

NO. 66208-2-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Appellant,

v.

M.L.,

Respondent.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 JUL 27 PM 4:05

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CHRISTOPHER WASHINGTON

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

M.L. presents two primary arguments in response to this State's appeal. First, he argues that the rules of statutory construction show that judges must be entitled to impose a deferred disposition upon finding a lesser offense or absurdities will result. Second, he argues that the trial court's written findings contain a "clerical error" and that such a minor error should not undermine confidence in the judge's verdict or sentence.

Neither of these arguments is correct. The plain language of the statute does not permit judges to impose a deferred disposition except under the very narrow circumstances described in the statute. Statutory construction is simply not needed because the plain language need not be "construed." This court should resist M.L.'s invitation to amend the statutory scheme by allowing a deferred disposition after a fact finding hearing has occurred.

Second, the trial court did not simply make a clerical or typographical error in its findings. Rather, the court's oral and written rulings make clear that the court believed M.L. committed an intentional assault that resulted in a broken facial bone. The fact that the court nonetheless found him guilty of a lesser offense

suggests that the court did not keep sufficiently separate its fact-finding and sentencing functions.

This case does present an interesting policy question as to whether judges should be permitted to impose a deferred sentence after a fact finding hearing, but those who believe a juvenile court judge should have the option of imposing a deferred disposition after a fact finding hearing should present their arguments to the legislature. Given the need to ensure that neither the prosecutor nor the court oversteps its authority to determine who receives a deferred disposition, this Court should allow the legislature to decide, in light of the entire statutory scheme, whether a post-trial deferred disposition is sound policy and under what circumstances such a disposition should be allowed.

1. M.L.'s STATUTORY ARGUMENTS ARE FLAWED BECAUSE THEY PRESUME THAT DEFERRED DISPOSITIONS ARE SIMPLY A SENTENCING OPTION AVAILABLE AT THE COURT'S DISCRETION.

M.L. begins his argument by implying that a deferred disposition is simply one of "a wide array of sentencing options" available to juvenile courts. Br. of Resp. at 4. But, this Court has made clear that deferred dispositions are unique and that trial

courts cannot impose them except as specifically authorized by the statutory language. State v. Mohamoud, 159 Wn. App. 753, 760-61, 246 P.3d 849 (2011). The legislature went so far as to say that the deferred disposition statute "shall not" be ordered except under the circumstances defined in Chapter 13.40 RCW. RCW 13.40.160(10). The deferred disposition is an alternative that is only available pre-trial. RCW 13.40.127(2). As a consequence, it must operate only as to charges filed by the prosecutor, not findings made by a court, because no fact finding has occurred before trial. This focus on pre-trial practice serves to ensure the speedy resolution of non-violent cases where punishment and the need for a lasting record of felony conviction are lower.

M.L. wants this Court to judicially create a new post-fact finding deferred disposition option. This Court does not have the authority to create such an option. Where the legislature has not authorized a practice or procedure, and where it has forbidden the practice outside specified limits, this Court is not at liberty to create the procedure. State v. Hughes, 154 Wn.2d 118, 148-49, 110 P.3d 192 (2005) (supreme court refused to create a sentencing procedure where none had been created by legislature). As the Court held in Hughes, "It is the function of the legislature and not of

the judiciary to alter the sentencing process" and fix punishment. Hughes, 154 Wn.2d at 149. This Court should decline M.L.'s request to amend the deferred disposition statute.

M.L. argues, however, that hypothetical facts suggest the statute might lead to strained and absurd results. This argument misapplies the rules of statutory construction. When a statute is ambiguous, courts apply principles of statutory construction to effectuate the legislature's intent. But when the plain language of a statute is clear on its face, courts need not employ rules of statutory interpretation because there is nothing to "interpret." State v. Delgado, 148 Wn.2d 723, 727-28, 63 P.3d 792 (2003) (supreme court refused to find a comparability requirement where a comparability clause was inserted by the legislature in the "two-strikes" statute).

Moreover, Washington courts have a long history of practicing restraint when faced with an alleged legislative omission. Delgado, 148 Wn.2d at 730 (citing State v. Taylor, 97 Wn.2d 724, 728, 649 P.2d 633 (1982) (inadvertent decriminalization of felony flight statute could not be corrected by supreme court opinion)). An appellate court may not correct perceived legislative omissions when the court can guess as to the reason for the omission or

when the court believes that the omission was inadvertent. Id. at 730-31. The court can correct an omission only where the mistake renders the statute entirely meaningless. Id. at 731.

Another situation where appellate intervention might be appropriate would be to reject a statutory interpretation that completely defeats the legislature's intent, a situation that occurred in State v. Cirkovich, 41 Wn. App. 275, 703 P.2d 1075 (1985). See Br. of Resp. at 17). In Cirkovich, the juvenile obtained a stay of disposition pending appeal, his appeal failed, he had left the jurisdiction, so by the time he was arrested on a bench warrant juvenile court jurisdiction had expired. No statute addressed this situation so this court interpreted the statute in a manner that avoided completely defeating its purpose. Cirkovich, 41 Wn. App. at 279-80. Such a construction was necessary to prevent the juvenile from completely avoiding operation of the court's judgment simply by virtue of the fact that he had appealed.

Similarly, our supreme court has held that a failure to abide by a mandatory disposition time limit does not mean that the underlying judgment cannot be enforced. State v. Martin, 137 Wn.2d 149, 969 P.2d 450 (1999). Although the statute was silent

as to remedy, an interpretation that would defeat the purpose of the proceedings would not be adopted because

[t]he common law embodies in itself sufficient reason and common sense to reject the monstrous doctrine that a prisoner, whose guilt is established, by a regular verdict, is to escape punishment altogether, because the court committed an error in passing the sentence. If this court sanctioned such a rule, it would fail to perform the chief duty for which it was established.

Martin, 137 Wn.2d at 157 (quoting Ex parte Cress, 13 Wn.2d 7, 123 P.2d 767 (1942)).

The "strained results" listed by M.L. hardly render this statute meaningless or the proceedings pointless. Br. of Resp. at 9-10, 13-14. At best, they identify a set of circumstances to which the legislature might choose to extend the benefits of a deferred disposition. They do not make the statute "entirely meaningless." Delgado, at 731.

M.L. also errs by arguing that various hypothetical facts illustrate that the plain language leads to absurd results. This argument is essentially an argument that there is a latent ambiguity in RCW 13.40.127, i.e., an ambiguity as to whether the legislature intended to create a post-fact finding deferred disposition. This argument must be rejected. "A latent ambiguity is apparent only

when the language is applied to the facts as they exist and is not apparent on the face of the language." Delgado, at 727. The facts in this case do not present any of the difficulties that M.L. postulates. Br. of Resp. at 13-17 (suggesting that prosecutors might manipulate the charges simply to thwart a deferred disposition). In fact, the disposition court repeatedly found that the prosecutor had not acted in bad faith. 2RP 7, 12. Moreover, any concerns that the prosecutor has mishandled the case could be raised in a due process challenge or pursuant to the procedure in CrR 8.3(c); JuCR 1.4(b).

Finally, M.L. errs by relying on State v. Posey, 161 Wn.2d 638, 167 P.3d 560 (2007), because he fails to correctly recount the appellate and legislative history of the legal issue presented in that case, to wit, whether a juvenile automatically declined from juvenile court should be returned to juvenile court after being found guilty in adult court of a lesser crime that would not have permitted invoking the adult court's jurisdiction. The issue first arose in this Court in the case of State v. Manro, 125 Wn. App. 165, 104 P.3d 708 (January 10, 2005). This Court correctly held that because the statute did not provide a mechanism for returning a juvenile to juvenile court after acquittal of the automatic decline crime in adult

court, the juvenile must remain in adult court for sentencing.

Manro, at 173-74.

In April 2005, four months after Manro, the legislature passed a bill permitting a juvenile who was acquitted of a serious violent offense to return to juvenile court. Appendix A (Laws of 2005, ch. 238, § 1). The bill was supported by the Washington Association of Prosecuting Attorneys and others, and it passed unanimously. Appendix B (House Bill Report, HSB 2061).

Several months later, the Court of Appeals rejected an argument that this bill must apply to a juvenile prosecuted before the effective date of the statute. State v. Posey, 130 Wn. App. 262, 122 P.3d 914 (2005).

Two years after that decision, the Supreme Court reversed the Court of Appeals, holding that the legislature intended that a juvenile should return to juvenile court if found guilty of a lesser offense that would not have required transfer to adult court. State v. Posey, 161 Wn.2d 638, 167 P.3d 560 (2007). The Supreme Court did not cite, discuss, or overrule the analysis in Manro. Instead, the supreme court simply relied on the general statutory preference for keeping juveniles in juvenile court, and considered the 2005 legislative amendments as reaffirming the original

legislative intent. State v. Posey, 161 Wn.2d at 643-44, 645 n.5.

Finally, the court held that transfer to adult jurisdiction was an exception to the general rule that juveniles should be adjudicated in juvenile court, so the exception should be narrowly construed.

Posey, at 646.

There are several distinctions between Posey and this case. First, there is no general legislative preference for deferred dispositions; they are the exception not the rule, and their application is expressly limited to enumerated circumstances. RCW 13.40.127(2). Thus, a legislative intent to permit post-fact finding deferrals cannot be implied from any general intent.

Second, Posey actually undercuts M.L.'s argument because Posey confirms that exceptions to the general rule should be narrowly construed. The general intent of the legislature was that disposition not be deferred. Several exceptions were created and deferred sentences were forbidden outside that context. Thus, the exceptions where deferred disposition is allowed should be narrowly construed.

Also, recent legislative activity does not support the view that the legislature intended post-fact finding deferrals. A bill that would have allowed post-fact finding deferrals failed to pass in the most

recent legislative session. See Appendix C (Senate Bill Report, SB 5580, 2011). Although it is always difficult to discern legislative intent from rejection of any given bill, this recent legislative inaction is certainly in contrast with the legislature's response to Manro, and distinguishes this issue from the issue presented in State v. Posey. Thus, Posey does not support M.L.'s arguments.

In sum, respect for the legislative role and the separation of powers require that this court permit the legislature to address this situation rather than judicially rewriting the statute, as M.L. asks.

2. THE DISPOSITION COURT ERRED BY IMPOSING A DEFERRED DISPOSITION WHEN IT FOUND THAT THE JUVENILE HAD INTENTIONALLY ASSAULTED HIS VICTIM AND INFLICTED SERIOUS BODILY HARM.

M.L. claims that the State has unfairly attacked the "integrity" of the trial judge by noting the inconsistencies between the court's findings and its stated verdict. Br. of Resp. at 19. M.L.'s attempt to cast the State's arguments in inflammatory terms should be rejected.

A court can overstep the boundaries of its judicial role and still have integrity. The State has simply pointed out that the disposition judge found all the elements of an offense that would

prohibit a deferred disposition but, nonetheless, found the juvenile guilty of a lesser offense that would permit deferral. By pointing this out, the State is simply observing that the disposition judge succumbed to the very human temptation of blurring the fact finding and sentencing roles. The State makes this observation because the concern that a judge might blur these distinctions is not unique to this case. It may be tempting for a court (either deliberately or subconsciously) to find a juvenile guilty of a lesser crime in order to make the juvenile eligible for a disposition that the judge sincerely wants to impose. This temptation animates the State's concern that judicial authority to impose post-fact finding deferred dispositions be circumscribed. For instance, the legislature might require that a judge make special findings if it wants to impose a post-fact finding deferred disposition. In any event, the State's arguments are intended to illustrate the propriety of its legal argument that this matter be left to legislative amendment, not judicial amendment, of the statute.

The core complaint of M.L.'s brief is that a juvenile should be punished for the crime he committed, not the charged crime. The problem with that argument as applied to this case is it ignores the contradiction between the court's factual findings and its

verdict. The conflicts as to the elements of the crime were not simply the result of a "clerical error." Br. of Resp. at 21.

What M.L. actually did, according to the trial court's own factual findings, is commit an assault in the second degree. The court found that "the respondent intentionally and repeatedly punched [T.J.] in the face . . . The Court finds that [T.J.] suffered an orbital fracture as a result of the respondent's intentional assault." CP 40 (Finding of Fact 6). This is not mere boilerplate; the language directly addresses this situation. The court also found that M.L. was the aggressor and did not act in self-defense. Id. The court's conclusion of law likewise included the conclusion that M.L. had "intentionally assaulted [T.J.] and thereby recklessly inflicted substantial bodily harm, i.e., an orbital fracture." CP 41 (Conclusion of Law II).

The court's oral statements in open court are consistent with this view. In addressing M.L. directly, the court said, "What you did, it seemed pretty mean to me . . ." RP 37. He referred to the fact that the victim was "beat up" and ended up with "a broken bone in [his] face." RP 38. These oral remarks are wholly consistent with the written findings that M.L. repeatedly and intentionally punched

the victim. They are, however, logically and legally inconsistent with the conclusion that a "negligent" assault occurred.¹

M.L.'s conduct in repeatedly and deliberately punching his victim (who already had a broken arm from an accident) and causing a broken bone in that victim's face, is conduct the legislature has deemed to be an assault in the second degree and, under RCW 13.40.127, that conduct is *ineligible* for a deferred disposition. It would be inappropriate in this case to stretch the statutory language to allow the court authority to impose a deferred sentence as to behavior the legislature has clearly said is undeserving of the deferred disposition.

B. CONCLUSION

This Court should leave to the legislature the task of sorting out whether and how a juvenile should receive a post-fact finding deferred disposition. The State respectfully asks that the

¹ RCW 9A.08.010 provides that "a person . . . acts with criminal negligence when he fails to be aware of a substantial risk that a wrongful act may occur and his failure to be aware of such a risk constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation."

disposition be reversed and the matter be returned to the superior court for imposition of a disposition.

DATED this 27th day of July, 2011.

Respectfully submitted,

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APPENDIX A

Westlaw

WA LEGIS 238 (2005)
2005 Wash. Legis. Serv. Ch. 238 (S.H.B. 2061) (WEST)

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2005 Wash. Legis. Serv. Ch. 238 (S.H.B. 2061) (WEST)

WASHINGTON 2005 LEGISLATIVE SERVICE
59th Legislature, 2005 Regular Session
2061

Additions are indicated by **Text**; deletions by
~~Text~~. Changes in tables are made but not highlighted.
Vetoed provisions within tabular material are not displayed.

CHAPTER 238
S.H.B. No. 2061
JUVENILE COURTS—TRANSFERS—DISPOSITION

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:

<< WA ST 13.04.030 >>

- (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

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“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:

<< WA ST 13.40.300 >>

(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.

Approved April 28, 2005.

Effective July 24, 2005.

WA LEGIS 238 (2005)

WA LEGIS 238 (2005)

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2005 Wash. Legis. Serv. Ch. 238 (S.H.B. 2061) (WEST)

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APPENDIX B

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:

Committee Activity:

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.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 JUL 27 PM 4:06

APPENDIX C

SENATE BILL REPORT

SB 5580

As Reported by Senate Committee On:
Human Services & Corrections, February 17, 2011

Title: An act relating to orders of disposition for juveniles.

Brief Description: Modifying provisions relating to orders of disposition for juveniles.

Sponsors: Senators Regala and Kline.

Brief History:

Committee Activity: Human Services & Corrections: 2/11/11, 2/17/11 [DPS, w/oRec].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5580 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Carrell, Harper and McAuliffe.

Minority Report: That it be referred without recommendation.

Signed by Senator Baxter.

Staff: Shani Bauer (786-7468)

Background: Deferred disposition is a disposition alternative for some juveniles offenders. In a deferred disposition, a guilty plea or finding of guilt is entered, the case is continued generally for up to one year, and the juvenile is placed on community supervision. If the juvenile complies with the conditions of supervision and pays full restitution, the guilty plea is vacated and the case is dismissed with prejudice. If the juvenile fails to comply with the conditions of the community supervision, the court must enter the original disposition order.

A juvenile is ineligible for deferred disposition if the current charge is for a sex or violent offense; the juvenile has a criminal history that includes any felony; the juvenile has a prior deferred disposition or deferred adjudication; or the juvenile has two or more adjudications.

The juvenile court may continue a case for disposition if a motion is made at least 14 days prior to commencement of the trial.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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Summary of Bill (Recommended Substitute): If a motion for a deferred disposition is made with less than 14 days but prior to commencement of the trial, the court may waive the 14-day requirement for good cause. A juvenile who agrees to a deferral of disposition must acknowledge the direct consequences of being found guilty and the direct consequences that will happen if an order of disposition is entered.

The court may vacate a conviction at the end of a deferral period, even if restitution has not been paid in full, if the juvenile has made a good faith effort to pay. The court must enter an order establishing the balance due and entering a payment plan which may extend up to ten years. The respondent must remain under the court's jurisdiction for a maximum term of ten years. Prior to expiration of the ten year period, the juvenile court may extend the judgment of restitution for an additional ten years. The court may relieve the respondent of the requirement to pay restitution in whole or in part to any insurance provider if the court is satisfied that the respondent does not have the ability to pay. Restitution must be paid in full before the records of the juvenile's deferred disposition may be sealed.

Where disposition in separate disposition orders is imposed on a youth, the periods of community supervision in the separate orders must run concurrently and the periods of detentions must run consecutively.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): The court's authority to order a deferred disposition after the commencement of trial is removed. The court may relieve a juvenile of the requirement to pay restitution to any insurance provider if the court is satisfied the person does not have the ability to pay and could not reasonably acquire the means to pay the restitution over a ten-year period. Full restitution must be paid in order for the juvenile's records to be sealed.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: I became concerned with this issue because of an appellate court decision that requires dismissal of the conviction if the juvenile has made a good faith effort to pay. There is currently nothing in the statute that allows the court to keep restitution going. This bill is designed to remedy that problem.

CON: We oppose two areas of this bill. First, allowing the court to enter a deferred disposition after commencement of the trial. This has been used by the court to find the offender guilty of a lesser offense when the facts actually support another verdict. A deferred disposition is a good thing, but should be limited to pre-trial. We also do not agree with the victim restitution provisions. To allow the court to dismiss restitution devalues the victim. The deferred disposition is a give and take. It puts the juvenile back into the position where they were prior to committing the act, but does not necessarily restore the victim. This

situation is made worse if the court can dismiss the restitution. A compromise solution would be to allow the court to extend restitution out until the juvenile turns 21.

Persons Testifying: PRO: Judge Helen Halpert, Superior Court Judges Association.

CON: Todd Dowell, Kelly Pelland, Wyman Yip, Washington Association of Prosecuting Attorneys.

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Casey Grannis, the attorney for the respondent, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Appellant, in STATE V. M.L., Cause No. 66208-2-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

W Brame

Name

Done in Seattle, Washington

7/27/11

Date 7/27/11

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