature never intended for juveniles like Daniel to be sentenced as adults without the benefit of a decline hearing. This amendment and its legislative history therefore lend additional support to the argument presented by Daniel in his opening brief, that the statute as it currently exists should be interpreted as requiring transfer back to the juvenile court if a juvenile is convicted of only nonenumerated crimes. Accordingly, even if this court finds that the 2005 amendment is not

³ It should be noted that this court is not bound by the *Manro* decision. Because *Manro* is a Division 1 case, it is merely persuasive authority and is not binding on this court. See *Joyce v. State, Dept. of Corrections*, 116 Wn. App. 569, 591 n.9, 75 P.3d 548 (2003).

retroactive, the statute as it is currently written should still be interpreted as requiring transfer back to the juvenile court in this case.

B. WHAT MEANINGS SHOULD BE GIVEN TO THE TERMS "REMAINING CHARGES" AND "DISPOSITION"?

The amendment to RCW 13.04.030 states:

The juvenile court shall have exclusive jurisdiction over the **disposition of any remaining charges** in any case in which the juvenile is found not guilty in the adult criminal court of the charge or charges for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense that is not also an offense listed in (e)(v) of this subsection.

Laws of 2005, ch. 238 (emphasis added). This court has requested discussion of what meaning should be given to the terms "disposition" and "remaining charges."

When called upon to interpret a statute, the court's primary obligation is to give effect to the legislature's intent. *Lacey Nursing Ctr.*, 128 Wn.2d at 53. The court should also interpret statutory language in the context of the entire statute. See *City of Seattle v. Clark-Munoz*, 152 Wn.2d 39, 43-44, 93 P.3d 141 (2004). And where the Legislature has used a term but has not defined that term, a reviewing court can refer to the dictionary definition to ascertain the term's meaning. *American Legion v. Walla Walla*, 116

Wn.2d 1, 8, 802 P.2d 784 (1991).

The juvenile justice act does not specifically define the term "disposition." According to Black's, when it is used in criminal procedure, the term "disposition" means "the sentencing or other final settlement of a criminal case." BLACKS LAW DICTIONARY 6TH ED. (1990) at 471.

The term "disposition" is also used throughout the juvenile justice act, RCW Title 13. Under the act, if a juvenile is found guilty of committing a crime, the juvenile court must hold a "disposition" hearing. See RCW 13.40.130(6), (8). At a disposition hearing, the judge is instructed to consider things like the factual allegations against the juvenile, any counselor's reports, and the juvenile's offender score, before deciding what sentence to impose. RCW 13.40.060(1) provides that "[t]he standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357." RCW 13.40.0357 is titled "Juvenile Offender Sentencing Standards", and lists the lengths of confinement that should be imposed for different crimes.

It is clear from a review of RCW Title 13, that "disposition" means the final settlement of the juvenile's case, including entry of judgment and sentence. There is no reason to believe the

Legislature intended to give the term "disposition" anything other than its ordinary and generally understood meaning when it used the term in the amendment to RCW 13.04.030. This court should give the term "disposition" its commonly understood meaning, and find that "disposition" means the entry of judgment and sentence.

The term "remaining charges" is used for the first time in the 2005 amendment. Webster's defines the term "remain" as "to be left after others have been removed, subtracted, or destroyed", and defines "remainder" as "that which is left over: a remaining group, part, or trace". WEBSTER'S DESK DICTIONARY (1995) at 465.

The House Bill Reports summarize the intended results of the bill as follows:

Requires a case that was automatically transferred to adult court to be returned to juvenile court for disposition if the juvenile is convicted of an offense that was not one requiring automatic transfer or jurisdiction, or if the juvenile was convicted of a lesser included offense.

SHB 2061 House Bill Report at 1.

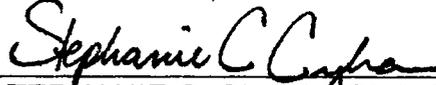
A consideration of the generally understood definition of "remainder", and a review of the Legislative intent, indicates that the term "remaining charges" is intended to mean convictions for any crimes that were not the basis for the transfer to adult court,

whether they be originally charged or lesser included crimes, that are left after acquittal on enumerated (automatic-transfer) crimes.

IV. CONCLUSION

The 2005 amendment applies to Daniel's case because it is retroactive, and it also supports his original argument that the statute as it is currently written requires his case to be transferred back to juvenile court for disposition. Accordingly, for these reasons, as well as the reasons argued in his Opening Brief, Daniel respectfully requests that this court reverse the judgment and sentence entered against him in the adult Superior Court.

DATED: June 1, 2005



STEPHANIE C. CUNNINGHAM

WSBA No. 26436

Attorney for Daniel A. Posey, Jr.

CERTIFICATE OF SERVICE

I certify that on June 1, 2005, I caused to be placed in the mails of the US, postage pre-paid, a copy of this document addressed to: (1) Kenneth Ramm, DPA, Prosecuting Attorney's Office, 128 N. Second St., Rm. 211, Yakima, WA 98901; and (2) Daniel A. Posey Jr., DOC#867232, Airway Heights Correction Center, P.O. Box 1809, Airway Heights, WA 99001-1809.



STEPHANIE C. CUNNINGHAM, WSBA # 26436

APPENDIX A

Laws of 2005, ch. 238

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2061

Chapter 238, Laws of 2005

59th Legislature
2005 Regular Session

JUVENILE COURTS--JURISDICTION

EFFECTIVE DATE: 7/24/05

Passed by the House March 9, 2005
Yeas 96 Nays 0

CERTIFICATE

FRANK CHOPP

Speaker of the House of Representatives

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2061** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Passed by the Senate April 12, 2005
Yeas 42 Nays 0

RICHARD NAFZIGER

BRAD OWEN

President of the Senate

Chief Clerk

Approved April 28, 2005.

FILED
April 28, 2005 - 4:16 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2061

Passed Legislature - 2005 Regular Session

By House Committee on Juvenile Justice & Family Law (originally sponsored by Representatives Darneille, Moeller and Dickerson)

READ FIRST TIME 03/04/05.

AN ACT Relating to requiring disposition to be held in juvenile court in certain circumstances when a case is automatically transferred to adult court; and amending RCW 13.04.030 and 13.40.300.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1 RCW 13.04.030 and 2000 c 135 s 2 are each amended to read as follows:

(1) Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings:

(a) Under the interstate compact on placement of children as provided in chapter 26.34 RCW;

(b) Relating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.170;

(c) Relating to the termination of a parent and child relationship as provided in RCW 13.34.180 through 13.34.210;

(d) To approve or disapprove out-of-home placement as provided in RCW 13.32A.170;

(e) Relating to juveniles alleged or found to have committed offenses, traffic or civil infractions, or violations as provided in RCW 13.40.020 through 13.40.230, unless:

(i) The juvenile court transfers jurisdiction of a particular juvenile to adult criminal court pursuant to RCW 13.40.110;

(ii) The statute of limitations applicable to adult prosecution for the offense, traffic or civil infraction, or violation has expired;

(iii) The alleged offense or infraction is a traffic, fish, boating, or game offense, or traffic or civil infraction committed by a juvenile sixteen years of age or older and would, if committed by an adult, be tried or heard in a court of limited jurisdiction, in which instance the appropriate court of limited jurisdiction shall have jurisdiction over the alleged offense or infraction, and no guardian ad litem is required in any such proceeding due to the juvenile's age: PROVIDED, That if such an alleged offense or infraction and an alleged offense or infraction subject to juvenile court jurisdiction arise out of the same event or incident, the juvenile court may have jurisdiction of both matters: PROVIDED FURTHER, That the jurisdiction under this subsection does not constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER, That courts of limited jurisdiction which confine juveniles for an alleged offense or infraction may place juveniles in juvenile detention facilities under an agreement with the officials responsible for the administration of the juvenile detention facility in RCW 13.04.035 and 13.20.060;

(iv) The alleged offense is a traffic or civil infraction, a violation of compulsory school attendance provisions under chapter 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has assumed concurrent jurisdiction over those offenses as provided in RCW 13.04.0301; or

(v) The juvenile is sixteen or seventeen years old and the alleged offense is:

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

(B) 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;

(C) Robbery in the first degree, rape of a child in the first degree, or drive-by shooting, committed on or after July 1, 1997;

(D) Burglary in the first degree committed on or after July 1, 1997, and the juvenile has a criminal history consisting of one or more prior felony or misdemeanor offenses; or

(E) Any violent offense as defined in RCW 9.94A.030 committed on or after July 1, 1997, and the juvenile is alleged to have been armed with a firearm.

(I) In such a case the adult criminal court shall have exclusive original jurisdiction, except as provided in (e)(v)(E)(II) of this subsection.

(II) The juvenile court shall have exclusive jurisdiction over the disposition of any remaining charges in any case in which the juvenile is found not guilty in the adult criminal court of the charge or charges for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense that is not also an offense listed in (e)(v) of this subsection. The juvenile court shall enter an order extending juvenile court jurisdiction if the juvenile has turned eighteen years of age during the adult criminal court proceedings pursuant to RCW 13.40.300. However, once the case is returned to juvenile court, the court may hold a decline hearing pursuant to RCW 13.40.110 to determine whether to retain the case in juvenile court for the purpose of disposition or return the case to adult criminal court for sentencing.

If the juvenile challenges the state's determination of the juvenile's criminal history under (e)(v) of this subsection, the state may establish the offender's criminal history by a preponderance of the evidence. If the criminal history consists of adjudications entered upon a plea of guilty, the state shall not bear a burden of establishing the knowing and voluntariness of the plea;

(f) Under the interstate compact on juveniles as provided in chapter 13.24 RCW;

(g) Relating to termination of a diversion agreement under RCW 13.40.080, including a proceeding in which the diveree has attained eighteen years of age;

(h) Relating to court validation of a voluntary consent to an out-of-home placement under chapter 13.34 RCW, by the parent or Indian custodian of an Indian child, except if the parent or Indian custodian and child are residents of or domiciled within the boundaries of a federally recognized Indian reservation over which the tribe exercises exclusive jurisdiction;

(i) Relating to petitions to compel disclosure of information filed by the department of social and health services pursuant to RCW 74.13.042; and

(j) Relating to judicial determinations and permanency planning hearings involving developmentally disabled children who have been placed in out-of-home care pursuant to a voluntary placement agreement between the child's parent, guardian, or legal custodian and the department of social and health services.

(2) The family court shall have concurrent original jurisdiction with the juvenile court over all proceedings under this section if the superior court judges of a county authorize concurrent jurisdiction as provided in RCW 26.12.010.

(3) The juvenile court shall have concurrent original jurisdiction with the family court over child custody proceedings under chapter 26.10 RCW as provided for in RCW 13.34.155.

(4) A juvenile subject to adult superior court jurisdiction under subsection (1)(e)(i) through (v) of this section, who is detained pending trial, may be detained in a detention facility as defined in RCW 13.40.020 pending sentencing or a dismissal.

Sec. 2 RCW 13.40.300 and 2000 c 71 s 2 are each amended to read as follows:

(1) In no case may a juvenile offender be committed by the juvenile court to the department of social and health services for placement in a juvenile correctional institution beyond the juvenile offender's twenty-first birthday. A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday:

(a) Proceedings are pending seeking the adjudication of a juvenile offense and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday;

(b) The juvenile has been found guilty after a fact finding or after a plea of guilty and an automatic extension is necessary to allow for the imposition of disposition; ((or))

(c) Disposition has been held and an automatic extension is necessary to allow for the execution and

enforcement of the court's order of disposition. If an order of disposition imposes commitment to the department, then jurisdiction is automatically extended to include a period of up to twelve months of parole, in no case extending beyond the offender's twenty-first birthday; or

(d) While proceedings are pending in a case in which jurisdiction has been transferred to the adult criminal court pursuant to RCW 13.04.030, the juvenile turns eighteen years of age and is subsequently found not guilty of the charge for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense, and an automatic extension is necessary to impose the disposition as required by RCW 13.04.030(1)(e)(v)(E).

(2) If the juvenile court previously has extended jurisdiction beyond the juvenile offender's eighteenth birthday and that period of extension has not expired, the court may further extend jurisdiction by written order setting forth its reasons.

(3) In no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday except for the purpose of enforcing an order of restitution or penalty assessment.

(4) Notwithstanding any extension of jurisdiction over a person pursuant to this section, the juvenile court has no jurisdiction over any offenses alleged to have been committed by a person eighteen years of age or older.

Passed by the House March 9, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

APPENDIX B
SHB 2061 House Bill Report

HOUSE BILL REPORT

SHB 2061

As Passed Legislature

Title: An act relating to requiring disposition to be held in juvenile court in certain circumstances when a case is automatically transferred to adult court.

Brief Description: Requiring disposition to be held in juvenile court in certain circumstances when a case is automatically transferred to adult court.

Sponsors: By House Committee on Juvenile Justice & Family Law (originally sponsored by Representatives Darneille, Moeller and Dickerson).

Brief History:

Juvenile Justice & Family Law: 2/23/05, 3/1/05 [DPS].

Floor Activity:

Passed House: 3/9/05, 96-0.

Passed Senate: 4/12/05, 42-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Requires a case that was automatically transferred to adult court be returned to juvenile court for disposition if the juvenile is convicted of an offense that was not one requiring automatic transfer of jurisdiction, or if the juvenile was convicted of a lesser included offense.

HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Dickerson, Chair; Moeller, Vice Chair; McDonald, Ranking Minority Member; McCune, Assistant Ranking Minority Member; Crouse, Lovick and Roberts.

Staff: Sonja Hallum (786-7092).

Background:

In general, the juvenile court has exclusive original jurisdiction over juveniles under age 18 who are charged with a criminal offense, traffic infraction, or violation. However, in some situations, the case is transferred to adult court and juvenile court does not have jurisdiction.

A case may be transferred to adult court through an automatic transfer procedure which permits the case to be filed directly into adult court and never enter juvenile court. A case may also be transferred to adult court if a court holds a decline hearing and decides to decline juvenile court jurisdiction.

A case may be automatically transferred to adult court if the juvenile is 16 or 17 years old and the alleged offense is a:

- (1) serious violent offense; or
- (2) violent offense and the offender has a criminal history consisting of:
 - (a) one or more prior serious violent offenses;
 - (b) two or more prior violent offenses; or
 - (c) 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 13th birthday and prosecuted separately.

If a case is automatically transferred to the adult court, and the prosecutor reduces the charge to an offense that does not require automatic transfer of jurisdiction, the case must be returned to juvenile court where all further proceedings will be held.

However, in a recent Washington Court of Appeals case, *State v. Manro*, the court found the juvenile automatic transfer of jurisdiction statute requires that if a person is found not guilty of the charge that was the basis of the automatic transfer, but is found guilty of a second count that was not an automatic transfer charge, or if the person were found guilty of a lesser included offense, then the case would not be sent to juvenile court for disposition. Instead, the adult court would retain jurisdiction regardless of whether the offense for which the juvenile was convicted was one requiring automatic transfer.

The juvenile court loses jurisdiction over a juvenile when the juvenile turns age 18, unless the court extends juvenile court jurisdiction by issuing a written order. In no event may the juvenile court extend jurisdiction over any juvenile offender beyond the juvenile's 21st birthday.

Summary of Substitute Bill:

If a juvenile offender case is transferred to adult court pursuant to the automatic transfer of jurisdiction statute, and the juvenile is then charged with multiple counts in adult court and found not guilty in the adult criminal court of the charge for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense that is not one requiring automatic transfer, the case will be returned to juvenile court for the disposition of the case.

If the juvenile has turned 18 years of age during the adult criminal court proceedings, the juvenile court must enter an order extending juvenile court jurisdiction.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) With the current interpretation of the law the juvenile might be convicted and sentenced in adult court on a charge that wasn't one that originally required transfer. We want to provide clarifying information to the court to send these cases back to juvenile court. The bill clarifies what a lot of people thought was the law. We don't want kids convicted of offenses as adults for crimes that never even required transfer. People were shocked by the court case that

interpreted the statute to require this result.

(With concerns) We thought this was the law, but would like an amendment to clarify that the juvenile court can still decline jurisdiction.

Testimony Against: None.

Persons Testifying: (In support) George Yeannakis, Washington Defenders Association; and Martha harden-Cesar, Superior Court Judges.

(With concerns) Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.

APPENDIX C
HB 2061 House Bill Report

HOUSE BILL REPORT

HB 2061

As Reported by House Committee On:
Juvenile Justice & Family Law

Title: An act relating to requiring disposition to be held in juvenile court in certain circumstances when a case is automatically transferred to adult court.

Brief Description: Requiring disposition to be held in juvenile court in certain circumstances when a case is automatically transferred to adult court.

Sponsors: Representatives Darneille, Moeller and Dickerson.

Brief History:

Juvenile Justice & Family Law: 2/23/05, 3/1/05 [DPS].

Brief Summary of Substitute Bill

- Requires a case that was automatically transferred to adult court be returned to juvenile court for disposition if the juvenile is convicted of an offense that was not one requiring automatic transfer of jurisdiction, or if the juvenile was convicted of a lesser included offense.

HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Dickerson, Chair; Moeller, Vice Chair; McDonald, Ranking Minority Member; McCune, Assistant Ranking Minority Member; Crouse, Lovick and Roberts.

Staff: Sonja Hallum (786-7092).

Background:

In general, the juvenile court has exclusive original jurisdiction over juveniles under age 18 who are charged with a criminal offense, traffic infraction, or violation. However, in some situations, the case is transferred to adult court and juvenile court does not have jurisdiction.

A case may be transferred to adult court through an automatic transfer procedure which permits the case to be filed directly into adult court and never enter juvenile court. A case may also be transferred to adult court if a court holds a decline hearing and decides to decline juvenile court jurisdiction.

A case may be automatically transferred to adult court if the juvenile is 16 or 17 years old and the alleged offense is a:

- (1) serious violent offense; or
- (2) violent offense and the offender has a criminal history consisting of:
 - (a) one or more prior serious violent offenses;

- (b) two or more prior violent offenses; or
- (c) 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 13th birthday and prosecuted separately.

If a case is automatically transferred to the adult court, and the prosecutor reduces the charge to an offense that does not require automatic transfer of jurisdiction, the case must be returned to juvenile court where all further proceedings will be held.

However, in a recent Washington Court of Appeals case, *State v. Manro*, the court found the juvenile automatic transfer of jurisdiction statute required that if a person was found not guilty of the charge that was the basis of the automatic transfer, but was found guilty of a second count that was not an automatic transfer charge, or if the person were found guilty of a lesser included offense, then the case would not be sent to juvenile court for disposition. Instead, the adult court would retain jurisdiction regardless of whether the offense for which the juvenile was convicted was one requiring automatic transfer.

The juvenile court loses jurisdiction over a juvenile when the juvenile turns age 18, unless the court extends juvenile court jurisdiction by issuing a written order. In no event may the juvenile court extend jurisdiction over any juvenile offender beyond the juvenile's 21st birthday.

Summary of Substitute Bill:

If a juvenile offender case is transferred to adult court pursuant to the automatic transfer of jurisdiction statute, and the juvenile is then charged with multiple counts in adult court and found not guilty in the adult criminal court of the charge for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense that is not one requiring automatic transfer, the case will be returned to juvenile court for the disposition of the case.

If the juvenile has turned 18 years of age during the adult criminal court proceedings, the juvenile court must enter an order extending juvenile court jurisdiction.

Substitute Bill Compared to Original Bill:

The substitute clarifies that if the juvenile is found not guilty of the charge for which he or she was transferred, the juvenile court will have jurisdiction over any remaining charges for purposes of disposition.

The substitute also clarifies that if the juvenile is convicted of a lesser included offense that is also an offense that would require automatic transfer of jurisdiction, the offense will not be returned to juvenile court for sentencing.

However, if a case is returned to juvenile court for sentencing purposes, the substitute states that juvenile court is permitted to hold a decline hearing and send the case back to adult court for sentencing if it is appropriate.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) With the current interpretation of the law the juvenile might be convicted and sentenced in adult court on a charge that wasn't one that originally required transfer. We want to provide clarifying information to the court to send these cases back to juvenile court. The bill clarifies what a lot of people thought was the law. We don't want kids convicted of offenses as adults for crimes that never even required transfer. People were shocked by the court case that interpreted the statute to require this result.

(With concerns) We thought this was the law, but would like an amendment to clarify that the juvenile court can still decline jurisdiction.

Testimony Against: None.

Persons Testifying: (In support) George Yeannakis, Washington Defenders Association; and Martha harden-Cesar, Superior Court Judges.

(With concerns) Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.

