

ORIGINAL

NO. 39519-3-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

IAN KEITH CHRISTENSEN,

Appellant.

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COURT OF APPEALS  
DIVISION II  
STATE OF WASHINGTON  
BY DEPUTY

ON APPEAL FROM THE SUPERIOR COURT OF  
KITSAP COUNTY, STATE OF WASHINGTON  
Superior Court No. 09-8-00256-1

BRIEF OF RESPONDENT

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This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.  
DATED October 23, 2009, Port Orchard, WA *[Signature]*  
Original **AND ONE COPY** filed at the Court of Appeals, Ste. 300, 950 Broadway, Tacoma WA 98402; Copy to counsel listed at left.

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**I. COUNTERSTATEMENT OF THE ISSUES**

- A. GIVEN THAT RESPONDENT’S APPEAL IS MOOT, SHOULD THIS COURT SHOULD DENY FURTHER REVIEW UNDER THE CIRCUMSTANCES OF THIS CASE?**
  
- B. ASSUMING THE COURT FINDS IT NECESSARY TO ADDRESS THE ISSUE PRESENTED, IS DETENTION TIME AN APPROPRIATE CONDITION OF SUPERVISION UNDER THE INTENT AND PURPOSES OF THE JUVENILE JUSTICE ACT?**

**II. STATEMENT OF THE CASE**

On March 9, 2009, the then thirteen year old Respondent assaulted a student at John Sedgewick Jr. High School. CP 10-15; RP 19. The victim was 14 year old Nicholas Walker (hereinafter “Nick” Walker). Id. As a result of the assault, Nick suffered injuries, including a broken tooth and loose teeth in the surrounding gums. CP 12.

During the investigation, Nick’s friend, John Steinbrink reported to law enforcement that, prior to the day of the incident, the Respondent had been constantly harassing he and Nick at school, calling them “fags” and saying he “fucked” their mothers. CP 12; RP 19.

According to Nick, the Respondent had harassed him since third grade. CP 12, 15; RP 11. Nick reported that, on the day of the incident, Respondent punched him several times in the face. CP 12, 15; RP 19. He

believed the first punch broke his tooth. CP 12. As a result of the punch, Nick suffered sore teeth, a swollen nose, and possible bruising to his eyes. Id.

Deputy Rick Stoner of the Kitsap County Sheriff's Office completed his investigation and submitted a report, labeling the incident an Assault in the Second Degree, 9A.36.021, a Class B felony. CP 10-15.

On March 23, 2009, the State filed charges against Respondent in the Kitsap County Juvenile Court, alleging he had committed Assault in the Third Degree, 9A.36.031, a Class C felony. CP 1-3. The lesser charge was filed as an option that would allow the Respondent to proceed with the matter as a deferred disposition under RCW 13.40.127, with the blessing of the State, the victim, and the victim's family. RP 6.

On May 19, 2009, Respondent appeared and set the matter for entry of a motion for deferred disposition to the lesser charge of Assault in the Third Degree. CP 4. That same day, the Respondent negotiated a plea agreement with the State, wherein the State agreed to "not object" to the motion for deferred disposition and to recommend a sentence that would include 20 days of "secure" detention.<sup>1</sup> Respondent did not object to the State's recommendation for secure detention in relation to the proposed deferred disposition. Id.

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<sup>1</sup> The State's promise to recommend detention did not necessitate Respondent's agreement however, it did provide Respondent with the benefit of the State joining in his motion.

On May 28, 2009, the Respondent came before the Kitsap County Juvenile Court and moved for a deferred disposition pursuant to RCW 13.40.127. CP 5-15. The Respondent handed forth “Juvenile’s Motion and Stipulation For Deferred Disposition – RCW 13.40.127” (hereinafter referred to as “Motion”). Id.

Prior to the Juvenile Court considering whether it would grant the Respondent’s Motion, the State re-iterated the plea agreement it made with the Respondent to join in the Motion and to recommend 20 days of secure detention. RP 8-9. At that time the Respondent did not object to the State’s recommendation, nor did the Respondent argue that the State’s recommendation for secure detention was without legal authority. Instead, the Respondent sat silent as the State expressed its wish, and the wish of the victim, that the Juvenile Court grant the Motion. RP 6-11.

The Juvenile Court expressed concerns about the facts of the case and whether they were appropriate for granting a deferred disposition. RP 7. The Juvenile Court carefully advised Respondent of the conditions that it could impose should it grant the Motion, including imposition of up to 30 days in detention. RP 8. The Respondent acknowledged his understanding that detention could be imposed and did not object at that time. Id.

The Juvenile Court further advised Respondent of the recommendations from both the State’s and Probation Staff which included

detention. RP 9. Again, Respondent did not object to the detention recommendations, nor did he argue they were potentially void of legal authority. Id. The Juvenile Court then granted the Motion, finding that, despite concerns over the facts leading up to the assault, the victim's family did not oppose the deferred disposition. CP 16; RP 7, 10.

The probation officer, Ms. Mullins, requested 5 days in detention with no objection to alternatives.<sup>2</sup> RP 10. The State requested 20 days of secure detention based on the severity of the injuries. Id.

After the Motion was granted, Respondent's attorney proceeded to characterize the State's recommendation for 20 days of secure detention as "extreme." RP 13-14. The Respondent requested no detention days be imposed, but was willing to do alternatives. RP 14.

Respondent's attorney then proceeded to argue that detention is not permissible under RCW 13.40.127, the deferred disposition statute. RP 14. Respondent's attorney cited no authority for this proposition except a general representation that "other jurisdictions don't impose detention for deferred dispositions and the Washington Courts forms for deferred disposition don't even have a line for detention". Id.

Respondent presented no case law or briefing on the issue of whether

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<sup>2</sup> "Alternatives" to detention, is a term used to describe ways of serving detention outside of a formal detention facility, for instance, doing community service or "work crew".

detention can be imposed under RCW 13.40.127. RP 15. Respondent relied on the fact that the deferred disposition statute does not mention the word detention as a condition of community supervision that can be imposed under RCW 13.40.127. Id.

The Juvenile Court disagreed, noting that detention can be an appropriate condition in a deferred disposition. RP 22. The Juvenile Court imposed 15 days of detention time of which 4 days were ordered as secure and the remaining 11 on alternatives if qualified. CP 18; RP 20.

Appellant filed a notice of appeal to this Court on September 25, 2007. CP 25.

### III. ARGUMENT

Respondent's case should be dismissed as moot.<sup>3</sup> Further consideration is unnecessary under the circumstances of this case. In the event this Court determines a continuing and substantial public interest to address the issue presented, it should find detention time to be an appropriate condition of supervision under the implicit authority of the Juvenile Justice Act (hereinafter "JJA").

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<sup>3</sup> The State has also moved for dismissal on the basis that the appeal is not ripe, as not been taken from a final dispositional order. See, State's Motion to Dismiss Appeal, filed separately herein.

**A) RESPONDENT'S APPEAL IS MOOT AND THIS COURT SHOULD DENY FURTHER REVIEW UNDER THE CIRCUMSTANCES OF THIS CASE.**

Respondent concedes that his appeal is moot because the detention time has already been served in this case. See, Brief of Appellant, page 3. However, Respondent contends that this Court should continue to determine the merits of his appeal, arguing that the issue of detention as a condition of supervision under RCW 13.40.127 is one that involves a continuing or substantial public interest. *Id.*

The State concedes the law that, despite being moot, this Court has discretion to decide whether it should address any issue that constitutes a “matter of continuing and substantial public interest.” *In re M.B.*, 101 Wn. App. 425, 432, 3 P.3d 780 (2000).

However, this Court should use its discretion to decline addressing the issue of detention under RCW 13.40.127 *as presented under the facts of this case*, where the Respondent: (1) Was given the opportunity to be eligible for the deferred disposition based on the charge; (2) Stood silent prior to the Motion being granted by the Juvenile Court; and, (3) Received the benefit of his plea bargain with the State, who agreed not to oppose the Motion in return for being allowed to recommend detention time. Based on these three reasons, further consideration of this appeal would be contrary to the equities presented by this already moot case.

**(1) Respondent Was Provided Eligibility by the State**

The State is vested with great discretion in determining what charge to file. State v. Korum, 157 Wn.2d 614, 625, 141 P.3d 13 (2006), *citing*, State v. Lewis, 115 Wn.2d 294, 299, 797 P.2d 1141 (1990). The State exercised its discretion in this case, charging Assault in the Third Degree, an offense which made Respondent eligible for deferred disposition under RCW 13.40.127.

However, the State could have chosen a different charge in this case. Instead of Assault in the Third Degree, Respondent could have been charged with a much more serious offense: Assault in the Second Degree, a class B felony. RCW 9A.36.021.<sup>4</sup> This would have rendered Respondent ineligible for a deferred disposition altogether. RCW 13.40.127(1)(a).<sup>5</sup> Had Respondent been charged with Assault in the Second Degree the presumptive standard range sentence would have been 15 to 36 weeks, or approximately 3 to 9 months, of confinement at the Juvenile Rehabilitation Administration.

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<sup>4</sup> Assault in the second degree is committed when, under circumstances not amounting to assault in the first degree, intentionally “assaults another and thereby recklessly inflicts substantial bodily harm.” RCW 9A.36.021(1)(a). “Substantial bodily harm” is “bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.” RCW 9A.04.110(4)(b). In this case there was substantial disfigurement of Nick’s facial features, a loss of his dental function, and, a fractured (chipped) tooth. CP 11-12.

<sup>5</sup> A juvenile is ineligible for a deferred disposition if they are charged with a “violent offense”. RCW 13.40.127(1). Assault in the Second Degree is defined as a “violent offense”. RCW 9.94A.030(50)(a)(xi).

RCW 13.40.0357.<sup>6</sup>

But in this case, the State chose to charge a less serious offense which allowed for Respondent to move for a deferred disposition and avoid a potentially lengthy commitment, amongst other things. RP 6. The victim's mother, Ms. Walker, was in agreement, as she did not wish to see it follow Respondent for the rest of his life. RP 7, 11. Even the Honorable Judge Hartman considered the seriousness of the actual facts in the case in relation to the charge and whether it would be in the interest of the community to grant the Motion absent the recommendations. RP 7, 18-20.

Instead of focusing solely on the facts of the case, the State chose to give the Respondent a break on the charge in order to provide him an opportunity to have this case dismissed at the end of his supervision. RP 5, 21.

**(2) Respondent Failed to Object or Brief Prior to Entry**

Respondent failed to timely object to the detention recommendations and the juvenile court's advisement that detention would be a possibility in this case.

Prior to considering Respondent's Motion, the Respondent was clearly advised by the court that detention time was something that was not

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<sup>6</sup> Respondent had no criminal history and thus a zero offender score at the time of the deferred disposition hearing. CP 6; RP 7. The presumptive range for Assault in the Second Degree with a zero offender score is confinement for 15 to 36 weeks. RCW 13.40.0357.

only recommended, but also could be imposed by the court in this case. RP 8-10. The Respondent acknowledged his understanding of that possibility without objection. Id.

Respondent then waited until the Motion was granted before arguing that there was no authority to impose detention as a condition of supervision for his deferred disposition. Respondent's attorney didn't even brief the argument or present authority for the proposition other than to question it because the statute is silent and certain forms left a line for detention out. RP 14-15. And, despite the argument secure detention couldn't be imposed, Respondent went on to agree that non-secure alternatives would have been appropriate anyway. RP 15.

At the conclusion of the hearing, despite having the opportunity, Respondent never requested the Motion be withdrawn, additional briefing, or reconsideration after the Juvenile Court chose to impose 4 days of secure detention. RP 20-22. Now, despite being moot, the Respondent asks this court to consider the issue as continuing and substantial public interest. Brief of Appellant, page 3.

**(3) Respondent Received the Benefit of His Plea Bargain**

Respondent in the case negotiated a deal with the State in which the State agreed not to oppose, and which, in fact, resulted in the State recommending the Court grant Respondent's Motion. CP 4. The State's

recommendation for 20 days of secure detention reflects the consideration given for allowing Respondent to request a deferred disposition without objection by the State. *Id.* In turn, the State was provided an opportunity to request detention time for a case that could have been a much more serious charge. The result is that the Respondent received the benefit of his plea bargain with the State, who did not oppose the Motion. The Juvenile Court took this recommendation into account in determining the appropriateness of the deferred disposition. RP 3, 6, 7, 9, 10.

One could argue that this Court's consideration of the issue now would actually be contrary to the public's interest because it could prevent negotiation of a deferred disposition in cases where the prosecutor or courts find detention a necessary component of the final outcome. For instance, in State v. Korum, the Washington State Supreme Court addressed the issue of prosecutorial vindictiveness where plea bargaining results in more severe or additional charges are being assessed in light of a defendant exercising his or her Constitutional right to trial. The Court in that case recognized the public interest of not interfering with the plea bargaining process, holding otherwise defendants risk greater charges and the possibility courts would be less inclined to accept the plea. Korum, 157 Wn.2d at 635.

The same holds true here, where Respondent was able to take advantage of his plea bargain with the State to allow a recommendation for

detention time, thereby avoiding greater charges and the possibility the Juvenile Court would have rejected the Motion. Id.

For all three of the above reasons, the case should be dismissed as moot and further consideration denied as unnecessary under the circumstances of this case.

**B) ASSUMING THE COURT FINDS IT NECESSARY TO ADDRESS THE ISSUE PRESENTED, DETENTION TIME IS AN APPROPRIATE CONDITION OF SUPERVISION UNDER THE INTENT AND PURPOSES OF THE JUVENILE JUSTICE ACT.**

Even if this Court finds it necessary to address this case under a continuing and substantial public interest, it should find detention to be an appropriate condition of supervision that is implicitly authorized under the Juvenile Justice Act (“JJA”).

Deferred dispositions are governed by statute, specifically RCW 13.40.127.<sup>7</sup> The deferred disposition statute says juvenile courts may defer disposition in certain cases. RCW 13.40.127(1). Upon granting a deferred disposition, the juvenile court is first instructed to place the juvenile under “community supervision”. RCW 13.40.127(5).

The term “community supervision” is defined in the JJA as an individualized program comprised of several things including “community-based sanctions”, “community-based rehabilitation”, and “monitoring and

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<sup>7</sup> A copy of RCW 13.40.127 has been attached herein as Appendix A for reference.

reporting requirements”. RCW 13.40.020(4).

The term “community based sanctions” is defined as “a fine, not to exceed five hundred dollars” and up to “one hundred fifty hours of community restitution.” RCW 13.40.020(2).

The term “community-based rehabilitation” essentially involves requirements for attending “employment”, “education”, “treatment” and the like. RCW 13.40.020(1).

The term “monitoring and reporting requirements” essentially involves restrictions on where an offender must be during certain hours of the day. It includes geographical restrictions and requirements for the offender to meet with probation. It also includes “other conditions or limitations as the court may require which may not include confinement.” RCW 13.40.020(18).

**(1) Standard of Review**

Because this case deals with interpretation of statutory law, specifically RCW 13.40.127, the standard of review is *de novo*. State v. Lown, 116 Wn. App. 402, 407, 66 P.3d 660 (2003), *citing*, State v. J.A., 105 Wn. App. 879, 884-85, 20 P.3d 487 (2001).

**(2) Court Is Not Limited To The Definition Of Community Supervision**

RCW 13.40.127(5), of the deferred disposition statute states:

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. RCW 13.40.127(5)(emphasis added).

As stated above, the first sentence of RCW 13.40.127(5) requires the court first place the juvenile under “community supervision”; however, in the same provision, the court is not limited to simply placing a juvenile on conditions of “community supervision” defined in RCW 13.04.020(4). Indeed, the next sentence makes clear: *“The court may impose any conditions of supervision that it deems appropriate including posting a probation bond.”* RCW 13.40.127(5) (emphasis added).

That second sentence in RCW 13.40.127(5), uses the term “supervision”; which is different than the term “community supervision” as stated in the preceding sentence. Thus, the court is not limited to just terms of “community supervision” and has broad authority to craft any conditions which it deems appropriate to effectuate the purposes of the JJA. Lown, 116 Wn. App. at 410-11, *citing*, J.A., 105 Wn. App. at 887.

### **(3) The Purposes of the JJA Support A Broader Reading of Supervision**

The purposes of the JJA are set out in RCW 13.40.010.<sup>8</sup> Those purposes involve a striking a balance between equally important concepts of accountability and rehabilitation, but often those concepts “must give way to

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<sup>8</sup> A copy of RCW 13.40.010 has been attached herein as Appendix B for reference.

the purposes of responding to the needs of the juvenile.” J.A., 105 Wn. App. at 886.

In State v. J.A., Division I of the Court of Appeals held that the juvenile court has discretion under RCW 13.40.127 to determine what constitutes a lack of compliance with supervision under the terms of a deferred disposition. J.A., at 887-88. In doing so, Division I found that, in light of the purposes of the JJA, subsection (5) of RCW 13.40.127 was intended as a “foundation for judicial discretion” and constitutes a “broad grant of authority” necessary to acknowledge the unique and individual circumstances of each juvenile standing before the court.. J.A. at 887.

In the end, juvenile courts must be given discretion to create orders for each juvenile individually that affect both accountability and rehabilitation. Id.

In State v. Lown, Division III of the Court of Appeals addressed a similar issue to that in J.A., holding that juvenile courts have discretion to determine whether a violation of the terms of supervision under a deferred disposition constitute a *de minimis* violation, and, to treat the violation under RCW 13.40.200<sup>9</sup> instead of revoking the order and imposing disposition. Lown, 116 Wn. App. at 408. Division III noted the importance of looking to

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<sup>9</sup> 13.40.200 is the provision for modification of standard juvenile disposition orders and states in part: “If the court finds that a respondent has willfully violated the terms of an order...it may impose a penalty of up to thirty days' confinement.” 13.40.200(3).

the purposes and intent of the JJA:

The intent of RCW 13.40.127 cannot be gleaned from a particular word, but must be gathered from the juvenile justice act as a whole. The act gives the court broad discretion in applying the rules. For instance, the court may consider admitted but uncharged crimes in imposing disposition, contrary to the rules governing adult offenders. A juvenile court may even dispense with the prerequisite procedures of determining competency, if to do so will accomplish the overall goals of the juvenile justice act. This is a ‘broad grant of authority’ to take into account the uniqueness of any juvenile's individual circumstances and to ‘fashion orders’ accordingly. Lown at 409, *quoting*, J.A. 105 Wn. App. 887 (citations omitted).

In Lown, the juvenile court had imposed a 10-day detention sanction instead of revoking the juvenile’s deferred disposition. Lown at 406. The State argued that the juvenile court exceeded the scope of 13.40.127, which does not specifically mention “detention” as a condition of supervision. Though the specific issue was not properly before the court because the State was not an aggrieved party, Division III mentioned that the 10-day detention sanction would otherwise be appropriate stating:

The juvenile justice act does not explicitly authorize the particular sanction the commissioner imposed. But the court may impose ‘any conditions of supervision that it deems appropriate.’ ***This gives the juvenile court broad authority to craft an appropriate sanction.*** Lown at 410-11, *quoting*, J.A. 105 Wn. App. 887 (citations omitted)(emphasis added).

Respondent argues that this court should take a narrow interpretation

of sanctions, arguing that the statutes contemplate only “community-based” sanctions which do not include confinement or detention. Brief Of Appellant, page 8. Respondent’s argument fails because not even 13.40.127 limits the court to “community-based” sanctions. Further, as stated above, there is broad authority to fashion sentences which are meaningful to the individual case.

Respondent attempts to argue his “community-based” sanction approach is consistent with a recent opinion of State v. M.C., 148 Wn. App. 968, 201 P.3d 413 (2009). Brief of Appellant, page 8-9.

In State v. M.C., Division I held courts have no authority to impose a Crime Victim’s Compensation Fee (CVC) pursuant to an RCW 7.68.035(1)(b)<sup>10</sup> because a deferred disposition under RCW 13.40.127 is not a “juvenile offense disposition”. M.C., 148 Wn. App. at 972.

Respondent claims the rationale in M.C. provides authority for the proposition that a court is not able to impose any deferred disposition condition that is not explicit in the statute. Brief of Appellant, page 8. But Respondent mis-interprets the holding of that case. The Court in M.C. simply held that authorization for imposition of a CVC is specific to RCW

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<sup>10</sup> RCW 7.68.035(1)(b) says: “When any juvenile is adjudicated of any offense in any *juvenile offense disposition* under Title 13 RCW, except as provided in subsection (2) of this section, there shall be imposed upon the juvenile offender a penalty assessment.” RCW 7.68.035(1)(b) (emphasis added).

7.68.035. M.C. at 970-72. M.C. held that a deferred disposition is not a “juvenile offense disposition” under RCW 7.68.035(1)(b), and, therefore, there is no authority to impose the fee. M.C. at 972.

In fact, there is no authority for imposition of that specific fee anywhere in Title 13, even for a standard disposition under 13.40.160 that is otherwise covered by RCW 7.68.035. The specific authority for CVC is set forth in Title 7 and thus limited to the language used in Title 7. That does not mean every condition of a deferred disposition must be explicit in RCW 13.40.127 as well.

In addition, a CVC fee is not a “condition of supervision”; it is a financial assessment. In the case of deferred dispositions, RCW 13.40.127(5) gives specific statutory authorization for a juvenile court to impose any conditions of supervision it feels are appropriate. RCW 13.40.127(5).

Finally, Respondent mentions that there are no *reported* cases in which the juvenile court imposed detention as a condition of a deferred disposition. Brief of Appellant, page 9. While that may be true, that does not mean courts are without authority to fashion conditions that include detention when the individual case warrants it.

While the court in Lown did not initially impose detention, it did utilize detention as a means to address de minimis violations. *Id* at 406. Nothing in RCW 13.40.127 explicitly says the court can find violations de

minimis or that the violation can be dealt with under RCW 13.40.200 with detention, yet that is exactly what happened.

Therefore, the intent and purpose of the JJA grants broad authority and discretion for juvenile courts to impose detention under RCW 13.40.127.

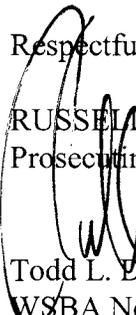
#### **IV. CONCLUSION**

For the foregoing reasons, the appeal should be dismissed as moot. In the event this Court finds a continuing and substantial interest exists to address the issue presented, it should uphold prior opinions concerning the appropriateness of allowing detention time as a condition of community supervision under RCW 13.40.127 and the JJA in general.

DATED October 23, 2009.

Respectfully submitted,

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## APPENDIX A

### **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 the effective date of this section, 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. RCW 13.40.127.

## APPENDIX B

### **13.40.010. Short title--Intent—Purpose**

(1) This chapter shall be known and cited as the Juvenile Justice Act of 1977.

(2) It is the intent of the legislature that a system capable of having primary responsibility for, being accountable for, and responding to the needs of youthful offenders and their victims, as defined by this chapter, be established. It is the further intent of the legislature that youth, in turn, be held accountable for their offenses and that communities, families, and the juvenile courts carry out their functions consistent with this intent. To effectuate these policies, the legislature declares the following to be equally important purposes of this chapter:

- (a) Protect the citizenry from criminal behavior;
- (b) Provide for determining whether accused juveniles have committed offenses as defined by this chapter;
- (c) Make the juvenile offender accountable for his or her criminal behavior;
- (d) Provide for punishment commensurate with the age, crime, and criminal history of the juvenile offender;
- (e) Provide due process for juveniles alleged to have committed an offense;
- (f) Provide necessary treatment, supervision, and custody for juvenile offenders;
- (g) Provide for the handling of juvenile offenders by communities whenever consistent with public safety;
- (h) Provide for restitution to victims of crime;
- (i) Develop effective standards and goals for the operation, funding, and evaluation of all components of the juvenile justice system and related services at the state and local levels;
- (j) Provide for a clear policy to determine what types of offenders shall receive punishment, treatment, or both, and to determine the jurisdictional limitations of the courts, institutions, and community services;
- (k) Provide opportunities for victim participation in juvenile justice process, including court hearings on juvenile offender matters, and ensure that Article

I, section 35 of the Washington state Constitution, the victim bill of rights, is fully observed; and

(l) Encourage the parents, guardian, or custodian of the juvenile to actively participate in the juvenile justice process.

RCW 13.40.010.