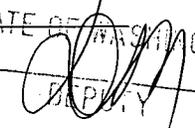


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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY  DEPUTY

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

STATE OF WASHINGTON, APPELLANT

v.

DAKOTA J. PENA-GAROUTTE, RESPONDENT

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

No. 09-8-01677-9

Appellant's Brief

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A. ASSIGNMENTS OF ERROR.

1. The trial court erred by vacating the finding of guilt and dismissing a deferred disposition when the respondent failed to pay a single dollar of the court ordered restitution amount imposed as a condition of the deferred disposition.
2. The trial court erred when it ordered that the restitution order would remain in effect after it dismissed the underlying charge with prejudice.

B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Does the plain language of the juvenile deferred disposition statute require a respondent to pay the full amount of court ordered restitution before a court has the authority to vacate a guilty finding and dismiss the charge? Assignments of Error 1, 2.
2. Did the trial court act without statutory authority when it dismissed a deferred prosecution despite the fact that respondent had not paid a dollar of court ordered restitution? Assignment of Error 1.
3. Did the trial court err in ordering that a restitution order would remain "in effect" after it dismissed the case in which the order was issued? Assignment of Error 2.

C. STATEMENT OF THE CASE.

On October 6, 2009, the State charged the respondent, Dakota J. Pena-Garoutte, in juvenile court with conspiracy to commit residential burglary. Clerk's Papers (CP) 1-3. On December 3, 2009, the State amended the charge to residential burglary. CP 17.

On December 18, 2009, the respondent initially intended to move for a deferred disposition. CP 11. However, the respondent requested a continuance because the parties were "awaiting restitution information." CP 19. Over the next three months, and after restitution information was provided to the respondent, the respondent continued his motion three more times. CP 21-22, 25, 27.

Finally, on April 7, 2010, the respondent moved for a deferred disposition, stipulated to the facts contained in the police reports, and agreed he was guilty of residential burglary CP 29-30; 4-7-10 RP¹ 2-11. The facts underlying the conviction are as follows: the respondent discovered where Husain and Alverta Albermany kept their jewelry, gaming systems, and other valuables when he was a guest in their residence. CP 2-3. Armed with that information, on July 10, 2009, the respondent and Joshua Miller went to the Albermanys' residence and stole

¹ There are two Verbatim Transcripts of Recorded Proceedings (RP) in this case and the reports are independently paginated. Therefore when referring to the record, each will be identified by the date of the proceeding: 4-7-10 RP and 2-14-11 RP.

two laptops, expensive jewelry, a video game console, video games, and DVDs. *Id.* In addition to suffering the loss of personal property, the Albermanys had to repair the damage to their house and furniture caused by the break-in. CP 2-3, 41.

When asking the court to grant the motion for a deferred disposition on April 7th, the respondent acknowledged that “the huge issue here is restitution.” 4-7-10 RP 3. The respondent understood the State was requesting more than \$26,000 in restitution on behalf of the victims; the respondent disputed that amount. 4-7-10 RP 3-4. The respondent indicated that if he thought the court would in fact impose restitution in an amount close to \$26,000 he would not be asking for a deferred disposition. 4-7-10 RP 7. The respondent understood some amount of restitution would be ordered as a condition of the deferred disposition, and the respondent’s mother told the court that her son knew he had to pay the price for his actions. 4-7-10 RP 8.

Commissioner E. Edward Haarmann noted the request for more than \$26,000 in restitution submitted by the Albermanys and the Albermanys’ insurance company, Pemco Insurance Co (Pemco). 4-7-10 RP 8-10. The court doubted the respondent could pay the restitution amount, even if the amount was reduced to \$10,000. 4-7-10 RP 9-10. During the motion for deferred disposition, the respondent repeatedly argued there was no downside in granting the motion, because even if the court ordered the full amount and he could not pay it, the deferred

disposition would be revoked. 4-7-10 RP 4, 8. Counsel for the respondent stated, "I don't see the harm. If . . . the restitution gets ordered and he can't pay it, it's a guilty finding." 4-7-10 RP 8.

The State and Probation Department both opposed the respondent's motion for deferred disposition based on the amount of restitution requested and the unlikelihood the respondent could comply with the required conditions. 4-7-10 RP 5-6. The court seemed to agree, stating that "the likelihood of a 13-and-a-half-year-old coming up with even \$5,000 is highly, highly problematical . . . we're setting him up to fail." 4-7-10 RP 10. Nevertheless, the court granted the deferred disposition and found the respondent guilty of residential burglary. CP 31-35; 4-7-10 RP 10. Sentence was deferred for six months on the condition that the respondent 1) comply with the conditions of community supervision, and 2) pay all legal financial obligations. CP 31-35; 4-7-10 RP 10.

The restitution hearing was initially scheduled on May 24, 2010, but was continued to June 14, 2010, so that witnesses could be called to testify. CP 31, 36. After hearing testimony from victim Husain Albermany and the respondent, and argument from the parties, the court ordered the respondent to pay \$26,658.00 in restitution: \$11,400 to the Albermanys and \$15,258 to Pemco. CP 37-39.

On June 21, 2010, the respondent filed a motion to revise the commissioner's restitution order in an effort to reduce the restitution

amount. CP 40-43. At a review hearing on October 7, 2010, the court scheduled a revocation hearing to address the respondent's failure to pay any restitution. CP 47-48.

At the first revocation hearing on November 8, 2010, Judge Beverly Grant reconsidered the issue of restitution and reduced the restitution amount owed to Pemco from \$15,258 to \$11,258, thereby reducing the total restitution from \$26,658 to \$22,658. CP 50. Judge Grant continued the revocation hearing until February 14, 2011, to give the respondent additional time to pay restitution. CP 51-52.

At the second revocation hearing on February 14th, the State and Probation Department again asked the court to revoke the deferred disposition because the respondent had failed to pay a single dollar of the \$22,658 restitution amount. 2-14-11 RP 2. That same day, the respondent filed a declaration contending he was "unable to pay anything towards my restitution obligation." CP 54-55. He claimed his inability to pay stemmed from his age, he was 12 when he committed the crime and 14 when he claimed inability to pay; his mother's income being \$9 per hour; and the cost of caring for his two siblings, ages 12 and 9. *Id.* All of these facts were present and known to the respondent when he moved for the deferred disposition.

Just over 10 months after the deferred disposition was granted, Judge Kitty-Ann van Doorninck found the respondent had not completed all the conditions of the deferred disposition. CP 66-67. The court noted

that it could extend jurisdiction for another year, but concluded the respondent's financial situation would not change. 2-14-11 RP 9. Although it found that respondent had not complied with the conditions of probation, the court did not revoke the deferred disposition. CP 66-67. Instead, the court vacated the respondent's guilty finding and dismissed the case. CP 66-67. The court further directed that the restitution order imposed as a condition of the deferred disposition would remain "in effect" despite the dismissal of the underlying action. CP 66-67.

The State filed its timely notice of appeal on March 2, 2011. CP 68-70.

D. ARGUMENT.

1. WHEN RESTITUTION IS IMPOSED AS A CONDITION OF A DEFERRED DISPOSITION, FULL RESTITUTION MUST BE PAID TO VICTIMS BEFORE THE CASE CAN BE DISMISSED

Courts lack inherent authority to suspend or defer imposition of disposition absent a legislative grant of authority. *City of Spokane v. Marquette*, 146 Wn.2d 124, 129, 43 P.3d 502 (2002); *State v. Mohamoud*, 159 Wn. App. 753, 760-61, 246 P.3d 849 (2011); *State v. H.E.J.*, 102 Wn. App. 84, 87, 9 P.3d 835 (2000). Unless otherwise authorized, the "court shall not suspend or defer the imposition or the execution of the disposition." RCW 13.40.160(10); *Mohamoud*, 159 Wn. App. at 760-61.

When granting a motion to defer disposition, juvenile courts must comply with the express requirements of the statute authorizing deferred dispositions: RCW 13.40.127². A trial court errs when it fails to follow the statutory requirements of the deferred disposition statute. *Mohamoud*, 159 Wn. App. at 763

Appellate courts review a juvenile court's decision to dismiss a deferred disposition de novo. *State v. Todd*, 103 Wn. App. 783, 787, 14 P.3d 850 (Div. 2, 2000). Additionally, statutory interpretation is a question of law and subject to de novo review. *State v. Watson*, 146 Wn.2d 947, 954, 51 P.3d 66 (2002). When interpreting a statute, the fundamental objective is to ascertain the legislature's intent. *Watson*, 146 Wn.2d at 954; *State v. I.K.C.*, 160 Wn. App. 660, 666, 248 P.3d 145 (Div. 2, 2011).

To determine legislative intent, courts first look to the statutory language and if the language is clear on its face, the meaning is derived from the plain language of the statute. *Watson*, 146 Wn.2d at 954; *Davis v. State ex rel. Dept. of Licensing*, 137 Wn.2d 957, 963-64, 977 P.2d 554 (1999) (the court should assume the legislature means exactly what it

² The complete language of the deferred disposition statute, RCW 13.40.127, is provided in Appendix A.

says). A clear, unambiguous statute is not subject to judicial construction. *Watson*, 146 Wn.2d at 954-55; *State v. M.C.*, 148 Wn. App. 968, 971, 201 P.3d 413 (2009).

a. The Plain Language Of The Deferred Disposition Statute Is Clear, Unambiguous, And Requires Full Payment Of Restitution Before Dismissal

Eligibility for a deferred disposition under the Juvenile Justice Act of 1977 (JJA), chapter 13.40 RCW, is limited and depends on the nature of the charged offense and the respondent's criminal history. RCW 13.40.127(1). Just because a respondent is eligible, does not mean that a deferred disposition will be granted; the trial court must first determine that a deferred disposition will benefit both the respondent and the community. RCW 13.40.127(2); *State v. B.J.S.*, 140 Wn. App. 91, 101, 169 P.3d 34 (Div. 2, 2007). The limited eligibility requirements and the assessment that the deferral is in the best interests of the juvenile and the community reflects that a deferred disposition is a privilege, not a right.

If a deferred disposition is granted, the deferred disposition statute imposes specific mandatory requirements:

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). RCW 13.40.190(1)(a)³ mandates that “the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent.” The use of the word “shall” in a statute imposes a mandatory requirement unless a contrary legislative intent is apparent. *State v. Q.D.*, 102 Wn.2d 19, 29-30, 685 P.2d 557 (1984) citing *State v. Bryan*, 93 Wn.2d 177, 183, 606 P.2d 1228 (1980).

In addition to requiring that restitution be ordered, the juvenile deferred disposition statute also mandates full payment of restitution before there can be a successful completion of the deferred disposition. The statute provides “[a]t the conclusion of the period set forth in the order of deferral **and upon a finding by the court of full compliance with conditions of supervision and payment of full restitution**, the respondent's conviction shall be vacated and the court shall dismiss the case with prejudice.” RCW 13.40.127(9) (emphasis added). The plain language of the statute requires full payment of restitution before the respondent's conviction may be vacated and the case dismissed.

While the statute gives a trial court the authority to defer disposition for up to one year initially, and to extend it for a second year upon a finding of good cause, it does not give the court the authority to

³ The full language of RCW 13.40.190 is provided in Appendix B.

dismiss the conviction if restitution has not been paid. RCW 13.40.127 (2), (8), (9). If the court declines to extend jurisdiction, the only option available to a court if a respondent fails to comply with terms of supervision is entry of an order of disposition. RCW 13.40.127(7).

Because the trial court's actions contravened the specific legislative requirements that had to be met before a dismissal was authorized, the court acted without statutory authority in dismissing the respondent's case. The trial court's dismissal order should be vacated and this Court should direct the trial court to enter a disposition order.

As noted above, the deferred disposition statute requires "full compliance with conditions of probation" and payment of "full restitution" and does not permit the court to consider a respondent's argument of substantial compliance with conditions of community supervision or of partial payment of restitution. RCW 13.40.127. This language is in marked contrast to the authority given under the statute governing violations of probation imposed under a disposition order where the court may consider whether the violation was willful or not. *See* RCW 13.40.200(2)⁴ ("The respondent shall have the burden of showing that the violation was not a willful refusal to comply with the terms of the order.").

Generally courts recognize that the legislature intended different phrases within the same statute to have different meanings. *State v. Contreras*, 124 Wn.2d 741, 747, 880 P.2d 1000 (1994). Unlike the provision addressing probation violations of disposition orders under RCW 13.40.200, there is no language within RCW 13.40.127 that provides a respondent with the right to argue a violation was not willful. This is because a deferred disposition is a privilege, not a right. In order to receive the benefit of a deferred prosecution a juvenile must comply fully with the terms of a deferral order; substantial compliance is not enough.

A respondent can only be granted a deferred disposition if it benefits the community. RCW 13.40.127(2). If a respondent fails to pay the full amount of restitution to victims, the deferral no longer benefits the community and disposition should be imposed.

The court must act within the authority granted within the deferred disposition statute. In *Mohamoud*, Division One held the legislature did not grant the juvenile court statutory authority to order a deferred disposition on its own motion under RCW 13.40.127, and because it failed

⁴ The full language of RCW 13.40.200 is provided in Appendix C.

to follow all statutory requirements, the deferred disposition order was void. 159 Wn. App. at 765.

Courts have interpreted the current deferred disposition statute in more than a dozen cases, and no court has held the language of the deferred disposition statute is unclear or ambiguous. This Court recently interpreted the current deferred disposition statute and found the plain meaning was clear. *I.K.C.*, 160 Wn. App. at 669 (“the plain language of RCW 13.40.127 does not allow juvenile courts to impose detention as a condition of community supervision for deferred dispositions.”).

In fact, this Court previously considered whether a respondent must pay full restitution as a condition of a deferred disposition. *State v. A.K.B.*, 107 Wn. App. 209, 26 P.3d 997 (2001). “Reading RCW 13.40.127 as a whole, we conclude that the words ‘payment of full restitution’ as used in RCW 13.40.127(9) means restitution properly ordered by the court during but not after the conclusion of the period of deferral.” *Id.* at 214.

Similarly, the plain language of RCW 13.40.127 does not allow a court to dismiss a deferred disposition without payment of full restitution. There is no language within RCW 13.40.127 supporting the dismissal of a deferred disposition when restitution had not been fully paid. Juvenile

courts only have the authority to vacate a conviction and dismiss a charge after full restitution is paid. RCW 13.40.127(9).

Division One also addressed whether full payment of restitution was required under the deferred disposition statute and found the statutory language to be clear. See *State v. A.M.R.*, 108 Wn. App. 9, 12, 27 P.3d 678 (2001). In 2009, Division One again “note[d] that RCW 13.40.127 requires payment of restitution as a condition to receiving an order deferring disposition” when it held that courts do not have the statutory authority to impose crime victim penalty assessments based on the plain meaning of the deferred disposition statute. *M.C.*, 148 Wn. App. at 972.

Furthermore, an earlier version of the restitution statute, RCW 13.40.190, did permit the court to limit the amount of restitution ordered or not to impose restitution at all. However, the statute was amended by the legislature and “[s]ince the amendment, juvenile courts have been required to order full restitution.” *A.M.R.*, 108 Wn. App. at 13.

In *A.M.R.*, juvenile respondents pleaded guilty to crimes resulting in damage to vehicles owned by victims who were insured. 108 Wn. App. 9. As part of disposition, the trial court only ordered payment of restitution for the individual victims’ out-of-pocket expenses and refused to order the respondents to pay restitution to the insurance companies. *Id.* at 10-11. Division One held the trial court abused its discretion when it

ignored the mandatory nature of the statute, and as a result undermined the purposes of the JJA. *Id.* at 14.

There is a provision that does permit a court to consider a respondent's ability to pay the court-ordered restitution amount when the victim is an insurance company. RCW 13.40.190(1)(g). However, in order to be relieved of any part of the restitution amount ordered, the respondent must reasonably satisfy the court

that he or she does not have the means to make full or partial restitution to the insurance provider and could not reasonably acquire the means to pay the insurance provider the restitution over a ten-year period.

RCW 13.40.190(1)(g).

In the instant case, the respondent failed to pay a single dollar of the restitution amount ordered to both the individual victim and to the insurance company. CP 54-55; 2-14-11 RP 2, 9. The State moved for revocation while noting that the court could probably extend jurisdiction for another year under the deferred disposition, but the court dismissed the case instead. CP 67; 2-14-11 RP 7-10.

The trial court appeared to recognize the importance of requiring the respondent to compensate the victims when it ordered that the restitution order would remain valid after the case was dismissed with prejudice. CP 67. However, the court's attempt was ineffectual. A court

no longer has jurisdiction to enforce an order once a case is dismissed. A court acquires jurisdiction over a proceeding when a complaint is filed. RCW 4.28.020. When the complaint is dismissed, the jurisdiction ends.

Even if the court somehow retained jurisdiction to enforce an order after the underlying case was dismissed with prejudice, the JJA prevents a court from enforcing the restitution order. Dismissed deferred disposition cases must be sealed no later than 30 days after the respondent's 18th birthday if there are no pending criminal charges. RCW 13.40.127(10). Records sealed under RCW 13.40.127 "shall have the same legal status as records sealed under RCW 13.50.050." RCW 13.40.127(10)(b).

Then, the restitution statute strips courts of jurisdiction to enforce restitution orders. RCW 13.40.190(1)(d) ("If the court grants a respondent's petition pursuant to RCW 13.50.050(11), the court's jurisdiction under this subsection shall terminate."). Therefore, if a court dismisses a deferred disposition when restitution has not been paid, there is no way to enforce the restitution order beyond 30 days after the respondent's 18th birthday.

In the instant case, even if the restitution order survived the dismissal of the case, the restitution order can only be valid for another four years, instead of an additional 10 years that would be available had the court revoked the deferred disposition and entered disposition. Under RCW 13.40.190, restitution orders are valid for 10 years and can be

extended for another 10 years by the clerk's office if restitution is ordered as a condition of disposition. RCW 13.40.190(1)(d).

Given the unlikely prospect of the respondent getting a well-paying job while he is in high school and the respondent's current claim of inability to pay, in all likelihood, the victim will not receive a single dollar of the \$11,400 court ordered restitution amount, not to mention the \$11,258 the respondent still owes to Pemco. Permitting dismissal of a deferred disposition when the victim of a Residential Burglary has not been compensated does not benefit the community and does not hold the respondent accountable for his actions.

- b. If the deferred disposition statute is not clear on its face, the legislative intent of the JJA requires full payment of restitution to victims

Under the language of Title 13 and the principles of statutory construction, if there is a question about the meaning of the deferred disposition statutory provision, courts must look to the JJA for legislature intent. The JJA is the exclusive authority on issues of adjudication and disposition of juvenile offenders, except where otherwise expressly provided. RCW 13.04.450.

The meaning of a statutory provision depends on the act as a whole, and therefore, the meaning of deferred disposition provision is governed by the purpose of the JJA. *State v. Young*, 125 Wn.2d 688, 696, 888 P.2d 142 (1995) ("A statute must be read as a whole giving effect to

all of the language used.”); *Weyerhaeuser Co. v. Tri*, 117 Wn.2d 128, 133, 814 P.2d 629 (1991) (Each provision of the statute should be read in relation to the other provisions, and the statute should be construed as a whole); *State v. Haws*, 118 Wn. App. 36, 41, 74 P.3d 147 (Div. 2, 2003).

Requiring full payment of restitution in juvenile cases furthers the JJA’s purposes of providing victim compensation and offender accountability. *A.M.R.*, 108 Wn. App. at 12-13. Compensating victims of crimes is critically important in the JJA, such that, (1) restitution must be ordered, (2) restitution must be ordered jointly and severally, and (3) restitution must be paid in full to receive the benefit of a deferred disposition. RCW 13.40.190(1), (2); RCW 13.40.127(5), (7).

The deferred disposition alternative furthers the JJA’s goals of rehabilitation and accountability. *State v. B.J.S.*, 140 Wn. App. 91, 101, 169 P.3d 34 (Div. 2, 2007). Therefore, the benefit of a deferred disposition must be provided by the court in a manner consistent the purpose of the JJA.

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;

...

(c) Make the juvenile offender accountable for his or her criminal behavior;

...
(h) Provide for restitution to victims of crime

...
(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;

RCW 13.40.010(2).

Unlike the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, which governs imposition of restitution in adult criminal proceedings, restitution ordered in juvenile cases is remedial, not punitive in nature. *State v. J.A.*, 105 Wn. App. 879, 20 P.3d 487 (2001); *State v. Bennett*, 63 Wn. App. 530, 533, 821 P.2d 499 (1991) (Restitution ordered under the JJA primarily serves the goal of rehabilitation). “The payment of restitution shall be in addition to any punishment which is imposed pursuant to the other provisions of this chapter.” RCW 13.40.190(1)(c); *A.M.R.*, 108 Wn. App. 9.

The primary purpose of providing compensation to victims is also reflected in the JJA’s mandate that restitution is imposed joint and several. RCW 13.40.190. “If the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution.” RCW 13.40.190(1)(f).

As it stands now, the victims have not been compensated for their damages, the case is dismissed, and even if the restitution order remains in effect after dismissal, the restitution order will no longer be valid after this case is sealed. By refusing to revoke the deferred disposition, the court did not hold the respondent accountable for his actions, did not compensate the victims for their losses, and undermined the purposes of the JJA.

E. CONCLUSION.

Dismissal of a deferred disposition when full restitution has not been paid to victims is not authorized by the plain language of RCW 13.40.127 and violates the purpose of the JJA. The State respectfully requests that the Court reverse the trial court's order dismissing the respondent's case, revoke the deferred disposition for failure to pay full restitution, and remand this case back to the trial court for imposition of disposition.

DATED: August 23, 2011.

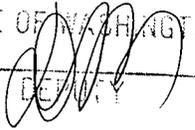
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STATE OF WASHINGTON
BY  DEPUTY

Certificate of Service:

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

8-23-11 
Date Signature

APPENDIX "A"



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CREDIT(S)

West's RCWA 13.40.127

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

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C

West's Revised Code of Washington Annotated Currentness

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CREDIT(S)

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

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APPENDIX “C”

C

West's Revised Code of Washington Annotated Currentness

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

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

→ **13.40.200. Violation of order of restitution, community supervision, fines, penalty assessments, or confinement--Modification of order after hearing--Scope--Rights--Use of fines**

(1) When a respondent fails to comply with an order of restitution, community supervision, penalty assessments, or confinement of less than thirty days, the court upon motion of the prosecutor or its own motion, may modify the order after a hearing on the violation.

(2) The hearing shall afford the respondent the same due process of law as would be afforded an adult probationer. The court may issue a summons or a warrant to compel the respondent's appearance. The state shall have the burden of proving by a preponderance of the evidence the fact of the violation. The respondent shall have the burden of showing that the violation was not a willful refusal to comply with the terms of the order. If a respondent has failed to pay a fine, penalty assessments, or restitution or to perform community restitution hours, as required by the court, it shall be the respondent's burden to show that he or she did not have the means and could not reasonably have acquired the means to pay the fine, penalty assessments, or restitution or perform community restitution.

(3) If the court finds that a respondent has willfully violated the terms of an order pursuant to subsections (1) and (2) of this section, it may impose a penalty of up to thirty days' confinement. Penalties for multiple violations occurring prior to the hearing shall not be aggregated to exceed thirty days' confinement. Regardless of the number of times a respondent is brought to court for violations of the terms of a single disposition order, the combined total number of days spent by the respondent in detention shall never exceed the maximum term to which an adult could be sentenced for the underlying offense.

(4) If a respondent has been ordered to pay a fine or monetary penalty and due to a change of circumstance cannot reasonably comply with the order, the court, upon motion of the respondent, may order that the unpaid fine or monetary penalty be converted to community restitution unless the monetary penalty is the crime victim penalty assessment, which cannot be converted, waived, or otherwise modified, except for schedule of payment. The number of hours of community restitution in lieu of a monetary penalty or fine shall be converted at the rate of the prevailing state minimum wage per hour. The monetary penalties or fines collected shall be deposited in the county general fund. A failure to comply with an order under this subsection shall be deemed a failure to comply with an order of community supervision and may be proceeded against as provided in this section.

(5) When a respondent has willfully violated the terms of a probation bond, the court may modify, revoke, or retain the probation bond as provided in RCW 13.40.054.

CREDIT(S)

[2004 c 120 § 7, eff. July 1, 2004; 2002 c 175 § 25; 1997 c 338 § 31; 1995 c 395 § 8; 1986 c 288 § 5; 1983 c 191 § 15; 1979 c 155 § 70; 1977 ex.s. c 291 § 74.]

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