

APR -9 2015

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON

2015 APR -9 PM 4: 23

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IN RE: THE PERSONAL RESTRAINT	)	
OF JOSEPH LEIF WOLF	)	NO. _____
	)	
JOSEPH LEIF WOLF,	)	PERSONAL RESTRAINT PETITION
	)	
Petitioner,	)	
	)	
v.	)	
	)	
STATE OF WASHINGTON,	)	
	)	
Respondent.	)	
_____	)	

If there is not enough room on this form, use the back of these pages or use other paper. Fill out all of the form and other papers you are attaching before you sign this form in front of a notary.

A. STATUS OF PETITIONER

I, Joseph Leif Wolf, DOC #323839, Monroe Correctional Complex, 16550 177th Avenue SE PO Box 777 Monroe, WA 98272,

Apply for relief from confinement. I am   x   am not \_\_\_\_\_ now in custody serving a sentence upon conviction of a crime. (If not serving a sentence upon conviction of a crime) I am now in custody because of the following type of court order: Order Revoking SSOSA.

1. The court in which I was sentenced is: Pierce County Superior Court.
2. I was convicted of the crime of: two counts of Rape of a Child in the First Degree.
3. I was sentenced after (check one) Trial \_\_\_\_\_ Plea of Guilty   x   on November 14, 2008.
4. The Judge who imposed sentence was the Honorable Lisa Worswick.

5. My lawyer at trial court was Mark T. Quigley, Pierce County Department of Assigned Counsel, 949 Market St., Ste 334, Tacoma, WA 98402-3696.

6. I did  did not  appeal from the decision of the trial court. (If the answer is that I did), I appealed to: \_\_\_\_\_  
Name of court or courts to which appeal took place

7. My lawyer for my appeal was: None.  
Name and address if known or write "none"

The decision of the appellate court was \_\_\_\_\_ was not  published. (If the answer is that it was published, and I have this information) the decision is published in \_\_\_\_\_

8. Since my conviction I have  have not \_\_\_\_\_ asked a court for some relief from my sentence other than I have already written above. (If the answer is that I have asked, the court I asked was the Court of Appeals Division II. Relief was denied on April 2, 2014.

(If you have answered in question 7 that you did ask for relief), the name of your lawyer in the proceedings mentioned in my answer was Sheri Arnold, 2725 Parkway W, University Place, WA 98466-1719.

9. If the answers to the above questions do not really tell about the proceedings and the courts, judges and attorneys involved in your case, tell about it here: **Please see attached brief.**

B. GROUNDS FOR RELIEF:

**Please see attached Brief in support of Personal Restraint Petition.**

C. STATEMENT OF FINANCES:

If you cannot afford to pay the \$250 filing fee or cannot afford to pay an attorney to help you, fill out this form. If you have enough money for these, do not fill this part of the form. If currently in confinement you will need to attach a copy of your prison finance statement.

1. I do  do not \_\_\_\_\_ ask the court to file this without making me pay the \$250 filing fee because I am so poor and cannot pay the fee.

63.21

2. I have \$~~143.50~~ in my prison or institution account.

3. I do \_\_\_ do not x ask the court to appoint a lawyer for me because I am so poor and cannot afford to pay a lawyer.

4. I am \_\_\_ am not x employed. My salary or wages amount to \$ \_\_\_\_\_ a month. My employer is \_\_\_\_\_  
Name and address of employer

5. During the past 12 months I did \_\_\_ did not x get any money from a business, profession or other form of self-employment. (If I did, it was \_\_\_\_\_  
Type of self-employment  
And the total income I received was \$ \_\_\_\_\_.

6. During the past 12 months I:

Did \_\_\_ Did Not x Receive any rent payments. If so, the total I received was \$ \_\_\_\_\_

Did \_\_\_ Did Not x Receive any interest. If so, the total I received was \$ \_\_\_\_\_

Did \_\_\_ Did Not x Receive any dividends. If so, the total I received was \$ \_\_\_\_\_

Did \_\_\_ Did Not x Receive any other money. If so the total I received was \$ \_\_\_\_\_

Do \_\_\_ Do Not x Have any cash except as said in question 2 of Statement of Finances. If so the total amount of cash I have is \$ \_\_\_\_\_.

Do \_\_\_ Do Not x Have any savings or checking accounts. If so, the total amount in all accounts is \$ \_\_\_\_\_

Do \_\_\_ Do Not x Own stocks, bonds or notes. If so, their total value is: \$ \_\_\_\_\_.

7. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what each item or property is worth and how much you owe on it. Do not list household furniture and furnishings and clothing which you or your family need.

Items	Value
N/A	

8. I am \_\_\_ am not x married. If I am married, my wife or husband's name and address is:

---

---

9. All of the persons who need me to support them are listed below:

Name & Address	Relationship	Age
<u>N/A</u>		

---

---

---

10. All the bills I owe are listed here:

Name & Address of Creditor	Amount
<u>Pierre County Superior Court</u>	<u>\$ 5,723.42</u>

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D. REQUEST FOR RELIEF:

I want this court to:

Vacate my conviction and give me a new trial

Vacate my conviction and dismiss the criminal charges against me without a new trial

Other: Reverse the trial court's order revoking SSOSA and reinstate the SSOSA.



TLLUTZ

WASHINGTON STATE REFORMATORY

OTRTASTB

TRUST ACCOUNT STATEMENT

6.03.1.0.1.9

DOC# 0000323839 Name: WOLF, JOSEPH LEIF  
 LOCATION: D01-040-B135L

BKG# 753257

Account Balance Today ( 01/06/2015 ) Current : 285.82  
 Hold :  
 Total : 285.82

Account Balance as of 12/31/2014 285.82  
 10/01/2014 12/31/2014

SUB ACCOUNT	START BALANCE	END BALANCE
MEDICAL ACCOUNT	0.00	0.00
SAVINGS BALANCE	169.25	222.61
EDUCATION ACCOUNT	0.00	0.00
SPENDABLE BAL	26.88	63.21
COMM SERV REV FUND ACCOUNT	0.00	0.00
WORK RELEASE SAVINGS	0.00	0.00
POSTAGE ACCOUNT	5.85	0.00

DEBTS AND OBLIGATIONS

TYPE	PAYABLE	INFO NUMBER	AMOUNT OWING	AMOUNT PAID	WRITE OFF AMT.
LFO	LEGAL FINANCIAL OBLIGATIONS	20120320	UNLIMITED	338.66	0.00
EL	ESCORTED LEAVE	02282012	UNLIMITED	0.00	0.00
TVD	TV CABLE FEE DEBT	08112012	0.00	3.47	0.00
HYGA	INMATE STORE DEBT	08092012	0.00	113.95	0.00
POSD	POSTAGE DEBT	09212012	0.00	9.75	0.00
IDTD	ID TAG DEBT	11022012	0.00	2.69	0.00
COI	COST OF INCARCERATION	02282012	UNLIMITED	233.74	0.00
COSXD	COST OF SUPERVISION DEBT	02282012	0.00	560.00	0.00
MHD	MENTAL HEALTH COPAY DEBT	07192012	0.00	3.59	0.00
COIS	COST OF INCARCERATION /07112000	02282012	UNLIMITED	133.56	0.00
CVCS	CRIME VICTIM COMPENSATION/07112000	02282012	UNLIMITED	33.39	0.00
CVC	CRIME VICTIM COMPENSATION	02282012	UNLIMITED	108.79	0.00

TRANSACTION DESCRIPTIONS --

MEDICAL ACCOUNT SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
------	-------------------------	----------	-----------------	---------

TRANSACTION DESCRIPTIONS --

SAVINGS BALANCE SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
------	-------------------------	----------	-----------------	---------

10/15/2014	Deductions-SAV-05142012 D D		17.75	187.00
11/14/2014	Deductions-SAV-05142012 D D		20.23	207.23
11/16/2014	Deductions-SAV-05142012 D D		1.00	208.23
12/15/2014	Deductions-SAV-05142012 D D		14.38	222.61

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WASHINGTON STATE REFORMATORY

OTRTASTB

TRUST ACCOUNT STATEMENT

6.03.1.0.1.9

DOC# 0000323839 Name: WOLF, JOSEPH LEIF  
LOCATION: D01-040-B135L

BKG# 753257

TRANSACTION DESCRIPTIONS --

EDUCATION ACCOUNT SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
------	-------------------------	----------	-----------------	---------

TRANSACTION DESCRIPTIONS --

SPENDABLE BAL SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
------	-------------------------	----------	-----------------	---------

10/01/2014	CRS SAL ORD #7948050		( 24.07)	2.81
10/11/2014	I05 - TV CABLE FEE		( 0.50)	2.31
10/15/2014	CLASS 2 GRATUITY C/I PRINT PLNT 09/14		177.48	179.79
10/15/2014	Deductions-LFO-20120320 D D		( 35.50)	144.29
10/15/2014	Deductions-CVC-02282012 D D		( 8.87)	135.42
10/15/2014	Deductions-SAV-05142012 D D		( 17.75)	117.67
10/15/2014	Deductions-COI-02282012 D D		( 26.62)	91.05
10/16/2014	CRS SAL ORD #7971320		( 36.48)	54.57
10/31/2014	CRS SAL ORD #7994804		( 38.86)	15.71
11/08/2014	I05 - TV CABLE FEE		( 0.50)	15.21
11/14/2014	CLASS 2 GRATUITY C/I PRINT PLANT		202.28	217.49
11/14/2014	Deductions-LFO-20120320 D D		( 40.46)	177.03
11/14/2014	Deductions-CVC-02282012 D D		( 10.11)	166.92
11/14/2014	Deductions-SAV-05142012 D D		( 20.23)	146.69
11/14/2014	Deductions-COI-02282012 D D		( 30.34)	116.35
11/16/2014	JPINTERF: JPAY deposit spendable, TXN_TRACE 40241483, TXN_DATE 11/16/2		10.00	126.35
11/16/2014	Deductions-LFO-20120320 D D		( 2.00)	124.35
11/16/2014	Deductions-CVCS-02282012 D D		( 0.50)	123.85
11/16/2014	Deductions-SAV-05142012 D D		( 1.00)	122.85
11/16/2014	Deductions-COIS-02282012 D D		( 2.00)	120.85
11/19/2014	CRS SAL ORD #8018500		( 42.97)	77.88
12/09/2014	CRS SAL ORD #8044261		( 52.54)	25.34
12/12/2014	I05 - DENTAL COPAY		( 4.00)	21.34
12/13/2014	I05 - TV CABLE FEE		( 0.50)	20.84
12/15/2014	CLASS 2 GRATUITY C/I PRINT PLANT 11/14		143.82	164.66
12/15/2014	Deductions-LFO-20120320 D D		( 28.76)	135.90
12/15/2014	Deductions-CVC-02282012 D D		( 7.19)	128.71
12/15/2014	Deductions-SAV-05142012 D D		( 14.38)	114.33
12/15/2014	Deductions-COI-02282012 D D		( 21.57)	92.76
12/17/2014	Sub-Account Transfer		0.35	93.11
12/17/2014	POSTAGE		( 1.84)	91.27
12/19/2014	POSTAGE		( 1.84)	89.43
12/24/2014	CRS SAL ORD #8065677		( 26.22)	63.21

TRANSACTION DESCRIPTIONS --

COMM SERV REV SUB-ACCOUNT  
FUND ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
------	-------------------------	----------	-----------------	---------

TRANSACTION DESCRIPTIONS --

WORK RELEASE SUB-ACCOUNT

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WASHINGTON STATE REFORMATORY

OTRTASTB

TRUST ACCOUNT STATEMENT

6.03.1.0.1.9

DOC# 0000323839 Name: WOLF, JOSEPH LEIF  
LOCATION: D01-040-B135L

BKG# 753257

SAVINGS

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
TRANSACTION DESCRIPTIONS --			POSTAGE ACCOUNT SUB-ACCOUNT	
DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
12/09/2014	SAPOS SAL ORD #8044122		( 5.50)	0.35
12/17/2014	Sub-Account Transfer		( 0.35)	0.00

RECEIVED  
COURT OF APPEALS  
DIVISION ONE

APR - 9 2015

NO. \_\_\_\_\_

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

In re Personal Restraint of:

JOSEPH LEIF WOLF

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR PIERCE COUNTY

The Honorable Elizabeth Martin

BRIEF OF PETITIONER

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2015 APR -9 PM 4:24

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DIVISION II  
2015 APR 13 AM 9:17  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
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A. STATUS OF PETITIONER

Joseph Leif Wolf, DOC #323839, applies for relief from personal restraint. This is Mr. Wolf's first court challenge to the restraint at issue: Pierce County Superior Court Judge Elizabeth Martin's order revoking his Special Sex Offender Sentencing Alternative sentence.

Mr. Wolf is currently incarcerated at Monroe Correctional Complex, where he is serving a sentence of 131.9 months under the jurisdiction of the Washington State Department of Corrections. The Court in which Mr. Wolf was sentenced is Pierce County Superior Court, under cause #08-1-02972-9. Judgment and Sentence attached as Appendix A; Order Revoking SSOSA attached as Appendix B.

The mandate in Mr. Wolf's appeal of Judge Martin's revocation of his SSOSA sentence was issued on April 9, 2014. Mandate attached as Appendix C. Mr. Wolf's petition is timely under RCW 10.73.090.

B. ASSIGNMENTS OF ERROR

1. The automatic decline process applicable here violates the Eighth Amendment bar on cruel and unusual punishment and the right to fundamental fairness guaranteed by the Fourteenth Amendment.

2. The application of the Sentence Reform Act ("SRA") in this case violates the Eighth Amendment bar on cruel and unusual punishment and the right to fundamental fairness guaranteed by the Fourteenth Amendment.

3. The imposition of legal financial obligations (“LFOs”) without consideration of current or future ability to pay violates RCW 10.01.160(3)’s requirement that the record reflect that the sentencing judge made an individualized inquiry into the defendant’s current and future ability to pay before the court imposes LFOs.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Case law from the United States Supreme Court holds that mandatory criminal processes that do not provide a court discretion to consider a juvenile’s youth and attendant circumstances violate the Eighth Amendment’s prohibition on cruel and unusual punishment. Joseph was subject to an automatic decline process wherein his case was transferred to adult court without the court having any opportunity to consider his youth and attendant circumstances. Did this application of the auto-decline statute violate the Eighth Amendment?

2. When a child commits a crime and faces a sentencing scheme crafted for adult offenders, the sentencing court must adjust the sentence to account for the his reduced blameworthiness and capacity for rehabilitation under controlling case law from the United States Supreme Court. The SRA, as it was applied in this case, provided no opportunity for consideration of these factors. Did this application violate the constitutional prohibition on cruel and unusual punishment?

3. The Washington Supreme Court has interpreted RCW 10.01.160(3) to require the sentencing judge to consider an individual's current and future ability to pay prior to imposing LFOs. The case record must reflect the court's consideration. The court ordered Joseph to pay LFOs without consideration of his current or future ability to pay. Did this violate RCW 10.01.160(3)?

D. STATEMENT OF THE CASE

1. PROCEDURAL HISTORY

On June 23, 2008, Joseph Wolf was charged with five counts of Rape of a Child in the First Degree. CP 1-3.<sup>1</sup> Joseph was accused of raping 11 year-old N.W. and 10 year-old S.S., who were fellow residents of Joseph's foster home. CP 4. Joseph was 16 years old at the time of the incident. CP 1. Because he was subjected to automatic decline, the case was directly filed in adult court. CP 1.

Joseph came before the court as a child who had spent the first 16 years of his life in situations of abandonment, abuse, disruption and lack of appropriate treatment for both mental health issues and his growing chemical dependency. CP 494. Joseph's victimization began before he was born, as his mother used intoxicants and his father was murdered

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<sup>1</sup> Petitioner contemporaneously filed a Motion to Transfer Clerk's Papers and VRPs from *State v. Joseph Wolf*, #08-1-02972-9, Court of Appeals #43448-2-II, to this case.

(while *he* was high on drugs) while Joseph was in utero. *Id.* When Joseph was two years old, his mother overdosed on methadone and had her parental rights terminated. *Id.* Joseph then began a series of 14 foster care placements; records indicate that he suffered further emotional, physical and sexual abuse.<sup>2</sup> *Id.* The defense explained to the trial court:

...Joseph sexually assaulted three other foster-care children. These acts are undeniably serious and consequential. Importantly, Joseph was also a child-victim of sexual assault while in the foster care. Joseph was prosecuted for his offenses, but his abuser(s) were not. Joseph's victims received the assistance and advocacy offered victims.

CP 494. Joseph was prosecuted as an adult. CP 1.

The charges in this case stem from offenses Joseph committed shortly after being sent from a relative's house in California back into the Washington foster care system. CP 494-95. Ultimately, he pled guilty to two counts of Rape of a Child in the First Degree. CP 9-18; 10/9/2008 RP at 12. With no criminal history, Joseph was sentenced on November 14, 2008, and received a Special Sex Offender Sentencing Alternative sentence ("SSOSA"). CP 34-51. He was to serve 12 months in confinement, and had 119.9 months suspended on condition of completing

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<sup>2</sup> At one point, the Court commented that she had difficulty even comprehending the level of adversity that Joseph faced. 7-20-11 RP at 137. For purposes of this Personal Restraint Petition, Petitioner will refer to the verbatim reports of the proceeding by date, followed by "RP", followed by citation to the specific page number.

a three-year outpatient sex offender treatment program. CP 38. If revoked, he would serve 131.9 months confinement, total. *Id.*

At sentencing, Joseph's current and future ability to pay was neither discussed nor considered before he was ordered to pay \$1200 in legal financial obligations ("LFOs") consisting of a \$500 Crime Victim Assessment, a \$100 DNA Database Fee, a \$400 Court-Appointed Attorney Fee, and a \$200 Criminal Filing Fee. 11/14/2008 RP at 15-23; CP 36-37. The Judgment and Sentence also contained pre-printed language indicating that the costs of an appeal may be added and that interest would accumulate from the date of judgment. CP 37.

Joseph was also sentenced to register as a sex offender, pursuant to RCW 9A.44.130 and RCW 10.01.200. CP 43-44.

Joseph was released on June 20, 2009, at the age of 17. CP 53. As he was still a dependent child, he was considered a ward of the state who "qualifies for the highest priority level of services identified through an agreement between CCS and DCFS." CP 53.

Upon Joseph's release, he reported to the Department of Corrections ("DOC") as "transient." CP 82. He was permitted to visit his grandmother for three days. Having nowhere else to go, he was then was put in an extended stay hotel until the state could provide an apartment and a case aid to supervise him. CP 53, 82.

Joseph was accused of committing his first SSOSA violations during his stay with his grandmother. CP 65-69. He was accused of (1) having contact with his 16-year-old sister, (as she was also living with his grandmother), and (2) having telephone contact with his 4-year-old sister and 17-year old friend. CP 66-67.

The state filed notice of the violations two days after the defense filed a Motion to Modify Conditions of Release.<sup>3</sup> The defense motion was filed because the CASA/Guardian Ad Litem recommended that Joseph be allowed to return to high school and maintain employment that involved limited contact with the public, as it was

necessary for the development of his social, interpersonal and life skills, including his ability to be self-supporting; important to the enhancement of his sense of personal responsibility; and necessary to help prepare him for life after his emergence from Dependency upon reaching his 18<sup>th</sup> birthday on November 16, 2009.<sup>4</sup>

CP 56-57.

At a hearing to consider the defense motion and the SSOSA violation allegations, the state complained that Joseph was receiving an anomalous amount of services for someone designated an “adult”:

STATE: Your Honor, from the State’s position, we’re asking the Court not to modify the condition, and here is

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<sup>3</sup> The Motion to Modify Conditions of Release was filed on July 20, 2009. CP 52. The State then prepared a Notice of Violation on July 22, 2009. CP 65.

<sup>4</sup> The Motion was supported by TeamChild Advocacy for Youth and the sex offender treatment provider (“SOTP”) that conducted Mr. Wolf’s SSOSA evaluation. CP 52-60.

why. This Defendant has far more support than almost any Defendant you have seen in the SSOSA program. ... However, he's in adult court. He did not enter this plea as a juvenile in juvenile court. He entered it as an adult. We don't tailor those –

THE COURT: Was that – was that his choice?

STATE: It was his choice to enter a plea or go to trial and ---

THE COURT: And not his choice as an adult or juvenile?

DEFENSE: It was auto decline.

STATE: It's auto decline.

We don't tailor the SSOSA program for the Defendants. We set up strict rules for them to comply with and conditions for them to follow through. ...

7/24/09 RP at 12-14.

The Court found Joseph in violation of his sentence, sanctioned him to seven days confinement, and denied his motion to modify, keeping him dependent on the state. 7/24/09 RP at 9.

Three months later, Joseph's SOTP, Jeanglee Tracer, wrote:

The more I am getting to know Mr. Wolf, the more I believe he is desperately trying to keep up his façade of being in control when the truth is, he is an extremely scared young man who has no idea what his life will be like once he "ages out of the system" on November 16, 2009, the day he turns 18. ... While Mr. Wolf presents as a mature young adult, he does not possess the necessary skills, whether life skills or vocational skills, to be successful living independently.

CP 74-75

A review hearing was held in November, 2009, after a report alleged two violations: (1) he travelled outside Pierce County – after the case aide provided by the state erroneously advised him that Vashon Island was in Pierce County – and (2) he had not yet made payments towards his outstanding LFOs so that he owed “\$1326.65 which include[d] \$126.65 in interest. 11/13/2009 RP; CP 81-85. The Court was further told that Joseph continued to fall short of the expectations imposed on adults on SSOSAs due to his masturbation -- he demonstrated insufficient responsibility or “ownership” when questioned about it and demonstrated needless risk-taking by doing it in a manner that was dangerous to his health. CP 83-84, 87. At the hearing, all parties noted that Joseph, at the age of 17, needed to “grow up.”<sup>5</sup>

At Joseph’s next SSOSA review hearing, he was found to be in compliance, although the Court was informed that he had recently “chosen to consume 17 Benadryl tablets.” 2-12-10 RP at 3; CP 112. But he was then arrested after telling his community corrections officer (“CCO”) and SOTP that he viewed pornography the day after the hearing. Joseph felt

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<sup>5</sup> The state said: “As his own treatment provider says, he needs to grow up and accept responsibility for what he is doing.” 11-13-09 RP at 5. The CCO reiterated: “like Ms. Tracer told him, he needs to grow up. I’ve told him the same thing.” *Id.* at 6. Even Mr. Wolf’s defense attorney told the court:

I think he turns 18 on the 16<sup>th</sup>, but that’s part of the problem here. He is 17. He’s almost 18. He does need to grow up. This is adult court. There are adult expectations, and there are adult consequences.  
11-13-09 RP at 7-8.

bad that the Court had not given him positive feedback for his compliance and impulsively watched pornography to make himself feel better. CP 134, 137. At the time, his SOTP also noted Joseph's vulnerability to negative influences and outside persons:

Mr. Wolf often sought out the advice from other members of his SSOSA group; unfortunately, he chose those individuals who were also struggling. In February, 2010, he accessed pornography via his housemate's computer and when he asked a fellow group member what he should do, he was told to lie about it. Mr. Wolf attempted to do so; however, after being challenged by his fellow group members, he, he [sic] reluctantly admitted to accessing the pornography.

CP 251. His CCO also concluded that these actions demonstrated reckless impulsivity and an inadequate sense of responsibility:

If nothing else, Mr. Wolf's current violations – and those that have already been brought before the Court – indicate that he can and will violate the terms of his supervision with ease and worry about the consequences of these actions later.

CP 138. Even though all parties agreed that the Judgment and Sentence had vague language regarding pornography, Joseph was sanctioned to 30 days in jail. 3-12-2010 RP at 4-8.

In addition to viewing pornography, Joseph was again accused of failing to make LFO payments (the interest on the \$1200 imposed had grown to \$186.25.) 2-24-10 RP at 4; CP 126-27; CP 138. But his SOTP

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noted that he'd just obtained the "first job he's has ever had" at the time of his arrest – it was a part-time job as a custodian. CP 107; CP 134.

At SSOSA review hearings held in June and September of 2010 and March of 2011, Joseph was found in compliance. 6-11-2010 RP at 3; 9-10-2010 RP at 7; 3-11-2011 RP at 3. But in April, 2011, Joseph was accused of using marijuana for consuming a "baked good" given to him by a friend, possessing pornography for viewing and forwarding a picture of a topless female that was sent to his cell phone, using synthetic cannabis, and accessing the internet without authorization.

These violations also resulted in Ms. Tracer terminating Joseph's treatment. CP 217-18; CP 228-29. Ms. Tracer began her termination letter by distinguishing Joseph from other SSOSA participants:

Without question, due to the fact Mr. Wolf was 16 years old at the time of his offense but was convicted as an adult, he had additional obstacles not normally present with other individuals in the SSOSA program.

CP 251.

Joseph had a caseworker through Pierce County Alliance's Independent Youth Housing Program ("IYHP"). CP 285. The program helps with housing, case management and financial assistance for youth aging out of foster care. *Id.*, n. 2. The caseworker wrote to the Court:

In my observations of Mr. Wolf, I think that he is an easy target to be manipulated and encouraged to participate in actions that could

lead to infractions. He has a unique situation due to his total lack of family support, evidenced by his long term stay in foster care. I work exclusively with foster youth and in so many ways Joseph is a typical 19 year old former foster youth. He struggles with abandonment, lack of social support system, lack of acceptance and a basic self esteem deficiency. These are common traits in this population due to their unique history of being raised in the system. These traits open the door to being exploited by more sophisticated or older individuals. It is my opinion that Joseph's participation in a group of older adult offenders placed him at a disadvantage due to his unique life history dynamics. In the last year I saw Joseph take many steps towards living a productive and normal life. I saw him excel at school, participate actively in this program and maintain employment. He made many mistakes, as do all my clients, because they are young adults entering an adult world. This process is full of lessons to be learned in difficult ways. In my experience working with Joseph he seems to be a young man that needs significant support services but he is worth investing in and preventing his live [sic] from become [sic] one of incarceration and violence. I see him as a human that has something good to offer this world and after 10 years of incarceration, that potential will be surely lost.

CP 290.

At the outset of the violation hearing (held July 20, 2011) the state reminded the court that Joseph's young age and difficult childhood should not excuse his behavior. 7-20-11 RP at 10. The state then called Ms.

Tracer as a witness. Tracer testified that the system failed Joseph "miserably"; he should never had been tried as an adult. 7-20-2011 RP at 18-19. Ms. Tracer also opined:

- Joseph's first two SSOSA violations (contact with his sisters and a friend while visiting his grandmother and travel outside of the County) were "absolutely" "indicative to [her] of a person who is just really not

fully aware of the rules” or the geographical area. 7-20-2011 RP at 45-46.

- Joseph’s mental health issues diminished his ability to find stability, as did the stressor of his mother being released from prison, reentering his life, and introducing him to her fiancé – the man who killed his father. 7-20-11 RP at 23.
- “Impulsivity” was one of Joseph’s shortcomings. 7-20-2011 RP at 22, 44.<sup>6</sup> Other shortcomings were his fear, his inadequate ability to express himself, and naivety.<sup>7</sup> She noted that even though he was “18 by chronological age”, he had no life skills, no idea of how to lead an adult life, and no role models. 7-20-2011 RP at 23. In fact, she testified that, because he was in the adult SSOSA program, he was “not a typical 19 year old” but, [i]f he’s not in this program, everything he is doing is typical of a 19-year old adolescent that needs some maturity.” 7-20-2011 RP at 47.
- She admitted that she did not these three recommendations, even though they were made in Joseph’s SSOSA evaluation:
  1. She did not place Joseph in an adolescent treatment group. 7-20-11 RP at 42.<sup>8</sup> This put him in a “unique position in the system” and also made him “significantly different than other members of the group.” *Id.* at 22, 82. It also meant that Joseph – a child-victim of sexual abuse – was in a treatment group with adults, including those who had sexually assaulted minors. *Id.* at 41-42, 75-76. The older group members also influenced Joseph, taught him about synthetic cannabis, and advised him to lie. *Id.* at 44.<sup>9</sup>
  2. She did not remember that Joseph was chemically dependent and had a problem with sleep medication; she did not monitor

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<sup>8</sup> But she explained that she could not because, even though he was an adolescent, he was prohibited from “peer-related activities.” 7-20-11 RP at 22.

<sup>9</sup> In her termination letter, Ms. Tracer also provided a chronology suggesting that Joseph learned about synthetic cannabis from a group discussion. CP 252.

him for chemical dependency even though it was her responsibility. 7-20-2011 RP at 21, 30, 56, 61-62.

3. She did not follow the recommendation that she regularly consult with Joseph's mental health provider and case managers (and was not even sure who they were). 7-20-2011 RP at 39-41, 52-53. Unrebutted testimony established that her failure to do so was an ethical violation. *Id.* at 193.

Finally, Tracer concluded that none of Joseph's violations were similar to the conduct that formed the basis for the charges, he still presented a low risk for sexual recidivism, and locking Mr. Wolf up for ten years is "not going to make the community safer ... nobody benefits by him going to prison." 7-20-2011 RP at 37, 71, and 73-74.

The defense presented the testimony of Robert Parham, a certified SOTP who wanted to treat Joseph. 7-20-2011 RP at 85. Mr. Parham agreed that Joseph was low-risk to reoffend.<sup>10</sup> 7-20-2011 RP at 91. Mr. Parham concluded that Joseph's mental and emotional maturity level rendered him easily influenced by adults, that he has "very sensitive mental health issues ... which stem from long-term family issues and have caused him tremendous psychological damage over the years,"<sup>11</sup> and that these issues, together with him being in a place of instability with his medications (due to his biochemistry, not treatment resistance), impaired

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<sup>10</sup> He also testified that empirically-validated risk factors show that juveniles are generally low risk to reoffend. 7-20-2011 RP at 92.

<sup>11</sup> CP 319.

his stability and psychosocial functioning. CP 319; 7-20-11 RP at 93-94. He noted that Joseph had never been provided a neurological assessment, even though his evaluation recommending it (due to childhood head injuries) *Id.* at 93-94, 96. He opined that Joseph was unique because of his upbringing, his status as a foster child, and his mother reentering his life after beginning a relationship with the man who killed his father. 7-20-2011 RP at 97. Mr. Parham concluded that Joseph has “had actually remarkable progress, given his circumstances,” that even though “Joseph was tried as an adult ... he most certainly was not an adult” and is “quite delayed in his mental and emotional maturity... “, and that

if he is incarcerated [his] needs are not going to be adequately met and ... the antisocial element he will be exposed to may have long-term adverse effects on this very vulnerable young man.

CP 319-20; 7-20-2011 RP at 101.

Mr. Parham also vowed to do things differently. He would have Joseph obtain a drug and alcohol evaluation, would coordinate care with other providers, and would place Joseph in individual therapy. CP 320; 7-20-2011 RP at 98, 104, and 193.

In closing, the state urged revocation, emphasizing its position that the Court was bound by criminal procedures, not Joseph’s youthfulness, when considering whether to revoke the SSOSA:

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I'm sure you'll hear argument that he committed this when he was a juvenile; therefore, he should have different treatment. The SSOSA statute is not different for a defendant who is a juvenile. He's treated like an adult. He's not your typical juvenile. He gave that up when he raped three kids.

7-20-2011 RP at 118.

The defense asked for a 90-day sanction:

...if this was a perfect world, he would not be in the adult system because he committed this offense when he was 16 years old. I better than anybody, and Ms. Kooiman and you, Your Honor, we all understand what the law is. We can debate whether it's fair, but the fact of the matter is that he was an adolescent when this offense occurred. He's thrown into an adult system with adult rules. Of course, he's now an adult. But during the entire dependency of this case, when I represented him, before it was resolved, while he was in custody, serving his 12 months, awaiting release after he was awarded SSOSA, during the first year and a half in treatment, you know, he is biologically and emotionally a child at this time. ... I would also agree with Ms. Tracer that I think he does present a unique collection of problems that all come to roost in one individual, ... .

The things he's doing here, the things you see that he stipulates to, you know, they're all inappropriate. They're all in violation of the court order, but, you know, I think they're indicative of a person who's young, who's impulsive, who's using drugs and has a mental health diagnosis. They're sort of impulsive, child-like, adolescent type things to do. ... he doesn't have any insight. He doesn't have the forethought to come forth and say, "I need help." That's just his reality.

7-20-2011 RP at 119-22.

The Court imposed a 165 days of confinement and did not revoke the SSOSA. 7-20-2011 RP at 150.

Joseph was found to be in compliance in October, 2011. 10/28/11 RP at 7. At a January, 2012, review the parties expressed concern about a suicide attempt, but Joseph was found to be in compliance. 1/27/12 RP at 5-6.

Less than two weeks later, the state had Joseph arrested on allegations that he used methamphetamine and synthetic cannabis (the week after his prior review) and was thereafter dishonest with his treatment provider. CP 432-446 and 644-648; 2/24/12 RP at 4.

The defense informed the Court that Joseph's mother had visited the day he violated. CP 462, 471.

While there, his stepfather<sup>12</sup> appeared and slashed a tire on her car. This upset his mother, who went after her husband with a knife. Joseph and others intervened, and after some effort, stopped his mother.

Joseph's mother then took methamphetamines from her pocket and, together with the two individuals who intervened, began to smoke. They were in Joseph's apartment at the time. The drugs were passed to him and he did not refuse. He was upset by what he'd witnessed, did not want to be alone, and in a sad but real way, felt that he was bonding with his mother.

CP 462.

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<sup>12</sup> His stepfather was the man that had previously been convicted of murdering Joseph's father. He married Joseph's mother after he served his sentence for that crime.

Mr. Wolf reacted poorly to the methamphetamine (he had not used it before) and concluded that synthetic cannabis would calm his reaction. CP 462. He purchased and consumed it. *Id.*

Thereafter Mr. Wolf went to his chemical dependency provider and provided a urine sample for analysis, but did not warn his provider it would test positive (hence the dishonesty allegation) CP 463. Instead, he did what many adolescents do when confronted with a serious and difficult situation – he called other adults to seek advice. *Id.* Thereafter, he decided to report his drug use to his provider. *Id.*

Before he could do so, Joseph's mother reappeared, learned that he intended to report the incident, became enraged that he might get her or her husband in trouble, spit on him, and punched him, causing a black eye. CP 463. Joseph sought safe refuge and from there, he called his chemical dependency provider, SOTP, and CCO, telling them about what had transpired. *Id.* He met with his CCO in-person, to talk further. *Id.* He also went to Pierce County Superior Court and obtained a Domestic Violence Protection Order barring his mother from contacting him. CP 467-77.

At his review hearing, Joseph stipulated to the three violations. The defense recommended 18 days incarceration. 2/24/12 RP at 11. The

CCO recommended 30 days incarceration. *Id.* The state recommended revocation, which would result in over 4,000 days of incarceration. *Id.*

The state argued that Joseph should face revocation so that his punishment would be proportionate to that faced by other adult offenders.

2/24/12 RP at 16-17. But the defense explained:

I know Ms. Kooiman says we need to treat all defendant similarly or the same way. And the problem with that concept is not all defendants come before you with the same background and the same experiences and the same problems. And so I think your job as a judge, any job is to sort of tailor made sort of figure out what is just for this particular defendant and also taking into consideration the victims, the community, the crime that was committed.

2/24/12 RP at 19-20. The Court, noting that it was required to honor the SSOSA as it was created by the legislature, revoked. 2/24/12 RP at 30; CP 482-84.

With the assistance of a volunteer attorney, Joseph moved for reconsideration. CP 491-515. During the hearing, the defense discussed the difference between “science and legal age,” explaining that the legal labels placed on an individual do not affect the rate at which his brain develops. 4-27-12 RP at 23-24. But the court concluded that in this context, he is now 20-years-old and is, therefore, an adult. 4-27-12 RP at 22-23. The Court then denied the motion to reconsider, explaining:

What I hear you asking the court to do is to somehow treat him differently because he should have been tried as a juvenile and not

as an adult, but he was tried as an adult. He was sentenced as an adult. It's the SSOSA structure that I have to administer... . A lot of argument has been made, first by Ms. Tracer, certainly by Mr. Parham, certainly by Mr. Quigley and now by you that it wasn't fair that Mr. Wolf was tried as an adult. Perhaps, I even agree with you that it wasn't fair, but that is the way it was, and that is the system in which I have to make my decision. It's an adult SSOSA. ... SSOSA is an always has been a privilege. It has been an exception to what the standard sentence would be. So when you're talking about lines in the sand or extreme options, the option of not going forward is revocation, and what goes with that is the original sentence. So I don't have a choice on what that sentence was. I don't. That's not part of my discretion. I don't have the ability to commute that sentence, or at least that's not something that's in front of me, nor that I can do.

*Id.* at 23, 51 and 55; CP 605.

Mr. Wolf appealed the Superior Court's Order Revoking his SSOSA sentence to the Court of Appeals, Division II. App. A. Prior to filing the Notice of Appeal, Joseph sought review at public expense, and provided a declaration showing indigence. A copy of Joseph's Motion is attached as Appendix D. The Court found that he was indigent or "unable by reason of poverty" to pay for any of the expenses of appellate review, granted the withdrawal of the volunteer attorney that presented Joseph's Motion to Reconsider and ordered the appointment of new counsel. A copy of the Order of Indigency is attached as Appendix E. The Court also noted the withdrawal of Joseph's public defender, Mark Quigley. App. E n. 1.

In an unpublished opinion, the Court of Appeals affirmed the trial court's order revoking Mr. Wolf's SSOSA. Court of Appeals Division II opinion attached as Appendix F. Mr. Wolf petitioned the Washington State Supreme Court for review on January 28, 2014. His petition for review was denied on April 2, 2014, and the mandate was issued on April 9, 2014. App. C.

On June 18, 2014, the State moved for an Order Adding Appellate Costs to Judgment and Sentence. A copy of the state's Motion is attached as Appendix G. The Court granted the motion, adding \$3,579.64 in LFOs. A copy of the Order is attached as Appendix H. The Order was made in the absence of a record that reflects that the Court made any individualized inquiry into the Joseph's current and future ability to pay. See App. G, H. Mr. Wolf was not present at any hearing, and neither was he represented by counsel. *Id.* Instead, the record erroneously reflects that his volunteer attorney was still "retained" counsel, despite the Court having granted her Motion to Withdraw two years prior. See App. E at 2-3 (withdrawal of Kim Gordon granted); Scheduling Order attached as Appendix I.

## 2. FACTUAL HISTORY.

Further substantive facts are contained Clerks Papers and Verbatim Report of Proceedings and, where relevant, will be referenced in the Argument section of this pleading.

E. ARGUMENT

This case involves the clash between science and facts, on one side, and mandatory processes dependent upon legal labels, on the other. Because Joseph Wolf was automatically given the legal label of “adult”, he was subject to all of the mandatory criminal procedures that applied to adults, regardless of the concern, by many, that doing so would result in a grave injustice. Yet scientific facts demonstrated that he was not an adult. Well-established case law holds that his treatment in this case violated the Eighth Amendment.

1. JUVENILES ARE DIFFERENT THAN ADULTS.

Courts may not impose adult penalties on juveniles “as though they were not children” because categorically, they are less blameworthy. *Miller v. Alabama*, \_\_\_ U.S. \_\_\_, 132 S.Ct. 2455, 2464, 2466, 183 L.Ed.2d 407 (2012); *Roper v. Simmons*, 543 U.S. 551, 572, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).

Youth is a time of immaturity, underdeveloped responsibility, impetuosity, and recklessness. *Miller*, 132 S.Ct. at 2467. “It is a moment and condition of life” when people are vulnerable, and most

susceptible to peer pressure and psychological damage.<sup>13</sup> *Roper*, 543 U.S. at 553; *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). These “developmentally normal impairments in making decisions can be exacerbated” when they are under stress.<sup>14</sup> Youths are “less able to escape from poverty or abuse” and their “characters are not well formed.” *Miller*, 132 S.Ct. at 2464, 2468; *Graham*, 560 U.S. at 68. They have a comparative lack of control over their environment, and therefore “have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.” *Roper*, 543 U.S. at 553.

Neurological and physiological evidence shows that these “qualities that distinguish juveniles from adults do not disappear when an individual turns 18.” *Roper*, 543 U.S. at 574.<sup>15</sup> In fact, “the brain does not reach full maturation until the age of 25.”<sup>16</sup>

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<sup>14</sup> Researchers have established a significant connection between adolescent crime and peer pressure. Research demonstrates that “most adolescent decisions to break the law take place on a social stage where the immediate pressure of peers is the real motive for most teenage crime.” Indeed, “group context” is the single most important characteristic of adolescent criminality. *Id.* at 281. Although a young person may be able to discriminate between right and wrong when alone, resisting temptation in the presence of others requires social experience; it is a distinctive skill that many adolescents have not yet fully developed. Marsha L. Levick and Elizabeth-Ann Tierney, *The United States Supreme Court Adopts a Reasonable Juvenile Standard in J.D.B. v. North Carolina for Purposes of the Miranda Custody Analysis: Can a More Reasoned Justice System for Juveniles Be Far Behind?* 47 Harv. C.R.-C.L. L. Rev. 501, note 49 (2012). (Internal citations omitted).

<sup>14</sup> Levick and Tierney, *supra* at 509 (2012).

<sup>15</sup> “Physiological research suggests that age-based brain maturation, which may be linked to maturity of judgment factors does not occur until the early

All in all, “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds” such that the principles underlying adult sentences – retribution, incapacitation and deterrence – do not extend to juveniles in the same way. *Id.*, at 68, 71. Scientifically, “juveniles” (which can include individuals as old as 25) are not adults. Legally, criminal processes that treat them as miniature adults are flawed.

2. CRIMINAL PROCESSES THAT FAIL TO CONSIDER YOUTH AND ITS ATTENDANT CHARACTERISTICS VIOLATE THE EIGHTH AMENDMENT.

Relying extensively on the well-research opinions of social scientists and the Eighth Amendment to the United States Constitution,<sup>17</sup> recent United States Supreme Court cases hold that,

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twenties.” *Id.* at 79. The prefrontal cortex, the portion of the brain which controls executive functioning, “remains structurally immature until early adulthood, around the mid-twenties. Until that time, adolescents’ decision-making and responses to stimuli are largely directed by ... more primitive neurological regions [of the brain].” Nick Straley, *Miller’s Promise: Re-evaluating Extreme Criminal Sentences for Children*, 89 Wash. L. Rev. 963, 971 (2014).

<sup>16</sup> Continued immaturity beyond the age of 18 is recognized in many other areas of the law, such as when weapons, alcohol or money is involved. A person must be 21 to obtain a concealed weapons permit. RCW 9.41.070. Only those over the age of 21 may purchase alcohol, rent a car without strict conditions, or rent a hotel room. RCW 66.44.290, [http://www.dollar.com/en/Car\\_Rental\\_Information/Main/Rent\\_a\\_Car\\_Under\\_25.aspx](http://www.dollar.com/en/Car_Rental_Information/Main/Rent_a_Car_Under_25.aspx); <http://www.hyatt.com/hyatt/customer-service/faqs/reservations.jsp>. The Washington State Patrol limits applicants to those over age 21. <http://www.wsp.wa.gov/employment/requirements.htm>.

<sup>17</sup> The Eighth Amendment states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.” U.S.

not only *are* juveniles different than adults, they must also be *treated* differently in the justice system.<sup>18</sup>

The Eighth Amendment “reaffirms the duty of the government to respect the dignity of all persons” and “guarantees individuals the right not to be subjected to excessive sanctions.” *Roper*, 543 U.S. at 560-61. The right to be free from excessive sanctions “‘flows from the basic precept of justice that punishment for crime should be graduated and proportioned’ to both the offender and the offense.” *Miller*, 132 S.Ct. at 2463, quoting *Roper*, 543 U.S. at 560. This “concept of proportionality is central.” *Miller*, 132 S.Ct. at 2463.

The Eighth Amendment is not static but,

like other expansive language in the Constitution, must be interpreted according to its text, by considering history, tradition, and precedent, and with due regard for its purpose and function in the constitutional design.

*Roper*, 543 U.S. at 560. When considering whether punishment is cruel and unusual, courts “must look beyond historical conceptions

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Const. Amendment VII. The Eighth Amendment applies to the states under the Fourteenth Amendment’s incorporation doctrine. *Graham*, 543 U.S. at 560, quoting *Robinson v. California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962).

<sup>18</sup> *Miller*, 132 S.Ct. at 2466; *Graham*, 560 U.S. at 68, 71; *Roper*, 543 U.S. at 569.

to the evolving standards of decency that mark the progress of a maturing society” because

[t]he standard of extreme cruelty is not merely description, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change.<sup>19</sup>

Washington courts have also recognized that established rules are appropriately reconsidered when they are incorrect and harmful. *City of Federal Way v. Koenig*, 167 Wn.2d 341, 343, 217 P.3d 1172 (2009). Prior decisions are harmful when they threaten a fundamental constitutional principle. *Id.*

History further demonstrates that the Eighth Amendment – has undergone continuous evolution *as it relates to juveniles*. When this country was founded, common law did not prevent execution of a seven-year-old. *Roper*, 543 U.S. at n.1. Until 1879, torture was not considered cruel and unusual punishment. *Wilkerson v. Utah*, 99 U.S. 130, 136, 25 L.Ed. 345 (1879). Until 1986, it was legal to execute an insane person and, until 2002, an individual who was mentally retarded.<sup>20</sup> The *Miller and Graham*

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<sup>19</sup> *Graham*, 560 U.S. at 58, quoting *Kennedy v. Louisiana*, 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008); Levick and Tierney, *supra* at 507 (2012).

<sup>20</sup> *Ford v. Wainwright*, 477 U.S. 399, 410, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986); *Atkins v. Virginia*, 536 U.S. 304, 321, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002).

lines of cases present even more recent examples, showing that the Eighth Amendment's evolution continues to this day, such that it prohibits an ever-expanding set of mandatory practices that strip the judiciary of oversight and the ability to provide a lenient sentence when facts supporting a finding of reduced culpability.

3. THE EIGHTH AMENDMENT WAS VIOLATED BY AN AUTO-DECLINE STATUTE WHICH, AS IT WAS APPLIED IN THIS CASE, DENIED THE COURT ANY OPPORTUNITY TO CONSIDER THE ATTRIBUTES OF YOUTH.

In 1977, the legislature gave juvenile courts "exclusive original jurisdiction" over all cases involving youthful offenders. *State v. Posey*, 174 Wn.2d 131, 137, 272 P.3d 840 (2012). But the auto-decline statute provides an exception. When the prosecutor charges a 16 or 17-year-old with offenses enumerated in RCW 13.40.110(2)(a) through (c), the "adult criminal court shall have exclusive original jurisdiction." RCW 13.04.030(1)(e)(v)(E)(1). The enumerated offenses include First Degree Rape of a Child, Joseph's crime of conviction. CP 9-10.

Although the auto-decline statute makes a prosecutor's charging decision critically important, that decision is made early in the process. There is no opportunity for the defense to provide information about how the defendant's youth may have affected

his culpability. Importantly, the court is not allowed to make any individualized determination on whether a particular juvenile who alleged to have committed a particular crime in a particular way belongs in adult court.

The criminal process at issue here is uniquely problematic. Less than a year *after* Joseph was charged, the legislature amended RCW 13.04.030(e)(V)(E)(III) to provide a way, at least theoretically, for the court to have an opportunity to consider the attributes of youth.<sup>21</sup> But here, the court never had any way to consider youthfulness in connection with jurisdiction.

In nearly any case, the consequences of a decline are severe. *State v. Holland*, 30 Wn. App. 366, 373, 635 P.2d 142 (1981), *aff'd*, 98 Wn.2d 507, 656 P.2d 1056 (1983) (“The consequences of a decline of jurisdiction may be severe...the [juvenile] procedures are not as punitive as adult criminal proceedings.”) As this case exemplifies, Washington’s current

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<sup>21</sup> As amended, RCW 13.04.030(e)(V)(E)(III) provided:

The prosecutor and respondent may agree to juvenile court jurisdiction and waive application of exclusive adult criminal jurisdiction in (e)(v)(A) through (E) of this subsection and remove the proceeding back to juvenile court with the court’s approval.

Albeit, the prosecutor still has veto power because state approval is required. Without state approval, no process allows a juvenile’s youthfulness to be presented to the court for consideration in connection with jurisdiction.

sentence scheme not only forces judges to *try* certain juveniles as adults, it also forces judges to *sentence* these juveniles as adults.<sup>22</sup>

Joseph was originally charged with five counts of Rape of a Child in the First Degree. If Joseph had been convicted, as charged, in juvenile court, he would have faced a standard range sentence of 90-120 *weeks* in custody.<sup>23</sup> When Joseph was sentenced in adult court for just two counts, he received a standard range sentence of 131.9 *months*.<sup>24</sup> CP 38. Moreover, had Joseph

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<sup>22</sup> RCW 9.94A.505 sets out legislatively-proscribed rules for calculating sentences. RCW 9.94A.505(1) says that felonies should be punished in accordance with this chapter. RCW 9.94A.505(2)(a)(1) creates a presumption that judges will issue a sentence within the standard range.

If the court wants to depart from the standard sentencing range, it must do so in compliance with RCW 9.94A.535. The court must find, “considering the purposes of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.” It also requires that the sentencing court set forth reasons for its decision in written findings of fact and conclusions of law. Moreover, the court can only go lower than the standard range “if it finds that mitigating circumstances are established by a preponderance of the evidence.” RCW 9.94A.535(1). In short, judges are bound by the SRA’s sentencing guidelines.

<sup>23</sup> According to the Juvenile Disposition Manual applicable here, Rape of a Child in the First Degree is a Level A- offense. Juveniles who are 15-17 years old face 30-40 week standard range sentences for Level A- offenses. Those sentences are served consecutively, but RCW 13.40.180 limits the overall sentence to 300% of the standard range. See RCW 13.40.0357; RCW 9A.44.073; RCW 13.40.180.

<sup>24</sup> *Posey II* provides another example of the difference between juvenile and adult sentencing consequences. Posey was found guilty of two counts of second degree rape. The adult criminal court sentenced him to indeterminate life sentences with a minimum term of 119 months. 174 Wn.2d at 134. On remand, a standard range juvenile disposition of 60 to 80 weeks was imposed. *Id.* at 135. Even if Posey would have been released after the minimum term of his (overturned) adult sentence, he would have served more than six times as long in confinement than his maximum sentence under the Juvenile Justice Act, and that longer confinement would have been in the adult prison system.

been sentenced under the Special Sex Offender Disposition Alternative (the juvenile version of a SSOSA), the length of the sentence would have been shorter, even if it was revoked.<sup>25</sup>

The prejudicial effects of adult court extend far beyond the amount of incarceration imposed. For example, termed adjudications rather than convictions because of the important advantages that flow from juvenile court, juvenile prosecutions can be diverted. RCW 13.40.080. Juveniles receive smaller legal financial obligations. RCW 7.68.035(1)(a) and (b). Juveniles can petition for relief from sex offender registration after only 5 years in the community, whereas adults convicted of the same offenses have to spend at least 10 years in the community. RCW 9A.44.143. Juvenile adjudications can be more readily sealed or vacated. *Compare* RCW 13.50.050(11) and (12) with RCW 9.96.060; RCW 9.94A.040 and GR 15. Juvenile adjudications do not constitute strike offenses. RCW 9.94A.570. Juvenile adjudications are not scored as high as adult offenses if the juvenile reoffends as an adult. RCW 9.94A.525. Finally, in an adult prison, juvenile offenders like Joseph are about five times

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<sup>25</sup> Compare former RCW 13.40.160 (in effect at the time of Joseph's offense) with RCW 9.94A.670. A copy of the statutes are attached as Appendix J.

more likely to be raped or sexually abused and significantly more likely to commit suicide, which says nothing of the violence they may witness while confined therein.<sup>26</sup>

Historically, courts have rejected constitutional challenges to the auto-decline statute.<sup>27</sup> But our evolving understanding about juvenile brain development undermines the reasoning relied upon by the legislature when it created auto-decline. Simply put, the state legislature did not know what we do now.

Additionally, we now have *Miller* and *Graham* holding that the constitution is violated if criminal procedures do not permit *the courts* (as opposed to the legislature or the prosecutor) discretion to draw distinctions between children and adults. While the *Miller*, *Roper*, and *Graham* line of cases are principally about mandatory punishments (such as a mandatory sentence of death or life without parole), the auto-decline statute, as it was applied here, conflicts with the reasoning behind these decisions. They strongly suggest

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<sup>26</sup> U.S. Dep't of Justice, Report of the Attorney General's National Task Force on Children Exposed to Violence 190 (Dec. 12, 2012), available at <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

<sup>27</sup> See *Posey*, 174 Wn.2d at 131 (adults courts can exercise discretion over juvenile criminal defendants in a manner that is consistent with Washington State Const. art. IV, § 6); *In Re Boot*, 130 Wn.2d 553, 572-74, 925 P.2d 964 (1996) (rejecting equal protection, and substantive and procedural due process challenges to auto-decline.)

that a transfer process that lacks effective judicial oversight and opportunity to consider the extent to which a particular defendant's youthfulness affects his or her creditability is constitutionally infirm and must be reconsidered. As the Juvenile Justice Delinquency and Prevention Act Fact Book explains:

Following the logic of the high court's ruling [in *Roper v. Simmons*] and its roots in a clearer understanding of the adolescent mind, it becomes important for juvenile court professionals and practitioners engaged in delinquency prevention and rehabilitation to re-examine each point of contact or interaction with adolescents – to ensure that developmentally appropriate responses are in place.<sup>28</sup>

As *Miller*, *Roper*, and *Graham* make clear, because the Eighth Amendment is ever evolving, courts must look to “evolving standards of decency.” *Graham*, 560 U.S. at 58; *Roper*, 543 U.S. at 560. It is therefore relevant that reconsideration of the auto-decline statute is supported by research which, over several decades, has generally failed to establish that juvenile transfer laws deter crime:

A separate body of research, comparing postprocessing outcomes for criminally prosecuted youth with those of youth handled in the juvenile system, has uncovered what appear to be counter-deterrent effects of transfer laws. Six

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<sup>28</sup> The JJDPA is part of the U.S. Department of Justice's Office of Justice Programs. A copy of the JJDPA document, which contains source citations and links to additional key resources on the science of adolescent brain development, is attached as App. K. The quoted language can be found on page 3.

large-scale studies summarized by Redding – employing a range of different methodologies and measures of offending, and focusing on a variety of jurisdictions, populations, and types of transfer laws – have all found greater overall recidivism rates among juveniles who were prosecuted as adults than among matched youth who were retained in the juvenile system. Criminally prosecuted youth were found to have recidivated sooner and more frequently. Poor outcomes like these could be attributable to a variety of causes, including the direct and indirect effects of criminal conviction on the life chances of transferred youth, the lack of access to rehabilitative resources in the adult corrections system, and the hazards of association with older criminal “mentors.”<sup>29</sup>

Reconsideration is also supported by public sentiment.

Recently, the MacArthur Foundation, the Center for Children’s Law and Policy and Models For Change published the results of new polling data “on Americans’ attitudes about youth, race and crime.” A copy of the Executive Summary, titled “Potential for Change: Public Attitudes and Policy Preferences for Juvenile Justice Systems Reform”, is attached as Appendix L. The data “revealed strong support for juvenile justice reforms that focus on rehabilitating youthful offenders rather than locking them up in adult prisons.” App. L at 1. “More than seven out of 10 [people] agreed that ‘incarcerating youth offenders without rehabilitation is

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<sup>29</sup> U.S. Dep’t of Justice, *Juvenile Offenders and Victims: National Report Series, Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, (September 2011), at 26.

the same as giving up on them.” App. L at 3. The provision of treatment, services and community supervision was, overwhelmingly, seen as a more effective way of rehabilitating youth than incarceration. *Id.* at 5. Of all the options provided for rehabilitating youth, the least number of people chose “incarcerating [them] in adult jails and prisons.” *Id.* at 6.

*Miller* and its progeny do not dictate a particular outcome at any decline hearing. But they do require that the decline process, because it is a criminal process, allow a court to consider a juvenile’s individual circumstances. Because the auto-decline statute applied to Joseph did not permit that consideration, it is irreconcilable with advancements in the understanding of juvenile brain development and the corresponding dictates of the Eighth Amendment’s ban on cruel and unusual punishment.

4. THE SENTENCING FRAMEWORK APPLICABLE IN THIS CASE, AFTER JOSEPH WAS AUTO-DECLINED, FURTHER BARRED MEANINGFUL CONSIDERATION OF YOUTH IN VIOLATION OF THE EIGHTH AMENDMENT.

Joseph was tried in a system that denied the Court any opportunity to consider his youthfulness. The case was auto-declined and filed in adult court. Once there, he was subject to the SRA, as it governs sentencing for any all persons in adult court.

Under the SRA, a standard range sentence presumptively applies unless the court finds substantial and compelling reasons to depart from it. *State v. Law*, 154 Wn.2d 85, 94, 110 P.3d 717 (2005) (“Generally, a trial court must impose a sentence within the standard range.”) But as interpreted by current case law, the SRA does not permit a court to depart from the standard range for “personal factors” like an offender’s age and individual circumstances. *Id.* at 97-98. The Court in *Law* relied upon *State v. Ha’mim*, as it also precluded consideration of youth or immaturity as a mitigating factor. *See* 132 Wn.2d 834, 847, 940 P.2d 633 (1997).<sup>30</sup>

*Law* and *Ha’mim* must be reconsidered, insofar as they apply to juveniles in adult court. In this context, they are irreconcilable with *Miller*, as it requires sentencing courts to evaluate the juvenile’s individual circumstances and impose a sentence proportional to his culpability.<sup>31</sup> 132 S.Ct. at 2468. A

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<sup>30</sup> *Ha’mim* held that “the age of the defendant does not relate to the crime or the previous record of the defendant” and finding that it could not “*seriously* be” contended that youth affected the maturity of judgment. (Italics in the original.) 132 Wn.2d at 847.

<sup>31</sup> Generally, a standard range sentence may not be appealed. RCW 9.94A.585(1). But that statute does not place an absolute bar on the right to appeal; it only precludes review of challenges to the amount of time imposed when the crime is within the standard range. *State v. McGill*, 112 Wn.App. 95, 99, 47 P.3d 173 (2002). A defendant may challenge the procedure by which a sentence within the standard range is imposed. *State v. Mail*, 121 Wn.2d 707, 712-13, 854 P.2d 1042 (1993).

youth's individual circumstances is a "relevant mitigating factor of great weight." *Miller*, 132 S.Ct. at 2467 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 116, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982)). The court "must" also take into account the child's "background and emotional development." *Miller*, 132 S.Ct. at 2467. Criminal procedure laws that do not permit this are flawed. *Miller*, 132 S.Ct. at 2465; *Graham*, 130 S.Ct. at 2027.

The Washington Supreme Court is set to consider these cases in a pending case. On March 17, 2015, the Washington Supreme Court heard oral arguments in *State of Washington v. Sean O'Dell*, #90337-9-I.<sup>32</sup> At issue was whether youth, by itself, could constitute a mitigating factor under the Sentencing Reform Act ("SRA") because it mitigates culpability and brings an increased capacity for rehabilitation. But even if the *O'Dell* court rules that *Law* and *Ha'mim* cannot constitutionally apply to juveniles, this will be too late to help Joseph, unless this Court also remands his case.

The Court's inability to consider Joseph's youthfulness also left it unable to meet the SRA's requirement that sentences be

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<sup>32</sup> Available at [http://www.tvw.org/index.php?option=com\\_tvwplayer&eventID=2015030005](http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2015030005).

proportionate. RCW 9.94A.010.<sup>33</sup> The *Miller* line of cases tells us that, because of the fundamental distinction between children and adults, the imposition of the same punishment for both classes ultimately results in harsher punishment for the child. *Miller*, 132 S.Ct. at 2468. Yet this is what the state insisted upon here. Ironically, the state argued that it would be disproportionate *to consider* Joseph's youthfulness – because he should be treated exactly as if he were an adult. But *Miller* makes clear that the failure to consider youthfulness *causes* disproportionality and, therefore, violates the constitution. *Miller*, 132 S.Ct. at 2466.

*Law* and *Ha'mim* were the law at the time Joseph was charged. Once he was auto-declined into adult court, they left him no real options. He could go to trial and, if he lost, he would not be able to seek a mitigating sentence based on his youth and attendant circumstances. He could plead guilty as charged and he would not be able to have the Court consider youthfulness. Either way, the Court had no discretion but to impose a standard range sentence unless a different mitigating factor was established.

Joseph was left with a SSOSA as the only way to attempt to mitigate a lengthy sentence. But that SSOSA was premised upon

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<sup>33</sup> The statute provides that one of the SRA's purposes is to make sure that sentences are

the notion that he could be something that he simply was not – an adult. It was premised on the notion that, if Joseph was designated an “adult” by the system, it was fair and just to hold him to adult standards and punish him for not possessing or displaying the characteristics that traditionally accompanied adulthood.

Granted, the state indicated that it based its decision to support an adult SSOSA sentence, in part, on Joseph’s age.<sup>34</sup> 10/9/2008 RP at 3. But prosecutorial consideration of Joseph’s age and individual characteristics is no substitute for the Court having discretion to consider the same. *Miller* and its progeny demand that the Court have this discretion. *Miller*, 132 S.Ct. at 2465; *Graham*, 130 S.Ct. at 2027. And as explained above, support for an *adult* SSOSA was no substitute for criminal processes that took his youthfulness into account.

Not surprisingly, Joseph did not emotionally and developmentally age in response to the “adult” label placed upon him. He remained a youth, and exhibited all of the problematic characteristics that come with youth. He displayed immaturity, an underdeveloped sense of responsibility, recklessness, vulnerability,

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“commensurate with the penalties imposed on others committing similar offenses.”

susceptibility to peer pressure, a lack of control over his environment and difficulty extricating himself from dangerous or potentially criminal situations. It is hardly surprising that, Joseph, a youth with an atypical childhood, mental illness, and chemical dependency, failed to complete an adult SSOSA.

Throughout the rest of the case, defense counsel, numerous experts and treatment providers, caseworkers, insisted that justice was not served by Joseph's "adult" designation and mandatory processes that resulted.<sup>35</sup> Even the Court questioned whether justice was served by that designation.<sup>36</sup> But in the end, after the state repeatedly insisted that the Court treat Joseph as an adult, and enforce the SSOSA in the same manner as that applied to adults, the Court did what the state requested. 2/24/12 RP at 30. Because Joseph did not meet the Court's expectations for adults sentenced to the SSOSA, the Court revoked. *Id.* After the SSOSA was revoked, the court acknowledged it still had no way to consider

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<sup>34</sup> The degree to which Joseph's youthfulness influenced the state's sentencing recommendation must inevitably be questioned in light of the state's repeated insistence, throughout the remainder of the proceedings, that it provided no excuse for his behavior.

<sup>35</sup> 7/24/09 at 12-14; CP 74-75; CP 251; CP 285; CP 290; 7/20/11 RP at 18-19; CP 319-20; 7/20/11 RP at 101, 119-22; 2/24/12 RP at 19-20; 4/27/12 RP at 23, 51 and 55.

<sup>36</sup> 4/27/12 RP at 23, 51 and 55.

youth. 4-27-12 RP at 23, 51, 55 (“I don’t have a choice on what that sentence was. I don’t. That’s not part of my discretion.”)

The sentencing framework found in the SRA and made applicable to Joseph’s case after he was auto-declined barred the court from any meaningful consideration of his youth and attendant circumstances, in violation of the Eighth Amendment. *Miller*, 132 S.Ct. at 2465, 2468; *Graham*, 130 S.Ct. at 2027.

5. THE COURT SHOULD ORDER ONE OF TWO ALTERNATIVE REMEDIES.

The question of whether the current auto-decline statute violates the Eighth Amendment need not be resolved in this case, as the version applied to Joseph was more restrictive. Neither is this Court required to strike down the SRA as a whole, just because its application, in this case, violated the Eighth Amendment. Instead, this Court should either reverse Mr. Wolf’s conviction and remand to juvenile court, or remand to adult court along with specific instructions to guide the court’s exercise of discretion in a manner consistent with *Miller* and its progeny.

a. Remand to Juvenile Court. The Washington Supreme Court has previously remanded a case to juvenile court despite the fact that, during the pending of the appellate proceedings, the defendant reached the age of

majority. In *State v. Posey*, a 16-year-old was charged with a serious violent offense, which required the juvenile court to automatically decline jurisdiction of the child as well as other crimes. 161 Wn.2d 638, 641, 167 P.3d 560 (2007) (*Posey I*). The adult court lost jurisdiction over Posey when he was later acquitted of the automatic decline charge. *Id.* at 641, 644-47. Nonetheless, Posey was not remanded to juvenile court by the trial court but was sentenced as an adult. *Id.* at 641. This Court affirmed the conviction but remanded to juvenile court for resentencing. *Id.* at 649.

The Court remanded to juvenile court even though Posey turned 18 during the pendency of the appeal. *Compare Id.* at 641 (He was 16 at the time of the crime) with *State v. Posey*, 130 Wn. App. 262, 122 P.3d 914 (2005), *aff'd in part*, 161 Wn.2d 638, 641, 167 P.3d 560 (2007) (over two years lapsed between the decisions). In fact, prior to issuance of the mandate in *Posey I*, Posey turned 21. *State v. Posey*, 174 Wn.2d 131, 133, 272 P.3d 840 (2012) (*Posey II*). Although RCW 13.40.300 does not provide for juvenile court jurisdiction beyond age 21, except with regard to restitution, this Court affirmed the superior court's imposition of a juvenile sentence on remand. *Id.* at 133, 142.

Other federal and state cases also show that the remedy for constitutional violations should be tailored to the injury suffered. In *Lafler v. Cooper*, the Court held remedy for ineffective assistance of counsel

“must ‘neutralize the taint’ of a constitutional violation.” \_\_\_ U.S. \_\_\_, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012); quoting *United States v. Morrison*, 449 U.S. 361, 365, 101 S.Ct. 665, 66 L.Ed.2d 564 (1981). Lafler rejected a plea offer after receiving ineffective legal advice, then had lost at trial, and received a sentence that was much worse than that offered in the plea. 132 S.Ct. at 1383. The Court found that the proper remedy is for a court to consider whether the defendant has shown reasonable probability that but for counsel’s errors he would have accepted the plea and, if so, exercise discretion to determine whether the defendant should receive the term of imprisonment offered by the government in the plea, the sentence received at trial, or something in between. *Id.* at 1389. The Court further explained that, where resentencing alone does not fully redress the constitutional injury, “the proper exercise of discretion to remedy the constitutional injury may be to require the prosecution to reoffer the plea proposal.” *Id.* at 1389. The Supreme Court also left “open to the trial court how best to exercise [its discretion in determining how to proceed if respondent accepts the reoffered plea bargain] in all the circumstances of the case.” *Id.* at 1391.

Similarly, in *State v. A.N.J.*, the Washington Supreme Court tailored the remedy, allowing a juvenile to withdraw his plea where

ineffective assistance led to him being misinformed of the consequences thereof. 168 Wn.2d 91, 225 P.3d 956 (2010).

Together, *Posey II*, *Lafler*, and *A.N.J.* demonstrate that, regardless of the age of the juvenile when the error is remedied on appellate review, the proper remedy is to treat the juvenile consistently with the Juvenile Justice Act. If the juvenile turned 21 years old during the pendency of appeal, as in *Posey II*, the JJA can be applied in superior court.

Remanding to juvenile court is consistent with legislative intent that, except in extraordinary circumstances not present here, juvenile offenders receive treatment and rehabilitation through the juvenile justice system. The primary distinction between Washington's juvenile justice and adult criminal systems hinges on the need of the offenders subject to each system. The Juvenile Justice Act responds to the needs of juvenile offenders by focusing on rehabilitation, not punishment. RCW

13.40.010(2); *Posey I*, 161 Wn.2d at 645 (citing *Monroe v. Soliz*, 132 Wn.2d 414, 419-20, 939 P.2d 205 (1997)). A juvenile disposition focuses on treatment and rehabilitation. *Posey I*, 161 Wn.2d at 645. The statute "reflects the intent to keep juveniles in the juvenile system to allow creative intervention at the juvenile justice level." *Id.*

The U.S. Department of Justice ("DOJ") similarly instructs,

**Whenever possible, prosecute young offenders in the juvenile justice system instead of transferring their cases to adult courts.** No juvenile offender should be viewed or treated as an adult. Laws and regulations prosecuting them as adults in adult courts, incarcerating them as adults, and sentencing them to harsh punishments that ignore and diminish their capacity to grow must be replaced or abandoned.

U.S. Dep't of Justice, *supra* at 23 (emphasis in original). The DOJ further explains that our communities are *less safe* when we deny juvenile offenders tailored treatment that enables them “to grow, mature, and become productive citizens.” *Id.* at 189-90 (also noting “Children prosecuted as adults are 34 percent more likely to commit new crimes than are youth who remain in the juvenile justice system.”)<sup>37</sup>

b. Remand to adult court. This Court could also remand to adult court for resentencing. But this remedy would only cure the constitutional problems at issue here if this the trial court is required to do certain things.

First and foremost, the Court should be required to consider how Joseph's youth and attendant circumstances and impacted his culpability.

Second, this Court should make it clear that, as argued here and in the pending case (*State v. O'Dell*), *Law* and *Ha'mim* do not prohibit the

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<sup>37</sup> See also U.S. Dep't of Justice, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting 26* (Sept. 2011) (results of extensive studies showing juveniles prosecuted as adults had greater recidivism rates and recidivated more quickly and more often than those prosecuted as juveniles “could be attributable to a variety of causes, including the direct and indirect effects of criminal conviction on the life chances of transferred youth, the lack of access to rehabilitative resources in the adult corrections system, and the hazards of association with older criminal ‘mentors’”), available at <http://www.ncjrs.gov/pdffiles1/ojdp/232424.pdf>.

use of youth and attendant circumstances as a mitigator. Court discretion to depart from an otherwise-mandatory standard range when a juvenile is involved, brings the SRA in line with *Miller* and its progeny.

Third, this Court should make it clear that the trial court is to consider whether other sentencing provisions that are potentially applicable here would not be applicable to juveniles, like lifetime sex-offender registration, also violate the dictates of *Miller*.

Importantly, Joseph is not suggesting that this Court remand for resentencing, and then instruct the trial court that it is to impose a specific sentence. Rather, this Court should only direct the trial court to consider Joseph's youth and attendant circumstances and how they may have impacted his culpability.

6. THE COURT ERRONEOUSLY IMPOSED LEGAL FINANCIAL OBLIGATIONS WITHOUT CONSIDERATION OF JOSEPH'S CURRENT OR FUTURE ABILITY TO PAY.

The Superior Court imposed legal financial obligations ("LFOs") on Joseph that consisted of a \$400 "Court Appointed Attorney Fees and Defense Costs",<sup>38</sup> a \$200 "Criminal Filing Fee",<sup>39</sup> a \$500 Crime Victim

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<sup>38</sup> Costs such as "Attorney Fees" or "Defense Costs" may be imposed, at the Court's discretion, under RCW 10.01.160.

<sup>39</sup> Criminal Filing Fees are imposed pursuant to RCW 36.18.020. The fee is charged by the clerk of the court. The statute does not appear to require the Court to impose the fee.

Assessment<sup>40</sup> and \$100 DNA Database Fee.<sup>41</sup> CP 36-37. After Joseph's unsuccessful direct appeal, the Court imposed appellate costs in the amount of \$3579.64.<sup>42</sup> App. H. All of the LFOs were imposed without consideration of Joseph's current or future ability to pay. *Id.*

In total, the Court ordered an indigent juvenile, who was a mentally ill, unemployed, 16-year-old foster child at the time he was charged, who had been auto-declined into the adult system, who was then sentenced to serve 131.9 months in prison, who was thereafter required to register as a sex offender, and who did not even have his GED, to pay \$5779.64 in LFOs. CP 36; App. H. The Court further ordered that these

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<sup>40</sup> RCW 7.68.035 requires a Crime Victim Assessment be imposed on adult and juvenile cases resulting in conviction or guilty adjudication, although juveniles adjudicated guilty pay a fraction (\$100) of what convicted adults are required to pay (\$500).

<sup>41</sup> Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars. The fee is a court-ordered legal financial obligation as defined in RCW 9.94A.030 and other applicable law. For a sentence imposed under chapter 9.94A RCW, the fee is payable by the offender after payment of all other legal financial obligations included in the sentence has been completed. For all other sentences, the fee is payable by the offender in the same manner as other assessments imposed. The clerk of the court shall transmit eighty percent of the fee collected to the state treasurer for deposit in the state DNA database account created under RCW 43.43.7532, and shall transmit twenty percent of the fee collected to the agency responsible for collection of a biological sample from the offender as required under RCW 43.43.754.

<sup>42</sup> "RCW 10.73.160 provides for recoupment of appellate costs from a convicted defendant." *State v. Blank*, 131 Wn.2d 230, 234, 930 P.2d 1213 (1997). RCW 10.73.160(3) states that: "An award of costs shall become part of the trial court judgment and sentence." Division I of the Court of Appeals has held that "the superior court has no discretion to decide whether to add the costs award to its judgment." *State v. Wright*, 97 Wn.App. 382, 383-84, 985 P.2d 411 (1999).

LFOs bear 12% interest from the date of judgment. RCW 10.82.090(1); CP 37.

The Washington Supreme Court recently considered two cases, consolidated under the name *State v. Blazina*, in which the defendants (Nicholas Blazina and Mauricio Paige-Coulter) challenged the imposition of LFOs without consideration of current or future ability to pay. \_\_\_ Wn.2d \_\_\_, 2015 WL 1086552 at \*5 (No. 89028-5, March 12, 2015) (A copy of the *Blazina* is attached as the Appendix M). The LFOs challenged were the same as those at issue in Joseph's case, with the exception of the appellate cost bill. *Blazina* involved the consolidated appeals of Nicholas Blazina and Mauricio Paige-Colter. *Id.* at 1. Both had been the \$500 Victim Penalty Assessment, the \$200 Filing Fee, a \$100 DNA sample fee, and recoupment for appointed counsel.<sup>43</sup> Mr. Blazina was also assessed \$2,087.87 in extradition costs.<sup>44</sup>

The *Blazina* court held that a defendant need not wait until the State seeks to collect the costs before challenging the imposition of the

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<sup>43</sup> Mr. Blazina was ordered to pay \$400 in recoupment for assigned counsel. Slip. Op. at 1. Mr. Paige-Colter had been ordered to pay \$1,500. Slip. Op. at 3.

<sup>44</sup> Slip. Op. at 2. Extradition costs may be imposed under RCW 10.01.160, RCW 9.92.060(2), and RCW 9.95.210(2).

LFOs. *Blazina*, at 4 n. 1.<sup>45</sup> This holding was a departure from prior cases.<sup>46</sup>

The departure was undertaken in order to remedy substantial problems caused by the imposition of LFOs, and particularly, the imposition of debilitating LFOs in the absence of consideration of the defendant's ability to pay. *Blazina*, Slip. Op. at 7-10. The Court ruled that prior to imposing costs and entering them onto the Judgment and Sentence:

The record must reflect that the trial court made an individualized inquiry into the defendant's current and future ability to pay. Within this inquiry, the court must also consider important factors, as amici suggest, such as incarceration and a defendant's other debts, including restitution, when determining a defendant's ability to pay.

*Id.* at 10. The Court further clarified that this "means that the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry." *Id.*

The *Blazina* court also unanimously found that the injustices caused the by LFO procedure rejected therein justified appellate review

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<sup>45</sup> "The State argues that the issue is not ripe for review because the proper time to challenge the imposition of an LFO arises when the State seeks to collect. Suppl. Br. of Resp't (*Blazina*) at 5-6. We disagree." *Blazina*, Slip. Op at 4 n1.

<sup>46</sup> *State v. Blank*, 131 Wn.2d 230, 242, 252-53, 930 P.2d 1213 (1997); *State v Crook*, 146 Wn. App. 24, 27, 189 P.3d 811 (2008); *State v. Mahone*, 98 Wn. App. 342, 348, 989 P.2d 583 (1999); *State v. Curry*, 62 Wn. App. 676, 681, 841 P.2d 1252 (1991), *aff'd*, 118 Wn.2d 911, 829 P.2d 166 (1992).

despite a lack of preservation in the court below. *Blazina*, Slip. Op. at 13 and concurrence at 4. That the judges were unanimous in reviewing this issue, but only disagreed about which of two rules, RAP 1.2(a) and 2.5(a), provided the better justification for appellate review<sup>47</sup> also highlights the importance of correcting the problems presented.

Without distinguishing between discretionary and mandatory LFOs, the

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<sup>47</sup> The *Blazina* majority utilized its discretionary power under RAP 2.5(a) to review the same LFO problem raised here. Slip Op. at 6, citing *State v. Russell*, 171 Wn.2d 118, 122, 249 P.3d 604 (2011). The majority did so due to because of “[n]ational and local cries for reform of broken LFO systems” that present “increased difficulty in reentering society, doubtful recoupment of money to the government, and inequities in administration”, the “importance” of the LFO “conversation” to Washington “state and to our court system.” Slip. Op. at 7-8.

Justice Fairhurst, joined by Justice Stephens, concurred in the result, but discussed a different justification for review of an unreserved LFO issue:

this error can be reached by applying RAP 1.2(a), which states that the “rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits.” RAP 1.2(a) is rarely used, but this is an appropriate case for the court to exercise its discretion to reach the unreserved error because of widespread problems, as stated in the majority, associated with LFOs imposed against indigent defendants. Majority at 6.

The consequences of the State’s LFO system are concerning, and addressing where courts are falling short of the statute will promote justice. In *State v. Aho*, 137 Wn.2d 736, 740-41, 975 P.2d 512 (1999), we held that the supreme court “has the authority to determine whether a matter is properly before the court, to preform those acts which are proper to secure fair and orderly review, and to waive the rules of appellate procedure when necessary ‘to serve the ends of justice.’” (quoting RAP 1.2(c)). I agree with the majority that RCW 10.01.160(3) requires sentencing judges to take a defendant’s individual financial circumstances into account and make an individual determination into the defendant’s current and future ability to pay. In order to ensure that indigent defendants are treated as the statute requires, we should reach the unreserved error.

Slip. Op., Concurrence at 2-3.

*Blazina* Court remanded for a new sentencing, and instructed the court to consider current and future ability to pay.

This Court should exercise its powers under RAP 1.2(a) and 2.5(a) to review Joseph's LFOs, and should remand for a resentencing that complies with Blazina and RCW 10.01.160(3). *Blazina* was decided after Joseph was sentenced, and also after his Judgment and Sentence was modified to add the requirement that he reimburse the state for the costs of his appeal. At no time did the sentencing court consider his ability to pay. But *Blazina* is directly applicable to most of Joseph's LFOs; the same LFOs were at issue in that case.

The Court should exercise its discretionary authority to review this issue now, because Joseph will not have the right to counsel in the future to assist him in challenging the costs. See *State v. Mahone*, 98 Wn. App. 342, 346-47, 989 P.2d 583 (1999) (defendant not entitled to appointment of counsel either at the time of the amendment of the judgment and sentence or on remission). Finally, Joseph did not have the right to appeal from the amended judgment and sentence containing the costs on appeal. *Mahone*, 98 Wn. App. at 346.

For all of these reasons, the Court should remand for a new sentencing hearing wherein the court must consider Joseph's current

and future ability to pay his LFOs. This Court should also specifically hold that *Blazina* applies to appellate costs imposed pursuant to RCW 10.01.160(3). There is no reason to distinguish appellate costs – as they present the same problems as the diverse set of LFOs recently remanded by the Washington Supreme Court.

F. CONCLUSION

For the reasons set forth above, Mr. Wolf respectfully requests this Court reverse the trial court order revoking his SSOSA, and either remand to juvenile court or remand to adult court for resentencing.

DATED this 9<sup>th</sup> day of April, 2015.

Respectfully submitted,  
GORDON & SAUNDERS, PLLC



Kimberly N. Gordon, WSBA# 25401  
Jason B. Saunders, WSBA# 24963  
Attorneys for Petitioner Joseph Leif Wolf

# APPENDIX A



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 08-1-02972-9

vs.

JOSEPH LEIF WOLF,

Defendant.

WARRANT OF COMMITMENT

- 1)  County Jail
- 2)  Dept. of Corrections
- 3)  Other Custody

NOV 14 2008

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

- 1) YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).
- 2) YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

08-1-02972-9

[ ] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 11/14/08

By direction of the Honorable

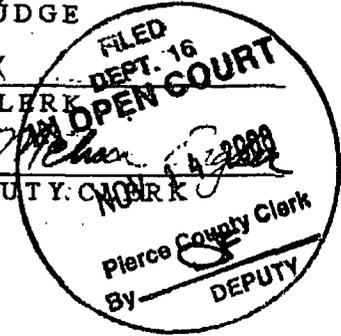
[Signature]  
JUDGE

KEVIN STOCK

CLERK

By:

DEPUTY CLERK



CERTIFIED COPY DELIVERED TO SHERIFF

Date: NOV 14 2008 [Signature] Deputy

STATE OF WASHINGTON

ss:

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this

\_\_\_\_\_ day of \_\_\_\_\_

KEVIN STOCK, Clerk

By: \_\_\_\_\_ Deputy

tc

08-1-02972-9



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

NOV 14 2008 NCO

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-02972-9

vs.

JUDGMENT AND SENTENCE (FJS)

JOSEPH LEIF WOLF

Defendant.

- Prison  RCW 9.94A.712 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Breaking The Cycle (BTC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

SID: WA24583921  
DOB: 11/16/1981

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 9/25/08 by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	RAPE OF A CHILD IN THE FIRST DEGREE (136)	9A.44.073	NONE	03/01/08 06/11/08	PCSO 081691509
II	RAPE OF A CHILD IN THE FIRST DEGREE (136)	9A.44.073	NONE	03/01/08 06/11/08	PCSO 081691509

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

JUDGMENT AND SENTENCE (JS)  
(Felony) (1/2007) Page \_\_\_ of \_\_\_

08-9-14347-4

Office of Prosecuting Attorney  
930 Tacoma Avenue S. Room 946  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400

08-1-02972-9

as charged in the AMENDED Information

- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525): NONE KNOWN OR CLAIMED

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	3	XII	120-160 MONTHS	NONE	120-160 MONTHS	LIFE/ \$50,000
II	3	XII	120-160 MONTHS	NONE	120-160 MONTHS	LIFE/ \$50,000

2.4  EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:

- within  below the standard range for Count(s) \_\_\_\_\_.
- above the standard range for Count(s) \_\_\_\_\_.

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were  stipulated by the defendant,  found by the court after the defendant waived jury trial,  found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4.  Jury's special interrogatory is attached. The Prosecuting Attorney  did  did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defend's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

---

The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

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2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are  attached  as follows:

III. JUDGMENT

3.1 The defendant is GUILTY of the Courts and Charges listed in Paragraph 2.1.

3.2  The court DISMISSES Courts \_\_\_\_\_  The defendant is found NOT GUILTY of Courts \_\_\_\_\_

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN \$ LOC Restitution to: \_\_\_\_\_  
 \$ \_\_\_\_\_ Restitution to: \_\_\_\_\_  
 (Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

PUB \$ 400.00 Court-Appointed Attorney Fees and Defense Costs

FRC \$ 200.00 Criminal Filing Fee

FCM \$ \_\_\_\_\_ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_  
 \$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_  
 \$ 1200.00 TOTAL

The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

shall be set by the prosecutor.

is scheduled for \_\_\_\_\_

RESTITUTION. Order Attached

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ per CCO per month commencing. per CCO RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

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The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

[ ] COSTS OF INCARCERATION. In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.160.

4.1b ELECTRONIC MONITORING REIMBURSEMENT. The defendant is ordered to reimburse \_\_\_\_\_ (name of electronic monitoring agency) at \_\_\_\_\_ for the cost of pretrial electronic monitoring in the amount of \$ \_\_\_\_\_.

4.2 [X] DNA TESTING. The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[X] HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 NO CONTACT  
The defendant shall not have contact with \_\_\_\_\_ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence).

[X] Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 OTHER:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4.4a BOND IS HEREBY EXONERATED

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4.5 SPECIAL SEX OFFENDER SENTENCING ALTERNATIVE. RCW 9.94A.670. The court finds that the defendant is a sex offender who is eligible for the special sentencing alternative and the court has determined that the special sex offender sentencing alternative is appropriate. The defendant is sentenced to a term of confinement as follows:

(a) CONFINEMENT. RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the county jail or Department of Corrections (DOC):

131.9 months on Court I months on Court  
31.9 months on Court II months on Court

Actual number of months of total confinement ordered is: 131.9 months w/ 119.9 suspended  
CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the following which shall be served consecutively:

The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

The sentence herein shall run concurrently to all felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here.

[ ] The sentence herein shall run consecutively to the felony sentence in cause number(s) \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 147 days

(d) SUSPENSION OF SENTENCE. The execution of this sentence is suspended; and the defendant is placed on community custody under the charge of DOC for the length of the suspended sentence or three years, whichever is greater, and shall comply with all rules, regulations and requirements of DOC and shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. Community custody for offenses not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody may result in additional confinement. The defendant shall report as directed to a community corrections officer, pay all legal financial obligations, perform any court ordered community restitution (service) work, submit to electronic monitoring if imposed by DOC, and be subject to the following terms and conditions or other conditions that may be imposed by the court or DOC during community custody:

Undergo and successfully complete an  outpatient [ ] inpatient sex offender treatment program with

for a period of 3 yrs

Defendant shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, community corrections officer and the court and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change.

Serve 12 months of total confinement. Work Crew and

Electronic Home Detention are not authorized. RCW 9.94A.725, 734.

Obtain and maintain employment: Per CCO

[ ] Work release is authorized, if eligible and approved. RCW 9.94A.731.

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[ ] Defendant shall perform \_\_\_\_\_ hours of community restitution (service) as approved by defendant's community corrections officer to be completed:

[ ] as follows: \_\_\_\_\_

[ ] on a schedule established by the defendant's community corrections officer. RCW 9.94A.

Defendant shall not reside in a community protection zone (within 880 feet of the facilities and grounds of a public or private school). (RCW 9.94A.030(8)).

Other conditions: \_\_\_\_\_

The conditions of community custody shall begin immediately unless otherwise set forth here: \_\_\_\_\_

4.6 **REVOCATION OF SUSPENDED SENTENCE.** The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence, with credit for any confinement served during the period of community custody, if the defendant violates the conditions of the suspended sentence or the court finds that the defendant is failing to make satisfactory progress in treatment. RCW 9.94A.670.

4.7 **TERMINATION HEARING.** A treatment termination hearing is scheduled for 5/13/2011 at 10:30 pm (three months prior to anticipated date for completion of treatment) RCW 9.94A.670. Dept 16

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4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

_____ months on Court			
_____ months on Court			
_____ months on Court			

Actual number of months of total confinement ordered is: \_\_\_\_\_

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

[ ] The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: \_\_\_\_\_

4.6 [ ] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count \_\_\_\_\_ for \_\_\_\_\_ months,

Count \_\_\_\_\_ for \_\_\_\_\_ months,

Count \_\_\_\_\_ for \_\_\_\_\_ months,

COMMUNITY CUSTODY is ordered as follows:

Count F for a range from: 36 to 48 Months,

Count H for a range from: 36 to 48 Months,

Count \_\_\_\_\_ for a range from: \_\_\_\_\_ to \_\_\_\_\_ Months,

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or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offense not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories, or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers,		
vii) Offense for delivery of a controlled substance to a minor, or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC, and (8) for sex offenses, submit to electronic monitoring if imposed by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall not consume any alcohol.

Defendant shall have no contact with: Mothers; see NCO's

Defendant shall remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_

Perth

Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). (RCW 9.94A.030(8))

The defendant shall participate in the following crime-related treatment or counseling services: \_\_\_\_\_

The defendant shall undergo an evaluation for treatment for  domestic violence  substance abuse

mental health  anger management and fully comply with all recommended treatment.

The defendant shall comply with the following crime-related prohibitions: \_\_\_\_\_

Other conditions may be imposed by the court or DOC during community custody, or are set forth here:

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See App H

[ ] For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4.7 [ ] WORK ETHIC CAMP. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

08-1-02972-9

1  
2 school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after  
3 doing so if you are under the jurisdiction of this state's Department of Corrections.

4 **3. Change of Residence Within State and Leaving the State:** If you change your residence within a  
5 county, you must send written notice of your change of residence to the sheriff within 72 hours of moving.  
6 If you change your residence to a new county within this state, you must send signed written notice of your  
7 change of residence to the sheriff of your new county of residence at least 14 days before moving and  
8 register with that sheriff within 24 hours of moving. You must also give signed written notice of your  
9 change of address to the sheriff of the county where last registered within 10 days of moving. If you move  
10 out of Washington State, you must send written notice within 10 days of moving to the county sheriff with  
11 whom you last registered in Washington State.

12 **4. Additional Requirements Upon Moving to Another State:** If you move to another state, or if you  
13 work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and  
14 photograph with the new state within 10 days after establishing residence, or after beginning to work, carry  
15 on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving  
16 to the new state or to a foreign country to the county sheriff with whom you last registered in Washington  
17 State.

18 **5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of**  
19 **Higher Education or Common School (K-12):** If you are a resident of Washington and you are admitted to  
20 a public or private institution of higher education, you are required to notify the sheriff of the county of your  
21 residence of your intent to attend the institution within 10 days of enrolling or by the first business day after  
22 arriving at the institution, whichever is earlier. If you become employed at a public or private institution of  
23 higher education, you are required to notify the sheriff for the county of your residence of your employment  
24 by the institution within 10 days of accepting employment or by the first business day after beginning to work  
25 at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of  
26 higher education is terminated, you are required to notify the sheriff for the county of your residence of your  
27 termination of enrollment or employment within 10 days of such termination. If you attend, or plan to attend,  
28 a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify  
the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff  
within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier.  
The sheriff shall promptly notify the principal of the school.

**6. Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not have a fixed  
residence, you are required to register. Registration must occur within 24 hours of release in the county  
where you are being supervised if you do not have a residence at the time of your release from custody.  
Within 48 hours excluding weekends and holidays after losing your fixed residence, you must send signed  
written notice to the sheriff of the county where you last registered. If you enter a different county and  
stay there for more than 24 hours, you will be required to register in the new county. You must also report  
weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day  
specified by the county sheriff's office, and shall occur during normal business hours. You may be  
required to provide a list the locations where you have stayed during the last seven days. The lack of a  
fixed residence is a factor that may be considered in determining an offender's risk level and shall make  
the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

**7. Reporting Requirements for Persons Who Are Risk Level II or III:** If you have a fixed residence  
and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of  
the county where you are registered. Reporting shall be on a day specified by the county sheriff's office,  
and shall occur during normal business hours. If you comply with the 90-day reporting requirement with  
no violations for at least five years in the community, you may petition the superior court to be relieved of  
the duty to report every 90 days.

**8. Application for a Name Change:** If you apply for a name change, you must submit a copy of the  
application to the county sheriff of the county of your residence and to the state patrol not fewer than five  
days before the entry of an order granting the name change. If you receive an order changing your name,  
you must submit a copy of the order to the county sheriff of the county of your residence and to the state  
patrol within five days of the entry of the order. RCW 9A.44.130(7).

V. NOTICES AND SIGNATURES

5.1 COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 RESTITUTION HEARING. Defendant waives any right to be present at any restitution hearing (sign initials): J/W 07

5.5 CRIMINAL ENFORCEMENT AND CIVIL COLLECTION. Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.6 FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicaid, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200.  
1. General Applicability and Requirements: Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW) where the victim is a minor defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.  
2. Offenders Who Leave the State and Return: If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three (3) business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within three (3) business days after starting

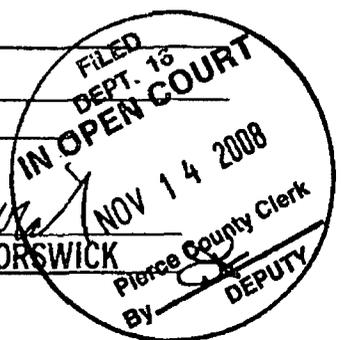
08-1-02972-9

5.8 [ ] The court finds that Court \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 OTHER: Doc to pay for txt while in  
compliance w/ SSO SA program

DONE in Open Court and in the presence of the defendant this date: 11/14/08



JUDGE  
Print name: KISA WORSWICK

Attorney for Defendant

Print name: Mark Quigley  
WSB # 64496

Deputy Prosecuting Attorney

Print name: Luci Korman  
WSB # 30370

Defendant  
Print name: JOSEPH WOLF

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: [Signature]

08-1-02972-9

**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case: 08-1-02972-9

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_.

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

**IDENTIFICATION OF COURT REPORTER**

**SUZANNE TRIMBLE**

Court Reporter

08-1-02972-9

APPENDIX "G" - CONDITIONS FOR SSOSA SENTENCE

I. The defendant shall attend and complete sexual deviancy treatment with:

Michael Comrie (if not allowed) to have agency set up: approved prior to Release

1. The defendant shall follow all rules set forth by the treatment provider;
2. The defendant shall submit to quarterly polygraph examinations to monitor compliance with treatment conditions;
3. The defendant shall submit to periodic plethysmograph examinations;
4. The defendant shall not peruse pornography, which shall be defined by the treatment provider.
5. \_\_\_\_\_

II. The defendant shall not have any contact with the victim(s) \_\_\_\_\_ or any minor child (without prior written authorization from the treatment provider and community corrections officer). The defendant shall not frequent establishments where minor children are likely to be present such as school playgrounds, parks, roller skating rinks, video arcades, See Sec 1214. RCW's

III. The defendant's living arrangements shall be approved in advance by the community corrections officer.

IV. The defendant shall work at Department of Corrections approved education or employment.

V. The defendant shall not consume alcohol.

VI. The defendant shall not consume controlled substances except pursuant to lawfully issued prescriptions.

VII. The defendant shall remain within geographical boundaries prescribed by the community corrections officer.

VIII. See App. H'  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

08-1-02972-9

IDENTIFICATION OF DEFENDANT

SID No. WA24583921  
(If no SID take fingerprint card for State Patrol)

Date of Birth ~~11/16/1901~~ 1991

FBI No. 996452WC1

Local ID No. PCSO302897

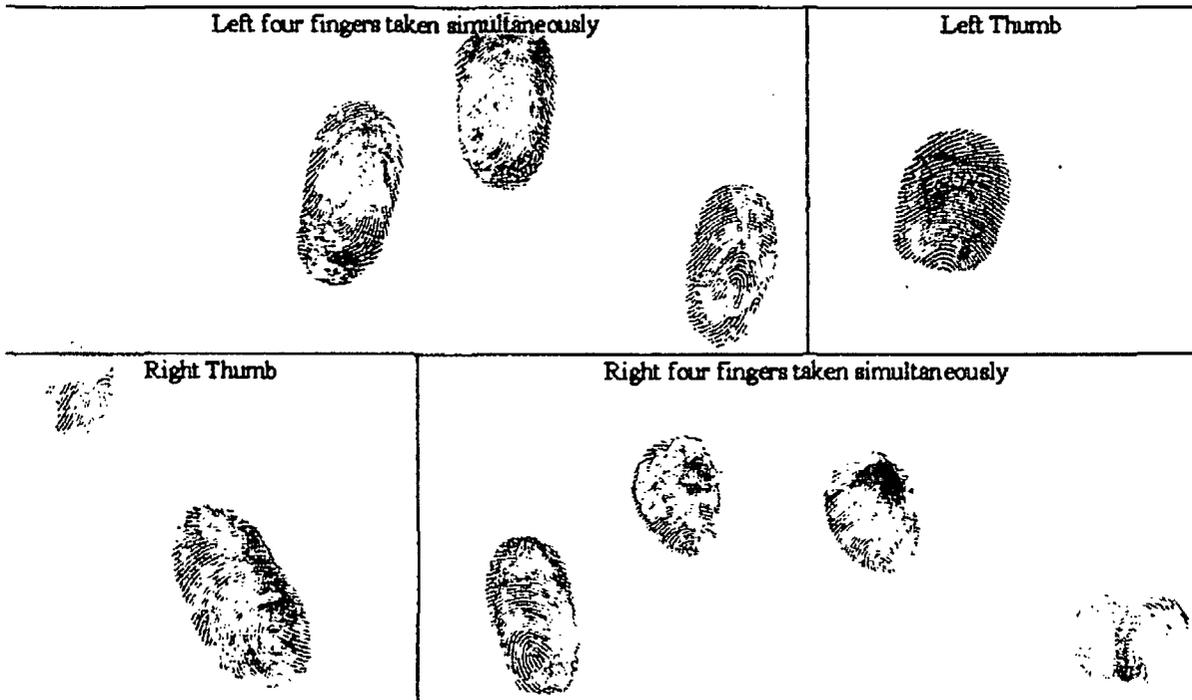
PCN No. 539490893

Other

Alias name, SSN, DOB: \_\_\_\_\_

Race:		Ethnicity:		Sex:	
<input type="checkbox"/>	Asian/Pacific Islander	<input type="checkbox"/>	Black/African-American	<input checked="" type="checkbox"/>	Caucasian
<input type="checkbox"/>	Native American	<input type="checkbox"/>	Other: :	<input checked="" type="checkbox"/>	Non-Hispanic
				<input checked="" type="checkbox"/>	Male
				<input type="checkbox"/>	Female

FINGERPRINTS

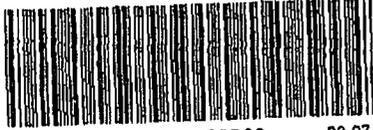


I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Dea. Sington Dated: 11/14/08

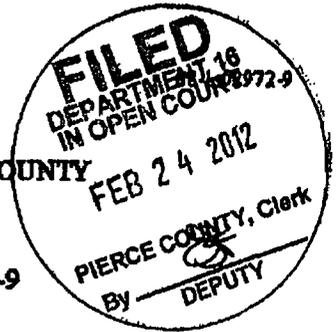
DEFENDANT'S SIGNATURE: 11/07

DEFENDANT'S ADDRESS: \_\_\_\_\_

# APPENDIX B



08-1-02972-9 38063059 ORRSS 02-27-12



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-02972-9

vs.

JOSEPH LEIF WOLF,

Defendant.

ORDER REVOKING SENTENCE

FEB 27 2012

THIS MATTER coming on regularly for hearing before the above entitled court on the petition of GRANT E. BLINN, Deputy Prosecuting Attorney for Pierce County, Washington, for an order revoking sentence heretofore granted the above named defendant on July 24, 2009, pursuant to defendant's plea of guilty to/trial conviction for the charge(s) of RAPE OF A CHILD IN THE FIRST DEGREE; RAPE OF A CHILD IN THE FIRST DEGREE, the defendant appearing in person and being represented by Mark Quigley, defendant's attorney, and the State of Washington being represented by Lois Kowman, Deputy Prosecuting Attorney for Pierce County, Washington, the court having examined the files and records herein, having read said petition, and hearing testimony in support thereof/defendant having stipulated to the violation(s), and it appearing therefrom that the defendant has, by various acts and deeds, violated the terms and conditions of said sentence and the court being in all things duly advised, Now, Therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the suspended standard range sentence be revoked pursuant to RCW 9.94A.670 and 9.94A.505, and the defendant committed to the Department of Corrections for a period of 131.9 months. *on Counts I & II*

The Defendant is additionally sentenced to a term of 3 year(s) community placement, *custody* see Appendix F attached hereto and incorporated by reference. *Credit for time served 513 days.*

IT IS FURTHER ORDERED:

*all conditions as previously outlined in J & S, App H, App F  
 of found violations as stipulated 1) use of Methamphetamine on  
 or about 2/4/12, 2) use of Synthetic Cannabinoids on  
 or about 2/4/12; 3) Disobedience of Chemical Dep. Prob  
 officer on or about 2/6/12*

ORDER REVOKING SENTENCE -1  
OrderRevokingSosa.dot

Office of Prosecuting Attorney  
930 Tacoma Avenue S, Room 946  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400

DONE IN OPEN COURT this 24 day of Feb., 2012.

SIGNED IN THE PRESENCE OF THE DEFENDANT

Presented by:

[Signature]  
GRANT E. BLINN *Los Kosimay*  
Deputy Prosecuting Attorney  
WSB # 25570 30370

**FILED**  
DEPARTMENT OF  
IN OPEN COURT  
FEB 24 2012  
PIERCE COUNTY, Clerk  
By [Signature]  
DEPUTY

[Signature]  
JUDGE

wjj

[Signature]  
Defendant

[Signature] 14499  
x Mark Aubrey

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52 committed after July 1, 1988 is also sentenced to one (1) year term of community placement on these conditions:

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC;

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

- (I) The offender shall remain within, or outside of, a specified geographical boundary:  
*per CCO*  
Do not comply with Registrations
- (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: *Previously filed NCO's, No contact with others*
- (III) The offender shall participate in crime-related treatment or counseling services;
- (IV) The offender shall not consume alcohol;
- (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or
- (VI) The offender shall comply with any crime-related prohibitions.
- (VII) Other *Chemical dependency eval & Ho test*  
*Psycho social eval & Ho test*

# APPENDIX C

May 23 2014 11:55 AM

KEVIN STOCK  
COUNTY CLERK  
NO: 08-1-02972-9

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JUN 23 2014

Jordan & Associates

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JOSEPH WOLF,

Appellant.

No. 43448-2-II

MANDATE

Pierce County Cause No.  
08-1-02972-9

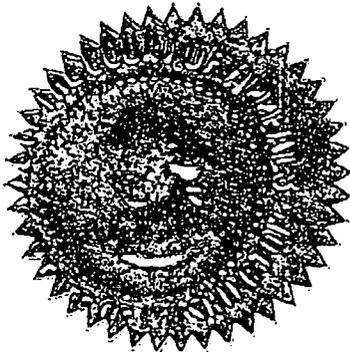
The State of Washington to: The Superior Court of the State of Washington  
in and for Pierce County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on December 31, 2013 became the decision terminating review of this court of the above entitled case on April 2, 2014. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion. Costs have been awarded in the following amount:

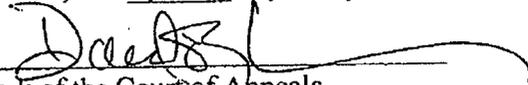
Judgment Creditor: State of Washington - \$6.43

Judgment Creditor: A.I.D.F. - \$3,573.21

Judgment Debtor: Joseph Wolf - \$3,579.64



IN TESTIMONY WHEREOF, I have hereunto set  
my hand and affixed the seal of said Court at  
Tacoma, this 21<sup>st</sup> day of April, 2014.

  
Clerk of the Court of Appeals,  
State of Washington, Div. II

CASE #: 43448-2-II  
State of Washington, Respondent v. Joseph Wolf, Appellant  
Mandate – Page 2

Hon. Elizabeth Martin

Maureen Marie Cyr  
Washington Appellate Project  
1511 3rd Ave Ste 701  
Seattle, WA, 98101-3635  
maureen@washapp.org

Melody M Crick  
Pierce County Prosecuting Attorney  
930 Tacoma Ave S Rm 946  
Tacoma, WA, 98402-2171  
mcrick@co.pierce.wa.us

# APPENDIX D

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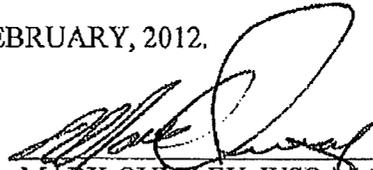
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PIERCE COUNTY

STATE OF WASHINGTON,	)	Superior Court No. 08-1-02972-9
Plaintiff,	)	
	)	MOTION AND DECLARATION
v.	)	FOR ORDER AUTHORIZING THE
	)	DEFENDANT TO SEEK REVIEW
JOSEPH WOLF,	)	AT PUBLIC EXPENSE AND
Defendant.	)	PROVIDING FOR APPOINTMENT
	)	OF ATTORNEY ON APPEAL

A. MOTION

COMES NOW the defendant and moves the Court for an order allowing the defendant to seek review at public expense and providing for appointment of attorney on appeal. This motion is based on RAP 2.2(a)(1) and is supported by the following declaration.

DATED this 27 day of FEBRUARY, 2012.




---

MARK QUIGLEY, WSBA# 14496  
Attorney for Defendant

MOTION AND DECLARATION FOR  
ORDER AUTHORIZING THE DEFENDANT TO  
SEEK REVIEW AT PUBLIC EXPENSE AND  
PROVIDING FOR APPOINTMENT  
OF ATTORNEY ON APPEAL

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7.) That I have approximately \$ 0 in checking account(s),  
\$ 0 in savings account(s), and \$ 0 in cash.);

8.) That I am not married (if so, my spouse's name and address is:  
\_\_\_\_\_);

9.) That the following persons are dependent on me for their support:

NAME	RELATIONSHIP	AGE
<u>NONE</u>	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

10.) That I have the following substantial debts or expenses:

NAME	AMOUNT OWED	MONTHLY PAYMENT
<u>NONE</u>	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

11.) That I am personally receiving public assistance from the following  
sources (or was until I was incarcerated):

AGENCY OR PROGRAM	AMOUNT OF ASSISTANCE
<u>NONE</u>	_____
_____	_____
_____	_____

MOTION AND DECLARATION FOR  
ORDER AUTHORIZING THE DEFENDANT TO  
SEEK REVIEW AT PUBLIC EXPENSE AND  
PROVIDING FOR APPOINTMENT  
OF ATTORNEY ON APPEAL

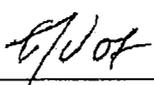
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18.) That the foregoing is a true and correct statement of my financial position to the best of my knowledge and belief.

For the foregoing reasons, I request the Court to authorize me to seek review at public expense, including, but not limited to, all filing fees, attorney's fees, preparation of briefs, and preparation of verbatim report of proceedings as set forth in the accompanying order of indigency, and the preparation of necessary clerk's papers.

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

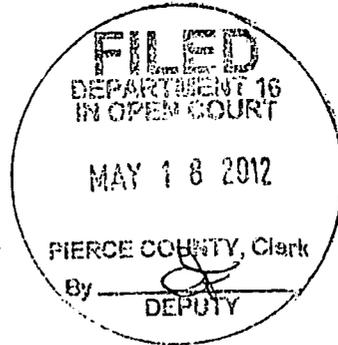
SIGNED in PCS, Washington this 27 day of FEBRUARY, 2012

  
\_\_\_\_\_  
Signature

Joseph Wolf  
\_\_\_\_\_  
Printed Name

MOTION AND DECLARATION FOR  
ORDER AUTHORIZING THE DEFENDANT TO  
SEEK REVIEW AT PUBLIC EXPENSE AND  
PROVIDING FOR APPOINTMENT  
OF ATTORNEY ON APPEAL

# APPENDIX E



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,  
Plaintiff,

v.

JOSEPH WOLF,  
Defendant.

NO. 08-1-02972-9

ORDER AUTHORIZING APPEAL IN  
FORMA PAUPERIS AND  
APPOINTMENT OF COUNSEL

THIS MATTER having come before the undersigned Judge of the above-entitled Court. Upon motion of the defendant and the Court having considered the declaration in support of the motion, and being fully advised, now, therefore.

IT IS ORDERED

1. That the defendant is unable by reason of poverty to pay for any of the expenses of appellate review.
2. That the defendant cannot contribute anything toward the costs of appellate review.
3. That the filing fee is waived.
4. That the statement of the facts shall be prepared at public expense and

Room 945  
COPY RECEIVED

MAY 18 2012

PIERCE COUNTY  
PROSECUTING ATTORNEY

1 shall contain a verbatim report of the following proceedings, all of which  
2 are necessary for review of assignments of error.

3 (x) Pre-trial Hearing

4 Date(s)/Court Reporter(s):

5 10/09/2008; Plea Date

Judge: Lisa Worswick

6 ( ) Trial

7 Date(s)/Court Reporter(s):

8 N/A

9 (x) Sentencing Hearings

10 Date(s)/Court Reporter(s):

11/14/2008; Sentencing w/PSI

Judge: Lisa Worswick

11 (x) Hearing on Probation Revocations Motions

12 Date(s)/Court Reporter(s):

13 7-24-2009; Preliminary Hearing, SOSSA Review, 11-13-2009 SOSSA Review  
14 2-12-2010; SOSSA Review, 2-24-2010, Prelim Hrg, 3-12-2010 Review Hrg, 6-11-  
15 2010; SOSSA Review; 9/10/2010, Prelim Hrg, 3-11-2011, SOSSA Review Hrg,  
16 4-28-2011, Preliminary Hearing; 7/20/2011, SOSSA Review; 10-28-2011 SOSSA  
17 Review Hrg; 1-27-2012, SSOSA Review; 2-8-2012, Mtn Hrg; 2/9/2012, Bench  
18 Warrant issued; 2/24/2012, SOSSA Hrg.

19 (x) Other

20 Date(s)/Court Reporter(s):

21 4-27-2012, Motion to Reconsider

Judge: Elizabeth Martin

22 5. That the copy of the above record shall be provided to the defendant's  
23 counsel and the prosecuting attorney for their joint use.

24 6. That the preparation of the Clerk's papers shall be at public expense.

25 7. That the costs of reproduction of appellant's briefs shall be at public  
26 expense.

8. That Kimberly N. Gordon is allowed to withdraw as counsel effective

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upon the appointment of new counsel by the clerk of the Division II Court of Appeals.<sup>1</sup> Payment for expenses of this appointment and assignment procedures are authorized under contract with the office of the Administrator for the Courts.

9. Co-Defendants, if any, are listed below by case name and superior court cause number.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. That counsel on appeal, or his representative is authorized to remove the clerk's file from the Clerk's office for one day for the purpose of reproducing clerk's papers and designation the record on appeal.

*if permitted by the clerk*

DATED this 18<sup>th</sup> day of May 2012.

*Elizabeth Martin*  
JUDGE ELIZABETH MARTIN  
Pierce County Superior Court

Presented by:

*Kimberly N. Gordon*

KIMBERLY N. GORDON, WSBA #25401  
GORDON & SAUNDERS, PLLC  
1111 3<sup>rd</sup> Ave Ste 2220  
Seattle, WA 98101  
(206) 340-6034  
Fax: (206) 682-3746

<sup>1</sup> Mark Quigley signed NOA and previously withdrew on February 27, 2012

# APPENDIX F

FILED  
COURT OF APPEALS  
DIVISION II

2013 DEC 31 AM 9:16

STATE OF WASHINGTON

BY lo  
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JOSEPH LIEF WOLF,

Appellant.

No. 43448-2-II

UNPUBLISHED OPINION

MAXA, J. – Joseph Wolf appeals an order revoking his special sex offender sentencing alternative (SSOSA), claiming that he was denied due process, his counsel was ineffective, and the trial court abused its discretion in ordering revocation. We affirm because Wolf requested the procedure he now challenges and he did receive due process, his counsel's request for an immediate hearing represented a legitimate strategy decision and therefore was not ineffective, and the trial court had a reasonable basis for its revocation order.

FACTS

On October 9, 2008, Wolf pleaded guilty to two counts of first degree child rape. Following the terms of the plea agreement, the sentencing court imposed 131.9 months of confinement with 119.9 months suspended on the primary condition that Wolf successfully complete a three-year outpatient sex offender treatment program.<sup>1</sup>

<sup>1</sup> RCW 9.94A.670, the SSOSA statute, authorizes the trial court to suspend a first time offender's sentence if he is amenable to treatment.

No. 43448-2-II

Wolf violated his SSOSA conditions several times. On July 24, 2009, the trial court found a violation for having contact with minors. On November 13, 2009, the trial court found a violation for leaving Pierce County. On March 12, 2010, the trial court found a violation for viewing pornography. On July 20, 2011, the trial court found seven violations: being terminated from treatment, having an unauthorized romantic relationship, having unauthorized use of the Internet, consuming the synthetic marijuana drug Spice, consuming marijuana, being untruthful to his treatment provider and community corrections officer (CCO), and failing to make satisfactory progress in treatment. At the July 20 hearing the trial court indicated that it was giving Wolf one last chance.

On February 9, 2012, the Washington State Department of Corrections (DOC) filed a notice of another infraction with the superior court. Wolf appeared for hearing on February 24. At the time of the hearing, the State had not filed a petition for revocation. There was some initial confusion as to whether the matter was scheduled for a review hearing or a revocation hearing. However, Wolf was aware of the violations and stipulated that he had consumed methamphetamine and Spice. He also stipulated to the fact pattern supporting the third alleged violation that he was dishonest with his treatment provider. Wolf knew that the State was seeking revocation.

Despite the absence of a written revocation petition, Wolf's counsel wanted to hold the revocation hearing immediately. In his initial remarks to the court, defense counsel noted, "I would normally require that we have a petition filed before we proceed. . . . Time is of the essence, from my perspective and I think Mr. Wolf's perspective, if the Court were to follow the recommendations that we're going to propose. I don't want to delay this matter." Report of Proceedings (RP) (Feb. 24, 2012) at 5. When the trial court asked defense counsel again to

explain why he was willing to proceed without the State having first filed a petition, defense counsel stated:

He's stipulating to all three violations, in essence. [The prosecutor] is going to file a petition that alleges what she just told the Court. The third violation is that he was dishonest with his treatment provider. He's stipulated to facts that I think are sufficient for you to make whatever finding you want.

.....  
State's going to recommend revocation, prison ten years. [Wolf's CCO], I believe, is going to recommend 30 days as a sanction. With all due respect, I'm going to ask you give him 18 days. The reason I picked that figure is he will be out on Sunday night and able to get back into schooling. I've submitted documents. I know [his CCO] has submitted documents to the Court. So I'm prepared to proceed. I know that you were, perhaps, caught off guard this was going to go forward as a revocation hearing.

.....  
I can tell you from my perspective, again, time is of the essence. If we were to set this over even a week, which normally would be my preference and I would give the prosecutor a chance to file the petition, but I already know what the allegations are or are going to be. He's going to lose schooling, if we set this over even one week. He'll still maintain his housing and treatment, but he's going to get removed from school. [The attorney for TeamChild] can speak to that in more detail than I can, but that's why I would like to proceed today. I think all of the information that I can possibly get I have gotten and given to the Court.

RP (Feb. 24, 2012) at 11-12.

The trial court decided to proceed with the revocation hearing and then heard argument from the prosecutor, defense counsel, the community corrections officer, and the attorney representing TeamChild. The trial court then found the three alleged violations and revoked Wolf's SSOSA.

The State filed a revocation petition three days later on February 27. The petition contained the same information that had been presented at the hearing. Through new counsel, Wolf filed a motion for reconsideration. The trial court conducted a full hearing on Wolf's motion. After the hearing, the trial court denied the motion. Wolf appeals.

ANALYSIS

A. DUE PROCESS

Because the revocation of a suspended sentence is not a criminal proceeding, a defendant is entitled only to minimal due process rights in a revocation proceeding. *State v. Dahl*, 139 Wn.2d 678, 683, 990 P.2d 396 (1999). This minimal due process for an offender facing revocation of a SSOSA requires (1) written notice of the claimed violations, (2) disclosure of the evidence against the offender, (3) an opportunity to be heard, (4) the right to confront and cross-examine witnesses, (5) a neutral and detached hearing body, and (6) a statement by the court of the evidence relied on and the reasons for the revocation. *Dahl*, 139 Wn.2d at 683 (citing *Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972)).

Wolf argues that he was denied even minimal due process at his revocation hearing because (1) he did not get written notification of the claimed violations, (2) the trial court based its revocation decision on hearsay evidence, (3) the trial court found the violations based on defense counsel's stipulation to unverified facts and on a improper legal conclusion, (4) de novo review of the record shows the denial of minimal due process, and (5) the order reflects the lack of due process. However, Wolf waived his first four arguments. The record reflects that Wolf *requested* the trial court's procedure. Wolf urged the court to proceed without a written revocation petition. He did not object to the presentation of hearsay evidence. He stipulated to the alleged violations.

In *State v. Robinson*, 120 Wn. App. 294, 299-300, 85 P.3d 376 (2004), the defendant claimed due process violations because of lack of notice, the State's use of hearsay, and the trial court's failure to make a written statement of the evidence it relied on. Division One of this court refused to consider the notice and hearsay claims because Robinson did not object at the

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trial court. *Robinson*, 120 Wn. App. at 299-300. And it found that the trial court's failure to state the evidence it relied on was not fatal because the record was sufficient to determine the trial court's reasons. *Robinson*, 120 Wn. App. at 300-01. *Robinson* controls here.

Further, Wolf did receive due process following the trial court's initial decision. The trial court conducted a full hearing on Wolf's motion for reconsideration. Wolf cannot claim that he did not have an opportunity to be heard.

As to his fifth claim, Wolf faults the trial court's written order because (1) it states that the matter came on for a regular hearing when, in fact, it had been noted as a review hearing not a revocation hearing and (2) it states that the trial court had read the petition when, in fact, the petition did not exist at that time. He argues that this court should void the order because it contains false statements.

The record reflects that the trial court was surprised that the parties wanted a revocation hearing because the docket reflected that a review hearing was scheduled. The trial court stated:

If the three of you are willing to proceed with this as a revocation hearing, with the petition being filed after the fact, I'm willing to proceed. I want you to know that's not what was noted in front of me. This simply is report on a violation as far as I can tell.

RP (Feb. 24, 2012) at 11-12. After Wolf explained that time was of the essence and he did not want to wait, the trial court agreed to proceed with a revocation hearing. We fail to see any basis for voiding the revocation order because it says it came on for a regular hearing.

We also are not persuaded that because the boilerplate order states that the trial court considered the petition before the hearing there is a basis to void the order. The trial court had made its decision after reading the CCO violation report, listening to Wolf's stipulations, and considering the recommendations of the prosecutor, Wolf's CCO and Wolf. We agree with the

No. 43448-2-II

State that under these circumstances not striking the boilerplate language was a scrivener's error, not a due process violation. The remedy for clerical or scrivener's errors in judgment and sentence forms is remand to the trial court for correction. *In re Pers. Restraint of Mayer*, 128 Wn. App. 694, 701-02, 117 P.3d 353 (2005) (citing CrR 7.8(a)); see RAP 7.2(e). Here, though, Wolf does not seek that form of relief and so we do not remand. Wolf's due process claims fail.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

Wolf claims that counsel's performance at the revocation hearing denied him his right to effective assistance of counsel because (1) defense counsel's conduct was not objectively reasonable and (2) it is likely that the court would have imposed confinement rather than revocation had defense counsel protected Wolf's due process rights. We disagree.

This court reviews claims of ineffective assistance of counsel de novo. *State v. Sutherby*, 165 Wn.2d 870, 883, 204 P.3d 916 (2009). To prevail on an ineffective assistance of counsel claim, the defendant must show both that (1) defense counsel's representation was "deficient" and (2) the deficient representation prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. Grier*, 171 Wn.2d 17, 32-33, 246 P.3d 1260 (2011). Representation is deficient if, after considering all the circumstances, it falls below an objective standard of reasonableness. *Grier*, 171 Wn.2d at 33. Prejudice exists if there is a reasonable probability that except for counsel's errors, the result of the proceeding would have differed. *Grier*, 171 Wn.2d at 34.

This court gives great deference to trial counsel's performance and begins its analysis with a strong presumption that counsel was reasonable. *Grier*, 171 Wn.2d at 33. A claim that trial counsel provided ineffective assistance does not survive if trial counsel's conduct can be characterized as legitimate trial strategy or tactic. *Grier*, 171 Wn.2d at 33. To rebut the strong

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presumption that counsel's performance was effective, "the defendant bears the burden of establishing the absence of any 'conceivable legitimate tactic explaining counsel's performance.'" *Grier*, 171 Wn.2d at 42 (emphasis omitted) (quoting *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004)).

We find neither prong satisfied here. The trial court and the parties were intimately aware of the facts. Including the plea and sentencing, there were 16 hearings over a three-and-one-half year period. Defense counsel represented Wolf in all but the motion for reconsideration. Over that course of time, defense counsel kept Wolf in the SSOSA program in spite of Wolf's repeated violations of the sentencing conditions. Everyone agreed that Wolf had a low risk of reoffense and that his best chance of success was in a community-based treatment program. Wolf suffered from mental disorders, substance abuse addiction, and a troubling family history. The trial court had articulated that Wolf's greatest chance of success was education and praised Wolf for completing his general educational development certification and being an honors student in college.

Defense counsel's urgency in resolving the revocation threat was to keep Wolf in school. Emphasizing school appears to be an attempt to focus the trial court's attention on that positive aspect of Wolf's life. This was a reasonable tactic in that the trial court in prior hearings had shown a willingness to allow Wolf's team of therapists and advocates to work toward making Wolf successful. Further, given Wolf's multiple prior violations, stipulating to current violations and pleading for mercy was a reasonable strategy.

We also do not find prejudice. The trial court ultimately decided that a SSOSA was inappropriate for Wolf because his issues were so complex. The trial court was intimately familiar with this case, having held all of the review hearings since June 2011 and having

No. 43448-2-II

presided over the July 2011 revocation hearing in which a new team approach to Wolf's issues resulted. At the revocation hearing, defense counsel made an impassioned plea for leniency, yet the trial court decided that Wolf just simply was not an appropriate candidate for a SSOSA. There is no indication that the trial court's decision would have been different if the revocation hearing procedure would have been different. Further, Wolf obtained new counsel for the motion for reconsideration, presented new evidence to the trial court, and again pleaded for an approach different than revocation. Again, the trial court denied the motion. There seems little or no likelihood that the result would have differed had defense counsel demanded a full hearing at the outset. Wolf's ineffective assistance of counsel claim fails.

C. REVOCATION DECISION

Wolf claims that the trial court abused its discretion in revoking his SSOSA because it (1) did so without even providing minimal due process, (2) relied solely on hearsay evidence, and (3) denied his motion for reconsideration when it had revoked his SSOSA without observing minimal due process.

We review a trial court's decision to revoke a SSOSA for an abuse of discretion. *State v. Miller*, 159 Wn. App. 911, 918, 247 P.3d 457 (2011). A trial court abuses its discretion when its ruling is manifestly unreasonable or is based on untenable grounds or reasons. *Miller*, 159 Wn. App. at 918. A decision based on an error of law may constitute an abuse of discretion. *Miller*, 159 Wn. App. at 918. A trial court may revoke a SSOSA "at any time where there is sufficient proof to reasonably satisfy a trial court that the defendant has violated a condition of the suspended sentence or has failed to make satisfactory progress in treatment." *Miller*, 159 Wn. App. at 917-18 (citing *State v. McCormick*, 166 Wn.2d 689, 705, 213 P.3d 32 (2009)).

Wolf contends that the trial court's decision to hold the revocation hearing without respecting Wolf's minimal due process rights was a legal error and thus an abuse of discretion. We disagree. The trial court relied on the parties' assent to hold the hearing and only after offering to have a hearing at a later date and having defense counsel insist on having the hearing that day did it agree to do so. It is clear that Wolf knew about the alleged violations, stipulated to two of them, and stipulated to the facts surrounding the third. In that posture, there was no need for an evidentiary hearing as to the fact of the violations. And the trial court's reliance on hearsay was both invited and appropriate under the circumstances presented here.

As to the actual decision to revoke rather than consider other alternatives, the trial court's reasons were sound, based on its history with Wolf. As we noted above, the trial court had had a full evidentiary hearing seven months before and then only hesitantly gave Wolf another chance because of the complexity of issues affecting him. The trial court did not violate Wolf's minimal due process rights and thus did not abuse its discretion.

The trial court also did not abuse its discretion in denying the motion for reconsideration. After hearing from Wolf's new counsel and his CCO, the attorney for TeamChild, and a representative from the Post-Prison Education Project House, the trial court did reassess its decision to revoke. But the court concluded:

You've asked me to reconsider based on a new plan and a plan that, I think, is probably the best possible plan that could be put together, but the truth is that [Wolf] has been given extraordinary support and opportunity that I have not seen in any other SSOSA candidate that has been in front of me, and despite everything that he was given, he still has not been able to succeed.

.....  
I think [his CCO] kind of struck a chord there, is that given the complexity of the substance abuse and mental health issues, he's not supervisable by [DOC]. . . .

. . . It's that he has had extraordinary resources that were devoted to him. He still hasn't been able to succeed. Perhaps the mistake that was made was mine

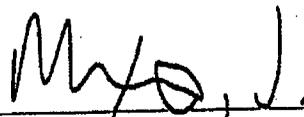
No. 43448-2-II

in giving him the opportunity in July, when we knew at that time that he had substance abuse issues.

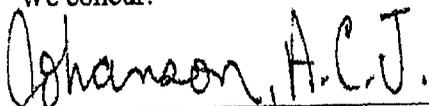
RP (Apr. 27, 2012) at 52-54. Wolf fails to show that this well-reasoned approach was an abuse of discretion.

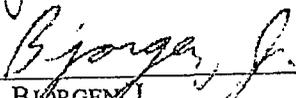
We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
\_\_\_\_\_  
MAXA, J.

We concur:

  
\_\_\_\_\_  
JOHANSON, A.C.J.

  
\_\_\_\_\_  
BJORGEN, J.

# APPENDIX G

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IN THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

STATE OF WASHINGTON  
Plaintiff

NO. 08-1-02972-9  
Court of Appeal: No. 43448-2

JOSEPH WOLF

MOTION FOR ORDER ADDING  
APPELLATE COSTS TO JUDGMENT AND  
SENTENCE

Defendant

COMES NOW MARK LINDQUIST, Prosecuting Attorney for Pierce County, Washington,

by and through his Deputy Jared Außerer, and moves the court for an order adding appellate costs to the judgment and sentence. This motion is made pursuant to RCW 10.73.160, which states that "[a]n award of costs shall become part of the final court judgment and sentence," and the authority of State v. Mahone, 98 Wn. App. 342, 989 P.2d 583 (1999). An award in the total amount of \$3,579.64 has been set forth in the mandate of ruling on costs, dated April 9, 2014. The State requests entry of an order adding this amount to the judgment payable as set forth in the appellate order, but leaving all other terms of the judgment and sentence in full force and effect.

DAVED this 18<sup>th</sup> day of June, 2014.

MARK LINDQUIST  
Pierce County Prosecuting Attorney

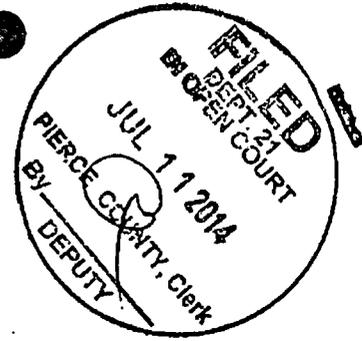
By:   
JARED AUßERER  
Deputy Prosecuting Attorney  
WSB #17719

# APPENDIX H

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IN THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

STATE OF WASHINGTON,  
Plaintiff

v.

JOSEPH WOLF,  
Defendant.

NO. 08-1-02972-9  
Court of Appeals No. 43448-2

ORDER ADDING APPELLATE COSTS  
TO JUDGMENT AND SENTENCE

THIS MATTER coming on regularly for hearing before the above entitled court on the Motion of Jared Ausserer, Deputy Prosecuting Attorney for Pierce County, Washington, for an order adding appellate costs to the Judgment and Sentence, and the court being in all things duly advised, Now, Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that appellate costs in the amount of \$3,579.64 shall be added to the legal financial obligations listed in

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the Judgment and Sentence to be paid by the defendant. All other terms and conditions of the original Judgment and Sentence shall remain in full force and effect as if set forth in full herein.

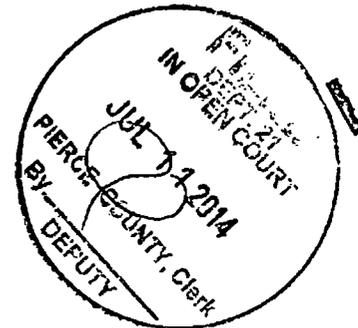
DONE IN OPEN COURT this 11 day of July, 2014.

JUDGE

FRANK E. CUTHBERTSON

Presented by:

Deputy Prosecuting Attorney  
WSB # 44076



Approved as to Form by:

\_\_\_\_\_  
Attorney for Defendant  
WSB# \_\_\_\_\_

# APPENDIX I

RECEIVED

JUN 23 2014

IN THE SUPERIOR COURT FOR PIERCE COUNTY WASHINGTON

State of Washington,

Plaintiff

vs.

JOSEPH LEIF WOLF

Defendant

No 08-1-02972-9

SCHEDULING ORDER

IT IS HEREBY ORDERED that:

1. The following court dates are set for the defendant:

Hearing Type	Date & Time	Judge/Room
MOTION-APPELLATE COSTS	Friday, Jul 11, 2014 1:30 PM	CDPJ 260

2. The defendant shall be present at these hearings and report to the courtroom indicated at 930 Tacoma Avenue South, County-City Building, Tacoma, Washington, 98402



- 3.  DAC; Defendant will be represented by Department of Assigned Counsel.
- Retained Attorney; Defendant will hire their own attorney or, if indigent, be Screened (interviewed) for Department of Assigned Counsel Appointment.

DATED: 06/17/14

Copy Received:

Ordered By:

SEE ORIGINAL

JOSEPH LEIF WOLF, Defendant

SEE ORIGINAL

JUDGE/COMMISSIONER

SEE ORIGINAL

KIMBERLY NOEL GORDON  
Attorney for Defendant/Bar #25401

SEE ORIGINAL

JARED AUSSERER  
Prosecuting Attorney/Bar #32719

# APPENDIX J

West's RCWA 13.40.160

West's Revised Code of Washington Annotated <sup>Currentness</sup>

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

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

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

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

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

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

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

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

(3) When a juvenile offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030, and has no history of a prior sex offense, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of problems in addition to alleged deviant behaviors, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

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

(a)(i) Frequency and type of contact between the offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

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

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this special sex offender disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition within the standard range for the offense, or if the court concludes, and enters reasons for its conclusions, that such disposition would cause a manifest injustice, the court shall impose a disposition under option D, and the court may suspend the execution of the disposition and place the offender on community supervision for at least two years. As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:

(b)(i) Devote time to a specific education, employment, or occupation;

(ii) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change;

(iii) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;

(iv) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;

(v) Report as directed to the court and a probation counselor;

(vi) Pay all court-ordered legal financial obligations, perform community restitution, or any combination thereof;

(vii) Make restitution to the victim for the cost of any counseling reasonably related to the offense;

(viii) Comply with the conditions of any court-ordered probation bond; or

**13.40.160. Disposition order—Court’s action..., West’s RCWA 13.40.160**

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(ix) The court shall order that the offender shall not attend the public or approved private elementary, middle, or high school attended by the victim or the victim’s siblings. The parents or legal guardians of the offender are responsible for transportation or other costs associated with the offender’s change of school that would otherwise be paid by the school district. The court shall send notice of the disposition and restriction on attending the same school as the victim or victim’s siblings to the public or approved private school the juvenile will attend, if known, or if unknown, to the approved private schools and the public school district board of directors of the district in which the juvenile resides or intends to reside. This notice must be sent at the earliest possible date but not later than ten calendar days after entry of the disposition.

The sex offender treatment provider shall submit quarterly reports on the respondent’s progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent’s compliance with requirements, treatment activities, the respondent’s relative progress in treatment, and any other material specified by the court at the time of the disposition.

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

Except as provided in this subsection (3), after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW. A sex offender therapist who examines or treats a juvenile sex offender pursuant to this subsection does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender’s home; and (C) the evaluation and treatment plan comply with this subsection (3) and the rules adopted by the department of health.

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty of up to thirty days’ confinement for violating conditions of the disposition. The court may order both execution of the disposition and up to thirty days’ confinement for the violation of the conditions of the disposition. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

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 crime charged. “Victim” may also include a known parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

A disposition entered under this subsection (3) is not appealable under RCW 13.40.230.

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

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

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

**13.40.160. Disposition order—Court's action..., West's RCWA 13.40.160**

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

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

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

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

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

**CREDIT(S)**

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

Current with all 2007 legislation

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West's RCWA 9.94A.670

West's Revised Code of Washington Annotated <sup>Currentness</sup>

Title 9. Crimes and Punishments (Refs & Annos)

Chapter 9.94A. Sentencing Reform Act of 1981 (Refs & Annos)

**9.94A.670. Special sex offender sentencing alternative**

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider or a certified affiliate sex offender treatment provider as defined in RCW 18.155.020.

(b) "Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any body part or organ, or that causes a fracture of any body part or organ.

(c) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense. If the conviction results from a guilty plea, the offender must, as part of his or her plea of guilty, voluntarily and affirmatively admit he or she committed all of the elements of the crime to which the offender is pleading guilty. This alternative is not available to offenders who plead guilty to the offense charged under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state;

(c) The offender has no prior adult convictions for a violent offense that was committed within five years of the date the current offense was committed;

(d) The offense did not result in substantial bodily harm to the victim;

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

(f) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

**9.94A.670. Special sex offender sentencing alternative, West's RCWA 9.94A.670**

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(a) The report of the examination shall include at a minimum the following:

- (i) The offender's version of the facts and the official version of the facts;
- (ii) The offender's offense history;
- (iii) An assessment of problems in addition to alleged deviant behaviors;
- (iv) The offender's social and employment situation; and
- (v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

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

- (i) Frequency and type of contact between offender and therapist;
- (ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;
- (iv) Anticipated length of treatment; and
- (v) Recommended crime-related prohibitions and affirmative conditions, which must include, to the extent known, an identification of specific activities or behaviors that are precursors to the offender's offense cycle, including, but not limited to, activities or behaviors such as viewing or listening to pornography or use of alcohol or controlled substances.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall

**9.94A.670. Special sex offender sentencing alternative, West's RCWA 9.94A.670**

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then impose a sentence or, pursuant to RCW 9.94A.712, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(a) The court shall order the offender to serve a term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. The court may order the offender to serve a term of confinement greater than twelve months or the maximum term within the standard range based on the presence of an aggravating circumstance listed in RCW 9.94A.535(3). In no case shall the term of confinement exceed the statutory maximum sentence for the offense. The court may order the offender to serve all or part of his or her term of confinement in partial confinement. An offender sentenced to a term of confinement under this subsection is not eligible for earned release under RCW 9.92.151 or 9.94A.728.

(b) The court shall place the offender on community custody for the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.712, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.720.

(c) The court shall order treatment for any period up to five years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(d) As conditions of the suspended sentence, the court shall impose specific prohibitions and affirmative conditions relating to the known precursor activities or behaviors identified in the proposed treatment plan under subsection (3)(b)(v) of this section or identified in an annual review under subsection (7)(b) of this section.

(5) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) Crime-related prohibitions;

(b) Require the offender to devote time to a specific employment or occupation;

(c) Require the offender to remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(d) Require the offender to report as directed to the court and a community corrections officer;

(e) Require the offender to pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(f) Require the offender to perform community restitution work; or

(g) Require the offender to reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(6) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.

**9.94A.670. Special sex offender sentencing alternative, West's RCWA 9.94A.670**

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(7)(a) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(b) The court shall conduct a hearing on the offender's progress in treatment at least once a year. At least fourteen days prior to the hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. At the hearing, the court may modify conditions of community custody including, but not limited to, crime-related prohibitions and affirmative conditions relating to activities and behaviors identified as part of, or relating to precursor activities and behaviors in, the offender's offense cycle or revoke the suspended sentence.

(8) At least fourteen days prior to the treatment termination hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. The court may order an evaluation regarding the advisability of termination from treatment by a sex offender treatment provider who may not be the same person who treated the offender under subsection (4) of this section or any person who employs, is employed by, or shares profits with the person who treated the offender under subsection (4) of this section unless the court has entered written findings that such evaluation is in the best interest of the victim and that a successful evaluation of the offender would otherwise be impractical. The offender shall pay the cost of the evaluation. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment in two-year increments for up to the remaining period of community custody.

(9)(a) If a violation of conditions other than a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (4)(d) or (7)(b) of this section occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (6) and (8) of this section.

(b) If a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (4)(d) or (7)(b) of this section occurs during community custody, the department shall refer the violation to the court and recommend revocation of the suspended sentence as provided in subsection (10) of this section.

(10) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(11) The offender's sex offender treatment provider may not be the same person who examined the offender under subsection (3) of this section or any person who employs, is employed by, or shares profits with the person who examined the offender under subsection (3) of this section, unless the court has entered written findings that such treatment is in the best interests of the victim and that successful treatment of the offender would otherwise be impractical. Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

**9.94A.670. Special sex offender sentencing alternative, West's RCWA 9.94A.670**

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(b)(i) No certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

(12) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment.

**CREDIT(S)**

[2006 c 133 § 1, eff. June 7, 2006. Prior: 2004 c 176 § 4, eff. July 1, 2005; 2004 c 38 § 9, eff. July 1, 2004; 2002 c 175 § 11; 2001 2nd sp.s. c 12 § 316; 2000 c 28 § 20.]

**Current with all 2007 legislation**

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# APPENDIX K



*Juvenile Offenders and Victims:*



# National Report Series

*Bulletin*

September 2011

*This bulletin is part of the Juvenile Offenders and Victims National Report Series. The National Report offers a comprehensive statistical overview of the problems of juvenile crime, violence, and victimization and the response of the juvenile justice system. During each interim year, the bulletins in the National Report Series provide access to the latest information on juvenile arrests, court cases, juveniles in custody, and other topics of interest. Each bulletin in the series highlights selected topics at the forefront of juvenile justice policymaking, giving readers focused access to statistics on some of the most critical issues. Together, the National Report and this series provide a baseline of facts for juvenile justice professionals, policymakers, the media, and concerned citizens.*



## Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting

Patrick Griffin, Sean Addie, Benjamin Adams, and Kathy Firestone

### A Message From OJJDP

In the 1980s and 1990s, legislatures in nearly every state expanded transfer laws that allowed or required the prosecution of juveniles in adult criminal courts. The impact of these historic changes is difficult to assess inasmuch as there are no national data sets that track youth who have been tried and sentenced in the criminal justice system. Moreover, state data are hard to find and even more difficult to assess accurately.

In addition to providing the latest overview of state transfer laws and practices, this bulletin comprehensively examines available state-level data on juveniles adjudicated in the criminal justice system. In documenting state reporting practices regarding the criminal processing of youth and identifying critical information gaps, it represents an important step forward in understanding the impact of state transfer laws.

Currently, only 13 states publicly report the total number of their transfers, and even fewer report offense profiles, demographic characteristics, or details regarding processing and sentencing. Although nearly 14,000 transfers can be derived from available 2007 sources, data from 29 states are missing from that total.

To obtain the critical information that policymakers, planners, and other concerned citizens need to assess the impact of expanded transfer laws, we must extend our knowledge of the prosecution of juveniles in criminal courts. The information provided in these pages and the processes used to attain it will help inform the focus and design of additional federally sponsored research to that end.

Jeff Slowikowski  
Acting Administrator

Access OJJDP publications online at [ojjdp.gov](http://ojjdp.gov)

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# All states set boundaries where childhood ends and adult criminal responsibility begins

## Transfer laws alter the usual jurisdictional age boundaries for exceptional cases

State juvenile courts with delinquency jurisdiction handle cases in which “juveniles” are accused of acts that would be crimes if “adults” committed them. Generally, these terms are defined solely by age. In most states, youth accused of violating the law before turning 18 years old come under the original jurisdiction of the juvenile courts, whereas those accused of violating the law on or after their 18th birthdays have their cases processed in criminal courts. Some states draw the juvenile/adult line at the 17th birthday, and a few draw it at the 16th birthday.

However, all states have transfer laws that allow or require criminal prosecution of some young offenders, even though they fall on the juvenile side of the jurisdictional age line.

Transfer laws are not new, but legislative changes in recent decades have greatly expanded their scope. As a result, the transfer “exception” has become a far more prominent feature of the nation’s response to youthful offending.

## Most states have multiple transfer mechanisms

Transfer laws vary considerably from state to state, particularly in terms of flexibility and breadth of coverage, but all fall into three basic categories:

- **Judicial waiver laws** allow juvenile courts to waive jurisdiction on a case-by-case basis, opening the way for criminal prosecution. A case that is subject to waiver is filed originally in juvenile court but may be transferred

with a judge’s approval, based on articulated standards, following a formal hearing. Even though all states set minimum thresholds and prescribe standards for waiver, the waiver decision is usually at the discretion of the judge. However, some states make waiver presumptive in certain classes of cases, and some even specify circumstances under which waiver is mandatory.

- **Prosecutorial discretion or concurrent jurisdiction laws** define a class of cases that may be brought in either juvenile or criminal court. No hearing is held to determine which court is appropriate, and there may be no formal standards for deciding between them. The decision is entrusted entirely to the prosecutor.
- **Statutory exclusion laws** grant criminal courts exclusive jurisdiction over certain classes of cases involving juvenile-age offenders. If a case falls within a statutory exclusion category, it must be filed originally in criminal court.

All states have at least one of the above kinds of transfer law. In addition, many have one or more of the following:

- **“Once adult/always adult” laws** are a special form of exclusion requiring criminal prosecution of any juvenile who has been criminally prosecuted in the past—usually without regard to the seriousness of the current offense.
- **Reverse waiver laws** allow juveniles whose cases are in criminal court to petition to have them transferred to juvenile court.
- **Blended sentencing laws** may either provide juvenile courts with criminal sentencing options (juvenile blended sentencing) or allow criminal courts to

impose juvenile dispositions (criminal blended sentencing).

## Nearly all states give courts discretion to waive jurisdiction over individual cases

A total of 45 states have laws designating some category of cases in which waiver of jurisdiction may be considered, generally on the prosecutor’s motion, and granted on a discretionary basis. This is the oldest and still the most common form of transfer law, although most states have other, less traditional forms as well.

Discretionary waiver statutes prescribe broad standards to be applied, factors to be considered, and procedures to be followed in waiver decisionmaking and require that prosecutors bear the burden of proving that waiver is appropriate. Although waiver standards and evidentiary factors vary from state to state, most take into account both the nature of the alleged crime and the individual youth’s age, maturity, history, and rehabilitative prospects.

In addition, most states set a minimum threshold for waiver eligibility: generally a minimum age and a specified type or level of offense, and sometimes a sufficiently serious record of previous delinquency. Waiver thresholds are often quite low, however. In a few states—such as Alaska, Kansas, and Washington—prosecutors may ask the court to waive virtually any juvenile delinquency case. As a practical matter, however, even in these states, waivers are likely to be relatively rare. Nationally, the proportion of juvenile cases in which prosecutors seek waiver is not known, but waiver is granted in less than 1% of petitioned delinquency cases.

### Most states have multiple ways to impose adult sanctions on offenders of juvenile age

State	Judicial waiver			Prosecutorial discretion	Statutory exclusion	Reverse waiver	Once an adult always an adult	Blended sentencing	
	Discretionary	Presumptive	Mandatory					Juvenile	Criminal
Number of states	45	15	15	15	29	24	34	14	18
Alabama	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		
Alaska	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Arizona	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Arkansas	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
California	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Colorado	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Connecticut			<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Delaware	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Dist. Of Columbia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		
Florida	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Georgia	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Hawaii	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>		
Idaho	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Illinois	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Indiana	<input checked="" type="checkbox"/>								
Iowa	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Kansas	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Kentucky	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
Louisiana	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
Maine	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>		
Maryland	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Massachusetts					<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Michigan	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Minnesota	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Mississippi	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Missouri	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Montana				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Nebraska				<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
Nevada	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
New Hampshire	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>		
New Jersey	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
New Mexico					<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
New York					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
North Carolina	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		
North Dakota	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		
Ohio	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Oklahoma	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Oregon	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Pennsylvania	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Rhode Island	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
South Carolina	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>				
South Dakota	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Tennessee	<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Texas	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Utah	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Vermont	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Virginia	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Washington	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		
West Virginia	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>
Wisconsin	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Wyoming	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			

Note: Table information is as of the end of the 2009 legislative session.

**Most states allow juvenile court judges to waive jurisdiction over certain cases and transfer them to criminal court**

State	Any criminal offense	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Alabama	14							
Alaska	NS							
Arizona		NS						
Arkansas		14	14	14	14			14
California	16							
Colorado		12		12	12			
Delaware	NS							
Dist. of Columbia	16	15						NS
Florida	14							
Georgia	15		13		13			
Hawaii		14		NS				
Idaho	14	NS		NS	NS	NS	NS	
Illinois	13							
Indiana		14		10			16	
Iowa	14							
Kansas	10							
Kentucky		14	14					
Louisiana				14	14			
Maine		NS						
Maryland	15		NS					
Michigan		14						
Minnesota		14						
Mississippi	13							
Missouri		12						
Nevada	14	14						
New Hampshire		15		13	13			
New Jersey	14			14	14	14	14	14
North Carolina		13						
North Dakota	16				14			
Ohio		14						
Oklahoma		NS						
Oregon		15		NS	NS	15		
Pennsylvania		14						
Rhode Island	NS	16	NS					
South Carolina	16	14		NS	NS		14	14
South Dakota		NS						
Tennessee	16			NS	NS			
Texas		14	14				14	
Utah		14						
Vermont				10	10	10		
Virginia		14						
Washington	NS							
West Virginia		NS		NS	NS	NS	NS	
Wisconsin	15	14		14	14	14	14	
Wyoming	13							

Notes: An entry in the column below an offense category means that there is at least one offense in that category for which a juvenile may be waived from juvenile court to criminal court. The number indicates the youngest possible age at which a juvenile accused of an offense in that category may be waived. "NS" means no age restriction is specified for an offense in that category. Table information is as of the end of the 2009 legislative session.

**In presumptive waiver cases, the burden of proof shifts to the juvenile**

In 15 states, presumptive waiver laws define a category of cases in which waiver from juvenile to criminal court is presumed appropriate. Statutes in these states leave the decision in the hands of a judge but weight it in favor of transfer. A juvenile who meets age, offense, or other statutory thresholds for presumptive waiver must present evidence rebutting the presumption, or the court will grant waiver and the case will be tried in criminal court.

**State laws may require juvenile court judges to waive jurisdiction in certain cases**

Fifteen states require juvenile courts to waive jurisdiction over cases that meet specified age/offense or prior record criteria. Cases subject to mandatory waiver are initiated in juvenile court, but the court has no other role than to confirm that the statutory requirements for mandatory waiver are met.

Functionally, a mandatory waiver law resembles a statutory exclusion, removing a designated category of cases from juvenile court jurisdiction. However, the juvenile court may retain power to make necessary orders relating to appointment of counsel, detention, and other preliminary matters.

**Nonjudicial transfer cases bypass juvenile courts altogether**

Only 15 states now rely solely on traditional hearing-based, judicially controlled forms of transfer: Connecticut, Hawaii, Kansas, Kentucky, Maine, Missouri, New Hampshire, New Jersey, North Carolina,

North Dakota, Ohio, Rhode Island, Tennessee, Texas, and West Virginia. In these states, all cases against juvenile-age offenders (except those who have already been criminally prosecuted once) begin in juvenile court and must be literally transferred, by individual court order, to courts with criminal jurisdiction.

In all other states, cases against some accused juveniles are filed directly in criminal court. Youth subject to direct criminal filing in these states may nevertheless be entitled to make an individualized case for juvenile handling at "reverse waiver" hearings before criminal court judges. Not all states allow this, however, and others do not allow it in some categories of cases.

### Prosecutors' discretion to opt for criminal handling is often unfettered

Laws in 15 states designate some category of cases in which both juvenile and criminal courts have jurisdiction, so prosecutors may choose to file in either one court or the other. The choice is considered to be within the prosecutor's executive discretion, comparable with the charging decision.

In fact, prosecutorial discretion laws are usually silent regarding standards, protocols, or appropriate considerations for decisionmaking. Even in those few states where statutes provide some general guidance to prosecutors, or at least require them to develop their own decision-making guidelines, there is no hearing, no evidentiary record, and no opportunity for defendants to test (or even to know) the basis for a prosecutor's decision to proceed in criminal court. As a result, it is possible that prosecutorial discretion laws in some places operate like statutory exclusions, sweeping whole categories into criminal court with little or no individualized consideration.

### Some states designate circumstances in which the burden of proof in a waiver hearing is shifted to the juvenile

State	Any criminal offense	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Alaska					NS			
California		14		14	14	14	14	
Colorado*		12		12	12			
Dist. Of Columbia†	15			15	15	15		
Illinois		15					15	
Kansas†	14	14			14		14	
Maine				NS	NS			
Minnesota		16						
Nevada†	14				14			
New Hampshire		15		15	15		15	
New Jersey		14		14	14	14	14	14
North Dakota		14		14	14		14	
Pennsylvania					14	14		
Rhode Island*	NS							
Utah		16		16	16	16		16

\* In Colorado and Rhode Island, the presumption is applied against juveniles with certain kinds of histories.

† In the District of Columbia, Kansas, and Nevada, the presumption applies to any offense committed with a firearm.

Notes: An entry in the column below an offense category means that there is at least one offense in that category for which a juvenile is presumed to be an appropriate candidate for waiver to criminal court. The number indicates the youngest possible age at which a juvenile accused of an offense in that category is subject to the presumption. "NS" means no age restriction is attached to the presumption for an offense in that category. Table information is as of the end of the 2009 legislative session.

### In some states, waiver is mandatory once the juvenile court judge determines that certain statutory criteria have been met

State	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Connecticut	14	14	14				
Delaware	15		NS	NS	16	16	
Georgia			14	14	15		
Illinois	15						
Indiana	NS					16	
Kentucky	14						
Louisiana			15	15			
New Jersey	16		16	16	16	16	16
North Carolina		13					
North Dakota			14	14		14	
Ohio	14		14	16	16		
Rhode Island			17	17			
South Carolina	14						
Virginia			14	14			
West Virginia	14		14	14	14		

Notes: An entry in the column below an offense category means that there is at least one offense in that category for which waiver to criminal court is mandatory. The number indicates the youngest possible age at which a juvenile accused of an offense in that category is subject to mandatory waiver. "NS" means no age restriction is specified for an offense in that category. Table information is as of the end of the 2009 legislative session.

## Statutory exclusion laws restrict juvenile courts' delinquency jurisdiction

A total of 29 states have statutes that simply exclude some juvenile-age offenders from the jurisdiction of their juvenile courts, generally by defining the term "child" for delinquency purposes to leave out youth who meet certain age/offense or prior record criteria. Because such youth cannot by definition be "delinquent children," their cases are handled entirely in criminal court.

Many states make no distinction between minors and adults in enforcing traffic, boating, hunting, fishing and similar laws and ordinances—and may process all violations in criminal courts. Statutory exclusion laws are different, however, in that they make special exceptions for offending behavior that would otherwise be the responsibility of juvenile delinquency courts.

Murder is the offense most commonly singled out by statutory exclusion laws. In Massachusetts, Minnesota, and New Mexico, exclusion laws apply only to accused murderers. In all other states with exclusion statutes, murder is included along with other serious or violent felonies.

Some states exclude less serious offenses, especially where older juveniles or those with serious delinquency histories are involved. Montana law excludes 17-year-olds accused of a wide range of offenses, including attempted burglary, attempted arson, and attempted drug possession. Mississippi excludes all felonies that 17-year-olds commit as well as armed felonies that juveniles 13 or older commit. Utah excludes all felonies committed by 16-year-olds who have already been securely confined once, and Arizona excludes all felonies committed by those as young as 15, provided they have previously been disposed as juveniles more than once for felony-level offenses.

### Some states allow prosecutors to file certain categories of cases in juvenile or criminal court

State	Any criminal offense	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Arizona		14						
Arkansas		16	14	14	14			
California		14	14	14	14	14	14	
Colorado		14		14	14	14		
Dist. of Columbia				16	16	16		
Florida	16	16	NS	14	14	14		14
Georgia			NS					
Louisiana				15	15	15	15	
Michigan		14		14	14	14	14	
Montana				12	12	16	16	16
Nebraska	16	NS						
Oklahoma		16		15	15	15	16	15
Vermont	16							
Virginia				14	14			
Wyoming	13	14		14	14	14		

Notes: An entry in the column below an offense category means that there is at least one offense in that category that is subject to criminal prosecution at the option of the prosecutor. The number indicates the youngest possible age at which a juvenile accused of an offense in that category is subject to criminal prosecution. "NS" means no age restriction is specified for an offense in that category. Table information is as of the end of the 2009 legislative session.

### Many states exclude certain serious offenses from juvenile court jurisdiction

State	Any criminal offense	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Alabama		16	16				16	
Alaska					16	16		
Arizona		15		15	15			
California				14	14			
Delaware		15						
Florida				16	NS	16	16	
Georgia				13	13			
Idaho				14	14	14	14	
Illinois		15		13	15			15
Indiana		16		16	16		16	16
Iowa		16					16	16
Louisiana				15	15			
Maryland			14	16	16			16
Massachusetts				14				
Minnesota				16				
Mississippi		13	13					
Montana				17	17	17	17	17
Nevada	16*	NS		NS	16			
New Mexico				15				
New York				13	13	14		14
Oklahoma				13				
Oregon				15	15			
Pennsylvania				NS	15			
South Carolina		16						
South Dakota		16						
Utah		16		16				
Vermont				14	14	14		
Washington				16	16	16		
Wisconsin				10	10			

\* In Nevada; the exclusion applies to any juvenile with a previous felony adjudication, regardless of the current offense charged, if the current offense involves the use or threatened use of a firearm.

Notes: An entry in the column below an offense category means that there is at least one offense in that category that is excluded from juvenile court jurisdiction. The number indicates the youngest possible age at which a juvenile accused of an offense in that category is subject to exclusion. "NS" means no age restriction is specified for an offense in that category. Table information is as of the end of the 2009 legislative session.

## In most states, criminal prosecution renders a juvenile an “adult” forever

There is a special form of “automatic” transfer in 34 states for juveniles who have previously been prosecuted as adults. Most of these “once adult/always adult” laws are comprehensive, mandating criminal handling of all posttransfer offenses. However, Maryland, Michigan, Minnesota, and Texas have laws that apply only to posttransfer felonies, whereas Iowa, California, and Oregon require that the juveniles involved be at least 16.

Generally, once adult/always adult laws apply only to juveniles who were convicted of the offenses for which they were originally transferred. However, this is not necessary in all states, at least if the original transfer was based on an individualized judicial determination.

## Many states give courts special flexibility in handling youth subject to transfer

Even states with automatic or prosecutor-controlled transfer laws often have compensating mechanisms that introduce some form of individualized judicial consideration into the process.

The most straightforward of these corrective mechanisms is the reverse waiver. A total of 24 states have reverse waiver laws, which allow juveniles whose cases are filed in criminal court to petition to have them removed to juvenile court, either for trial or disposition. Criminal court judges deciding reverse waiver motions usually consult the same kinds of standards and weigh the same factors as their juvenile court counterparts in discretionary waiver proceedings—but the burden of proof may be shifted to the juvenile as

the moving party. Moreover, even in states that have a reverse waiver option, it is not necessarily afforded to all transferred youth: 10 states with reverse waiver laws explicitly limit its availability.

Blended sentencing laws are also designed to provide a measure of individualization and flexibility in cases subject to transfer.

Laws in 18 states authorize their criminal courts, in sentencing juveniles who have been tried and convicted as adults, to impose juvenile dispositions rather than criminal ones under some circumstances. Such “criminal blended sentencing” statutes can function somewhat like reverse waiver laws, returning transferred juveniles on an individual basis to the juvenile correctional system for treatment and rehabilitation. However, they often require that a transferred juvenile receive a suspended criminal sentence, over and above any juvenile disposition. In any case, here again, criminal blended sentencing is commonly authorized only for a subset of those youth who are criminally convicted.

Juvenile blended sentencing laws in 14 states are sometimes seen as providing a “last chance” alternative for youth who would otherwise be transferred. A youth subject to the most common form of juvenile blended sentencing is tried in juvenile court and given a juvenile disposition—but in combination with a suspended criminal sentence. Although this may be preferable to straight criminal handling, the practical effects of juvenile blended sentencing statutes are not well understood. Because juvenile blended sentencing thresholds are actually lower than transfer thresholds in most states, there is a possibility that such laws, instead of providing a mitigating alternative to transfer, are instead being used for an “in-between” category of cases that would not otherwise have been transferred at all.

### Some states give juvenile courts power to impose criminal sanctions in certain categories of cases

State	Any criminal offense	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Alaska					16			
Arkansas		14		NS	14			14
Colorado		NS			NS			
Connecticut		14			NS			
Illinois		13						
Kansas	10							
Massachusetts		14			14			14
Michigan		NS		NS	NS	NS	NS	
Minnesota		14						
Montana		12		NS	NS	NS	NS	NS
New Mexico		14		14	14	14		
Ohio		10		10				
Rhode Island		NS						
Texas		NS		NS	NS		NS	

Notes: An entry in the column below an offense category means that there is at least one offense in that category for which a juvenile may receive a blended sentence in juvenile court. The number indicates the youngest possible age at which a juvenile committing an offense in that category is subject to blended sentencing. “NS” indicates that, in at least one of the offense restrictions indicated, no minimum age is specified. Table information is as of the end of the 2009 legislative session.

# State transfer laws changed radically in the closing decades of the 20th century

## Before 1970, transfer in most states was court-ordered on a case-by-case basis

Laws allowing juvenile courts to waive jurisdiction over individual youth, sending “hard cases” to criminal courts for adult prosecution, could be found in some of the earliest juvenile codes and have always been relatively common. Most states had enacted such judicial waiver laws by the 1950s, and they had become nearly universal by the 1970s.

For the most part, these laws left transfer decisions to the discretion of juvenile court judges. Laws that made transfer “automatic” for certain categories—either by mandating waiver or by requiring that some charges be filed initially in criminal court—were rare and tended to apply only to rare offenses such as murder or capital crimes. Before 1970, only eight states had such laws.

Laws giving prosecutors the option to charge some juveniles in criminal court were even rarer. Only two states—Florida and Georgia—had prosecutorial discretion laws before 1970.

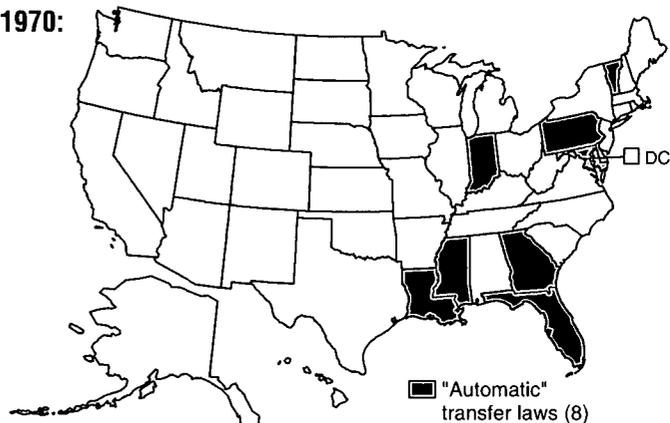
## States adopted new transfer mechanisms in the 1970s and 1980s

During the next two decades, automatic and prosecutor-controlled forms of transfer proliferated steadily. In the 1970s alone, five states enacted new prosecutorial discretion laws, and seven more states adopted some form of automatic transfer.

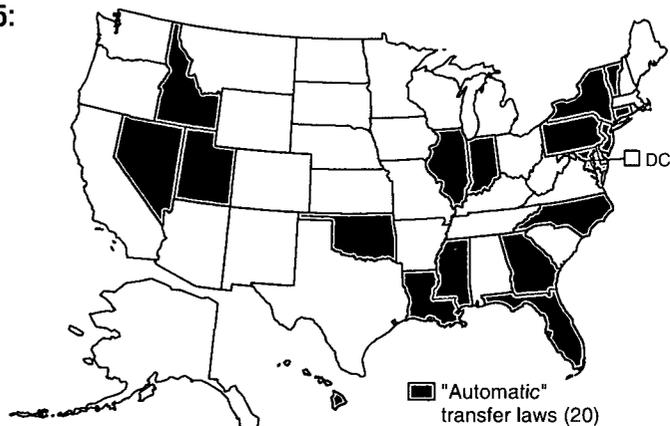
By the mid-1980s, nearly all states had judicial waiver laws, 20 states had automatic transfer laws, and 7 states had prosecutorial discretion laws.

## “Automatic” transfer laws proliferated in the decades after 1970 ...

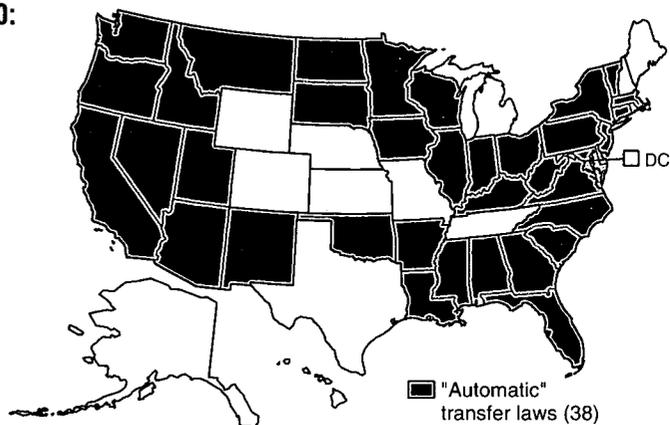
Pre-1970:



1985:



2000:

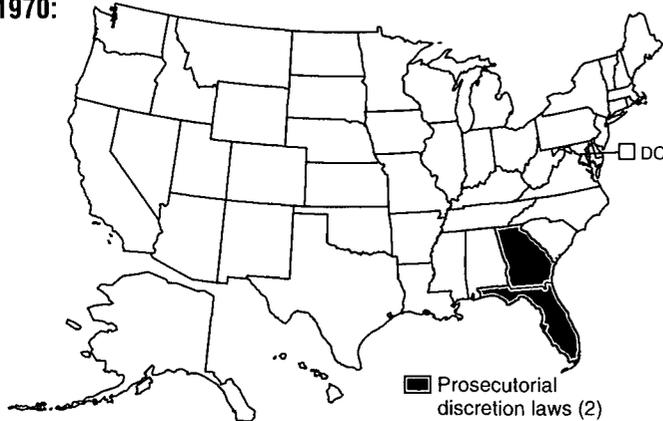


Sources: Pre-1970 and 1985 maps adapted from Feld’s *The Juvenile Court Meets the Principle of the Offense: Legislative Changes to Juvenile Waiver Statutes* and Hutzler’s *Juveniles as Criminals: 1980 Statutes Analysis*.

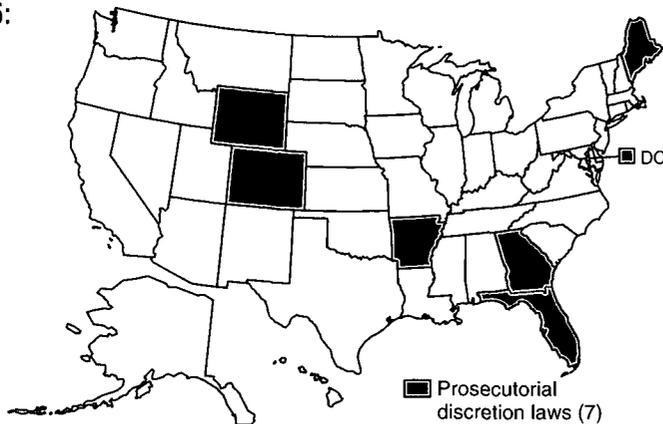
## The surge in youth violence that peaked in 1994 helped shape current transfer laws

... as did prosecutorial discretion laws

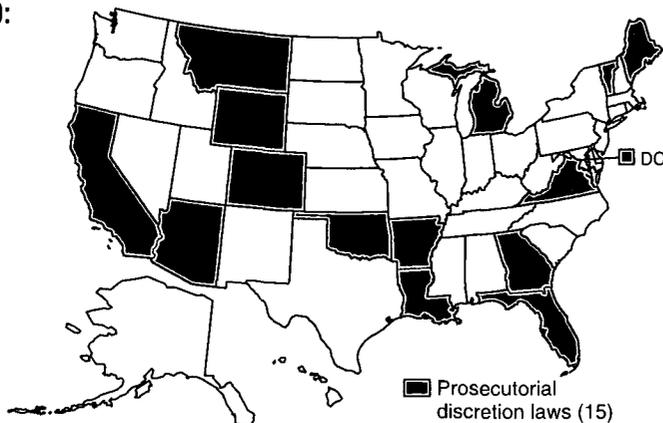
Pre-1970:



1985:



2000:



State transfer laws in their current form are largely the product of a period of intense legislative activity that began in the latter half of the 1980s and continued through the end of the 1990s. Prompted in part by public concern and media focus on the rise in violent youth crime that began in 1987 and peaked in 1994, legislatures in nearly every state revised or rewrote their laws to lower thresholds and broaden eligibility for transfer, shift transfer decisionmaking authority from judges to prosecutors, and replace individualized discretion with automatic and categorical mechanisms.

Between 1986 and the end of the 1990s, the number of states with automatic transfer laws jumped from 20 to 38, and the number with prosecutorial discretion laws rose from 7 to 15. Moreover, many states that had automatic or prosecutor-controlled transfer statutes expanded their coverage in such a way as to change their essential character. In Pennsylvania, for example, an exclusion law had been on the books since 1933—but had applied only to cases of murder. Amendments that took effect in 1996 transformed what had been a narrow and rarely used safety valve into a broad exclusion covering a long list of violent offenses.

### In recent years, transfer laws have changed little

Transfer law changes since 2000 have been minor by comparison. No major new expansion has occurred. On the other hand, states have shown little tendency to reverse or even reconsider the expanded transfer laws already in place. Despite the steady decline in juvenile crime and violence rates since 1994, there has as yet been no discernible pendulum swing away from transfer.

Sources: Pre-1970 and 1985 maps adapted from Feld's *The Juvenile Court Meets the Principle of the Offense: Legislative Changes to Juvenile Waiver Statutes* and Hutzler's *Juveniles as Criminals: 1980 Statutes Analysis*.

# For every 1,000 petitioned delinquency cases, about 9 are judicially waived to criminal court

## Juvenile court data provide a detailed picture of waiver in the U.S.

Each year juvenile courts provide detailed delinquency case processing data to the National Juvenile Court Data Archive that the National Center for Juvenile Justice maintains. Using this information, NCJJ generates annual estimates of the number and characteristics of cases that juvenile court judges waive to criminal court in the nation as a whole. In 2007, using data contributed by more than 2,200 juvenile courts with jurisdiction over 81% of the nation's juvenile population, juvenile courts are estimated to have waived jurisdiction in about 8,500 cases—less than 1% of the total petitioned delinquency caseload.

Nearly half of all cases judicially waived to criminal court in 2007 involved a person offense as the most serious charge. Youth whose cases were waived were overwhelmingly males and tended to be older teens. Although a substantial proportion (37%) of waivers involved black youth, racial disparity in the use of judicial waiver has diminished. In 1994, juvenile courts waived cases involving black youth at 1.5 times the rate at which cases involving white youth were waived. By 2007, the disparity was reduced to 1.1 times the white rate.

## The use of judicial waiver has declined steeply since 1994

The number of judicially waived cases hit a historic peak in 1994—when about 13,100 cases were waived—and has fallen 35% since that year. There are two sets of causes that might account for this trend:

### The likelihood of judicial waiver among petitioned delinquency cases was lower in 2007 than in 1994 for all offense categories and demographic groups

Offense/demographic	Profile of judicially waived delinquency cases		Percentage of petitioned cases judicially waived to criminal court	
	1994	2007	1994	2007
Total cases waived	13,100	8,500	13,100	8,500
<b>Most serious offense</b>	100%	100%		
Person	42	48	2.6%	1.7%
Property	37	27	1.1	0.7
Drugs	12	13	2.1	1.0
Public order	9	11	0.6	0.3
<b>Gender</b>	100%	100%		
Male	95	90	1.7	1.1
Female	5	10	0.4	0.4
<b>Age at referral</b>	100%	100%		
15 or younger	13	12	0.3	0.2
16 or older	87	88	3.0	1.7
<b>Race/ethnicity</b>	100%	100%		
White	53	59	1.2	0.9
Black	44	37	1.8	1.0

Note: These data on cases judicially waived from juvenile court to criminal court do not include cases filed directly in criminal court via other transfer mechanisms.

Source: Authors' analysis of Puzanchera et al.'s *Juvenile Court Statistics 2007*.

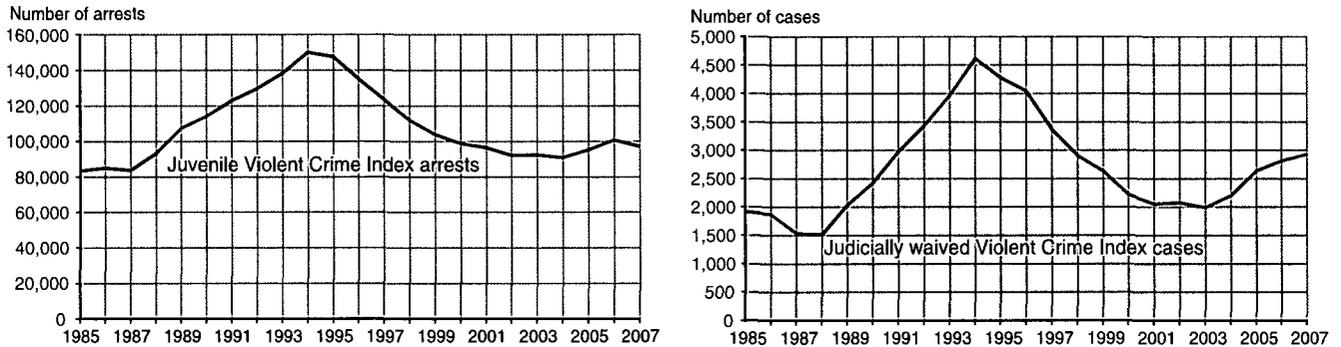
■ **Decreases in juvenile violent crime reduced the need for waiver.** Juvenile arrests for most crimes, and particularly for Violent Index offenses, have fallen almost every year since 1994. Because judicial waiver has historically served as a mechanism for removing serious and violent offenders from a juvenile system that was seen as ill-equipped to accommodate them, a reduction in serious and violent crime should naturally result in some reduction in the volume of waivers.

■ **New transfer mechanisms displaced waiver.** The nationwide proliferation and expansion of nontraditional transfer mechanisms also may have contributed to the reduction in waivers. In states with prosecutorial discretion or statutory exclusion laws, cases

involving juvenile-age offenders can originate in criminal courts, bypassing the juvenile courts altogether. During the 1990s, law revisions in most states exposed more youth to these forms of transfer. Because these new laws were generally operating already by the mid-1990s, many juveniles who would previously have been candidates for waiver were subject to nonwaiver transfer instead. Overall transfer volume after 1994 could have stayed the same—or even continued to rise—even as waiver volume declined.

It is probable that both of these causes were at work and that declining waiver numbers reflect both overall juvenile crime trends and the diminished importance of judicial waiver relative to other transfer mechanisms.

## Juvenile arrest and judicial waiver trends for serious violent offenses had similar patterns over the past two decades



\* The Violent Crime Index includes the offenses of murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault.

- From the mid-1980s to the peak in 1994, the number of juvenile arrests for Violent Crime Index offenses nearly doubled and then declined substantially through 2004 (down 39%). This decade-long decline was followed by an 11% increase over the next 2 years, and then a 4% decline between 2006 and 2007.
- Similarly, the number of cases judicially waived for Violent Crime Index offenses tripled between 1988 and 1994 and then declined 57% through 2003. Between 2003 and 2007, the number of cases waived increased 47%.

Sources: Authors' analyses of FBI unpublished reports for 1980 through 1997, the FBI's *Crime in the United States* reports for 1998 through 2007, and Sickmund et al.'s *Easy Access to Juvenile Court Statistics 2007*.

# National information on juvenile cases filed directly in criminal court is fragmentary

## No national data set tracks cases that bypass juvenile courts

No data source exists that is comparable to the National Juvenile Court Data Archive for nonwaiver cases—those in which juveniles are processed in criminal court as a result of statutory exclusions or prosecutors' discretionary choices. Because they are filed in criminal court like other cases, involve defendants who are "adults" at least for criminal handling purposes, and represent an insignificant proportion of the criminal justice system's overall caseload, juvenile cases originating in criminal court can be very difficult to isolate statistically. Legal, definitional, and reporting variations from state to state also make it hard to aggregate what information is available. Although several federally sponsored criminal processing data collection efforts have shed some light on cases involving juvenile-age offenders, to date none has been designed to yield reliable national estimates of the overall volume and characteristics of these cases. As a result, at the national level, a big part of the picture of transfer is missing.

## BJS research provides glimpses of transfer case characteristics

Available national statistics on criminal processing of juveniles come primarily from a handful of large-scale data gathering efforts that the federal Bureau of Justice Statistics (BJS) sponsors. Both the State Court Processing Statistics (SCPS) program and the National Judicial Reporting Program (NJRP) periodically collect detailed information on felony cases in state criminal courts. Special analyses of data from both programs have yielded information on the relatively small subset of

felony cases that involve youth. The BJS-sponsored National Survey of Prosecutors (NSP) has likewise been used to collect basic information on criminal prosecution of juveniles in the states.

The SCPS collects demographic, offense, processing, and sentencing information on felony defendants from a sample of 40 large urban jurisdictions that are representative of the nation's 75 largest counties. For the 1998 SCPS, BJS used an oversampling technique to capture sufficient information on criminally processed juveniles to support a special analysis of this subgroup. Although it did not produce a sample that was representative of the nation as a whole—and so cannot tell us about juveniles charged in criminal court with misdemeanors rather than felonies, or those processed outside the nation's 75 largest counties—the study did provide useful insight into urban transfer cases in which serious offenses are alleged:

- **Volume.** About 7,100 juveniles were criminally processed for felonies in the 40 sampled counties during 1998.
- **Transfer mechanism.** Less than a quarter of the cases reached criminal court via judicial waiver. More common were exclusion cases (42%) and prosecutorial direct files (35%).
- **Charges.** The most serious charge at arrest in about half of the cases was either robbery (31%) or assault (21%). The next most common charges were drug trafficking (11%) and burglary (8%).
- **Demographics.** Defendants were overwhelmingly male (96%) and predominantly black (62%).

The NJRP collects information on felony sentences in state courts. The 1996 NJRP

collected data from 344 counties, generating a subsample of juvenile-age felony cases that, while not statistically representative of all transferred juveniles, was large enough to enable researchers to explore ways in which juvenile cases differed from those of other convicted felons.

Compared with adult felons, the special analysis found, transferred juveniles were more likely than their adult counterparts to be male (96% versus 84%) and black (55% versus 45%). Juveniles were more likely than adults to have a person offense as their most serious offense at conviction (53% versus 17%) and far less likely to have a drug offense (11% versus 37%).

### The majority of juvenile felony defendants in the 75 largest counties reached criminal court through nonjudicial transfer

Demographic	Percentage of juvenile felony defendants
<b>Volume</b>	7,100
<b>Transfer mechanism</b>	100.0%
Judicial waiver	23.7
Prosecutor direct file	34.7
Statutory exclusion	41.6
<b>Most serious charge</b>	100.0%
Violent offense	63.5
Property offense	17.7
Drug offense	15.1
Public order offense	3.5
<b>Gender</b>	100.0%
Male	95.8
Female	4.2
<b>Race</b>	100.0%
White	19.9
Black	62.2
Other	1.8
Hispanic	16.2

Source: Authors' adaptation of Rainville and Smith's *Juvenile Felony Defendants in Criminal Courts: Survey of 40 Counties, 1998*.

## Most prosecutors' offices report trying juveniles as adults

The NSP is a regular BJS-sponsored survey of chief prosecutors who try felony cases in state courts of general jurisdiction. Its primary purpose is to collect basic information on office staffing, funding, caseloads, etc., but several recent surveys have asked respondents whether their offices proceeded against juveniles in criminal court and, if so, how many such cases were prosecuted in the 12 months preceding the survey. The 2005 NSP, which was a survey of a nationally representative sample of 310 prosecutors, found that about two-thirds of prosecutors' offices tried juveniles in criminal court. On the basis of the 2005 responses, it was estimated that about 23,000 juvenile cases had been criminally prosecuted nationwide during the 12 months preceding the survey.

Although the NSP information is useful as a starting point in assessing the criminal processing of youth, it must be handled with a certain amount of caution. Respondents were asked to give either the actual number of criminally prosecuted juvenile cases over the preceding 12-month period or their best estimates, but there is no way of knowing the basis for any estimates provided. In any case, the information elicited gives only an aggregate case total and does not contribute to understanding the characteristics or processing of those cases.

## Transferred juvenile felons were far more likely than adult felons to be convicted of violent offenses

Demographic	Transferred juvenile felons	Adult felons
<b>Most serious felony charge</b>	100%	100%
Violent offense	53	17
Property offense	27	30
Drug offense	11	37
Weapons offense	3	3
Other offense	6	14
<b>Gender</b>	100%	100%
Male	96	84
Female	4	16
<b>Race</b>	100%	100%
White	43	53%
Black	55	45
Other	2	2

Source: Authors' adaptation of Levin, Langan, and Brown's *State Court Sentencing of Convicted Felons, 1996*.

## A new BJS survey will help fill information gaps on criminal processing of juveniles nationally

BJS recently awarded a new national survey effort to Westat and subcontractor, the National Center for Juvenile Justice, with the goal of generating accurate and reliable case processing statistics for juveniles charged as adults. The Survey of Juveniles Charged as Adults in Criminal Courts will be the first effort of its kind that focuses solely on generating national data on youth in criminal court; it is likely to contribute substantially to the knowledge regarding the criminal processing of

youth. Drawing from a sample of felony and misdemeanor cases filed against youth in criminal courts who were younger than 18—including both transfer cases and cases involving youth who are considered adults under their states' jurisdictional age laws—the survey will gather information on offender demographics and offense histories, arrest and arraignment charges, transfer mechanisms, and case processing and disposition.

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# Most states do not track and account for all of their juvenile transfer cases

## The Transfer Data Project documented state transfer reporting practices

In the absence of any one data source that would make it possible to arrive at an accurate estimate of the number of juvenile-age offenders prosecuted in criminal courts nationwide, it is necessary to look instead to a variety of state sources. Unfortunately, information from these scattered sources is fragmentary, hard to find, and harder to analyze.

In an effort to document reliable sources of state-level data on juvenile transfers, identify crucial gaps in available information on transferred youth and, if possible, fill in the national data picture on transfer, NCJJ conducted a Transfer Data Project in 2009. The project, a component of the OJJDP-funded National Juvenile Justice Data Analysis Project, began with a structured search for any published or online reports that official sources regularly issued within the 1995–2009 time frame and containing any state-level statistics on criminal prosecution of juveniles. Following this initial search, project staff conducted a snowball survey of likely data keepers in individual states, including contributors to the National Juvenile Court Data Archive, asking for further information, clarification, and leads. In all, 63 officials were contacted via e-mail and telephone followups, including representatives of state juvenile justice agencies, state judicial administrative offices, state prosecutors' agencies, and state statistical analysis centers. Most state respondents referred NCJJ staff to published reports containing pertinent statistics, redirected queries to other state officials, or confirmed that the information sought was not collected at the state level. However, officials in nine states were able to supply

NCJJ directly with transfer numbers that resided in state information systems or had otherwise been collected at the state level but were not made available in public reports.

These data were analyzed along with state-published statistics on transfer, yielding the most complete picture currently available of juvenile transfer and transfer-reporting practice in the states. In addition to being summarized in this report, project findings regarding state transfer and reporting practice will be incorporated into the online summary of state transfer laws found on OJJDP's Statistical Briefing Book Web site, [http://ojjdp.gov/ojstatbb/structure\\_process/faqs.asp](http://ojjdp.gov/ojstatbb/structure_process/faqs.asp).

## Only 13 states publicly report all transfers

From the information that the Transfer Data Project assembled, it appears that only a small minority of states currently track and report comprehensive information regarding criminal prosecutions of juveniles. Indeed, only 13 states were identified as publicly reporting even the total number of their transfers, including cases of juveniles who reach criminal courts as a result of statutory exclusions or prosecutors' discretionary choices as well as judicial waiver decisions. States that publish information on the offense profiles or demographic characteristics of these youth, or provide details regarding their processing or sentencing, are even rarer.

With respect to their reporting of the *number* of transfers only, states fall into four categories:

■ **Publicly report all transfers (13 states).** A few of these states report only a bare annual total—the number

of criminally prosecuted youth, the number of criminal cases involving youth, or both—but most report something more, such as age, race, or gender information on transferred youth, how they reached criminal court, what their offenses were, or how their cases were resolved.

■ **Publicly report some but not all transfers (10 states).** Commonly, these states report the number of cases that are sent to criminal court, following waiver proceedings in juvenile court, but not the number that are filed directly in criminal court.

■ **Contribute data to the National Juvenile Court Data Archive but do not otherwise report transfers (14 states).** States that contribute annual juvenile case processing data to the Archive that NCJJ maintains are, in effect, reporting information on judicially waived cases, although not to the public. NCJJ uses these data to prepare national waiver estimates but does not publish individual state waiver totals. Accordingly, Archive reporting does not help the field and members of the public understand how individual states' waiver laws are operating in practice.

■ **Do not report transfers at all (14 states).** These states do not contribute data on waived cases to the Archive, and NCJJ was unable to locate any other official reports containing their waiver and/or transfer totals. However, officials in five of these states responded to NCJJ's information requests by sharing recent data on transfer cases—which suggests that they already collect the pertinent information at the state level or, at least, are capable of collecting it.

**About half of the states publicly report at least some information regarding criminal prosecutions of juveniles**

State	Publicly report all transfers	Publicly report some but not all transfers	Contribute to the National Juvenile Court Data Archive but do not otherwise report transfers	Do not report transfers at all
Number of states	13	10	14	14
Alabama			■	
Alaska			■	
Arizona	■			
Arkansas				■
California	■			
Colorado				■
Connecticut			■	
Delaware				■
District of Columbia			■	
Florida	■			
Georgia			■	
Hawaii			■	
Idaho				■
Illinois		■		
Indiana				■
Iowa		■		
Kansas	■			
Kentucky				■
Louisiana		■		
Maine				■
Maryland		■		
Massachusetts				■
Michigan	■			
Minnesota		■		
Mississippi		■		
Missouri	■			
Montana	■			
Nebraska				■
Nevada			■	
New Hampshire				■
New Jersey			■	
New Mexico		■		
New York			■	
North Carolina	■			
North Dakota				■
Ohio	■			
Oklahoma		■		
Oregon	■			
Pennsylvania		■		
Rhode Island			■	
South Carolina		■		
South Dakota				■
Tennessee	■			
Texas	■			
Utah			■	
Vermont				■
Virginia			■	
Washington	■			
West Virginia			■	
Wisconsin			■	
Wyoming				■

Note: Table information is as of 2009.

**States are more likely to track judicial waiver cases than other kinds of transfers**

Relatively speaking, states do a better job of tracking cases that originate in juvenile court and are transferred to criminal court on an individualized basis. Transfer cases that bypass juvenile courts altogether are more commonly “lost” in states’ general criminal processing statistics:

- Of the 46 states that have judicial waiver laws, 20 publicly report annual waiver totals and 13 more report waivers to the National Juvenile Court Data Archive.
- By contrast, of the 29 states with statutory exclusion laws requiring criminal prosecution of some juveniles, only 2 publicly report the total number of excluded cases, and 5 others report a combined total of all criminally prosecuted cases, without specifying the transfer mechanism employed.
- Of the 15 states that have prosecutorial discretion laws, only 1 publicly reports the total number of cases filed in criminal court at prosecutors’ discretion, and 4 others report an undifferentiated total of all criminally prosecuted cases.

The scarcity of information on cases involving youth prosecuted under exclusion and prosecutorial discretion laws presents a serious problem for those wishing to assess the workings, effectiveness, and overall impact of these laws. Even the few states that provide a count of excluded or direct-filed cases seldom report the kind of demographic, offense, sentencing, and other detail that is needed to inform judgments about whether laws entrusting transfer decisions to prosecutors rather than judges are being applied fairly and consistently. It is not clear whether these laws are targeting the most serious offenders and resulting in the kinds of sanctions lawmakers intended. And if these

laws are operating as intended in one state, are they doing so in all the states that rely on such provisions?

The absence of information on cases transferred at prosecutors' discretion is particularly troubling. Some prosecutorial discretion laws are very broadly written. For example, in Nebraska and Vermont—neither of which currently publish annual transfer statistics—any youth who is at least 16 may be prosecuted as an adult at the prosecutor's option, regardless of the offense alleged. However, even states that limit prosecutors' discretionary authority to cases involving serious offenses do not thereby eliminate the possibility of unfair or inappropriate use of the authority.

Because statutory exclusion laws apply automatically to all juveniles who come within their provisions, they present less danger of inconsistent, unfair, or inappropriate enforcement. However, even apparently neutral laws may, in practice, fall more heavily on certain groups. Again, many exclusion laws apply to very broadly defined categories—all felony-grade offenses, for example, or all offenses in high-volume categories like assaults, robberies, burglaries, and drug offenses—that may, in practice, cover a variety of actual crime scenarios, from the very serious to the relatively trivial. Whether or not exclusion laws are working as intended—increasing the likelihood of prosecution, conviction, incarceration, and long sentences, and serving as a deterrent—is a question of fact that cannot be answered without more information than is generally available at present. Additional data are also needed to determine whether exclusion laws (1) impact certain groups more than others, (2) impact large numbers of youth whose offense profiles may be less serious than those originally envisioned, or (3) work differently from one state to another.

### Few states publicly report data on cases transferred by statutory exclusion or prosecutorial discretion

State	Has judicial waiver	Reports judicial waiver to public	Reports judicial waiver to Archive	Has prosecutorial discretion	Reports statutory discretion to public	Has statutory exclusion	Reports statutory exclusion to public
Number of states	46	20	28	15	5	29	7
Alabama	■		■			■	
Alaska	■		■			■	
Arizona	■	■	■	■	*	■	*
Arkansas	■		■	■			
California	■	■	■	■	*	■	*
Colorado	■			■			
Connecticut	■		■				
Delaware	■					■	
District of Columbia	■		■	■			
Florida	■	■	■	■	*	■	*
Georgia	■		■	■		■	
Hawaii	■		■				
Idaho	■					■	
Illinois	■	●				■	●
Indiana	■					■	
Iowa	■	■				■	
Kansas	■	■					
Kentucky	■						
Louisiana	■			■		■	
Maine	■						
Maryland	■	■	■			■	
Massachusetts	■					■	
Michigan	■	■	■	■	■		
Minnesota	■	■				■	
Mississippi	■	■				■	
Missouri	■	■	■				
Montana				■	*	■	*
Nebraska				■			
Nevada	■		■			■	
New Hampshire	■						
New Jersey	■		■				
New Mexico						■	
New York						■	
North Carolina	■		■				
North Dakota	■						
Ohio	■	■	■				
Oklahoma	■	■	■	■		■	
Oregon	■	*	■			■	*
Pennsylvania	■	■	■			■	
Rhode Island	■		■				
South Carolina	■	■	■			■	
South Dakota	■					■	
Tennessee	■	■	■				
Texas	■	■	■				
Utah	■		■			■	
Vermont	■			■		■	
Virginia	■		■	■			
Washington	■	■	■			■	■
West Virginia	■	■	■				
Wisconsin	■		■			■	
Wyoming	■			■			

● Partial reporting (not all jurisdictions).

\* Combined total of transfer mechanisms (not separated out).

Note: Table information is as of 2009.

# There are wide variations in the ways states document juvenile transfers

## Only a few states report significant details about transfer cases

The Transfer Data Project's search for official state data on youth prosecuted as adults uncovered a broad range of approaches to reporting on transfers, particularly in terms of the completeness and level of detail of the information reported.

Arizona, California, and Florida can be regarded as exemplary states when it comes to collecting and regularly reporting detailed statistics on juveniles tried as adults. Although they do not report exactly the same things in the same ways, they do provide the field and the public with most of the basic information needed to assess the workings and impact of their juvenile transfer laws. Most other states—even among those that regularly track and report their annual juvenile transfer totals—report far fewer details regarding those cases.

Although there is no one "right" way to report information on juvenile transfer cases, reasonably complete documentation could be expected to cover each of the following general categories:

- **Demographics.** Eight of the 13 states provide age, race/ethnicity, gender, or other demographic information on criminally prosecuted youth.
- **Offenses.** Only three of these states provide information on the offenses for which youth were transferred.
- **Processing outcomes.** Only one of these states—California—reports information on criminal court handling and disposition of transfer cases.

## Available data show dramatic differences in states' transfer rates

Although the national picture is far from complete, rough comparisons among the subset of states that do track total transfers make it clear that there are striking variations in individual states' propensity to try juveniles as adults, even when differences in juvenile population sizes are taken into account.

Some state-to-state differences in per capita transfer rates are undoubtedly linked to differences in jurisdictional age boundaries. The lowest transfer rates among the 13 full-reporting states tend to be found in the states that set lower age boundaries for criminal court jurisdiction (Michigan, Missouri, North Carolina, and Texas). In these states, 17-year-olds (or in the case of North Carolina, 16- and 17-year-olds) must be taken out of the mix: They cannot be "transferred" for criminal prosecution because they are already within the original jurisdiction of the criminal courts. That leaves a transfer-eligible population that is younger and statistically less likely to be involved in serious offending. (Of course, if one were simply measuring the extent to which states criminally prosecute youth who are younger than 18, these states' rates would be among the highest.)

Differences in state transfer rates may also be explained, in part, by broad differences in the way transfer mechanisms

- **Total volume.** As noted previously, only 13 states report the total number of cases in which juvenile-age offenders are prosecuted in criminal court, the total number of juveniles prosecuted, or both.
- **Pathways.** Of these 13 states, 5 provide information showing how transfer cases reached the criminal system—whether by way of judicial waiver, prosecutors' discretionary decisions, or as a result of statutory exclusions. In six others, judicial waiver was the only transfer mechanism available.

**Offense and processing information on transfers is rarely reported**

State	Total volume	Pathways	Demographics	Offenses	Processing outcomes
Number of states	13	11	8	3	1
Arizona	■	■	■	■	
California	■	■	■	■	■
Florida	■	■	■	■	
Kansas	■	*			
Michigan	■	■			
Missouri	■	*	■		
Montana	■		■		
North Carolina	■	*			
Ohio	■	*	■		
Oregon	■		■		
Tennessee	■	*	■		
Texas	■	*			
Washington	■	■			
* Waiver-only states.					
Note: Table information is as of 2009.					

work. In the six reporting states (Kansas, Missouri, North Carolina, Ohio, Tennessee, and Texas) that have only judicial waiver laws—even including those in which some waivers are mandated—average transfer rates are generally lower than those in the remaining seven states, which have statutory exclusion laws, prosecutorial discretion laws, or both.

However, it can be difficult to account for state transfer rate variations on the basis of legal structures alone. For instance, Tennessee appears to transfer juveniles far more often than Kansas (although both are waiver-only states) and, if anything, Tennessee law imposes more restrictions on the juvenile court's power to waive jurisdiction.

**Average annual transfer rate,\* 2003–2008:**

Florida	164.7
Oregon	95.6
Arizona	83.7
Tennessee	42.6
Montana	41.6
Kansas	25.3
Washington	21.2
Missouri	20.9
California	20.6
Ohio	20.4
Michigan	12.4
Texas	8.6
North Carolina	7.1

\*Cases per 100,000 juveniles ages 10 to upper age of juvenile court jurisdiction.

Notes: Table is intended for rough comparison only. Unit of count varies from state to state. Some states report by fiscal year, some by calendar year. Transfer volume was unavailable for Montana in 2005, 2006, and 2008 and for Washington in 2008.

**Detailed transfer reporting in some states makes indepth comparison possible**

Because they document their juvenile transfers more thoroughly than other states, data from Arizona, California, and Florida provide a considerably more nuanced picture of transfer in practice. Even though all three are populous “sunbelt”

states with large urban centers, significant crime, and a broadly similar array of transfer laws, official reports from the three states make clear that they have markedly different approaches to transfer.

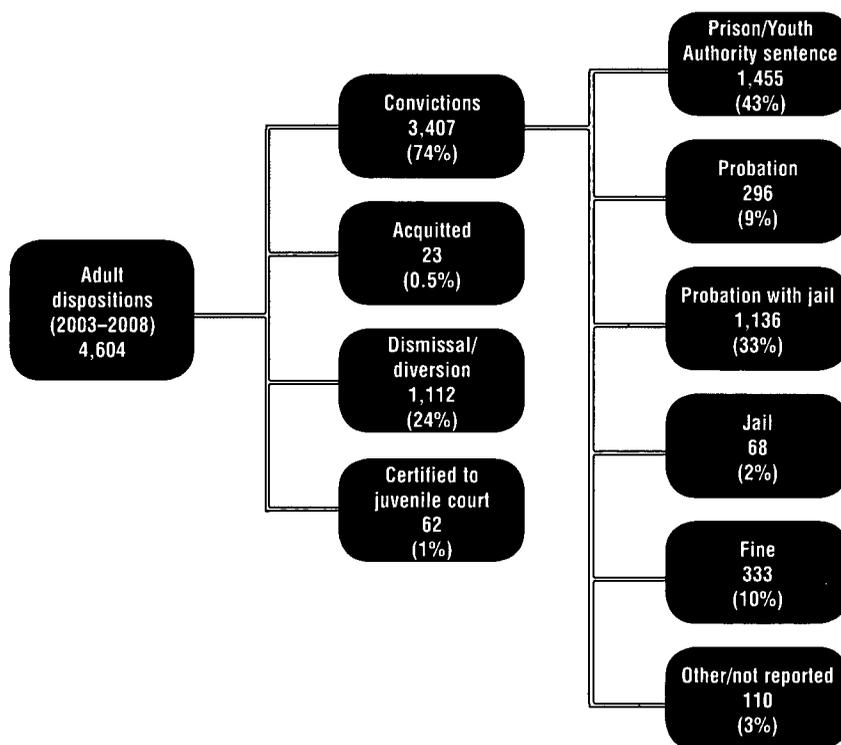
**Overall rates.** The three states differ dramatically in their per capita transfer rates—with Florida being the clear outlier. Over the period from 2003 through 2008, Florida transferred youth at about twice the rate of Arizona and about eight times the rate of California. (In fact, Florida's rate was about five times the average transfer rate in the other 12 states that publicly reported total transfers during this period.) One part of the explanation is undoubtedly Florida's expansive prosecutorial discretion law, which permits prosecutors to opt for criminal handling of, among others, all 16- and 17-year-olds accused of felonies. (Only Nebraska and Vermont give prosecutors more

discretionary authority.) However, both Arizona and California prosecutors also have broad prosecutorial discretion provisions, suggesting that aggressive use of prosecutorial discretion in Florida may be a factor as well.

**Transfer pathways.** Although Florida has an extremely broad and flexible judicial waiver provision—authorizing waiver for any offense, providing the juvenile was at least 14 at the time of commission—judicial waiver is a relatively insignificant transfer mechanism there, accounting for only about 4% of total transfers from 2003 to 2008. In Arizona, 14% of transfers came by way of waiver, but waivers steadily declined over that period, both in absolute terms and as a proportion of total transfers.

In California, by contrast, about 40% of transfers from 2003 to 2008 were

**California reports detailed case-processing outcomes for transferred youth**



Source: Authors' analyses of California Office of the Attorney General reports available online.

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waivers. California prosecutors may make a motion for “fitness hearings” for any 16- or 17-year-old, regardless of the offense alleged, and for younger offenders accused of more serious offenses. Moreover, where youth are accused of serious offenses or have serious prior records, they may be presumed to be unfit for juvenile court handling and must affirmatively prove otherwise. Perhaps because this shifting of the burden of proof makes the fitness hearing route easier for prosecutors, it is frequently used and is frequently successful: 71% of all fitness hearings from 2003 to 2008 resulted in remand to criminal court.

**Demographics.** In 2008, a majority of transfers involved youth who were at least age 17 in Florida (65%), Arizona (55%), and California (56%), but the racial and

ethnic mix was quite different. In Florida, most transferred youth in 2008 were black (54%), whereas whites (29%) and Hispanics (12%) were considerably underrepresented. By contrast, transfers were predominantly Hispanic in Arizona (57%) and California (56%).

**Offenses.** In all three states, the vast majority of transfers involved felonies rather than misdemeanors. In 2008, 98% of reported transfers in Arizona, 89% in California, and 94% in Florida involved felonies, but transfer offenses in the three states differed substantially. In Florida, only 44% of reported 2008 transfers involved person offenses, whereas 31% involved property offenses and 11% involved drug offenses. Transfers were far more likely to involve person offenses in Arizona (60%) and California (65%).

Transfers for property offenses were less common in those states (25% in Arizona, 15% in California), as were transfers for drug offenses (6% in Arizona, 4% in California).

**Case outcomes.** As noted above, no comparison is possible among the three states with regard to the crucial issue of what happens to transferred youth—only California reports processing outcomes in transfer cases. However, because processing outcome information on transfer cases is so rare, it is worth noting that, over the period from 2003 through 2008, about three-quarters of cases involving juveniles disposed in California’s criminal courts resulted in convictions. Following conviction, youth were sentenced to some form of incarceration (in a prison, jail, or California Youth Authority facility) in almost 8 of 10 cases.

# Nearly 14,000 transfers can be accounted for in 2007—but most states are missing from that total

## The size of the gaps in available transfer data can be broadly estimated

On the basis of juvenile court case processing data reported to the National Juvenile Court Data Archive, 8,500 judicial waivers are estimated to have occurred nationwide in 2007. The six states that track and report all of their nonjudicial transfers as well—Arizona, California, Florida, Michigan, Oregon, and Washington—reported an additional 5,096 nonjudicial transfer cases in 2007. Unpublished state-level information that Idaho provided to the Transfer Data Project contributed some 20 additional nonjudicial transfers to the 2007 total of 13,616.

A great deal is missing from this total, however—including nonjudicial transfers in the 29 other states that have statutory exclusion or prosecutorial discretion laws but do not publish statistics on criminal prosecution of juveniles and were not able to provide the Transfer Data Project with data from which 2007 totals could be derived. These 29 states fall into three basic groups.

**States with extremely narrow nonjudicial transfer laws.** In five of these states, transfer by means other than judicial waiver must be a very rare event. Massachusetts, Minnesota, and New Mexico have statutory exclusion provisions, but they apply only to juveniles accused of homicide. Utah has an exclusion law that, apart from homicide cases, covers only felonies that inmates in secure custody commit. Wisconsin's exclusion applies only to homicides and cases involving assaults committed against corrections, probation, and parole personnel. Even without knowing more, the authors can predict that the contribution to the nation's nonjudicial transfer total from these five states would be insignificant.

**States with extremely broad nonjudicial transfer laws.** At the other extreme, laws in two states—Nebraska and Vermont—authorize criminal prosecution of any 16- or 17-year-old youth, at the prosecutor's option, regardless of the offense alleged. In a third state—Wyoming—prosecutors have discretion to prosecute all misdemeanants in criminal court, as long as they are at least 13 years old. Laws of this exceptionally broad type are likely to generate large numbers of transfer cases, even though the states involved are not populous ones. In fact, criminal court data from Vermont, analyzed by NCJJ as part of a one-time study for that state's Agency for Human Services, found nearly 1,000 cases in which 16- and 17-year-old Vermont youth were handled as adults in a single year—a contribution to the nation's

transfer total that would be comparable to California's published total in a typical year.

**Other states.** In the remaining 21 states, nonjudicial transfer provisions are much broader in scope than those in the first group but not so broad as those in the second. Youth are subject to nonjudicial transfer in these states for a range of offenses or offense types, all far more common than homicide. Nevertheless, they must meet some minimum threshold of offense seriousness. Some states within this middle group list specific offenses qualifying for nonjudicial transfer. In others, nonjudicial transfer laws do not merely apply to named offenses but also to felony offenses generally, or at least to felonies of a particular grade or grades.

**Among states that do not track and report nonjudicial transfers, the number unaccounted for depends on the scope of each state's laws**

State	Nonjudicial transfer only for extremely rare offenses	Nonjudicial transfer for listed offenses	Nonjudicial transfer for all felonies or range of felonies	Prosecutorial discretion limited solely by age
Number of states	5	16	5	3
Alabama		■		
Alaska		■		
Arkansas			■	
Colorado		■		
Delaware		■		
Dist. Of Columbia		■		
Georgia		■		
Illinois		■		
Indiana			■	
Iowa		■		
Louisiana		■		
Maryland		■		
Massachusetts	■			
Minnesota	■			
Mississippi			■	
Montana		■		
Nebraska				■
Nevada		■		
New Mexico	■			
New York		■		
Oklahoma		■		
Pennsylvania		■		
South Carolina			■	
South Dakota			■	
Utah	■			
Vermont				■
Virginia		■		
Wisconsin	■			
Wyoming				■

Note: Table information is as of the end of the 2009 legislative session.

# Jurisdictional age laws may “transfer” as many as 175,000 additional youth to criminal court

## In 13 states, youth become criminally responsible before their 18th birthdays

Although it is important to have an idea of the number and characteristics of juveniles who are prosecuted as adults under state transfer laws, it should be remembered that most criminal prosecutions involving youth younger than 18 occur in states that limit the delinquency jurisdiction of their juvenile courts so as to exclude all 17-year-olds—or even all 16-year-olds—accused of crimes. States have always been free to define the respective jurisdictions of their juvenile and criminal courts. Nothing compels them to draw the line between “juvenile” and “adult” at the 18th birthday; in fact, there are 13 states that hold youth criminally responsible beginning with the 16th or

17th birthday. The number of youth younger than 18 prosecuted as adults in these states—not as exceptions, but as a matter of routine—can only be estimated. But it almost certainly dwarfs the number that reach criminal courts as a result of transfer laws in the nation as a whole.

## A total of 2.2 million youth younger than 18 are subject to routine criminal processing

The authors do not know the number of youth prosecuted as adults in states that set the age of adult responsibility for crime at 16 or 17 for many of the same reasons that they do not know the number of youth prosecuted as adults under transfer laws. However, rough estimates are possible, based on population data and what is known about the offending behavior of 16- and 17-year-old youth.

In 2007, there were a total of 2.2 million 16- and 17-year-olds who were considered criminally responsible “adults” under the jurisdictional age laws of the states in which they resided. If one applies age-specific national delinquency case rates (the number of delinquency referrals per 1,000 juveniles) to this population group—and assume that they would have been referred to criminal court at the same rates that 16- and 17-year-olds are referred to juvenile courts in other states—then as many as 247,000 offenders younger than age 18 would have been referred to the criminal courts in 2007.

To determine the number of youth who are actually criminally prosecuted in the 13 states, delinquency case rates may be less pertinent than delinquency petition rates—that is, the age-specific rates at which youth are formally processed in (rather than merely referred to) juvenile

court. On the basis of age-specific delinquency petition rates, one would expect about 145,000 youth younger than 18 to have been criminally prosecuted in the 13 states in 2007.

It is possible to refine this rough estimate somewhat further. To account for the fact that different groups are formally processed in court at different rates, one can control not only for age but also for sex and race. If one applies age-, sex-, and race-specific petition rates to the population involved, an estimated 159,000 youth who were younger than 18 were prosecuted in criminal courts in the 13 states in 2007.

One can also take population density into account. The estimation procedure that NCJJ used to produce national data on juvenile court processing characteristics uses the county as the unit of aggregation. As part of the multiple-imputation and weighting process, all U.S. counties are placed into one of four strata on the basis of the size of their youth population, and specific rates are developed for age/race groups within each of the strata. If we apply similar age-, race-, and strata-specific petition rates to this population, we arrive at an estimate of 175,000 cases involving 16- or 17-year-olds tried in criminal court in the 13 states in 2007.

It should be noted again, however, that all of these estimates are based on an assumption that is at least questionable: that juvenile and criminal courts would respond in the same way to similar offending behavior. In fact, it is possible that some conduct that would be considered serious enough to merit referral to and formal processing in juvenile court—such as vandalism, trespassing, minor thefts, and low-level public order offenses—would not receive similar handling in criminal court.

### Upper age of original juvenile court jurisdiction, 2007

Age	State
15	Connecticut,* New York, North Carolina
16	Georgia, Illinois,** Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, Wisconsin
17	Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming

\* Upper age of original jurisdiction is being raised from 15 to 17: the transition will be complete by 2012.

\*\* Upper age rose from 16 to 17 for those accused of misdemeanors only, effective 2010.

# Juveniles in most states can be jailed while awaiting trial in criminal court

## Contact with adult inmates is sometimes but not always restricted

Depending on state law, local practice, and such factors as the age of the accused, juveniles who are confined while awaiting criminal trial may be held in juvenile detention facilities or adult jails.

A total of 48 states authorize jailing of juveniles who are awaiting trial in criminal court. In 14 of these states, use of adult jails rather than juvenile detention facilities for pretrial holding of transferred juveniles is mandated, at least in some circumstances; in the rest, the use of jails is allowed but not required. Sometimes a special court order or finding is required for jail holding, and sometimes a minimum age. For example, California requires a finding that a youth's pretrial detention in an ordinary juvenile facility would endanger the public or other juvenile detainees. In Illinois, a juvenile must be at least 15 to be held in jail, and a court must specifically order it. New Jersey requires a special hearing, comparable to a transfer hearing, before jail holding may be ordered. On the other hand, some states, such as Idaho and Tennessee, generally mandate use of jails for pretrial confinement when juveniles are processed as adults but empower courts to order the use of juvenile detention centers in individual cases.

Laws in 18 of the states that allow jail holding of juveniles specify that they must be kept from contact with adult jail inmates. Transferred youth in most states may also be held in juvenile detention facilities, either routinely or pursuant to court orders in individual cases.

**Most states allow but do not require transferred youth to be held pretrial in adult jails rather than juvenile detention centers**

State	Jailing of transferred youth allowed pending criminal trial	Minimum age, special condition, or court order required	Use of jails mandated under some circumstances	Youth-adult separation required
Number of states	48	15	14	18
Alabama	■		■	
Alaska	■			
Arizona	■			■
Arkansas	■			
California	■	■		■
Colorado	■	■		■
Connecticut	■		■	
Delaware	■	■	■	
District of Columbia	■			
Florida	■		■	■
Georgia	■	■		■
Hawaii	■		■	
Idaho	■		■	■
Illinois	■	■		■
Indiana	■			■
Iowa	■	■		■
Kansas	■			■
Kentucky	■			■
Louisiana	■		■	
Maine	■	■		
Maryland	■		■	■
Massachusetts	■	■		
Michigan	■	■		■
Minnesota	■			
Mississippi	■			
Missouri	■		■	
Montana	■			■
Nebraska	■	■		
Nevada	■			
New Hampshire	■		■	
New Jersey	■	■		
New Mexico	■		■	
New York	■	■		
North Carolina	■			
North Dakota	■			
Ohio	■			■
Oklahoma	■		■	■
Oregon	■	■		
Pennsylvania	■			
Rhode Island	■			
South Carolina	■	■		
South Dakota	■			■
Tennessee	■		■	■
Texas	■			
Utah	■			■
Vermont	■	■		
Virginia	■			
Washington	■			
West Virginia	■			
Wisconsin	■		■	
Wyoming	■			

Note: New Mexico and Washington provisions apply only to previously convicted juveniles. Table information is as of the end of the 2009 legislative session.

**A 2009 survey found that more than 7,000 youth who were younger than 18 were in jails**

Federal data collections shed some light on state approaches to pretrial holding of transferred youth. The BJS-sponsored Annual Survey of Jails (ASJ) provides a one-day snapshot of the population confined in jails nationwide. According to the most recent ASJ, at midyear 2009 the nation's jails held a total of 7,220 inmates who were younger than 18, including 5,847 who had been tried or were awaiting trial as adults—less than 1% of the total jail population.

However, this cannot be considered an exact count of “transferred juveniles” in jail because many of these inmates who were younger than 18 were held in states

where ordinary criminal court jurisdiction begins at age 16 or 17. Moreover, the total does not take account of inmates who were accused of offenses committed while younger than 18 but were already older than 18 by the time of the survey.

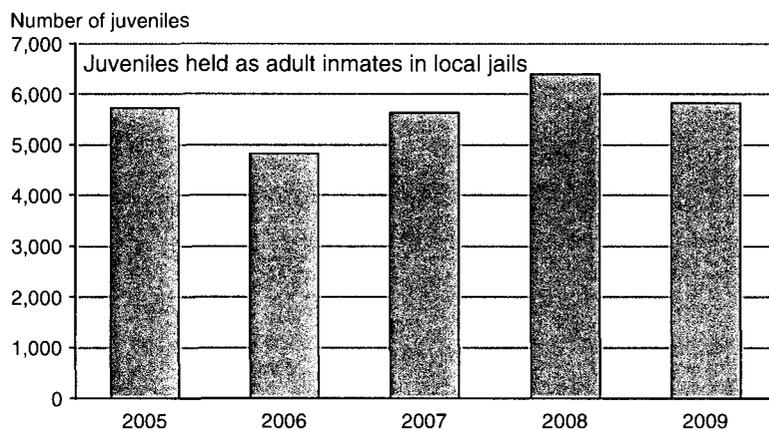
The Census of Juveniles in Residential Placement (CJRP) provides a one-day population count of the nation's juvenile facilities, including those normally used for detaining youth pending trial in the juvenile system. The most recent CJRP found that, as of the 2007 census date, a total of 1,101 individuals being held in juvenile residential facilities nationwide were awaiting proceedings in criminal court, in addition to 303 who were awaiting transfer hearings. Taken together, these youth made up about 1.6% of the residents of the nation's juvenile facilities.

**Federal law prohibiting holding of juveniles with adults does not apply to transferred juveniles**

The Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, generally requires, as a condition of federal funding for state juvenile justice systems, that juvenile delinquents and status offenders not be confined in jails or other facilities in which they have contact with incarcerated adults who have been convicted or are awaiting trial on criminal charges. However, regulations interpreting the JJDP Act provide that juveniles who are being tried as adults for felonies or have been criminally convicted of felonies may be held in adult facilities without violating this “sight and sound separation” mandate. Juveniles who have been transferred to the jurisdiction of a criminal court may also be confined with other juveniles in juvenile facilities without running afoul of the JJDP Act mandate. However, once these youth reach the state's maximum age of extended juvenile jurisdiction, they must be separated from the juvenile population.

The proposed Juvenile Justice and Delinquency Prevention Reauthorization Act of 2009, currently pending before Congress, would eliminate the special exception that permits jail holding of transferred juveniles while they await proceedings in criminal court. Effective 3 years from the enactment of the Reauthorization Act, the sight and sound separation mandate would apply to such youth. They could not be jailed with adults unless a court of competent jurisdiction, after considering a number of individualized factors, had determined that the interests of justice required it.

**Between 2005 and 2009, an average of 5,700 juveniles were held as adults in local jails—less than 1% of all inmates**



Note: Authors' adaptation of Minton's Jail Inmates at Midyear 2009—Statistical Tables, *Prison and Jail Inmates at Midyear*.

# Convicted juveniles do not always receive harsher sanctions in the adult system

## Sentencing and correctional handling of transferred youth vary from state to state

There are few national sources of information regarding what happens to youth once they are transferred to criminal courts. Even the most basic question—whether convicted youth are sanctioned more severely in the adult system than they would have been in the juvenile system—is difficult to answer, as various studies focusing on individual jurisdictions have yielded inconsistent results. On the one hand, most studies have concluded that criminal processing of these youth is more likely to result in incarceration and that periods of incarceration that criminal courts impose tend to be longer. However, a few have found no such differences in sentencing severity. In any case, it is likely that juvenile-criminal sentencing differences are largest in states that criminally prosecute only the most serious juvenile offenders. In states with transfer laws that apply to a broader range of less serious offenses, one would expect the adult system to regard transferred youth more lightly—and perhaps more lightly than the juvenile system would.

Special analyses of data from the State Court Processing Statistics Program (SCPS) and the National Judicial Reporting Program (NJRP) have shed some light on the ways in which criminal sentencing of transferred juvenile felons compares with dispositions of nontransferred youth on the one hand, and with sentencing of adult criminals on the other. In the first comparison, data on juvenile felony defendants from the 1990, 1992, and 1994 SCPS sample were contrasted with data on youth formally processed in the juvenile courts of the same large urban jurisdictions. Overall, 68% of the transferred

youth received sentences involving incarceration in jail or prison, whereas only 40% of the nontransferred youth received dispositions involving placement in juvenile correctional facilities. Of those convicted in criminal court of violent offenses, 79% were sentenced to incarceration, whereas only 44% of those adjudicated delinquent for violent offenses received juvenile dispositions involving placement. Similar criminal-juvenile differences were found in sanctions received by property offenders (57% incarcerated in the criminal system versus 35% in the juvenile system), drug offenders (50% versus 41%), and public order offenders (60% versus 46%).

A separate issue is whether, by reason of their age, juveniles in criminal court receive more lenient sentencing treatment than adult defendants. Analyses of 1996

NJRP data and 1998 SCPS data, comparing sentences that transferred juvenile felons received with sentences that adult felony defendants received, found no such consistent pattern of age-based leniency. Both studies found that transferred juveniles convicted of violent felonies were about as likely as adults to be sentenced to some form of incarceration. At least in the NJRP sample, juveniles convicted of property and weapons offenses were considerably more likely to be incarcerated than adult property and weapons offenders. Moreover, even though the NJRP analysis showed that transferred juveniles were sentenced to shorter maximum prison terms than were adults for sexual assault, burglary, and drug offense convictions, they received longer prison terms than adults did for murder and weapons offense convictions.

### Among felony defendants convicted of property and weapons offenses, transferred juveniles were far more likely than adults to be sentenced to prison terms

Offense/ defendant	Profile of felony sentence imposed				Mean maximum sentence length (in months)		
	Total	Prison	Jail	Probation	Prison	Jail	Probation
<b>All offenses</b>							
Transferred juveniles	100%	60%	19%	21%	91	6	44
Adults	100	37	23	40	59	6	38
<b>Violent offenses</b>							
Transferred juveniles	100	75	9	15	118	8	55
Adults	100	78	5	17	101	7	46
<b>Property offenses</b>							
Transferred juveniles	100	46	27	27	39	6	43
Adults	100	18	28	54	46	6	38
<b>Drug offenses</b>							
Transferred juveniles	100	31	36	33	30	6	29
Adults	100	34	28	38	47	6	39
<b>Weapons offenses</b>							
Transferred juveniles	100	55	20	25	48	6	26
Adults	100	39	17	44	42	5	31
<b>Other offenses</b>							
Transferred juveniles	100	37	43	20	48	6	33
Adults	100	22	37	41	41	6	36

Source: Authors' adaptation of Levin, Langan, and Brown's *State Court Sentencing of Convicted Felons, 1996*.

## Convicted youth may sometimes serve part of their sentences in juvenile facilities

States take a variety of correctional approaches with criminally convicted youth who receive sentences of incarceration, including straight incarceration in adult facilities with no distinction between minor and adult inmates, segregated incarceration in special facilities for underage offenders, and graduated incarceration that begins in juvenile facilities and is followed by later transfer to adult ones. According to juvenile correctional agencies responding to a 2008 survey that the Council of Juvenile Correctional Administrators conducted, in about two-thirds of states, juveniles who have been convicted and sentenced to incarceration by criminal courts may serve some portion of their sentences in juvenile correctional facilities.

Several states set a statutory minimum age—typically 16—for commitment to an adult correctional facility. In Delaware, for example, a youth younger than 16 who has been sentenced to a term of imprisonment must be held initially by the state's Division of Youth Rehabilitation Services and then transferred to the state's Department of Corrections upon reaching his or her 16th birthday.

The 2007 Census of Juveniles in Residential Placement counted a total of 761 inmates in juvenile residential facilities who had been convicted in criminal court and, presumably, were either serving their sentences or awaiting transfer to adult facilities.

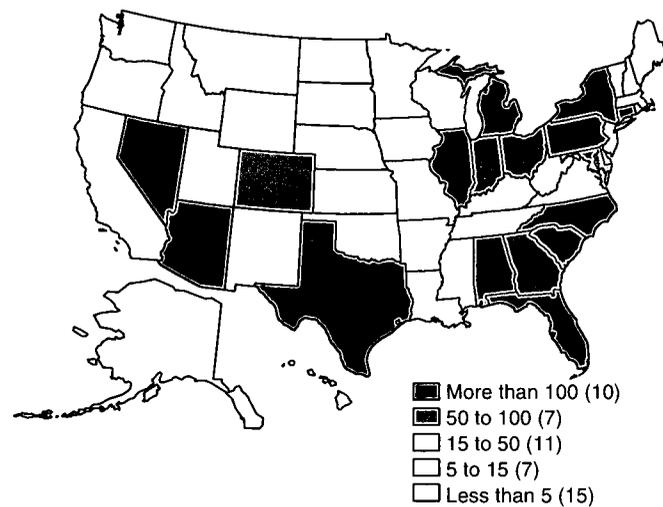
## State prisons, the bulk of them in the South, held more than 2,700 juveniles in 2009

At mid-year 2009, the National Prisoner Statistics Program, which collects one-day snapshot information on state prison inmates, counted a total of 2,778 inmates younger than age 18 in state prisons

nationwide. About 46% of these inmates were held in prisons in southern states.

Although many of these youth were undoubtedly convicted following prosecution under state transfer laws, more than half were held in states where ordinary criminal court jurisdiction begins at age 16 or 17 rather than 18.

## Half of inmates younger than 18 held in state prisons come from states with a younger age of criminal responsibility



State	Inmates*	State	Inmates*	State	Inmates*
U.S. total	2,778	<b>Upper age 17</b>	<b>1,368</b>	Montana	1
<b>Upper age 15</b>	<b>737</b>	Alabama	118	Nebraska	21
Connecticut	332	Alaska	7	Nevada	118
New York	190	Arizona	157	New Jersey	21
North Carolina	215	Arkansas	17	New Mexico	3
		California	0	North Dakota	0
<b>Upper age 16</b>	<b>673</b>	Colorado	79	Ohio	86
Georgia	99	Delaware	28	Oklahoma	19
Illinois	106	Florida	393	Oregon	13
Louisiana	15	Hawaii	2	Pennsylvania	61
Massachusetts	8	Idaho	0	Rhode Island	1
Michigan	132	Indiana	54	South Dakota	1
Missouri	31	Iowa	13	Tennessee	22
New Hampshire	0	Kansas	5	Utah	6
South Carolina	89	Kentucky	0	Vermont	4
Texas	156	Maine	0	Virginia	16
Wisconsin	37	Maryland	58	Washington	2
		Minnesota	13	West Virginia	0
		Mississippi	28	Wyoming	1

\* Reported number of inmates younger than age 18 held in custody in state prisons, 2009.

Source: Authors' adaptation of West's Prison Inmates at Midyear 2009—Statistical Tables, *Prison and Jail Inmates at Midyear*.

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# Transfer laws generally have not been shown to deter crime

## Some research suggests that transfer may increase subsequent offending

Given the many practical ways in which state transfer laws vary in their scope and operation, blanket statements about their effects should be read with caution. However, insofar as these laws are intended to deter youth crime generally, or to deter or reduce further criminal behavior on the part of youth subjected to transfer, research over several decades has generally failed to establish their effectiveness.

Research on the general deterrence effects of transfer laws—their tendency to discourage the commission of offenses subject to transfer and criminal prosecution—has not produced entirely consistent results. Most studies have not found reductions in juvenile crime rates that can be linked to transfer laws. One multistate analysis by Levitt concluded that there could be a moderate general deterrent effect, and studies based on interviews with juveniles, conducted by Redding and Fuller and by Glassner and others, suggest the possibility that transfer laws could deter crime if sufficiently publicized. However, the weight of the evidence suggests that state transfer laws have little or no tendency to deter would-be juvenile criminals. Possible explanations include juveniles' general ignorance of transfer laws, tendency to discount or ignore risks in decisionmaking, and lack of impulse control.

A separate body of research, comparing postprocessing outcomes for criminally

prosecuted youth with those of youth handled in the juvenile system, has uncovered what appear to be counter-deterrent effects of transfer laws. Six large-scale studies summarized by Redding—employing a range of different methodologies and measures of offending, and focusing on a variety of jurisdictions, populations, and types of transfer laws—have all found greater overall recidivism rates among juveniles who were prosecuted as adults than among matched youth who were retained in the juvenile system. Criminally prosecuted youth were also generally found to have recidivated sooner and more frequently. Poor outcomes like these could be attributable to a variety of causes, including the direct and indirect effects of criminal conviction on the life chances of transferred youth, the lack of access to rehabilitative resources in the adult corrections system, and the hazards of association with older criminal “mentors.”

However, some critics have raised the possibility that the observed greater reoffending on the part of transferred youth is simply a consequence of group differences between transferred and nontransferred youth—not an effect of transfer but a “selection bias” that could not be corrected for, given the limited information and statistical controls available to researchers. (See, for example, Meyers' study “The Recidivism of Violent Youths in Juvenile and Adult Court: A Consideration of Selection Bias.”)

The studies finding that transfer had counterdeterrent effects did not all agree

in finding these effects for all offense types—leaving open the possibility that criminal prosecution may work for some kinds of young offenders and not work for others. In fact, a 2010 comparison, by Schubert and others, of rearrest outcomes for transferred and nontransferred youth found that, whereas transfer appeared to have no effect on rearrest rates for the sample as a whole, transferred person offenders had lower rearrest rates than their nontransferred counterparts.

Although transfer laws in general have not been shown to work (that is, improve public safety by reducing serious crime through specific or general deterrence), it is not clear whether this conclusion applies to all transfer laws equally because the key studies have been conducted in only a handful of states. Again, it should be remembered that transfer laws vary considerably, and their effects are unlikely to be uniform. It may be that some transfer provisions—targeting certain offenses or resulting in certain sanctions—are more effective in deterring crime than others.

The data gathered under BJS's new Survey of Juveniles Charged in Adult Criminal Courts should significantly contribute to our understanding of the national impact of state transfer mechanisms but is unlikely to support state-level analyses. Better state-level data are necessary to support the state-specific research that is clearly needed to shed light on the impact and workings of each state's transfer laws.

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# APPENDIX L

# Potential for Change: Public Attitudes and Policy Preferences for Juvenile Justice Systems Reform

## Executive Summary

### A Center for Children's Law and Policy Report

#### Introduction

New polling data on Americans' attitudes about youth, race and crime reveal strong support for juvenile justice reforms that focus on rehabilitating youthful offenders rather than locking them up in adult prisons. The public also believes that African American and poor youth receive less favorable treatment than those who are white or middle class.

The poll was commissioned by the Center for Children's Law and Policy as part of the John D. and Catherine T. MacArthur Foundation's Models for Change juvenile justice reform initiative, which supports juvenile justice reform in Illinois, Pennsylvania, Louisiana and Washington state. Prior to the poll, focus groups on the issues were held in Chicago, Pittsburgh, Baton Rouge and Seattle. The poll included oversampling in the four Models for Change states to determine attitudes by the public there.

#### Survey findings include:

- **The public recognizes the potential of young people to change.** Nearly nine out of 10 (89 percent) of those surveyed agreed that "almost all youth who commit crimes have the potential to change," and more than seven out of 10 agreed that "incarcerating youth offenders without rehabilitation is the same as giving up on them."
- **The public supports redirecting government funds from incarceration to counseling, education and job training programs for youth offenders.** Eight out of 10 favor reallocating state government money from incarceration to programs that provide help and skills to enable youth to become productive citizens.
- **The public views the provision of treatment and services as more effective ways of rehabilitating youth than incarceration.** Majorities saw schooling, job training, mental health treatment, counseling and follow-up services for youth once they leave the juvenile justice system to help them go back to school or find a job as "very effective" ways to rehabilitate young people. Less than 15 percent of those surveyed thought that incarcerating juveniles was a "very effective" way to rehabilitate youth.

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**Models for Change**  
Systems Reform in Juvenile Justice

- **The public favors keeping nonviolent juveniles in small, residential facilities in their own communities rather than in large distant institutions.** More than three-quarters of the public favors juvenile justice policies that keep nonviolent youth in small facilities in their own communities, and six in 10 favor community supervision for nonviolent youth. Eight out of 10 favor keeping these youth in small residential facilities rather than in large institutions.

- **The public believes the juvenile justice system treats low-income youth, African American youth and Hispanic youth unfairly. Almost two-thirds of respondents said that poor youth receive worse treatment than middle-class youth who get arrested for the same offense.** A majority think that African American youth receive worse treatment than white youth who get arrested for the same offense. More than seven out of 10 favor funding programs that help Hispanic youth who get in trouble with the law overcome the language barriers they face in the juvenile justice system.

## **1. The public recognizes the potential of young people to change.**

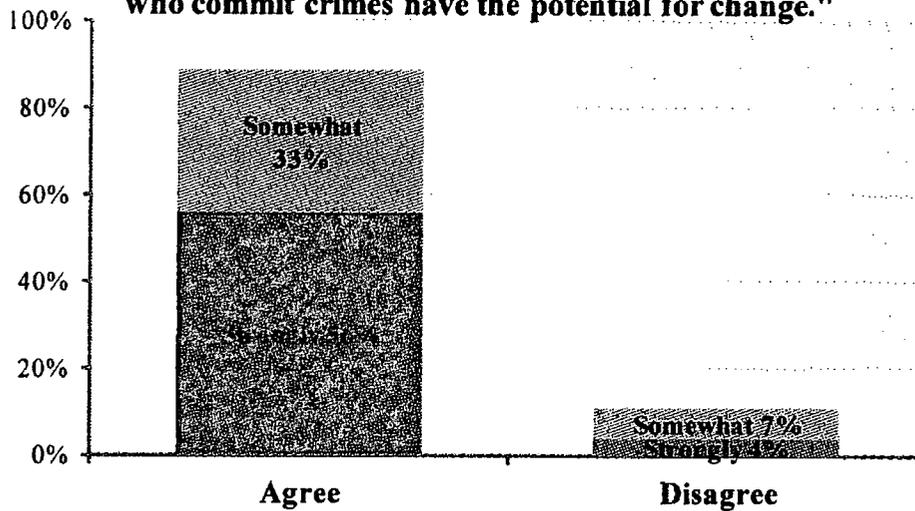
The juvenile justice system in the United States began a century ago in Chicago with the enlightened goal of providing individualized treatment, supervision and services to troubled and at-risk youth. In the 1990s, attitudes changed. A temporary rise in violent juvenile crime and a few spectacular cases fueled political calls for more punitive approaches: a shift away from rehabilitation and toward the implementation of harsher sanctions, reduced confidentiality of juvenile proceedings and increased incarceration of young people.

Today, the fallacies that drove the wave of punitive policies are being challenged and the space for new ideas to flourish is growing. A number of factors—falling crime rates, state budget crises, rigorous demonstrations of “what works” and new research on brain development in adolescents—are encouraging policymakers to reconsider the wisdom of “get-tough” policies. There is a large reservoir of public support that policymakers can draw upon to help shift the juvenile justice system back to the principles on which it was founded.

*“The system seems to ignore the potential any child may have. The way the system seems to be set up, they seem to be written off rather than helping them become productive society members. I think they keep throwing these kids away.”*— **Focus group respondent, Chicago**

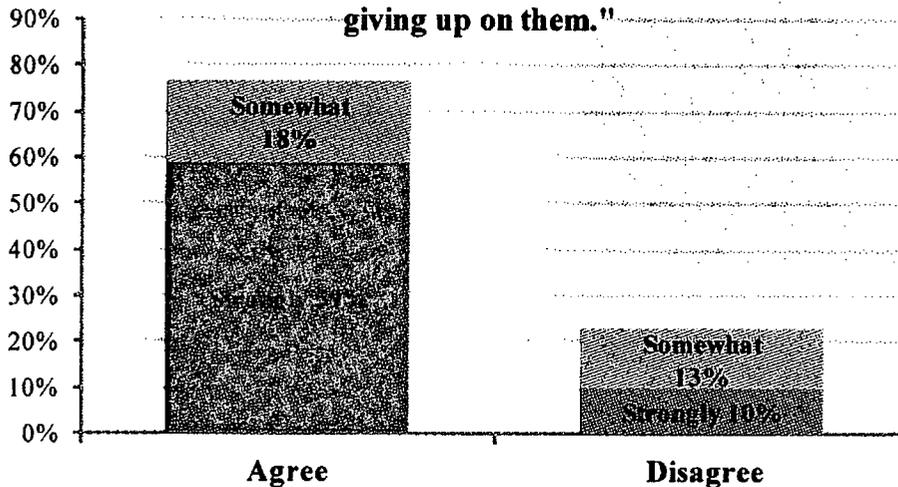
The public believes that almost all young people who commit crimes have the potential to change. Nearly nine out of 10 people nationally (89 percent) agreed with the statement that “almost all youth who commit crimes are capable of positive growth and have the potential to change for the better.” In the Models for Change states, more than eight out of 10 agreed with the statement. Similarly, more than eight out of 10 disagreed with the statement that “there is not much you can do to change youth who commit crimes.” More than three out of four agreed that “incarcerating youth offenders without rehabilitation is the same as giving up on them.”

**Nearly nine out of 10 agreed that "almost all youth who commit crimes have the potential for change."**



"Please tell me if you agree or disagree with each of the following statements. (Do you agree or disagree? Is that strongly or somewhat agree/disagree?) Almost all youth who commit crimes are capable of positive growth and have the potential to change for the better.

**More than seven out of 10 agreed that "incarcerating youth offenders without rehabilitation is the same as giving up on them."**



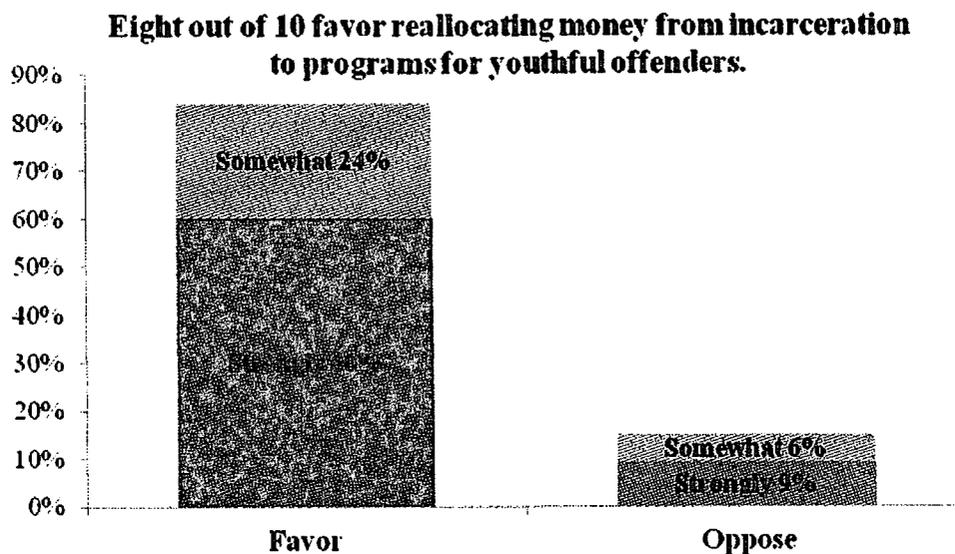
"Please tell me if you agree or disagree with each of the following statements. (Do you agree or disagree? Is that strongly or somewhat agree/disagree?) Incarcerating youth offenders without rehabilitation is the same as giving up on them."

## 2. The public supports redirecting government funds from incarceration to counseling, education and job training for youth offenders.

In Illinois, Pennsylvania, Louisiana and Washington, the legislatures have enacted policies that discourage incarcerating youth in large state facilities and encourage having more young people under community supervision or receiving services and treatment in their own communities. The public supports this change in policy.

A majority in the United States and in the four Models for Change states strongly favor taking away some of the money their state spends on incarcerating youth offenders and spending it instead on programs for counseling, education and job training for youth offenders. Eight out of 10 say they strongly favor or somewhat favor this policy choice.

*"For nonviolent crimes, it would make more sense to take the money, x amount of dollars to keep an individual incarcerated for x amount of time—you could put that to programs to prevent them from being in jail to begin with."*—Focus group respondent, Baton Rouge



"Do you favor or oppose taking away some of the money your state government spends on incarcerating youth offenders and spending it instead on programs for counseling, education and job training for youth offenders. Is that strongly or somewhat favor/oppose?"

**3. The public views the provision of treatment, services and community supervision as more effective ways of rehabilitating youth than incarceration.**

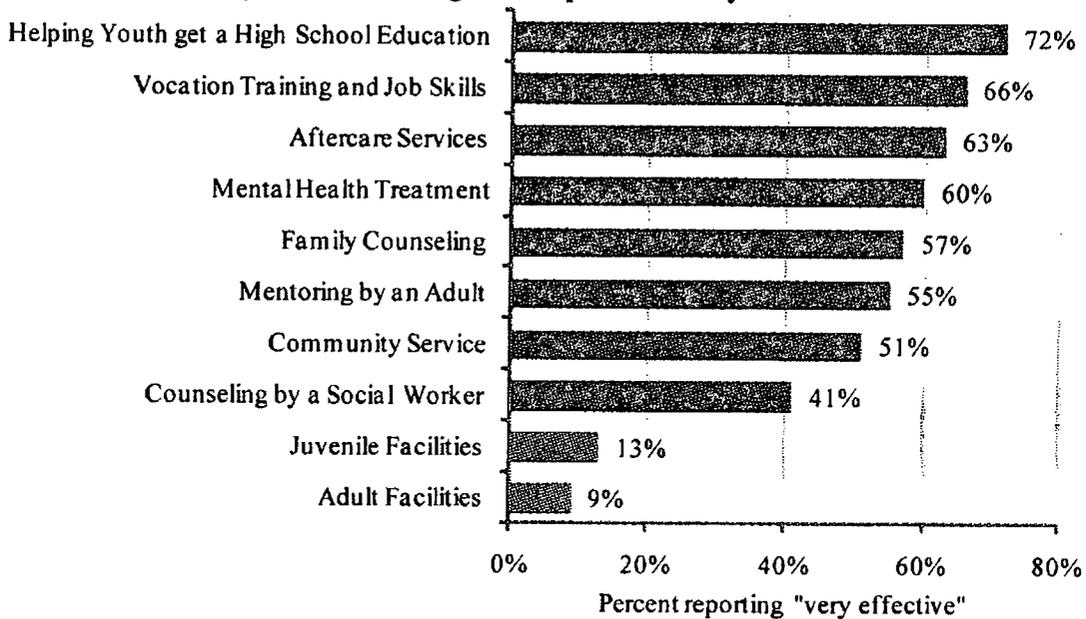
Large majorities see providing treatment, services and community supervision as more effective ways of rehabilitating youth who commit crimes than punishment or incarceration in either an adult or juvenile facility.

*"If you're just going to throw them in a place where no one cares and nobody does anything, you're just going to grow up an 18-year-old kid that still has nothing."*—Focus group respondent, Baton Rouge

A majority views family counseling, mental health treatment, vocational and job training and assistance with getting a high school education as "very effective" ways to rehabilitate young people who commit crimes. In contrast, less than 15 percent see incarcerating youth in either a juvenile or adult facility as being "very effective" at rehabilitating youth who commit crimes.

One of the biggest challenges facing communities is the development of effective "aftercare" services and plans for juveniles: the ability to connect juveniles leaving the system with the programs and services they need to adjust and succeed. More than six in 10 of those surveyed nationally said that "providing follow-up services once youth leave the juvenile justice system to help them go back to school or get a job" was a "very effective" way to rehabilitate young people who commit crimes.

**Treatment, supervision and services were seen as "very effective" ways to rehabilitate youthful offenders. Less than 15 percent thought that "locking them up" was "very effective."**

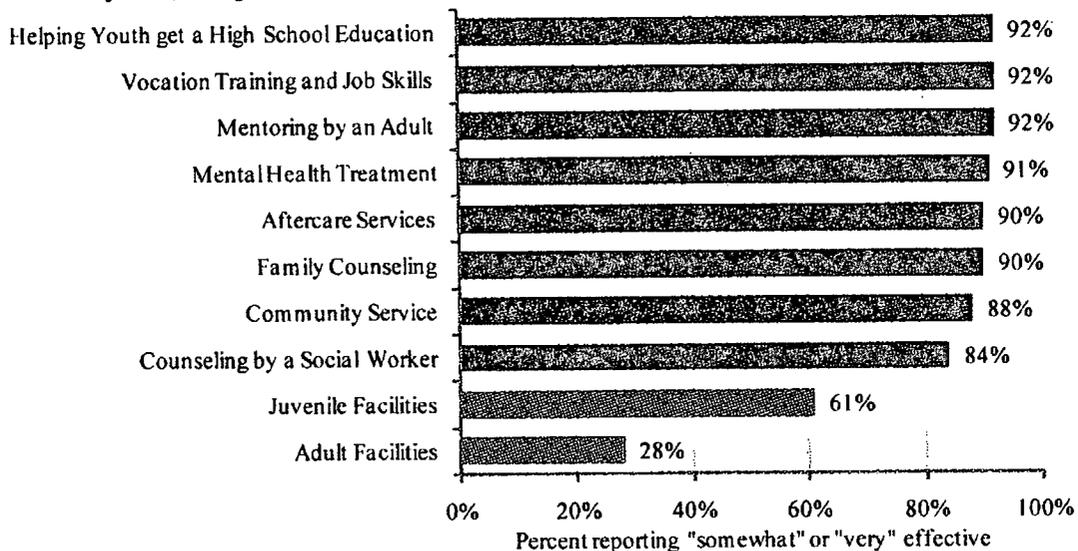


"I am going to read you a list of things the juvenile justice system can do to help rehabilitate youth who commit crimes. In your opinion, please tell me how effective each of the following is in rehabilitating youth offenders: very effective, somewhat effective, not very effective, or not at all effective way to rehabilitate youth who commit crimes?"

Similarly, when responses of "somewhat effective" and "very effective" are combined, most respondents believe that non-incarceration options are productive ways to rehabilitate youth. Across all question items, about nine out of 10 see mentoring, job training, mental health treatment and other non-incarceration options as effective ways to rehabilitate youth who commit crimes.

By contrast, six out of 10 survey participants see incarcerating youth in a juvenile facility as "somewhat" or "very" effective. Few people think that incarcerating youth in adult jails and prisons is effective: less than three out of 10 see them as effective ways to rehabilitate youth.

**More than eight out of 10 people said that providing community-based services is a "somewhat" or "very" effective way to rehabilitate youth, compared to six out of 10 or three out of 10 for incarcerating youth.**



"I am going to read you a list of things the juvenile justice system can do to help rehabilitate youth who commit crimes. In your opinion, please tell me how effective each of the following is in rehabilitating youth offenders: very effective, somewhat effective, not very effective or not at all effective way to rehabilitate youth who commit crimes?"

*"Putting them in prison without even a thought to rehabilitation is pretty much the status quo and is not accomplishing anything. There's a lot more options than just giving them a DCN [Department of Corrections number] and forgetting about them." — Focus group respondent, Baton Rouge*

*"The problem is that we are punishment-focused rather than education-, rehab- and change- focused. The change I would make is to provide funding for mentor and group-based education and rehabilitation." — Focus group respondent, Chicago*

#### **4. The public favors keeping nonviolent juveniles in small, residential facilities in their own communities rather than in large distant institutions.**

Of all youth arrested each year, more than 90 percent are charged with nonviolent offenses. Of the youth subsequently held either in detention or juvenile corrections facilities across the country, more than six in 10 are held for nonviolent offenses.<sup>1</sup> Illinois and Louisiana recently made policy changes to increase the number of young people in “community-supervision,” which generally involves keeping nonviolent youth in their own homes under the close supervision of a caseworker or probation officer, where they are required to receive counseling services and attend school.

To help move more nonviolent youth to places more likely to reduce their reoffending, several states have embraced the “Missouri model” approach. In Missouri, young people were removed from large, distant state institutions and into small, “community-based” residential facilities that provide intensive services. Three-fourths of those committed to state care in Missouri are placed in open environments, such as nonresidential treatment programs, group homes or other non-secure facilities. In open environments, youth typically spend each weekday focused on both academics and counseling alongside 10 to 12 other youths who share a dormitory. Afterwards, residents participate in community service activities, tutoring, and individual and family counseling.<sup>2</sup> Statistics from the Missouri Department Youth Services found that in 2006, the recidivism rate was only 8.7 percent.<sup>3</sup> It is difficult to compare that figure to other states’ recidivism rates because states use different measurement practices.<sup>4</sup> In an effort to overcome these measurement differences, the Virginia Department of Juvenile Justice conducted a study in 2005 using the same definition of juvenile recidivism in 27 states.<sup>5</sup> The study showed that 55 percent of juveniles released from facilities in Florida, New York and Virginia were rearrested within one year. Louisiana and Washington, D.C., have recently embraced the “Missouri model” approach.

Wherever young people are in the juvenile justice system, the public wants them to be held accountable. Eight out of 10 say that they want a stronger focus on accountability and that the system is not focused enough on “teaching youth who commit crimes to be accountable for their actions.” However, the public supports keeping nonviolent offenders, who comprise the majority of youth who enter the system and the majority of youth who are incarcerated, in community-based facilities or under community supervision.

<sup>1</sup> Sickmund, Melissa, T.J. Stadky and Wei Kang. 2005. Census of Juveniles in Residential Placement Databook. [www.ojjdp.ncjrs.org/ojstatbb/cjrp/](http://www.ojjdp.ncjrs.org/ojstatbb/cjrp/)

<sup>2</sup> Mendel, Richard A. 2001. Less Cost, More Safety: Guiding Lights for Reform in Juvenile Justice. Washington, D.C.: American Youth Policy Forum. [www.aecf.org/upload/PublicationFiles/less%20cost%20more%20safety.pdf](http://www.aecf.org/upload/PublicationFiles/less%20cost%20more%20safety.pdf).

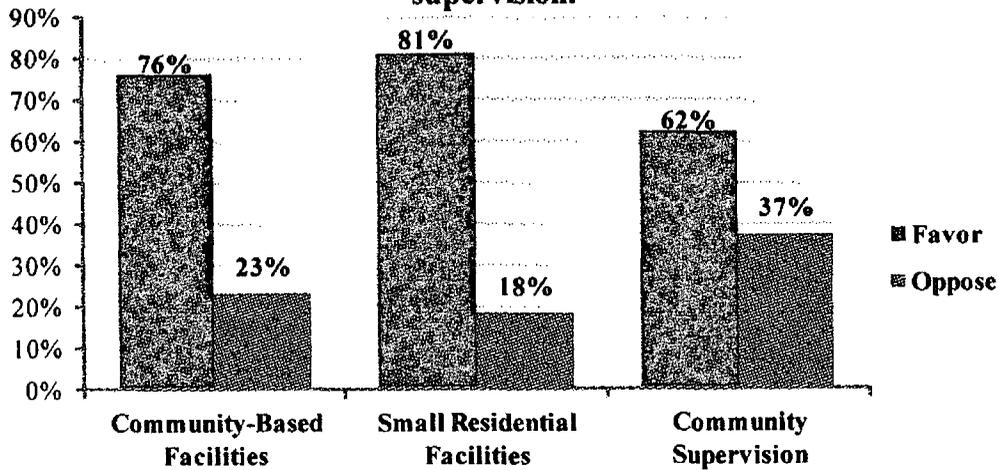
<sup>3</sup> Missouri Department of Social Services. 2006. Division of Youth Services Annual Report: Fiscal Year 2006. [www.dss.mo.gov/re/pdf/dys/dysfy06.pdf](http://www.dss.mo.gov/re/pdf/dys/dysfy06.pdf).

<sup>4</sup> Snyder, Howard N. and Melissa Sickmund. 2006. Juvenile Offenders and Victims: 2006 National Report. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention. <http://ojjdp.ncjrs.gov/ojstatbb/nr2006/downloads/NR2006.pdf>.

<sup>5</sup> Virginia Department of Juvenile Justice. 2005. Juvenile recidivism in Virginia. DJJ Research Quarterly. Richmond, VA: VDJJ; cited in Snyder, Howard N. and Melissa Sickmund. 2006. Juvenile Offenders and Victims: 2006 National Report. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention.

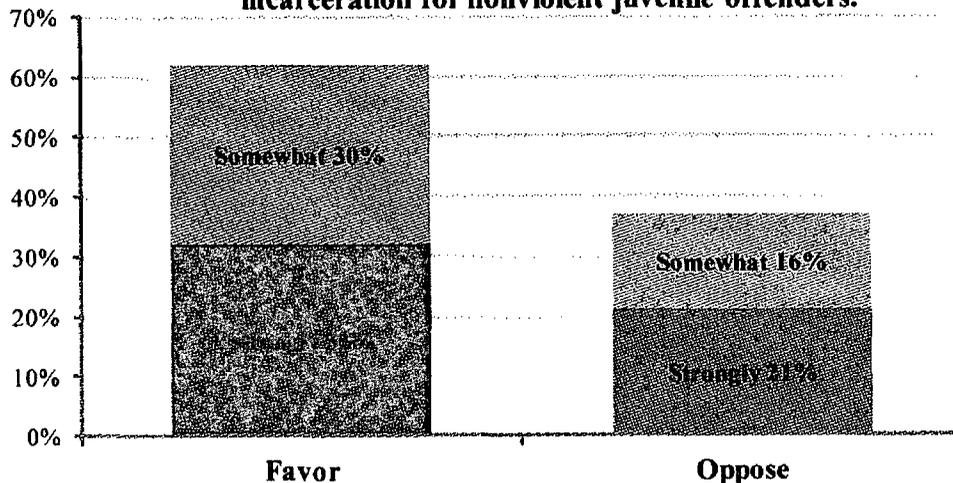
Seventy-six percent strongly or somewhat favor "placing nonviolent youth in facilities located in their own communities." Eight out of 10 say they favor placing nonviolent youth "in a residential facility that holds a small number of youth" instead of incarcerating them in a large juvenile facility. Six out of 10 nationally say that instead of incarceration in a large juvenile facility, they favor assigning a nonviolent youth "to live in their own homes and receive counseling and other services under the close supervision of a caseworker."

**The public favors keeping nonviolent juvenile offenders in community-based facilities or under community supervision.**



"Please tell me whether you favor or oppose each of the following proposals for dealing with youth convicted of NONVIOLENT crimes. Is that strongly or somewhat favor/oppose?"

**A majority of respondents favor community supervision over incarceration for nonviolent juvenile offenders.**



"Please tell me whether you favor or oppose each of the following proposals for dealing with youth convicted of NONVIOLENT crimes. (Do you favor or oppose this? Is that strongly or somewhat favor/oppose?) Instead of incarceration in a juvenile facility, assigning youth to live in their own homes and receive counseling and other services under the close supervision of a caseworker."

## 6. The public believes the juvenile justice system treats low-income youth, African American youth and Hispanic youth unfairly.

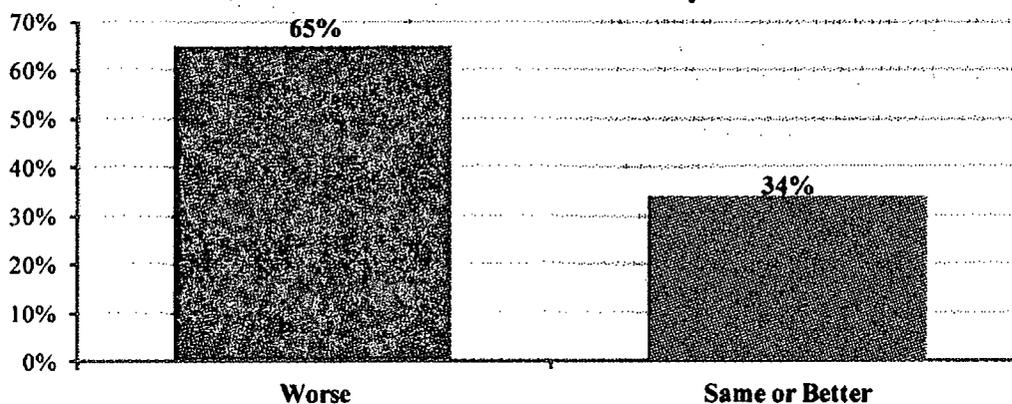
*"It's almost like that's the face they expect to see."*—Focus group participant, Baton Rouge

*"I've seen kids in white neighborhoods be picked out just for being black. I think there's definitely an attitude. The attitude that cops have towards them is they're guilty for walking down the street."*—Focus group respondent, Chicago

The public thinks that the system treats some youth—specifically, poor or low-income youth, and African American and Hispanic youth—unfairly and that the juvenile justice system or “programs” should be developed to help the system be more fair to youth of color.

The public strongly believes that low-income youth receive worse treatment at the hands of the justice system. Nearly two-thirds of people polled nationwide (65 percent to 34 percent), and the majority of those surveyed in the Models for Change states think poor youth receive worse treatment than middle-income youth arrested for the same offense.

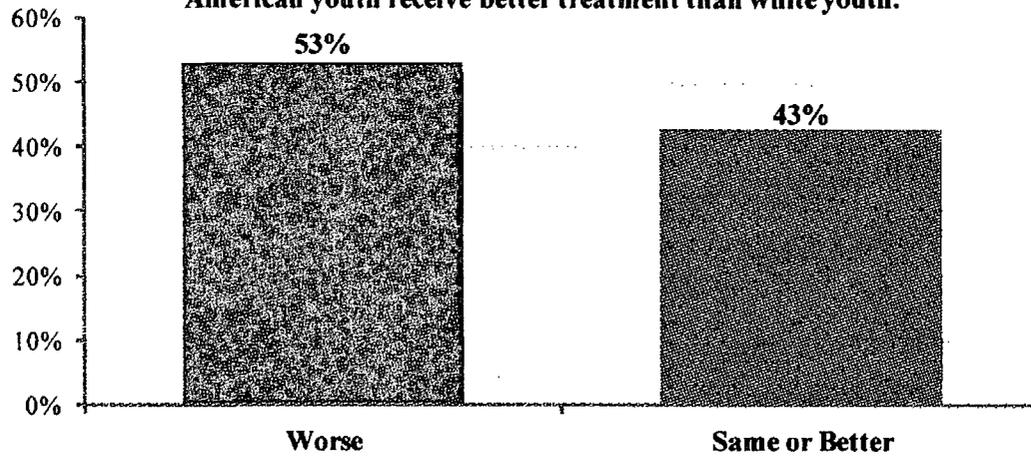
**Nearly two-thirds of respondents said that poor youth who get arrested receive worse treatment by the justice system than middle-income youth arrested for the same offense. Three percent said that poor youth receive better treatment than middle-income youth.**



"In general, do you think a poor youth who gets arrested receives the same, better, or worse treatment by the justice system than a middle-income youth who gets arrested for the same offense?"

About half of those polled said that “an African American youth who gets arrested receives worse treatment by the justice system than a white youth who gets arrested for the same offense.” In each of the Models for Change states, a larger proportion of the public believe that African American youth receive worse treatment rather than the “same” or “better” treatment. At a time when the justice system is just beginning to learn the scale of Hispanic overrepresentation in the justice system, 47 percent of the public thought Hispanic youth receive worse treatment compared with white youth, with 41 percent saying they thought Hispanics received the same treatment as white youth.

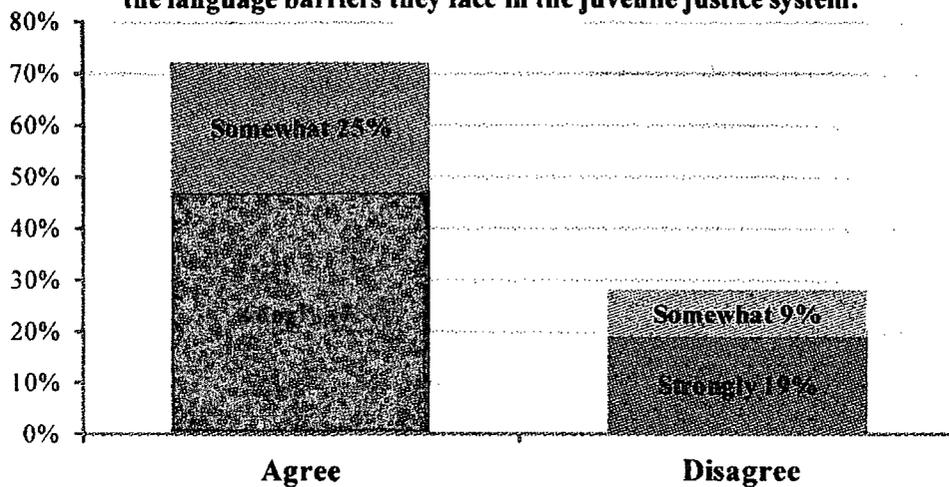
**About half of those polled said that African American youth who get arrested receive worse treatment by the justice system than white youth arrested for the same offense. Three percent said that African American youth receive better treatment than white youth.**



"In general, do you think an African American youth who gets arrested receives the same, better, or worse treatment by the justice system than a white youth who gets arrested for the same offense?"

The public recognizes the language barriers that Hispanic youth face in the juvenile justice system. More than seven out of 10 nationally, and more than six out of 10 in the Models for Change states, think "we should fund more programs to help Hispanic youth who get in trouble with the law overcome the language barriers they face in the juvenile justice system." In addition, six out of 10 respondents agreed that "we should fund more programs that acknowledge and address the cultural backgrounds of Hispanic youth who get in trouble with the law."

**More than seven out of 10 think we should fund more programs to help Hispanic youth who get in trouble with the law overcome the language barriers they face in the juvenile justice system.**



"Please tell me if you agree or disagree with the following statements. (Do you agree or disagree? Is that strongly or somewhat agree/disagree?) We should fund more programs to help Hispanic youth who get in trouble with the law overcome language barriers they face in the juvenile justice system."

## **Conclusion: The public is ready to support juvenile justice reform.**

The findings from the survey show that the public is ready to support juvenile justice reform. The public sees rehabilitation, services, treatment and community supervision as more effective ways to curb reoffending than incarceration in either juvenile or adult facilities. A majority of respondents support moving juveniles out of large institutions and into community-based facilities or into community supervision. And the public favors redirecting funds spent on incarceration to support these community-based services.

The public believes the juvenile justice system treats low-income youth, African American youth and Hispanic youth unfairly. The public thinks that poor youth, African American youth and Hispanic youth are more likely to receive worse treatment in the juvenile justice system than white youth charged with the same offense. More than seven out of 10 think that the system should fund more programs that help Hispanic youth overcome language barriers, and six out of 10 support measures to address their cultural backgrounds when they are in the justice system.

These results also show that Models for Change is implementing the kinds of reforms the public supports in Illinois, Pennsylvania, Louisiana and Washington. While the nature of the work varies from state to state, all are working toward reducing overrepresentation and racial and ethnic disparities, improving the delivery of mental health services, expanding community-based alternatives to incarceration, increasing the number of youth receiving services that have been proven effective, keeping young people out of adult facilities and helping young people return home after being in the juvenile justice system.

## About the Poll and Methodology

As part of Models for Change, one of the initiative's grantees—the Center for Children's Law and Policy—asked a public opinion research firm to survey public attitudes on youth, crime, race and the juvenile justice system. In the summer of 2007, Belden Russonello and Stewart (BRS) conducted eight focus groups on the issues in Chicago, Pittsburgh, Baton Rouge and Seattle. Informed by the results from the focus groups, BRS conducted a national survey in September 2007.

Survey interviews were conducted September 17 to September 29 of 500 adults 18 years or older nationwide and approximately 300 adults in the four Models for Change states. The national survey of 500 people had a margin of error of  $\pm 4.4$  percent, and the individual state surveys had a margin of error of  $\pm 5.7$  percent.

For more information, contact Mark Soler, Executive Director, Center for Children's Law and Policy, at [msoler@cclp.org](mailto:msoler@cclp.org) or (202) 637-0377 ext. 104.

**Models for Change** is an effort to create successful and replicable models of juvenile justice system reform through targeted investments in key states. With long-term funding and support from the John D. and Catherine T. MacArthur Foundation, Models for Change seeks to accelerate progress toward a more rational, fair, effective, and developmentally appropriate juvenile justice system. Four states - Illinois, Louisiana, Pennsylvania and Washington - have been selected as core Models for Change sites. Other states participate in action networks targeting mental health and disproportionate minority contact in juvenile justice systems.

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**Models for Change**  
Systems Reform in Juvenile Justice

# APPENDIX M

**FILE**  
IN CLERKS OFFICE  
SUPREME COURT, STATE OF WASHINGTON  
DATE **MAR 12 2015**  
*Madsen C.J.*  
CHIEF JUSTICE

This opinion was filed for record  
at 8:00 am on March 12, 2015

*[Signature]*  
Ronald R. Carpenter  
Supreme Court Clerk

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 89028-5
Respondent,	)	(consol. w/No. 89109-5)
	)	
v.	)	
	)	
NICHOLAS PETER BLAZINA,	)	
	)	
Petitioner.	)	En Banc
_____	)	
STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
v.	)	
	)	
MAURICIO TERRENCE PAIGE-COLTER,	)	Filed <u>MAR 12 2015</u>
	)	
Petitioner.	)	
_____	)	

MADSEN, C.J.—At sentencing, judges ordered Nicholas Blazina and Mauricio Paige-Colter to pay discretionary legal financial obligations (LFOs) under RCW 10.01.160(3). The records do not show that the trial judges considered either defendant’s ability to pay before imposing the LFOs. Neither defendant objected at the time. For the first time on appeal, however, both argued that a trial judge must make an individualized

inquiry into a defendant's ability to pay and that the judges' failure to make this inquiry warranted resentencing. Citing RAP 2.5, the Court of Appeals declined to reach the issue because the defendants failed to object at sentencing and thus failed to preserve the issue for appeal.

Although a defendant has the obligation to properly preserve a claim of error, an appellate court may use its discretion to reach unpreserved claims of error consistent with RAP 2.5. In this case, we hold that the Court of Appeals did not err in declining to reach the merits. However, exercising our own RAP 2.5 discretion, we reach the merits and hold that a trial court has a statutory obligation to make an individualized inquiry into a defendant's current and future ability to pay before the court imposes LFOs. Because the trial judges failed to make this inquiry, we remand to the trial courts for new sentence hearings.

## FACTS

### A. *State v. Blazina*

A jury convicted Blazina of one count of second degree assault, and the trial court sentenced him to 20 months in prison. The State also recommended that the court impose a \$500 victim penalty assessment, \$200 filing fee, \$100 DNA (deoxyribonucleic acid) sample fee, \$400 for the Pierce County Department of Assigned Counsel, and \$2,087.87 in extradition costs. Blazina did not object, and the trial court accepted the State's recommendation. The trial court, however, did not examine Blazina's ability to pay the discretionary fees on the record. Instead, Blazina's judgment and sentence included the following boilerplate language:

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS The court has considered the total amount owing, the defend[ant]’s past, present and future ability to pay legal financial obligations, including the defendant’s financial resources and the likelihood that the defendant’s status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753

Clerk’s Papers at 29.

Blazina appealed and argued that the trial court erred when it found him able to pay his LFOs. The Court of Appeals declined to consider this claim because Blazina “did not object at his sentencing hearing to the finding of his current or likely future ability to pay these obligations.” *State v. Blazina*, 174 Wn. App. 906, 911, 301 P.3d 492 (2013). We granted review. *State v. Blazina*, 178 Wn. App. 1010, 311 P.3d 27 (2013).

B. *State v. Paige-Colter*

The State charged Paige-Colter with one count of first degree assault and one count of first degree unlawful possession of a firearm. A jury convicted Paige-Colter as charged. The trial court imposed the State’s recommended 360-month sentence of confinement. The State also recommended that the court “impose . . . standard legal financial obligations, \$500 crime victim penalty assessment, \$200 filing fee, \$100 fee for the DNA sample, \$1,500 Department of Assigned Counsel recoupment . . . [, and] restitution by later order.” Paige-Colter Verbatim Report of Proceedings (Paige-Colter VRP) (Dec. 9, 2011) at 6. Paige-Colter made no objection. The trial court accepted the State’s recommendation without examining Paige-Colter’s ability to pay these fees on the record. Paige-Colter’s judgment and sentence included boilerplate language stating the court considered his ability to pay the imposed legal fees.

Paige-Colter appealed and argued that the trial court erred when it imposed discretionary LFOs without first making an individualized inquiry into his ability to pay. The Court of Appeals concluded that Paige-Colter waived these claims by not objecting below. *State v. Paige-Colter*, noted at 175 Wn. App. 1010, 2013 WL 2444604, at \*1. We granted review on this issue and consolidated the case with *Blazina*. *State v. Paige-Colter*, 178 Wn.2d 1018, 312 P.3d 650 (2013).

### ANALYSIS

A defendant who makes no objection to the imposition of discretionary LFOs at sentencing is not automatically entitled to review.<sup>1</sup> It is well settled that an “appellate court may refuse to review any claim of error which was not raised in the trial court.” RAP 2.5(a). This rule exists to give the trial court an opportunity to correct the error and to give the opposing party an opportunity to respond. *State v. Davis*, 175 Wn.2d 287, 344, 290 P.3d 43 (2012), *cert. denied*, \_\_\_ U.S. \_\_\_, 134 S. Ct. 62, 187 L. Ed. 2d 51 (2013). The text of RAP 2.5(a) clearly delineates three exceptions that allow an appeal as a matter of right. *See* RAP 2.5(a).<sup>2</sup>

Blazina and Paige-Colter do not argue that one of the RAP 2.5(a) exceptions applies. Instead, they cite *State v. Ford*, 137 Wn.2d 472, 477-78, 973 P.2d 452 (1999)

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<sup>1</sup> The State argues that the issue is not ripe for review because the proper time to challenge the imposition of an LFO arises when the State seeks to collect. Suppl. Br. of Resp’t (Blazina) at 5-6. We disagree. “Three requirements compose a claim fit for judicial determination: if the issues are primarily legal, do not require further factual development, and the challenged action is final.” *State v. Bahl*, 164 Wn.2d 739, 751, 193 P.3d 678 (2008) (quoting *First United Methodist Church v. Hr’g Exam’r*, 129 Wn.2d 238, 255-56, 916 P.2d 374 (1996)). A challenge to the trial court’s entry of an LFO order under RCW 10.01.160(3) satisfies all three conditions.

<sup>2</sup> By rule, “a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right.” RAP 2.5(a).

and argue that “it is well established that illegal or erroneous sentences may be challenged for the first time on appeal,” suggesting that they may challenge unpreserved LFO errors on appeal as a matter of right. Suppl. Br. of Pet’r (Blazina) at 3. In *State v. Jones*, 182 Wn.2d 1, 338 P.3d 278 (2014), a recent unanimous decision by this court, we said that *Ford* held unpreserved sentencing errors “may be raised for the first time upon appeal because sentencing can implicate fundamental principles of due process if the sentence is based on information that is false, lacks a minimum indicia of reliability, or is unsupported in the record.” *Jones*, 182 Wn.2d at 6. However, we find the exception created by *Ford* does not apply in this case.

Unpreserved LFO errors do not command review as a matter of right under *Ford* and its progeny. As stated in *Ford* and reiterated in our subsequent cases, concern about sentence conformity motivated our decision to allow review of sentencing errors raised for the first time on appeal. *See Ford*, 137 Wn.2d at 478. We did not want to ““permit[] widely varying sentences to stand for no reason other than the failure of counsel to register a proper objection in the trial court.”” *Id.* (quoting *State v. Paine*, 69 Wn. App. 873, 884, 850 P.2d 1369 (1993)). Errors in calculating offender scores and the imposition of vague community custody requirements create this sort of sentencing error and properly fall within this narrow category. *See State v. Mendoza*, 165 Wn.2d 913, 919-20, 205 P.3d 113 (2009) (prior convictions for sentencing range calculation); *Ford*, 137 Wn.2d at 475-78 (classification of out of state convictions for offender score calculation); *State v. Bahl*, 164 Wn.2d 739, 743-45, 193 P.3d 678 (2008) (community custody conditions of sentence). We thought it justifiable to review these challenges

raised for the first time on appeal because the error, if permitted to stand, would create inconsistent sentences for the same crime and because some defendants would receive unjust punishment simply because his or her attorney failed to object.

But allowing challenges to discretionary LFO orders would not promote sentencing uniformity in the same way. The trial court must decide to impose LFOs and must consider the defendant's current or future ability to pay those LFOs based on the particular facts of the defendant's case. *See* RCW 10.01.160(3). The legislature did not intend LFO orders to be uniform among cases of similar crimes. Rather, it intended each judge to conduct a case-by-case analysis and arrive at an LFO order appropriate to the individual defendant's circumstances. Though the statute mandates that a trial judge consider the defendant's ability to pay and, here, the trial judges erred by failing to consider, this error will not taint sentencing for similar crimes in the future. The error is unique to these defendants' circumstances, and the Court of Appeals properly exercised its discretion to decline review.

Although the Court of Appeals properly declined discretionary review, RAP 2.5(a) governs the review of issues not raised in the trial court for all appellate courts, including this one. While appellate courts normally decline to review issues raised for the first time on appeal, *see Roberson v. Perez*, 156 Wn.2d 33, 39, 123 P.3d 844 (2005), RAP 2.5(a) grants appellate courts discretion to accept review of claimed errors not appealed as a matter of right.<sup>3</sup> *State v. Russell*, 171 Wn.2d 118, 122, 249 P.3d 604 (2011). Each

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<sup>3</sup> RAP 2.5(a) states, "The appellate court may refuse to review any claim of error which was not raised in the trial court."

appellate court must make its own decision to accept discretionary review. National and local cries for reform of broken LFO systems demand that this court exercise its RAP 2.5(a) discretion and reach the merits of this case.

At a national level, organizations have chronicled problems associated with LFOs imposed against indigent defendants. These problems include increased difficulty in reentering society, the doubtful recoupment of money by the government, and inequities in administration. In 2010, the American Civil Liberties Union issued a report that chronicled the problems associated with LFOs in five states—including Washington—and recommended reforms to state and to local officials. AM. CIVIL LIBERTIES UNION, IN FOR A PENNY: THE RISE OF AMERICA'S NEW DEBTORS' PRISONS (2010) (ACLU), *available at* [https://www.aclu.org/files/assets/InForAPenny\\_web.pdf](https://www.aclu.org/files/assets/InForAPenny_web.pdf). That same year, the Brennan Center for Justice at New York University School of Law published a report outlining the problems with criminal debt, most notably the impediment it creates to reentry and rehabilitation. ALICIA BANNON, MITALI NAGRECHA & REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE, CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY (2010), *available at* <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>. Two years later, the Brennan Center followed up with “A Toolkit for Action” that proposed five specific reforms to combat the problems caused by inequitable LFO systems. ROOPAL PATEL & MEGHNA PHILIP, BRENNAN CTR. FOR JUSTICE, CRIMINAL JUSTICE DEBT: A TOOLKIT FOR ACTION (2012), *available at* <http://www.brennancenter.org/sites/default/files/legacy/publications/Criminal%20Justice%20Debt%20Background%20for%20web.pdf>. As part of its second

proposed reform, the Brennan Center advocated that courts must determine a person's ability to pay before the court imposes LFOs. *Id.* at 14.

Washington has contributed its own voice to this national conversation. In 2008, the Washington State Minority and Justice Commission issued a report that assessed the problems with the LFO system in Washington. KATHERINE A. BECKETT, ALEXES M. HARRIS & HEATHER EVANS, WASH. STATE MINORITY & JUSTICE COMM'N, THE ASSESSMENT AND CONSEQUENCES OF LEGAL FINANCIAL OBLIGATIONS IN WASHINGTON STATE (2008) (WASH. STATE MINORITY & JUSTICE COMM'N), *available at* [http://www.courts.wa.gov/committee/pdf/2008LFO\\_report.pdf](http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf). This conversation remains important to our state and to our court system.

As amici<sup>4</sup> and the above-referenced reports point out, Washington's LFO system carries problematic consequences. To begin with, LFOs accrue interest at a rate of 12 percent and may also accumulate collection fees when they are not paid on time. RCW 10.82.090(1); Travis Stearns, *Legal Financial Obligations: Fulfilling the Promise of Gideon by Reducing the Burden*, 11 SEATTLE J. SOC. JUST. 963, 967 (2013). Many defendants cannot afford these high sums and either do not pay at all or contribute a small amount every month. WASH. STATE MINORITY & JUSTICE COMM'N, *supra*, at 21. But on average, a person who pays \$25 per month toward their LFOs will owe the state more 10 years after conviction than they did when the LFOs were initially assessed. *Id.* at 22.

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<sup>4</sup> This court received a joint amici curiae brief from the Washington Defender Association, the American Civil Liberties Union of Washington, Columbia Legal Services, the Center for Justice, and the Washington Association of Criminal Defense Lawyers.

Consequently, indigent offenders owe higher LFO sums than their wealthier counterparts because they cannot afford to pay, which allows interest to accumulate and to increase the total amount that they owe. *See id.* at 21-22. The inability to pay off the LFOs means that courts retain jurisdiction over impoverished offenders long after they are released from prison because the court maintains jurisdiction until they completely satisfy their LFOs. *Id.* at 9-11; RCW 9.94A.760(4) (“For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime.”). The court’s long-term involvement in defendants’ lives inhibits reentry: legal or background checks will show an active record in superior court for individuals who have not fully paid their LFOs. ACLU, *supra*, at 68-69. This active record can have serious negative consequences on employment, on housing, and on finances. *Id.* at 69. LFO debt also impacts credit ratings, making it more difficult to find secure housing. WASH. STATE MINORITY & JUSTICE COMM’N, *supra*, at 43. All of these reentry difficulties increase the chances of recidivism. *Id.* at 68.

Moreover, the state cannot collect money from defendants who cannot pay, which obviates one of the reasons for courts to impose LFOs. *See* RCW 9.94A.030. For example, for three quarters of the cases sentenced in the first two months of 2004, less than 20 percent of LFOs had been paid three years after sentencing. WASH. STATE MINORITY & JUSTICE COMM’N, *supra*, at 20.

Significant disparities also exist in the administration of LFOs in Washington. For example, drug-related offenses, offenses resulting in trial, Latino defendants, and male defendants all receive disproportionately high LFO penalties. *Id.* at 28-29. Additionally, counties with smaller populations, higher violent crime rates, and smaller proportions of their budget spent on law and justice assess higher LFO penalties than other Washington counties. *Id.*

Blazina and Paige-Colter argue that, in order to impose discretionary LFOs under RCW 10.01.160(3), the sentencing judge must consider the defendant's individual financial circumstances and make an individualized inquiry into the defendant's current and future ability to pay. Suppl. Br. of Pet'r (Blazina) at 8. They also argue that the record must reflect this inquiry. We agree. By statute, "[t]he court *shall not* order a defendant to pay costs unless the defendant is or will be able to pay them." RCW 10.01.160(3) (emphasis added). To determine the amount and method for paying the costs, "the court *shall* take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose." *Id.* (emphasis added).

As a general rule, we treat the word "shall" as presumptively imperative—we presume it creates a duty rather than confers discretion. *State v. Bartholomew*, 104 Wn.2d 844, 848, 710 P.2d 196 (1985). Here, the statute follows this general rule. Because the legislature used the word "may" 11 times and the word "shall" eight times in RCW 10.01.160, we hold that the legislature intended the two words to have different meanings, with "shall" being imperative.

Practically speaking, this imperative under RCW 10.01.160(3) means that the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry. The record must reflect that the trial court made an individualized inquiry into the defendant's current and future ability to pay. Within this inquiry, the court must also consider important factors, as amici suggest, such as incarceration and a defendant's other debts, including restitution, when determining a defendant's ability to pay.

Courts should also look to the comment in court rule GR 34 for guidance. This rule allows a person to obtain a waiver of filing fees and surcharges on the basis of indigent status, and the comment to the rule lists ways that a person may prove indigent status. GR 34. For example, under the rule, courts must find a person indigent if the person establishes that he or she receives assistance from a needs-based, means-tested assistance program, such as Social Security or food stamps. *Id.* (comment listing facts that prove indigent status). In addition, courts must find a person indigent if his or her household income falls below 125 percent of the federal poverty guideline. *Id.* Although the ways to establish indigent status remain nonexhaustive, *see id.*, if someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFOs.

#### CONCLUSION

At sentencing, judges ordered Blazina and Paige-Colter to pay LFOs under RCW 10.01.160(3). The records, however, do not show that the trial judges considered either defendant's ability to pay before imposing the LFOs. The defendants did not object at

sentencing. Instead, they raised the issue for the first time on appeal. Although appellate courts will normally decline to hear unpreserved claims of error, we take this occasion to emphasize the trial court's obligation to consider the defendant's ability to pay.

We hold that RCW 10.01.160(3) requires the record to reflect that the sentencing judge made an individualized inquiry into the defendant's current and future ability to pay before the court imposes LFOs. This inquiry also requires the court to consider important factors, such as incarceration and a defendant's other debts, including restitution, when determining a defendant's ability to pay. Because the records in this case do not show that the sentencing judges made this inquiry into either defendant's ability to pay, we remand the cases to the trial courts for new sentence hearings.

Madsen, C.J.

WE CONCUR:

Johnson  
Cross

Wiggins, J.  
Gonzalez, J.  
Madhok, J.  
J.M.G.  
U.P.T.

No. 89028-5

FAIRHURST, J. (concurring in the result)—I agree with the majority that RCW 10.01.160(3) requires a sentencing judge to make an individualized determination into a defendant’s current and future ability to pay before the court imposes legal financial obligations (LFOs). I also agree that the trial judges in these cases did not consider either defendant’s ability to pay before imposing LFOs. Because the error was unpreserved, I also agree that we must determine whether it should be addressed for the first time on appeal. RAP 2.5(a).

I disagree with how the majority applies RAP 2.5(a). RAP 2.5(a) contains three exceptions on which unpreserved errors can be raised for the first time on appeal. While the majority does not indicate which of the three exceptions it is applying to reach the merits, it is likely attempting to use RAP 2.5(a)(3), “manifest error affecting a constitutional right.”<sup>1</sup> However, the majority fails to apply the three part test from *State v. O’Hara*, 167 Wn.2d 91, 98-100, 217 P.3d 756 (2009), that established what an appellant must demonstrate for an appellate court to reach an unpreserved error under RAP 2.5(a)(3).

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<sup>1</sup>The other two exceptions, “(1) lack of trial court jurisdiction” and “(2) failure to establish facts upon which relief can be granted,” are not applicable. RAP 2.5(a).

In *O'Hara*, we found that to meet RAP 2.5(a)(3) and raise an error for the first time on appeal, an appellant must demonstrate the error is manifest and the error is truly of constitutional dimension. *Id.* at 98. Next, if a court finds a manifest constitutional error, it may still be subject to a harmless error analysis. *Id.*

Here, the error is not constitutional in nature and thus the unpreserved error cannot be reached under a RAP 2.5(a)(3) analysis. In analyzing the asserted constitutional interest, we do not assume the alleged error is of constitutional magnitude but instead look at the asserted claim and assess whether, if correct, it implicates a constitutional interest as compared to another form of trial error. *Id.*

The trial court judges in *Blazina* and *Paige-Colter* did not inquire into the defendants' ability to pay LFOs, which violates RCW 10.01.160(3). RCW 10.01.160(3) provides:

The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

Failing to determine a defendant's ability to pay LFOs violates the statute but does not implicate a constitutional right.

Although the unpreserved error does not meet the RAP 2.5(a)(3) standard from *O'Hara*, I would hold that this error can be reached by applying RAP 1.2(a),

which states that the “rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits.” RAP 1.2(a) is rarely used, but this is an appropriate case for the court to exercise its discretion to reach the unpreserved error because of the widespread problems, as stated in the majority, associated with LFOs imposed against indigent defendants. Majority at 6.

The consequences of the State’s LFO system are concerning, and addressing where courts are falling short of the statute will promote justice. In *State v. Aho*, 137 Wn.2d 736, 740-41, 975 P.2d 512 (1999), we held that the supreme court “has the authority to determine whether a matter is properly before the court, to perform those acts which are proper to secure fair and orderly review, and to waive the rules of appellate procedure when necessary ‘to serve the ends of justice.’” (quoting RAP 1.2(c)). I agree with the majority that RCW 10.01.160(3) requires sentencing judges to take a defendant’s individual financial circumstances into account and make an individual determination into the defendant’s current and future ability to pay. In order to ensure that indigent defendants are treated as the statute requires, we should reach the unpreserved error.

For the foregoing reasons, I concur in the result only.

*State v. Blazina; State v. Paige-Colter*, No. 89028-5  
(Fairhurst, J., concurring in the result)

Fairhurst, J.  
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Stephens, J.