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NO. 47455-7-II

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

REPLY BRIEF OF PETITIONER

Kimberly N. Gordon
Jason B. Saunders
Attorneys for Petitioner

Law Offices of Gordon & Saunders
1111 Third Avenue, Suite 2220
Seattle, Washington 98101
(206) 340-6034

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A. THE STATE FUNDAMENTALLY MISCHARACTERIZES JOSEPH'S AUTO-DECLINE CHALLENGE.

1. BECAUSE JOSEPH ONLY RAISES EIGHTH AMENDMENT CLAIMS, THE FACTORS USED TO DECIDE VIOLATIONS OF WASHINGTON'S ART. I, § 14 ARE INAPPLICABLE.

The state mischaracterizes Joseph's challenges, describing the pertinent issue thusly:

Where the defendant has failed to bring forward evidence sufficient to satisfy **the demanding four part test for cruel and unusual punishment**, should the petition as to the defendant's Eighth Amendment challenge be dismissed?

(Emphasis added.) State's Response to Personal Restraint Petition at 1, citing to *State v. Witherspoon*, 180 Wn.2d 875, 329 P.3d 888 (2014). The state further explains:

In Washington, the heavy burden in cruel and unusual punishment cases is encapsulated in a demanding four part test. *State v. Witherspoon*, 180 Wn.2d 875, 329 P.3d 888 (2014). The Court considers four factors "in analyzing whether punishment is prohibited as cruel and unusual **under article I, section 14** ...

(Emphasis added.) State's Response at 5, quoting *State v. Fain*, 94 Wn.2d 387, 392-93, 617 P.2d 720 (1980).

In *Fain*, the "task before" the court was "to decide whether Fain's sentence is 'cruel' within the meaning of the Washington Constitution."

94 Wn.2d at 394. The *Witherspoon* Court also applied the *Fain* factors to

determine “whether punishment is prohibited as cruel and unusual under article I, section 14.” 180 Wn.2d at 887.

But Joseph challenged the auto-decline process and SRA application under the federal constitution. His Assignments of Error and Issues Pertaining to Assignments of Error alleged violations of the Eighth Amendment and United States Supreme Court precedent. See Brief of Petitioner at 1-2. Joseph repeatedly discussed only the Eighth Amendment, and the precedent finding federal violations. The “cruel and unusual punishment clause” of the Washington State constitution is not at issue. The United States Constitution has been violated. Citation to cases interpreting the state constitution cannot cure the infirmities.

2. INSTEAD OF THE OFFENSE-FOCUSED AND “LEGISLATIVE TALLY” ANALYSIS FOUND IN *FAIN*, *MILLER* AND RELATED FEDERAL CASES APPLY AN OFFENDER-FOCUSED AND SCIENCE-BASED ANALYSIS TO EIGHTH AMENDMENT CASES INVOLVING YOUTH.

The fact that Joseph alleged a violation of the federal constitution is important, because the state constitution has different language,¹

¹ “The Eighth Amendment bars cruel and unusual punishment while article I, section 14 bars cruel punishment.” *Witherspoon*, 180 Wn.2d at 887.

broader protections,² and a presumptively different interpretation.³ The *Fain* and *Miller* tests are also quite different.

a. *Miller* did not apply the *Fain* test before finding an Eighth Amendment violation. The *Fain* test considers (1) the nature of the offense, (2) the legislative purpose behind the statute, (3) the punishment the defendant would have received in other jurisdictions, and (4) the punishment meted out for other offenses in the same jurisdiction. *Witherspoon*, 130 Wn.2d at 887. This test is dependent on “offense characteristics” and “legislative tallies” that played no part of the analysis that the *Miller* Court engaged in before finding an Eighth Amendment violation. See 132 S.Ct. at 2463-69. Prior to announcing that it was finding an Eighth Amendment violation,⁴ the *Miller* Court did not even discuss these concepts. *Id.* at 2463-69.

² *State v. Rivers*, 129 Wn.2d 697, 712, 921 P.2d 495 (1996). While the Washington Constitution provides citizens additional protection, a different test is applied in order to qualify for that broader protection.

³ “Especially where the language of our constitution is different from the analogous federal provision, we are not bound to assume the framers intended an identical interpretation.” *Fain*, 94 Wn.2d at 393.

⁴ See 132 S.Ct. at 2469 (“We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders.”)

b. The analysis applied to Eighth Amendment claims involving juveniles is offender-specific, not offense-specific. The Miller court explained why its holding is not dependent on a specific offense:

Graham concluded from [its social science and penological analysis] that life-without parole sentences, like capital punishment, may violate the Eighth Amendment when imposed on children. To be sure, *Graham*'s flat ban on life without parole applied only to nonhomicide crimes, and the Court took care to distinguish those offenses from murder, based both on moral culpability and consequential harm. **But none of what it said about children – about their distinctive (and transitory) mental traits and environmental vulnerabilities – is crime specific.**

Emphasis added. Citations omitted. 132 S.Ct. at 2465. “[I]f, (as *Harmelin* recognized) ‘death is different,’ children are different too.” 132 S.Ct. at 2470, (discussing *Harmelin v. Michigan*, 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991)). The salient factor is not the crime, but youth.

Miller's rejection of an “offense specific” analysis is especially important in this case, because the State suggests (1) that the defense is arguing for “an extension of the Eighth Amendment into unexplored territory,”⁵ and (2) that “[c]onsidering the consistent and persistent legislative judgment that first degree child rape is one of the state’s most egregious offenses, the defendant can hardly make a case that the first factor, the nature of the offense, supports his argument.”⁶ But *Miller* says

⁵ State’s Response at 4.

⁶ State’s Response at 5.

its analysis and reasoning applies to all criminal procedures mandating that juveniles be treated as though they were adults, not just in specific instances. 132 S.Ct. at 2467. Hence, this is not unexplored territory. Neither does *Miller* provide any basis for assuming that the attributes of youth matter when a case involves aggravated murder or another serious offenses resulting in life-without-parole, but not when the case involves another “one of the state’s most egregious offenses,”⁷ first degree child rape.

c. “Legislative tallies” are not relied upon in analogous Eight Amendment cases. The *Miller* court also explained why “legislative tallies” were irrelevant to its analysis:⁸

Alabama and Arkansas ... next contend that because many States impose mandatory life-without-parole sentences on juveniles, we may not hold the practice unconstitutional. ... We do not agree ... For starters, the cases here are different from the typical one in which we have tallied legislative enactments. Our decision does not categorically bar a penalty for a class of offenders or type of crime – as, for example, we did in *Roper* or *Graham*. Instead, it mandates only that a sentence follow a certain process – considering an offender’s youth and attendant characteristics – before imposing a particular penalty. And in so requiring, our decision flows straightforwardly from our precedents, specifically, the principle of *Roper*, *Graham*, and our individual sentencing

⁷ See State’s Response at 5 (acknowledging the “legislative judgment that first degree child rape is one of this state’s most egregious offenses.”)

⁸ As indicated above, the *Miller* court did this after it concluded that the Eighth Amendment was violated. This was an after-thought, not a part of the *Miller* test.

cases that youth matters for purposes of meting out the law's most serious punishments. When both of those circumstances have obtained in the past, we have not scrutinized or relied in the same way on legislative enactments.

Miller, 132 S.Ct. at 2470-71.

The state urges that the auto-decline statute applied to Joseph is constitutional because it is “similar to statutes in 29 states.” State’s Response at 6. *Miller* also addressed the “29 state” number, explaining that just because “Alabama and Alaska can count to 29” states arguably supporting their position, it “does not preclude our determination.” *Id.* at 2473. *Miller* rejects “legislative tallies” as a litmus test.

d. “Offender characteristics” are important to the *Miller* analysis.

The *Fain* and *Miller* analyses differ in yet another important way. *Fain* provides no mechanism for consideration of the characteristics of the individual offender. But *Miller* finds that offender characteristics are a “particularly relevant”⁹ “fundamental,”¹⁰ “clear,”¹¹ and “foundational,”¹²

⁹ *Miller*, 132 S.Ct. at 2466 (“We found [evidence of the defendant’s neglectful and violent family background (including his mother’s drug abuse and his father’s physical abuse) and his emotional disturbance] ‘particularly relevant’ – more so than it would have been in the case of an adult offender.”)

¹⁰ *Miller*, 132 S.Ct. at 2465 (“Most fundamentally, *Graham* insists that youth matters ...”)

¹¹ *Miller*, 132 S.Ct. at 2466 (“‘An offender’s age’, we made clear in *Graham*, ‘is relevant to the Eighth Amendment’...”)

¹² *Miller*, 132 S.Ct. at 2466 (“By removing youth from the balance – by subjecting a juvenile to the same life-without-parole sentence applicable to an adult – these laws prohibit a sentencing authority from assessing whether the law’s harshest term of imprisonment proportionately punishes a juvenile offender.” But a “foundational

part of its analysis. *Miller* also required that other courts make offender-specific determinations, by holding that “[m]andatory scheme[s]” or “criminal procedure laws” that “fail to take defendants’ youthfulness [an offender characteristic] into account at all” or give “no significance to ‘the character and record of the individual offender’” are flawed. 132 S.Ct. at 2465, 2467.

e. Science and social science are objective indicia in *Miller*, but not in *Fain*. The science, and the social science, that are an important part of the *Miller* analysis are ignored by *Fain*. Where *Fain* uses “offense characteristics” and “legislative tallies” as indicia of societal standards, the United States Supreme Court has repeatedly relied upon science and social science when analyzing Eighth Amendment claims involving juveniles. See *Miller*, 132 S.Ct. at 2464-65 (“Our decisions rested not only on common sense – on what “any parent knows” – but on science and social science as well”; see also *Roper*, 125 S.Ct. 1183; *Graham*, 130 S.Ct. at 2026)); *Eddings*, 455 U.S. at 115. Moreover, the strength of this scientific evidence has continually increased, as the *Miller* court held:

The evidence presented to us in these cases indicates that the science and social science supporting *Roper*’s and *Graham*’s conclusions have become even stronger. [A]n ever-growing body of research in developmental psychology and neuroscience continues to confirm and strengthen the Court’s conclusions. It is

principle” in *Graham* and *Roper* is “that imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.”)

increasingly clear that adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead and risk avoidance. Numerous studies post-*Graham* indicate that exposure to deviant peers leads to increased deviant behavior and is a consistent predictor of adolescent delinquency.

Citations omitted. *Miller*, 132 S.Ct. n. 5.

f. Miller would not survive a *Fain* test. The reasons already discussed make it is easy to see why the State, in its Response, relied solely, though misguidedly, on *Fain*. *Fain* has a different focus and test, disregarding what is important in *Miller*. In fact, it seems inevitable that if *Miller* brought his claim under the Washington Constitution, and *Fain*'s factors were used to analyze it, no Art. I, §14 violation would have been found. The factors integral to the *Miller* decision would have been rendered irrelevant.

But *Miller* found a federal constitutional violation. This Court should follow *Miller* and hold that Washington courts must be allowed to exercise discretion and consider youthfulness before juvenile jurisdiction is declined. The ramifications of such a decision are too important. The auto-decline statute applicable to Joseph's case, which automatically deemed Joseph's culpability equal to that of an adult, unconstitutionally deprived the court of all opportunity to exercise discretion over the matter. As a "criminal procedure law" that failed to give the Court any

opportunity to take defendant's youthfulness into account, it violates the Eighth Amendment.

3. *BOOT* DOES NOT CONTROL THIS ISSUE.

The State argues that *In re Boot*, 130 Wn.2d 553, 925 P.2d 964 (1996), which relied upon *State v. Massey*, 60 Wn.App. 131, 803 P.2d 340, *rev. denied*, 115 Wn.2d 1021, 802 P.2d 126 (1990), *cert. denied*, 499 U.S. 960, 111 S.Ct. 1584, 113 L.Ed.2d 648 (1991) already upheld automatic decline in the face of an Eighth Amendment challenge and controls here.

It is true that *Boot* rejected a different Eighth Amendment challenge. But that was 20 years ago. And *Boot* relied on *Massey*, which is even older. The Supreme Court rejected a similar tactic in *O'Dell* when it acknowledged that another decision from this same time period, *State v. Ha'mim*, 82 Wn.App. 139, 916, *aff'd* 132 Wn.2d 834, 940 P.2d 633 (1997), was based on an understanding about youth that has been "thoroughly undermined by subsequent scientific developments" and is, therefore, disavowed. *O'Dell*, Slip. Op. at 19, 23. Even *Massey* has now been resentenced after the state agreed that his prior sentence violated the Eighth Amendment and *Miller*. Attached as Appendix A is *Massey's* 2014 Judgment and Sentence. *Boot* does not control this issue.

4. *O'DELL*, A SIGNIFICANT RECENT CASE, WAS IGNORED BY THE STATE.

*State v. O'Dell*¹³ was decided before the state's Response Brief was due, and was the subject of a Notice of Supplemental Authority filed on August 14, 2015. Tellingly, the state does not cite or discuss the case.

The *O'Dell* court held that

a defendant's youthfulness can support an exceptional sentence below the standard range applicable to an adult felony defendant, and ... the sentencing court must exercise its discretion to decide when that is.

Slip. Op. at 23. *O'Dell* was not a "cruel and unusual punishment" case. But throughout its decision, Washington Supreme Court's demonstrates its acceptance of the principles articulated in *Miller* and the other Eighth Amendment cases involving juveniles.

O'Dell recognized the importance of the trial court performing an offender-focused analysis in cases involving juveniles, saying:

The legislature has determined that all defendants 18 and over are, **in general**, equally culpable for equivalent crimes. But it could not have considered the particular vulnerabilities – for example, impulsivity, poor judgment, and susceptibility to outside influences – of specific individuals. The trial court is in the best position to consider those factors.

(Emphasis in the original.) Slip Op. at 12.

¹³ Slip Op. 9033709, 2015 WL 4760476 (August 13, 2015).

O'Dell also adopted the same science and social science found persuasive in *Miller*.¹⁴ Then, relying upon that science, the Court acknowledged that youthfulness “is far more likely to diminish a defendant’s culpability than this court implied in *Ha’ mim*.” Slip. Op. at 19. It disavowed the inconsistent portions of that decision. Slip Op. at 19.

Further, the *O'Dell* Court demonstrated its willingness to second guess the legislature and contravene its dictates when scientific developments showed it was required in order to further the ends of justice. The *O'Dell* Court explained:

When the legislature enacted RCW 9.94A.030(34) – defining an “offender” subject to the SRA as “a person who has committed a felony established by state law and is eighteen years of age or older ...” – it did not have the benefit of the data underlying the decisions in *Roper*, *Graham v. Florida*, and *Miller v. Alabama*, since the SRA’s definition of an “offender” predates *Roper* by roughly 25 years. Thus, when the legislature enacted RCW 9.94A.030(34), it did not have the benefit of psychological and neurological studies showing that the “parts of the brain involved in behavior control” continue to develop well into a person’s 20s.

These studies reveal fundamental differences between adolescent and mature brains ... In *Miller*, *Roper*, and *Graham*, the Court recognized that these neurological differences make young offenders, **in general**, less culpable for their crimes

¹⁴ *O'Dell* said “[s]cientific advances in the study of adolescent brain development ... **show** that youth can significantly mitigate culpability.” (Emphasis added.) Slip. Op. at 16. It spoke in terms of certainty when it repeatedly said “**we now know** that age may well mitigate a defendant’s culpability, even if the defendant is over the age of 18.” (Emphasis added.) Slip. Op. at 18.

(Emphasis in the original.) *O'Dell*, Slip. Op. at 13-14. Rather than a blind and steadfast reliance on precedence, the *O'Dell* Court demonstrated that, as knowledge evolved, its decisions could evolve in order to take that into consideration. This is important for this case, where the state is pushing for unquestioning adherence to past views, rather than decisions based on the current data and knowledge.

5. *O'DELL STANDS IN GOOD COMPANY. CHANGE, BASED ON THE UNDERSTANDING THAT “YOUTH IS DIFFERENT” AND CAN MITIGATE CULPABILITY, IS BECOMING WIDESPREAD.*

As noted in Brief of Petitioner, less than a year after Joseph was charged, the legislature amended the auto-decline statute to provide a way, at least theoretically, for the court to have an opportunity to consider the attributes of youth. Brief of Petitioner at 27. In Joseph's case, there was no way to give the Court that discretion. While the state has insisted that Joseph be treated solely as an adult, widespread recognition and treatment of “youth as different” has occurred. Here are just some examples of the way community sentiment (including that in Pierce County) towards children has shifted:

- After *Miller*, *Graham*, and *Roper*, the Washington Supreme Court decided *State v. EJJ*, No. 88694 (June 25, 2015). Justice Gonzalez, in his concurrence, specifically recognized that juveniles are different and we should not “criminalize and pathologize typical juvenile behavior.” See Third Notice of Supplemental Authority, Slip. Op. at 4-5.

- The Washington State Institute of Public Policy (WSIPP) also published its report, specifically addressing the “Effectiveness of Declining Juvenile Court Jurisdiction of Youthful Offenders.” Notice of Supplemental Authority (“First Notice”). Prior to preparing this report, WSIPP “compared recidivism rates of youth who were automatically declined after 1994, with youth who would have been declined had the law existed prior to that time.” First Notice at 1. The “numerous tests” employed by WSIPP **all** demonstrated that auto-decline increased recidivism. They had higher rates of felony and violent felony recidivism. First Notice at 6. Similarly, **all** of the national research data showed that auto-decline increased recidivism, and to a statistically significant degree. First Notice at 9. The WSIPP also determined that auto-decline cost Washington taxpayers an average of **\$82,824 per declined offender**. First Notice at 11.¹⁵
- A year later, the Joint Legislative Task Force on Juvenile Sentencing Reform recommended:

Given the disproportionate impact of exclusive adult court jurisdiction and its ineffectiveness at reducing crime, exclusive adult jurisdiction should be eliminated. The court should hold a decline hearing in these circumstances and consider individualized criteria in determining whether to decline juvenile jurisdiction to the offender.

A complete copy of the Report is attached as Appendix B. The recommendation is on page 9.
- The Washington legislature passed laws allowing youth to seal many categories of juvenile records – sealing that is not available to adults. See Appendix C.

¹⁵ The state dismissed opinion poll data in its Response Brief because Washington’s recidivism data is not “publicly” reported and rendered its opinion that law makers do not rely on opinion poll data. State’s Response at 7. Whatever the merits of the state’s view of opinion poll data, it is clear that the WSIPP study is based on Washington’s actual recidivism data and was done at the request of the “Washington State Partnership Council on Juvenile Justice”, which serves an advisory role to the Governor. This is the type of data typically relied upon by the legislature.

- The MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice issued its brief entitled “Less Guilty by Reason of Adolescence”, concluded that there is “strong evidence” that juvenile culpability is different than that of adults, and noted, with approval, that “[l]egislatures in several states have been to reconsider the punitive laws enacted in recent decades.” Appendix D at 1, 4.
- Tacoma and Pierce County opened youth shelters, and created community programs for youth. Appendix E.
- The Federal Way School District initiated programs that work to keep children in school and the Seattle School District resolved to eliminate school suspensions as a punishment. Appendix F.
- The Seattle City Council resolved to eliminate the need for youth detention altogether. Appendix G.

B. THE STATE DOES NOT RESPOND TO JOSEPH’S SENTENCING REFORM ACT CLAIM.

In this case, there were two critical points at which the Court should have had the opportunity to consider whether Joseph’s youthfulness mitigated his culpability, such that he should not have been treated, legally, the same as an adult. The first, as discussed above, was at the time of decline. Thus, Joseph assigned error to the application of the auto-decline statute. The second was at the time of sentencing. Consequently, Joseph separately assigned error to the application of the Sentencing Reform Act (SRA), as it left no opportunity for the Court to sentence Joseph as anything other than adult.

The state responded to Joseph's auto-decline claim, but did not dispute or discuss Joseph's challenge to the application of the SRA. Yet with respect to the Joseph's SRA claim, *Miller* and *O'Dell* are both on point. The court must consider Joseph's youthfulness. As in *Miller* and *O'Dell*, this Court does not need to dictate the actual sentence. All that is required is that this Court ensure that Joseph is sentenced via a process in which the attributes of youth are taken into consideration.

C. JOSEPH HAS MET HIS BURDEN OF BRINGING FORTH COMPETENT, ADMISSIBLE EVIDENCE TO SHOW THAT STATUTORY PROTECTIONS (WHICH WERE NECESSARY TO ENSURE DUE PROCESS), WERE NOT FOLLOWED WHEN THE COURT IMPOSED LFOs.

The state says “[i]t is the defendant’s burden to bring before this Court competent, admissible evidence to establish the facts that entitle him to relief.” State’s Response at 9, citing *In re: Personal Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992).¹⁶ The state inevitably

¹⁶ In this portion of *Rice*, the Court took the

opportunity to explain more fully the showing petitioners must make to support a request for a reference hearing. As a threshold matter, the petitioner must state in his petition the facts underlying the claim of unlawful restraint and the evidence available to support the factual allegations. RAP 16.7(a)(2)(i). This does not mean that every set of allegations which is not meritless on its face entitles a petitioner to a reference hearing. Bald assertions and conclusory allegations will not support the holding of a hearing. *See In re Williams*, 111 Wash.2d 353, 364–65, 759 P.2d 436 (1988). Rather, with regard to the required factual statement, the petitioner must state with particularity facts which, if proven, would entitle him to relief.

In re Rice, 118 Wash. 2d 876, 885-86, 828 P.2d 1086, 1092 (1992)

interprets this burden as onerous – that Joseph bring before this court proof that he has already been released from custody, is indigent, cannot pay his legal financial obligations (LFOs) despite “an honest effort to support himself and pay his legal financial obligations through work,”¹⁷ and is facing punishment. *See* State’s Response at 9-11. The state suggests that otherwise “there can be no miscarriage of justice where the feared outcome has not happened.” State’s Response at 10. The state’s argument shows that it fundamentally misunderstands *Blazina*.

The “miscarriage of justice” in *Blazina* was not that the defendants were already released and facing punishment for inability to pay onerous legal financial obligations. Instead, there was a “miscarriage of justice” because LFOs were imposed without any record showing that the defendant’s “current or future ability to pay” had been considered by the court. *Blazina*, Appx. M to Brief of Petitioner at 10. The “miscarriage of justice” was the court’s failure to follow the mandate created by RCW 10.01.160(3):

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 ... 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

¹⁷ State’s Response at 9.

mandates that a trial judge consider the defendant's ability to pay and, here, the trial judges erred by failing to consider

Blazina, Appx M to Brief of Petitioner at 6. This “miscarriage of justice” is not merely a violation of statute, but a violation of part of the statutory requirements that are necessary to bring the statute in compliance with constitutional due process requirements.¹⁸

Further, as the Washington Supreme Court held, this “miscarriage of justice” perpetuated a LFO system so broken that there were national and local cries for reform, and “well-chronicled” problems including disproportionate harm to minorities and the poor, “impediments” to “reentry and rehabilitation,” “serious negative consequences on employment, on housing, and on finances,” and the tendency to increase recidivism. *Blazina*, Appx. M to Brief of Petitioner at 6-10.

Joseph met his burden. He showed that LFOs were imposed. He provided the entire record: all the transcripts and Clerk's Papers, including the orders imposing appellate costs. They show that Joseph was charged, he was indigent. He was also a mentally ill, unemployed, 16-year old

¹⁸ See *Utter v. State, Dep't of Soc. & Health Servs.*, 140 Wn. App. 293, 303-04, 165 P.3d 399, 404 (2007) (describing “the salient features of a constitutionally permissible costs and fees structure.”) The state may be right when it says that “[r]equiring the defendant to pay legal financial obligations after he is released may or may not impose a hardship on him ‘but not such a hardship that the constitution forbids it.’” State's Response at 9. But statutory law and the constitution **do** forbid the imposition of LFOs unless there is compliance with required procedures. Those procedures were not followed here.

foster child who did not have his GED. By the time of the first LFO orders, he had been auto-declined into the adult system, was unable to succeed at the SSOSA treatment he was required to undergo, was sentenced to serve 131.9 months in prison, and was required to thereafter register as a sex offender. Finally, at the time that appellate costs, the largest of the LFOs, were imposed, there was no hearing with Joseph present and he was not represented by defense counsel. See Appx. E at 2-3, G, H, and I of Brief of Petitioner. Nowhere in the record does the court make an individualized inquiry into Joseph's current or future ability to pay.

But the *Blazina* Court held:

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. ... It 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 sentencing hearings.

Blazina, Appx. M to Brief of Petitioner at 11, 12. In this case, there was not even boilerplate language stating that the court engaged in the required

inquiry. Joseph is not asking this court to rewrite or disregard the criteria for a personal restraint petition. Instead, Joseph has met his burden.

The state also argues that, instead of addressing this issue now, Joseph should be required to petition the sentencing court for remission of legal financial obligations under RCW 10.01.160(4). A similar argument was rejected in *Blazina* itself:

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. 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.”

Citations omitted. *Blazina*, Appx. M to Brief of Petitioner at 4, n.1.

In the face of a record showing that no individualized inquiry was made, the state asks the court to infer that the court made the requisite inquiries, because it had some relevant information at its disposal. State’s Response at 2, 10-11. The state argues that, because the court had some information about the defendant available to it, “[t]here is no basis for the claim that it did not factor in that knowledge when it revoked the defendant’s SSOSA sentence.” State’s Response at 11. But *Blazina* and the statute require that the record show that indigence was considered.

Another problem with the court’s failure to follow important statutory requirements, thereby creating a record showing what was or was

not considered, is that it is impossible to know whether the court engaged in any inquiry at all, much less an inquiry into accurate facts. The state's Response presents several examples of this phenomenon.

The state had access to the *Blazina* decision, but mischaracterizes the holding. The state had access to the complete record in this case – a record clearly showing that Joseph, as a foster-child, did not pay for his sexual deviance treatment because the law presumed he would not be able to afford it.¹⁹ But then the State got the facts wrong. It argued:

The court was aware of the fact that the defendant had to pay for sexual deviance treatment but still imposed minimal legal financial obligations as part of his sentence. It can hardly be said that the trial court did not make “an individualized inquiry.”

State's Response at 10-11. The state had access to all of the sentencing and LFO records from this case. Yet the state suggests that the court only imposed a “total of \$1,200 in legal financial obligations.” State's Response at 2. Again the state is wrong; the LFOs imposed were almost five times greater. As Joseph showed by proof included in the Brief of

¹⁹ See 11-14-08 RP at 20 (The defense informed the Court, without contradiction by the State: “...DOC, I think if you adopt this, would be responsible for payment of treatment per statute. I think the PSI makes reference to DSHS being responsible. But I think DSHS is going to be responsible for his housing because he is a ward of the State and he is still under the age of 18 and will be when released, I think the order should be clear that the Department of Corrections is to pay the cost of treatment, if the Court adopts this recommendation. ... I would say that DOC is going to be responsible for treatment to its completion.” The state and court agreed that “the state”, whether it was DOC or DSHS, would bear the entire costs of Joseph's Sex Offender Treatment, due to his indigence and youth. 11-14-08 RP at 21.)

Petitioner, the court ordered him to pay \$5,779.64 in LFOs. Brief of Petitioner at 45; CP 36; Appx. H to Brief of Petitioner. As the state's own brief demonstrates, access to accurate facts does not equate to actual or appropriate consideration of those facts. RCW 10.01.160(3) requires more. As this case demonstrates and the *Blazina* case held, it does so for important reasons.

If Washington courts truly wants to effect legal financial obligation change, they have more work to do. The court below did not do it right the first time. The statute, with its important procedural and substantive protections, was not followed. The state does not understand the statutory obligations or the pertinent facts. The LFOs should never have been imposed and were not lawfully done so in this case. The defendant should not be able to be left to try to find a way to get back in front of the trial court and raise the issue via a petition when that court erroneously put him in this position in the first place.

D. CONCLUSION.

The state quotes from *Furman v. Georgia*, which says that in a “democratic society legislatures, not courts, are constituted to respond to the will and consequently the moral values of the people.” State’s Response at 4, quoting *Furman v. Georgia*, 408 U.S. 238, 383, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972). Certainly, the state wants this Court to take

that to the extreme – finding that any change in the treatment of juveniles must originate with the legislature. But if that were the case, we would not have *Miller*, *Graham*, *Roper*, or *O'Dell*. When the legislatures have not acted to prevent the violation of constitutional rights, the Courts are there to step in. When state statutes are applied in a manner that violates the constitution as interpreted by the United States Supreme Court this Court can and does step in. When justice requires, this Court can and does step in.

Juvenile jurisdiction was declined in Joseph's case via a criminal process that deprived the court of any opportunity to consider Joseph's youthfulness. Without any consideration of whether Joseph's youthfulness made him generally less culpable than other adults, Joseph was subjected to adult courts, adult procedures, adult sentences, adult treatment, and, when he failed to "grow up" and "act like an adult", he was subject to the very adult penalty of 131.9 months in adult prison. This process violated the Eighth Amendment.

Moreover, as the court below made clear, it did not have the discretion to consider Joseph's youthfulness when it came to sentencing. Due to the provisions of the SRA applied in this case, the court was deprived of any opportunity to do so. The state does not argue otherwise

in its Response. As explained in Petitioner’s Brief, this application of the SRA violated the Eighth Amendment.

In his Brief of Petitioner, Joseph articulated different remedies for these constitutional violations. In its Response, the state did not address any of them. Instead, the state focused solely on arguing that Joseph had not satisfied the test for a legal error that he had not even raised.

Finally, the state defends the LFO issue, by mischaracterizing the *Blazina* decision, mischaracterizing the facts before the court below, and by asking this Court to assume that requisite findings were made – an assumption that *Blazina* specifically precludes. The complete record, provided by Joseph, demonstrates that LFOs were repeatedly imposed without the court considering Joseph’s current or future ability to pay. There was no discussion on the record, no written submissions or findings, not even a checked box or other evidence that any consideration was made. Joseph has met his burden of bringing forth competent, admissible evidence showing that statutory mandates – those that are designed to

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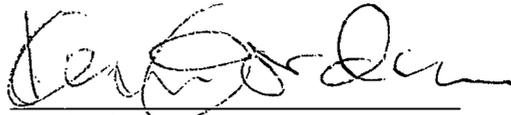
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bring the statute in compliance with due process – were not followed.

This Court should reverse for resentencing.

DATED this 28th day of September, 2015.

Respectfully submitted,
GORDON & SAUNDERS, PLLC

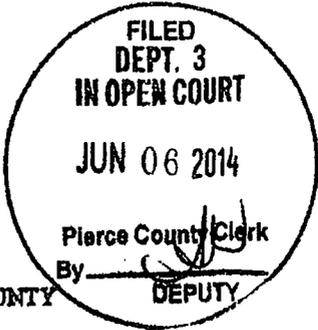
A handwritten signature in black ink, appearing to read "Kimberly N. Gordon". The signature is written in a cursive style with a horizontal line underneath it.

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: 87-1-01354-7

CERTIFIED COPY

vs

BARRY C. MASSEY,

Defendant.

WARRANT OF COMMITMENT

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

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).

X 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).

[] 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: June 6, 2014

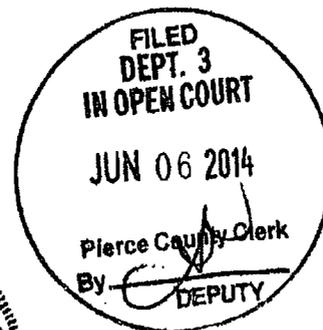
By direction of the Honorable

[Signature]
KEVIN STOCK
COUNTY CLERK
CLERK

By: [Signature]
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Date 06 2014 By [Signature] Deputy



STATE OF WASHINGTON

ss:

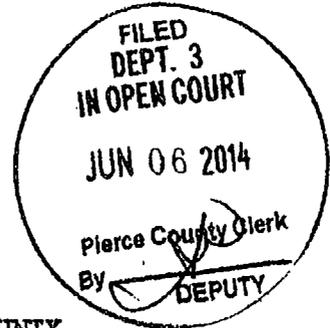
County of Pierce

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

SHS



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO. 87-1-01354-7

vs.

BARRY C. MASSEY

Defendant. 10.95.0001(4).

SID: 14102679
DOB: 08/25/1973

JUDGMENT AND SENTENCE (JS) setting minimum terms pursuant to SSSB 5064. Underlying convictions remain final pursuant to RCW 10.95.0001(4).
 Prison
 RCW 9.94A.7129.94A.507 Prison Confinement
 Jail One Year or Less
 First-Time Offender
 Special Sexual Offender Sentencing Alternative
 Special Drug Offender Sentencing Alternative
 Alternative to Confinement (ATC)
 Clerk's Action Required, para 4S (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
 Juvenile Decline Mandatory Discretionary

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present. This sentencing is held under SSSB 5064.

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 08/03/1988 by plea jury-verdict bench trial of:

| COUNT | CRIME | RCW | ENHANCEMENT TYPE* | DATE OF CRIME | INCIDENT NO. |
|-------|--|------------------------------------|-------------------|---------------|--------------|
| I | AGGRAVATED MURDER IN THE FIRST DEGREE (D18B) | 9A.32.030(1)(a) 10.95.020(7)(9) | N/A | 01/10/87 | 87-00030 |

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VE) Veh. Horn, 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(B). (If the crime is a drug offense, include the type of drug in the second column.)

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:

| COUNTY NO. | OFFENDER SCORE | SERIOUSNESS LEVEL | STANDARD RANGE (not including enhancements) | PLUS ENHANCEMENTS | TOTAL STANDARD RANGE (including enhancements) | MAXIMUM TERM |
|------------|----------------|----------------------------------|---|-------------------|---|--------------|
| 1 | 0 | XIV (in 1988) XVI (currently) | 25 YRS. TO LIFE | | 25 YRS. TO LIFE | LIFE |

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

within below the standard range for Court(s) _____.

above the standard range for Court(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 further 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 defendant'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):

Any restitution originally imposed has been paid in full.

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

All legal financial obligations originally imposed has been paid in full.

2.6 **FELONY FIREARM OFFENDER REGISTRATION.** The defendant committed a felony firearm offense as defined in RCW 9A.1.010.

The court considered the following factors:

the defendant's criminal history.

whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

JUDGMENT AND SENTENCE (JS)

(Felony) (1/2007) Page 2 of 10

evidence of the defendant's propensity for violence that would likely endanger persons.

other: _____

The court decided the defendant should should not register as a felony firearm offender.

III. JUDGMENT

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

3.2 The court **DISMISSES** Counts _____ The defendant is found **NOT GUILTY** of Counts _____

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/R/N \$ N/A Restitution to: _____

\$ N/A Restitution to: _____
(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ N/A Crime Victim assessment

DNA N/A DNA Database Fee

PUB \$ N/A Court-Appointed Attorney Fees and Defense Costs

FRC \$ N/A Criminal Filing Fee

FCM \$ N/A Fine

IFR \$ N/A Jury Fee

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ N/A Other Costs

for: _____

\$ N/A Other Costs

for: _____

\$ _____ **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 _____

[N/A] RESTITUTION. Order Attached

Restitution ordered above shall be paid jointly and severally with:

NAME of other defendant CAUSE NUMBER (Victim name) (Amount-\$)

RJN _____

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 3 of 10

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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 month commencing _____ 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.

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 **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. N/A because already done.

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).

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

4.4 **OTHER:** Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

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2 4.4a All property is hereby forfeited

Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

3
4 4.4b **BOND IS HEREBY EXONERATED**

5
6 4.5 **CONFINEMENT OVER ONE YEAR** The defendant is sentenced as follows:

(a) **CONFINEMENT**. Under ESSB 5064, Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC):

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8 Count 1 Minimum Term: 300 Months Maximum Term: LIFE

9 Count Minimum Term: _____ Months Maximum Term: _____

10 Count Minimum Term: _____ Months Maximum Term: _____

11 Actual number of months of total confinement ordered is: 300 to Life

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

13 The confinement time on Count(s) 1 contain(s) a mandatory minimum term of 25 years.

14 **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: _____

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17 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: _____

18
19 Confinement shall commence immediately unless otherwise set forth here: _____

20
21 (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. Credit for time served since January 10, 1986. _____

22
23 4.6 **COMMUNITY PLACEMENT** (pre 7/1/00 offenses) is ordered as follows:

24 Count _____ for _____ months;

25 Count _____ for _____ months;

26 Count _____ for _____ months;

27 **COMMUNITY CUSTODY** (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

The defendant shall be on community custody for: a period set by the ISRB.

28 Count(s) _____ 36 months for Serious Violent Offenses

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 5 of 10

1
2 Court(s) _____ 18 months for Violent Offenses
3 Court(s) _____ 12 months (for crimes against a person, drug offenses, or offenses
4 involving the unlawful possession of a firearm by a
5 street gang member or associate)

6 Note: combined term of confinement and community custody for any particular offense cannot exceed the
7 statutory maximum. RCW 9.94A.701.

8 (B) While on community placement or community custody, the defendant shall: (1) report to and be
9 available for contact with the assigned community corrections officer as directed; (2) work at DOC-
10 approved education, employment and/or community restitution (service); (3) notify DOC of any change in
11 defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully
12 issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not
13 own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform
14 affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any
15 additional conditions imposed by DOC under RCW 9.94A.704 and .705 and (10) for sex offenses, submit
16 to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements
17 are subject to the prior approval of DOC while in community placement or community custody.
18 Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the
19 statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may
20 result in additional confinement.

21 The court orders that during the period of supervision the defendant shall:

- 22 consume no alcohol.
23 have no contact with: _____
24 remain within outside of a specified geographical boundary, to wit: _____

25 not serve in any paid or volunteer capacity where he or she has control or supervision of minors under
26 13 years of age

27 participate in the following crime-related treatment or counseling services: _____

28 undergo an evaluation for treatment for domestic violence substance abuse
 mental health anger management and fully comply with all recommended treatment.

comply with the following crime-related prohibitions: _____

Other conditions: _____

For sentences imposed under RCW 9.94A.702, 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.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the
defendant must notify DOC and the defendant must release treatment information to DOC for the duration
of incarceration and supervision. RCW 9.94A.562.

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

1
2 sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on
3 community custody for any remaining time of total confinement, subject to the conditions below. Violation
4 of the conditions of community custody may result in a return to total confinement for the balance of the
5 defendant's remaining time of total confinement. The conditions of community custody are stated above in
6 Section 4.6.

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- 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: _____
- _____
- _____
- _____

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-WITHOLDING 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): _____
- 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.

N/A

5.8 [] The court finds that Count _____ 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: _____

DONE in Open Court and in the presence of the defendant this date: _____

JUDGE Th Larkin
Print name THOMAS P. LARKIN

Janel Ausceres
Deputy Prosecuting Attorney
Print name: Janel Ausceres
WSB # 32719

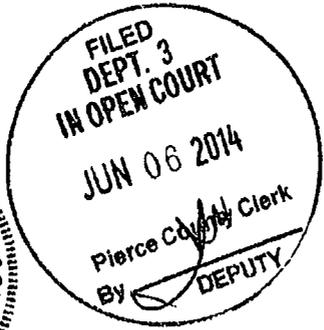
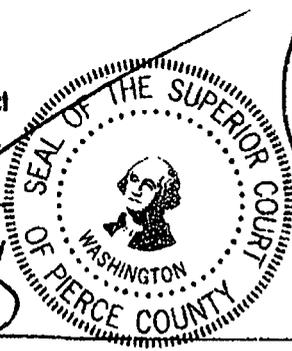
David Zuckerman
Attorney for Defendant
Print name: David Zuckerman
WSB # 18221

Barry Massey
Defendant
Print name: BARRY MASSEY

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.84.650.

Defendant's signature: Barry Massey

STATE OF WASHINGTON, 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 JUN 06 2014
By Kevin Stock Clerk
Deputy



JUDGMENT AND SENTENCE (S)
(Felony) (7/2007) Page 8 of 10

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 87-1-01354-7

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

JENNIFER McLEOD

Court Reporter

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

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: _____

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: _____

(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: _____

IDENTIFICATION OF DEFENDANT

SID No. 14102879
(If no SID take fingerprint card for State Patrol)

Date of Birth 06/25/1973

FBI No. S999371A.2

Local ID No. UNKNOWN

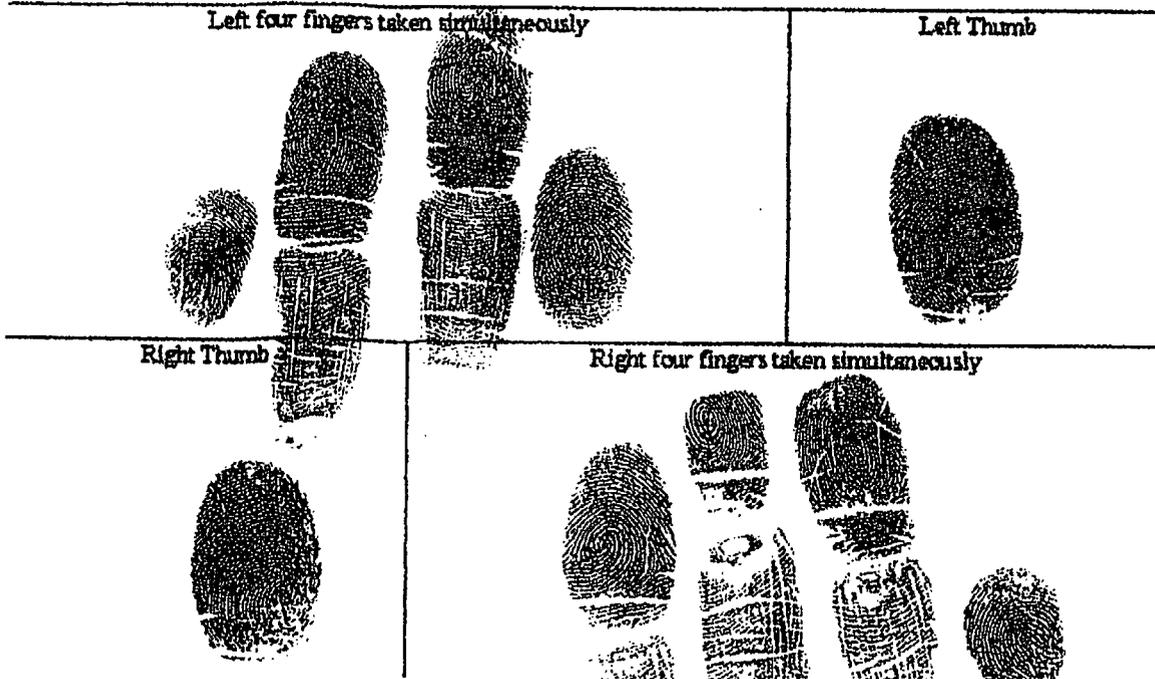
PCN No. UNKNOWN

Other

Alias name, SSN, DOB: BARRY BONDS

| | | | | | | | | | |
|--------------------------|---------------------------|-------------------------------------|----------------------------|-------------------------------------|------------------|--------------------------|----------|-------------------------------------|------|
| Race: | | | | | Ethnicity: | | Sex: | | |
| <input type="checkbox"/> | Asian/Pacific Islander | <input checked="" type="checkbox"/> | Black/African- American | <input type="checkbox"/> | Caucasian | <input type="checkbox"/> | Hispanic | <input checked="" type="checkbox"/> | Male |
| <input type="checkbox"/> | Native American | <input type="checkbox"/> | Other: : | <input checked="" type="checkbox"/> | Non- Hispanic | <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, John [Signature] Dated: 6/6/14

DEFENDANT'S SIGNATURE: [Signature]

DEFENDANT'S ADDRESS: _____

APPENDIX B

Joint Legislative Task Force on Juvenile Sentencing Reform

Committee Report and Recommendations

**December 2014
Report to the Legislature**

Introduction

Background

In 2014, the Legislature passed 2SSB 5064, which modified state laws on juvenile sentencing and created the Joint Legislative Task Force on Juvenile Sentencing Reform (“Task Force”).

2SSB 5064 was a response to the U.S. Supreme Court’s decision in *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed. 2d 407, (2012), in which the Court held that mandatory sentences of life without the possibility of parole are unconstitutional for juvenile offenders as being in violation of the Eighth Amendment prohibition against cruel and unusual punishment. The *Miller* opinion was the third in a series of three major pronouncements addressing the issue of proportionality of criminal punishment for youthful offenders. The first case was *Roper v. Simmons*, 543 U.S. 551, 560, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) in which the Court held that imposition of the death penalty against a person who committed the crime while under the age of 18 constituted cruel and unusual punishment. The second case was *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed. 2d 825 (2010) in which the Court extended *Roper* to prohibit sentences of life without possibility of parole for non-homicides committed by juveniles. Finally, came *Miller*, which as stated above, extended *Roper* and *Graham* to bar a sentence of life without parole for even homicides committed by youth. In all three cases, the United States Supreme Court, relying on substantial and compelling brain science, as well as “emerging standards of decency” concluded that children who commit crimes, even horrific crimes, must be sentenced in a manner that recognizes their youth, culpability and capacity to change.

2SSB 5064 responded to this line of cases by creating a new sentencing scheme for juvenile offenders convicted of aggravated murder and authorized the possibility of parole for juvenile offenders with sentences longer than twenty years. The bill also created the Task Force to examine further possible changes to juvenile sentencing laws.

The Task Force was required to undertake a thorough review of juvenile sentencing as it relates to the intersection of the adult and juvenile justice systems and make recommendations for reform that promote improved outcomes for youth, public safety, and taxpayer resources. The review must have included, but is not limited to:

1. The process and circumstances for transferring a juvenile to adult jurisdiction, including discretionary and mandatory decline hearings and automatic transfer to adult jurisdiction;
2. Sentencing standards, term lengths, sentencing enhancements, and stacking provisions that apply once a juvenile is transferred to adult jurisdiction; and
3. The appropriate custody, treatment, and resources for declined youth who will complete their term of confinement prior to reaching age 21.

The bill mandated that the Task Force submit its findings and recommendations to the Governor and the appropriate committees of the Legislature by December 1, 2014. This report is intended to fulfill this requirement. The Task Force expires on June 1, 2015.

Task Force Members and Represented Organizations

The Task Force is comprised of the following members representing the following entities or organizations:

| Member | Representing |
|---|--|
| Senator Jeannie Darnelle (Co-Chair) | Washington State Senate |
| Representative Brad Klippert (Co-Chair) | Washington House of Representatives |
| Senator Mike Padden | Washington State Senate |
| Representative Roger Goodman | Washington House of Representatives |
| Sandy Mullins | Office of Financial Management |
| John Clayton | Juvenile Justice & Rehabilitation Administration |
| Bernie Warner | Department of Corrections |
| The Honorable Helen Halpert | Superior Court Judges Association |
| Dan Satterberg | Washington Association of Prosecuting Attorneys |
| Travis Stearns | Washington Defender Association/WACDL |
| Cody Benson* | Washington Coalition of Crime Victim Advocates |
| Pete Peterson | Juvenile Court Administrators |
| Mitch Barker | Washington Association of Sheriffs & Police Chiefs |
| Rob Johanson* | Law Enforcement |
| The Honorable Janice Ellis | Sentencing Guidelines Commission |

The Task Force elected Senator Jeannie Darnelle and Representative Brad Klippert as co-chairs. Administrative support and other staffing was provided by Senate Committee Services and the House Office of Program Research.

*Cody Benson and Rob Johanson were appointed to the Task Force, but did not participate

Task Force Activities

Committee Meetings

The Task Force convened five meetings over the course of the 2014 interim, occurring on May 27, July 15, September 11, October 21, and November 17. All meetings were open to the public and included time allotted for public comments.

The Task Force received reports and testimony from various state entities and organizations on current issues, proposed reforms, and alternative sentencing models, including, but not limited to:

- Data and analysis pertaining to juveniles sentenced as adults in Washington from the Washington Office of Financial Management;
- Data and analysis pertaining to the effectiveness of declining juvenile court jurisdiction of youth from the Washington Institute of Public Policy;
- Report on experiences and reforms related to exclusive adult jurisdiction and decline hearings from representatives of the Washington Association of Prosecuting Attorneys and Washington Defender Association;
- Analysis of the out-of-home placement history of juveniles sentenced as adults from the Department of Social and Health Services;
- Current issues and proposed reforms on the custody and treatment of youth transferred to adult jurisdiction but who complete sentencing prior to turning age twenty-one from the Juvenile Justice & Rehabilitation Administration (JJ&RA) and Department of Corrections (DOC); and
- Staff research and analysis on Washington's current jurisdiction, sentencing, and custody laws, other state models, and proposed reforms.

The Task Force also collected written testimony and research from its own membership and outside organizations. To facilitate productivity, the Task Force surveyed its own membership with respect to specific interests and policy positions. Eight of the Task Force's fifteen members responded to the survey, and the Task Force used the responses to devise meeting agendas and facilitate roundtable discussions among the membership.

Task Force members and stakeholders were encouraged to submit policy options for consideration by the group. The Washington Defender Association/Washington Association of Criminal Defense Lawyers and Dr. Eric Trupin with the University of Washington submitted policy options for consideration in addition to policy options generated as a result of member discussion.

I. Transfer of Youth to Adult Courts

Current Law

In Washington, juvenile courts are a division of the state's superior court system. Juvenile courts have jurisdiction over persons under the age of 18 who are alleged to have committed a crime. However, there are several exceptions, and state law requires youth to be tried in adult courts, either superior courts or courts of limited jurisdiction, in certain circumstances. There are generally five scenarios where persons under the age of 18 are tried in adult courts:

1. Discretionary Decline Hearing Process (see RCW 13.40.110(1)). The juvenile court has the discretion to hold a hearing on whether to "decline" juvenile court jurisdiction on its own motion or when a party files a motion requesting the court transfer the juvenile to adult criminal court.
2. Mandatory Decline Hearing Process (see RCW 13.40.110(2)). The juvenile court is required to hold a decline hearing in the following circumstances, unless waived by the court and all parties:
 - The juvenile is 16 or 17 and is alleged to have committed a class A felony or attempt, solicitation, or conspiracy to commit a class A felony;
 - The juvenile is 17 and is alleged to have committed assault in the 2nd degree, extortion in the 1st degree, indecent liberties, child molestation in the 2nd degree, kidnapping in the 2nd degree, or robbery in the 2nd degree; or
 - The information alleges an escape and the juvenile is serving a minimum juvenile sentence to age 21.
3. Exclusive Adult Court Jurisdiction (sometimes erroneously referred to as "Automatic Transfer" or "Automatic Decline") (see RCW 13.04.030). The adult criminal court will have exclusive jurisdiction over a juvenile when the juvenile is 16 or 17 on the date of the alleged offense and the alleged offense is:
 - A serious violent offense;
 - A violent offense and the juvenile has a criminal history consisting of a prior serious violent offense; two or more prior violent offenses; or three or more of any combination of a class A felony, class B felony, vehicular assault, manslaughter in the 2nd degree;
 - Robbery in the 1st degree, rape of a child in the 1st degree, or drive-by shooting;
 - Burglary in the 1st degree and the juvenile has a criminal history of one or more prior felony or misdemeanor offenses; or
 - Any violent offense and the juvenile is alleged to have been armed with a firearm;

If the juvenile is found not guilty of the charge for which he or she was transferred or is convicted of a lesser included offense, the juvenile court will have jurisdiction of the disposition of the remaining charges in the case.

The prosecutor and the respondent may agree to juvenile court jurisdiction and waive application of exclusive adult criminal jurisdiction and remove the proceeding back to juvenile court with the court's approval.

4. Once an Adult, Always an Adult (see RCW 13.40.020). Once a juvenile is declined to adult court jurisdiction, he or she will be subject to exclusive adult jurisdiction for all future actions. However, if the juvenile is found not guilty or acquitted of the crime for which he or she was transferred, this provision will not apply.
5. Certain Crimes and Infractions in Courts of Limited Jurisdiction (see RCW 3.04.030(1)(e)(iii)). If a juvenile is 16 or 17 and he or she is charged with a traffic, fish, boating, or game offense, or an infraction, then the case is referred to a court of limited jurisdiction (district or municipal court). For further discussion of this topic, refer to Section IV. below.

Task Force Discussion and Policy Options

The recent U.S. Supreme Court case and other societal changes have caused some stakeholders to criticize certain aspects of policies that transfer youth to adult courts. Further, a recent report by the Washington State Institute of Public Policy (WSIPP) entitled, "The Effectiveness of Declining Juvenile Court Jurisdiction of Youth," found that recidivism is higher for youth who are sentenced as adults under the exclusive adult jurisdiction scheme than for those tried in juvenile courts for similar crimes prior to the policy going into effect.

The Task Force reviewed the WSIPP study and heard testimony from various stakeholders with respect to youth transferred to adult courts. The concerns primarily focused on exclusive adult jurisdiction, which differs from the discretionary or mandatory decline process where the court has the ability to conduct an individualized assessment of each youth and case. Opponents of exclusive adult jurisdiction emphasized the importance of evaluating the circumstances of each case and allowing the court to make the decision. Alternatively, proponents of the policy stated that prosecutors conduct a comparable individualized assessment when determining how to charge a case, and the policy of exclusive adult jurisdiction is appropriate because it is limited to the most violent crimes. Some members also expressed concern that taking away exclusive jurisdiction and requiring a hearing in these scenarios would increase costs to the counties.

In addition to discussing the potential elimination of exclusive adult jurisdiction, the Task Force reviewed a number of additional policy options:

1. Eliminate robbery in the first degree from the list of offenses requiring exclusive adult jurisdiction without a decline hearing. In discussing whether exclusive jurisdiction should be eliminated, some members suggested that a lesser approach could be taken by removing the crime of robbery from the list of offenses requiring that juvenile jurisdiction be declined. Data was gathered showing that for the years 2007 through 2011, over 50% of exclusive jurisdiction cases were in adult court as a result of a robbery charge.
2. Restrict discretionary decline hearings to juveniles age (fourteen) and older. Washington is one of two states that allow for the discretionary transfer of a youth to adult court at any age. 20 states restrict discretionary transfer to juveniles age fourteen or older.
3. Adopt individualized criteria to be considered by the court in determining whether to decline jurisdiction consistent with *Miller v. Alabama* (expounding on the Kent factors). The court uses the "Kent factors" from *Kent v. United States* in determining whether it is

appropriate to decline jurisdiction for a youth. Some members believe it would be appropriate to adopt criteria in statute, incorporating more of the individualized factors from *Miller v. Alabama*, such as:

- a. The youth's sophistication or maturity
- b. Relation between the child's behavior and physical or mental problems;
- c. Amenability to treatment;
- d. Previous delinquent history;
- e. Success of previous rehabilitation attempts; and
- f. Circumstances and gravity of the alleged offense, and the interest of public safety.

Other members believe that opportunities already exist for defense counsel to present these factors to the court and therefore codification is not needed.

4. Eliminate mandatory decline. Statutory language specifies that unless waived by the court, the parties, and their counsel, a decline hearing must be held when the youth is 16 or 17 years old and is alleged to have committed certain crimes. Practice appears to vary across the state, but members reported that at least one jurisdiction will hold a decline hearing in every situation where the youth meets age and crime criteria. Some members argued that the statute should be further clarified.
5. Allow an offender who is subject to exclusive adult jurisdiction to petition to be returned to juvenile court (reverse waiver). This option was offered as a way to ensure the court looks at the individual circumstances of an offender in determining whether adult court is the appropriate forum. Some proponents argue this could be used in conjunction with a blended sentence, suspending the adult sentence pending completion of juvenile sanctions. Some members worried about the cost of conducting a hearing for every or nearly every exclusive jurisdiction case. Still other members worried about the consistency of leaving the discretion to defense counsel as to whether to petition for reverse waiver and the potential for claims of insufficient counsel.
6. Eliminate "once an adult, always an adult." This provision has been part of the statute since its inception in 1977. In 1994, the legislature adopted exclusive adult jurisdiction for certain offenders. The law was amended at that time to clarify that the "once an adult, always an adult" rule only applies in those circumstances where a decline hearing has been held. 34 other states incorporate a similar rule into their transfer provisions.

Washington State Partnership Council on Juvenile Justice

The WA State Partnership Council on Juvenile Justice submitted a Bulletin on juveniles subject to adult court jurisdiction to the Task Force for consideration. The Bulletin contained three principal conclusions:

- Automatic Decline¹ Law Results in Higher Recidivism for Youth: Transferring youth under age 18 pursuant to the automatic decline law in our state is not effective in

¹ Automatic decline is the same as exclusive adult jurisdiction.

decreasing future criminal offending, but has the counter effect of increasing reoffending. The additional cost to taxpayers was estimated to be \$82,824 per youth due to the increase in length of stay and recidivism. See Drake, E. (2013) *The effectiveness of declining juvenile court jurisdiction of youthful offenders* (Doc. No. 13-12-1902). Olympia, Washington State Institute for Public Policy.

- **Significant Impact on Racial and Ethnic Disparities:** The automatic decline law (exclusive original criminal court jurisdiction) has a significant impact on minority youth as more youth of color, per capita, are declined for adult prosecution in our state. Youth of color comprise the majority of youth who are transferred to the adult court system, both for automatic declines and judicially controlled transfers.
- **The Lack of a Minimum Age Restriction in the Statute for Declination Results in Children of Any Age Being Prosecuted as Adults:** Washington State is one of only three states that does not have in effect an age restriction and has broad eligibility (for any criminal offense) for discretionary waivers from juvenile court to adult court. Not having a set age restriction for judicially controlled transfers to adult criminal court per RCW 13.40.110 has allowed youth as young as 11 years old to be found by a Juvenile Court to be capable of committing a criminal offense, and be transferred and charged in adult court (even though the court must hold a capacity hearing to overcome the presumption of incapacity for youth ages 8 to 11).

Recommendations²

- Discretionary decline hearings should be restricted to juveniles age fourteen and older.
- Given the disproportionate impact of exclusive adult jurisdiction and its ineffectiveness in reducing crime, exclusive adult jurisdiction should be eliminated. The court should hold a decline hearing in these circumstances and consider individualized criteria in determining whether to decline juvenile jurisdiction to the offender.

II. Custody and Treatment of Youth Sentenced as Adults

Current law places time and location restrictions for holding juveniles in adult facilities. A juvenile offender who is convicted in adult criminal court under the age of 18 and who is committed to a term of confinement must be housed in a jail cell that does not contain adult offenders until the offender reaches the age of 18. If the offender is committed to the custody of DOC rather than a local jail, he or she must be placed in a separate housing unit until the offender reaches the age of 18. This is often referred to as “sight and sound separation.”

² Recommendations reflect the majority vote of the committee but not the consensus of all committee members. For the voting record, please see the Summary of Task Force Recommendations at the end of the report.

Pre-trial Custody of Juveniles

When an offender under the age of 18 has been transferred to adult court jurisdiction, state law specifically provides the juvenile may be detained in a juvenile detention facility pending sentencing and is not required to be sight and sound separated from non-remanded juveniles. However, the law is silent on the question of separation during the pre-trial period if the offender is detained in an adult jail.

Some Task Force members expressed concern that counties are holding juveniles in the local jail pre-trial, sometimes for an extended period of time. Practice appears to vary widely by county. Data provided by the Washington Association of Sheriffs and Police Chiefs showed a snapshot of 25 juveniles held in county jails across 9 counties, with 6 of those counties housing 1-2 juveniles. While most Task Force members agreed it is generally not a good practice to house juveniles in jail pre-trial, members believed that counties might have circumstances that make this unavoidable. Members were reluctant to make further recommendations on this issue given that county jail representatives did not sit on the Task Force.

Youthful Offenders

Juvenile offenders committed to the custody of DOC become part of the Youthful Offender Program. DOC will conduct an assessment to determine whether the needs and correctional goals of the youthful offender could better be met by the housing environment and programs provided by a juvenile correctional institution.

Under current practice, youthful offenders less than 18 years of age are housed at JJ&RA. If the youth is expected to complete the term of confinement before the age of 21, that youth remains at JJ&RA. If the youth is expected to serve a term of confinement beyond the age of 21, the case is reviewed when the youth is age 18 to determine if the youth is able to serve the remaining time at DOC.

DOC and JJ&RA recently identified issues with regard to the custody status of those youthful offenders who were expected to complete their term of confinement prior to age 21. DOC and JJ&RA submitted a proposal to the Task Force to transfer custody of these offenders to JJ&RA so that JJ&RA can effectively transition the offenders back to the community in the same manner as other juvenile offenders.

JJ&RA currently houses 45 youthful offenders, which make up 8% of the total JJ&RA population. Of the 45 youth, 35 are between the ages of 18 and 21 and 10 youth are between the ages of 16 and 18. 17 youth will complete their sentence before the age of 21; 15 youth will complete their sentence before the age of 25.

Recommendations

- The proposal submitted by JJ&RA and DOC regarding the custody of youthful offenders should be adopted. Specifically, the proposal provides that:
 - a. Juvenile offenders convicted in adult court would first be sent to DOC for calculation of an early release date and then sent to JJ&RA without further evaluation;

- b. For offenders who will complete confinement prior to age 21, jurisdiction will transfer to JJ&RA for the term of confinement. DOC will be responsible for approving the offender release plan and supervision;
- c. For offenders who cannot complete confinement prior to age 21, DOC will maintain jurisdiction during the term of confinement; and
- d. In either scenario, some youthful offenders will be transferred to a DOC facility prior to age 21 if the youth is a danger to staff or other offenders.

III. Sentencing Policies Applicable to Youth in Juvenile and Adult Courts

Background

Youth sentenced as adults are subject to different sentencing laws than those that are sentenced in juvenile courts. Juvenile courts sentence persons according to the provisions of Chapter 13.40 RCW, the Juvenile Justice Act, whereas adult courts utilize Chapter 9.94a, the Sentencing Reform Act.

Both adult felony dispositions and juvenile court dispositions are structured by statutorily defined sentencing guidelines, but the juvenile sentencing guidelines differ in significant ways. For example:

- Juveniles sentenced to more than 30 days of confinement are sentenced to a range of confinement, with the actual release date set within the range at the discretion of the state JJ&RA; adults are sentenced to a specific sentence within a specified standard range, but may be released early as a result of "earned release time;"
- The maximum age of extended juvenile court jurisdiction is age 21, which limits the term of confinement and supervision that can be given;
- With the exception of supervision time across dispositions, terms of juvenile dispositions are served consecutively; adult sentences are typically run concurrently;

These differences result in circumstances where a youth sentenced in adult court could receive a very different sentence (with the possibility of a longer period of confinement) than he or she would have received if sentenced in juvenile court.

In adult court, this can further be exacerbated by the imposition of mandatory sentence enhancements.³ The Task Force heard a presentation from the Pierce County Prosecutor regarding Zion Houston-Sconiers, a 17-year old convicted on several counts of robbery, assault, and unlawful possession of a firearm for criminal activities that occurred on Halloween night. Mr. Houston-Sconiers received a sentence of 31 years due to the imposition of the mandatory firearm enhancement. The sentence would have been longer, but the court entered an exceptional downward sentence of 0 years on the underlying charges.

³ Although youth who receive dispositions in juvenile court under the Juvenile Justice Act are also subject to some minimum terms, the length of the mandatory minimum terms are far shorter. See e.g. RCW 13.40.193 (Firearm Provisions); RCW 13.40.308 (Auto theft crimes)

The Task Force discussed various approaches to address intermediate responses to juveniles where the juvenile system may be too lenient but adult criminal sanctions may be too harsh. Some Task Force members believe that 2SSB 5064, passed in the 2014 legislative session, already provides this intermediate response. 2SSB 5064 allows an offender convicted of crimes committed prior to turning age 18 to petition for release after serving 20 years.

Policy Options

Policy options discussed by the Task Force were as follows:

- **Blended Sentencing**. At least 32 other states employ a blended sentencing model. Blended sentencing can take one of two forms, either by giving the juvenile court the authority to impose adult criminal sanctions or by giving the adult criminal court the authority to impose juvenile sanctions. Many times, the court will suspend adult criminal sanctions contingent on the offender successfully completing the terms of a juvenile sentence.
- **Expanded jurisdiction**. The Task Force discussed various options for expanding the jurisdiction of the juvenile court by adjusting the age of the juvenile over which the court has jurisdiction. The Task Force considered options such as:
 - a. Extending juvenile court jurisdiction to all crimes committed by a juvenile before age 18, but filed prior to the juvenile turning age 21;
 - b. Extending the age of original jurisdiction to include offenders who commit a crime at the age of 18 or 19;
 - c. Extending the maximum age of juvenile court jurisdiction to something beyond age 21.
- **Judicial Discretion**. The Task Force discussed various mechanisms to give the court additional discretion when imposing sentences that may result in an overly excessive sentence. Options considered included:
 - a. Allowing the Superior Court to use the age of an offender as a mitigating factor;
 - b. Allowing Superior courts to determine when to impose consecutive sentencing and enhancements; eliminate mandatory sentences for youth; and
 - c. Giving the court the discretion to reduce an offender's sentence when sentencing enhancements result in a clearly excessive sentence.

Recommendations

- The court should have the discretion to impose an exceptional sentence below the standard range based on a consideration of the youth's age, sophistication, and role in the crime when the offender is under adult court jurisdiction for a crime committed as a minor.
- When sentencing enhancements apply to an offender in adult court for a crime committed as a minor, the court should have the discretion to determine when to impose consecutive enhancements (vs. concurrent).
- When sentencing enhancements apply to an offender in adult court for a crime committed as a minor, the court should have the discretion to reduce the sentence when the sentencing enhancements result in a clearly excessive sentence.

IV. Juveniles in Courts of Limited Jurisdiction

Under Washington law, certain juvenile cases are referred to courts of limited jurisdiction rather than superior court pursuant to RCW 13.04.030(1)(e)(iii). If a juvenile is 16 or 17 and he or she is charged with a traffic, fish, boating, or game offense, or an infraction, then the case is referred to a court of limited jurisdiction. In such circumstances, the case is handled according to the same procedures applicable to adults.

There is an exception if the offense arises out of the same event or incident as another offense where the juvenile court has jurisdiction (for example, a misdemeanor traffic offense and a felony are charged in the same case). In such cases, the juvenile court adjudicates both matters.

- Courts of Limited Jurisdiction. Courts of limited jurisdiction include district and municipal courts. District courts are county courts and serve defined territories, both incorporated and unincorporated, within the counties. Municipal courts are those created by cities and towns. Except for certain civil cases heard in district courts, district and municipal courts only have jurisdiction over gross misdemeanors, misdemeanors and infractions.
- Traffic Offenses. Some traffic offenses are misdemeanors and gross misdemeanors under Title 46 RCW, "Motor Vehicles." This includes, for example:
 - Driving While Under the Influence (Gross Misdemeanor Only) (RCW 46.61.502)
 - Driver Under 21 While Consuming Alcohol or Marijuana (RCW 46.61.503)
 - Reckless Driving (RCW 46.61.500)
 - Negligent Driving (RCW 46.61.5249)
 - Driving While License Suspended or Revoked (RCW 46.20.338)

- **Fishing and Wildlife Offenses.** Fishing and wildlife offenses are misdemeanors and gross misdemeanors under Title 77 RCW, "Fish and Wildlife." This includes, for example:
 - Unlawful Taking of Protected Fish or Wildlife (RCW 77.15.130)
 - Unlawful Use of Poison or Explosives (RCW 77.15.150)
 - Unlawful Trapping (RCW 77.15.190)
 - Unlawful Transportation of Fish or Wildlife (RCW 77.15.290)
 - Engaging in Commercial Wildlife Activity without a License (RCW 77.15.600)

- **Boating Offenses.** Boating offenses generally include misdemeanors and gross misdemeanors under Chapter 79A.60, "Regulation of Recreational Vessels." This includes, for example:
 - Failure to Stop for Law Enforcement Officer (RCW 79A.60.080)
 - Operation of a Vessel in a Reckless Manner (RCW 79A.60.040)
 - Operation of a Vessel Under the Influence of Intoxicating Liquor, Marijuana, Or Any Drug (RCW 79A.60.040)

- **Infractions.** Traffic infractions are fairly common (including most violations of the rules of the road, like speeding). However, several violations of state law are considered infractions throughout the code.

According to data provided by the Administrative Office of the Courts, in 2013 there were 30,320 juvenile cases filed in courts of limited jurisdiction. 3,253 of those cases were criminal offenses, and 26,797 of those cases were infractions. To provide some context to those figures, there were 20,882 juvenile offender cases filed in juvenile court in 2013. Some of the most filed offenses in courts of limited jurisdiction for 16 and 17 year olds include driving without a license, reckless driving, driving under the influence, and driving while license suspended.

Task Force Discussion

- The Task Force considered requiring the Department of Licensing to comply with orders sealing juvenile records. Brady Horenstein from the Department of Licensing responded to questions from Task Force members about the process of sealing records within the Department. The Task Force chose not to make any recommendation in this area.

V. Juvenile Parole

JJ&RA provides a system of post-release parole services. The length of parole supervision is determined by the youth's assessed risk to re-offend and the youth's offense. The lengths of parole are:

- 20 weeks for Auto Theft Parole
- 6 months for high risk youth assigned in Intensive Parole
- 24 to 36 months for sex offender parole

Functional Family Parole (FFP) is the model for JJ&RA parole services. Based on Functional Family Therapy, FFP is a family- focused therapeutic intervention to improve communication, build hope, and engage families in understanding, supporting, and reinforcing positive change made by youth as a result of services received in JJ&RA residential facilities. A 2009 study by the University of Indiana showed a 15% reduction in felony recidivism among youth who received FFP services from an experienced parole counselor proficient in the FFP model service requirements.

Budget reductions in 2009 required major changes to agency policy and programs, including critical aftercare provided to youth leaving JJ&RA residential facilities upon their reentry to the community. Youth served in JJ&RA are about 5-8% of all youth involved in juvenile justice in the state who have the most serious offenses and complex treatment needs. Prior to 2010, all youth leaving JJ&RA received parole aftercare to support their reentry and address these needs. Without this critical support, JJ&RA found that critical reentry outcomes are negatively impacted by:

- Higher re-arrest rates: Youth released without parole services were 48% more likely to be re-arrested during the nine months following release; and
- Lower Employment Rates: Youth released without parole services were 55% less likely to be employed, and if they were, they made significantly less money than youth with parole aftercare.

Recommendation:

- The legislature should budget an additional \$2.4 million to provide parole aftercare services for all youth exiting JJ&RA, taking into account the savings associated with this investment.

Summary of Task Force Recommendations

Nine voting members were present and voted on the final recommendations as follows: John Clayton, Senator Jeannie Darneille, Judge Janice Ellis, Judge Helen Halpert, Christie Hedman (WDAWACDL), Representative Brad Klippert, Pete Peterson, Dan Satterberg, and Amy Seidlitz (DOC).

- Discretionary decline hearings should be restricted to juveniles age fourteen and older. (1 abstaining – J. Ellis; 2 opposed – Rep. Klippert; D. Satterberg)
- Given the disproportionate impact of exclusive adult jurisdiction and its ineffectiveness in reducing crime, exclusive adult jurisdiction should be eliminated. The court should hold a decline hearing in these circumstances and consider individualized criteria in determining whether to decline juvenile jurisdiction to the offender. (1 abstaining – J. Ellis; 3 opposed – Rep. Klippert; D. Satterberg; A. Seidlitz)

- The proposal submitted by JJ&RA and DOC regarding the custody of youthful offenders should be adopted. Specifically, the proposal provides that:
 - a. Juvenile offenders convicted in adult court would first be sent to DOC for calculation of an early release date and then sent to JJ&RA without further evaluation;
 - b. For offenders who will complete confinement prior to age 21, jurisdiction will transfer to JJ&RA for the term of confinement. DOC will be responsible for approving the offender release plan and supervision;
 - c. For offenders who cannot complete confinement prior to age 21, DOC will maintain jurisdiction during the term of confinement; and
 - d. In either scenario, some youthful offenders will be transferred to a DOC facility prior to age 21 if the youth is a danger to staff or other offenders.
(2 opposed – Rep. Klippert; D. Satterberg)

- The court should have the discretion to impose an exceptional sentence below the standard range based on a consideration of the youth’s age, sophistication, and role in the crime when the offender is under adult court jurisdiction for a crime committed as a minor. (1 opposed – D. Satterberg)

- When sentencing enhancements apply to an offender in adult court for a crime committed as a minor, the court should have the discretion to determine when to impose consecutive enhancements (vs. concurrent). (1 opposed – J. Ellis)

- When sentencing enhancements apply to an offender in adult court for a crime committed as a minor, the court should have the discretion to reduce the sentence when the sentencing enhancements result in a clearly excessive sentence. (unanimous)

- The legislature should budget an additional \$2.4 million to provide parole aftercare services for all youth exiting JJ&RA, taking into account the savings associated with this investment. (unanimous)

APPENDIX C

Juvenile Justice Information Exchange | (<http://jjie.org/washington-state-passes-law-sealing-juvenile-records/>)

[Largo Project from the Investigative News Network](#) > [Juvenile Justice Information Exchange](#) > [News](#) >

Washington State Passes Law Sealing Juvenile Records

Washington State Passes Law Sealing Juvenile Records

By Ryan Schill | March 13, 2014



Wikimedia Commons

A measure restricting access to juvenile records passed the Washington state Legislature Wednesday,

As JJI reported [March 6](http://jjie.org/in-washington-state-removing-the-mistakes-kids-make-from-the-public-record/106447/) (<http://jjie.org/in-washington-state-removing-the-mistakes-kids-make-from-the-public-record/106447/>), the bill, [HB 1651](http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1651) (<http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1651>), restricts access to all juvenile records except the worst felony offenses, such as violent crimes and sexual assaults.

Prior to passage of the law juvenile records could only be sealed after a lengthy and complicated process. However, even if the court sealed the records, private consumer reporting companies could still purchase state data files that included information from juvenile records.

A Guide to Sealing and Destroying Court Records, Vacating Convictions, and Deleting Criminal History Records in Washington State



WASHINGTON
COURTS

State of Washington
June 2014

This brochure provides information about sealing and destroying court records, vacating convictions, and deleting criminal history records.

Courts and law enforcement agencies maintain records of those who are detained, arrested, charged, and convicted or acquitted of crimes. You have the right to inspect court records and criminal history records that pertain to you.

For information about a court record, contact the *city or county court* where the case was filed. This may be a municipal, district, juvenile, or superior court.

For information about a criminal history record, contact the law enforcement agency responsible for the case. This may be a city police department, county sheriff's office, the Washington State Patrol, or another agency with police powers.

The authority to seal or destroy records and to vacate convictions is established by laws enacted by the Legislature and by rules adopted by the Washington State Supreme Court. State laws concerning court records and criminal history records change frequently, so you may wish to seek legal advice about your specific circumstances. You should consult an attorney to determine if sealing or destroying your record or vacating your conviction could affect your immigration status or your right to possess a firearm.

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Court Records

A court record includes documents, information, and exhibits that are maintained by the court in connection with a judicial proceeding. If a defendant is convicted, the record contains a disposition order or judgment and sentence specifying the crime(s) committed and the punishment imposed. If a defendant is acquitted or the court determines charges should not go forward, the record shows the action has been dismissed.

Court records are maintained by the clerk of each court. Court records, like court hearings, are generally open to the public. Requests to access or review documents in a court file need to be addressed to the Clerk's Office or the Court Administrator for the court where your case is filed. A court can only address requests about cases filed in that court. If you have cases in more than one court, you must make a separate inquiry to each court.

Whether a court record may be sealed and whether a conviction may be vacated depends on the type of crime involved (misdemeanor or felony) and the court where conviction is obtained (juvenile or adult). A decision whether to seal or vacate a criminal case can only be made by a judge in the court where the case was filed.

Sealing or destroying a court record or vacating a conviction does not necessarily affect the records maintained by law enforcement agencies, other government agencies, or private concerns. Requests about records maintained by other agencies must be made to those agencies.

Juvenile Court Records

Sealing. The courts shall hold regularly scheduled sealing hearings to administratively seal individuals' juvenile offender court records pursuant to RCW 13.50.050. At the juvenile offender's disposition hearing, the court shall schedule the sealing for the first regularly scheduled sealing hearing date after the latest of the following events take place:

- Juvenile offender's eighteenth birthday;
- Anticipated completion of probation if ordered; or
- Anticipated release from confinement at the juvenile rehabilitation administration, or the completion of parole, if the respondent is transferred to the juvenile rehabilitation administration.

A contested hearing will be scheduled if there is an objection to the sealing or the court notes a compelling reason not to seal. The juvenile and the juvenile's attorney shall be given notice at least eighteen days before any contested sealing hearing, and allowed the opportunity to respond to any objections. Following a contested sealing hearing, the court shall enter an order sealing the juvenile offender's court record unless the court determines the sealing is not appropriate.

The court shall enter an order sealing a juvenile offender's court record if:

- At the time of the offense it was not:
 - A most serious offense as defined in RCW 9.94A.030;
 - A sex offense under chapter 9A.44 RCW;
 - A drug offense as defined in RCW 9.94A.030; and
- The juvenile offender has completed the terms and conditions of disposition, including affirmative conditions and financial obligations.

Alternative Sealing Process

If a juvenile offender court record was not subject to the process described above, and the information was filed pursuant to RCW 13.40.100 or a complaint was filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the juvenile may file a motion with the court to vacate the order and findings and to seal the official juvenile court file, the social file, and records of the court and of any other agency in the case. Reasonable notice shall be given to the prosecution and to any person or agency whose records are sought to be sealed.

The court shall grant any motion to seal records for class A offenses if:

- Since the last date of release from confinement, including full-time residential treatment, or entry of disposition, the person spent five consecutive years in the community without committing any offense or crime resulting in an adjudication or conviction;
- No proceeding is pending against the moving party that seeks the conviction of a juvenile offense or a criminal offense;
No proceeding is pending that seeks the formation of a diversion agreement with that person;
- The person is no longer required to register as a sex offender under RCW 9A.44.130 or is relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense;
- The person was not convicted of rape in the first or second degree, or of indecent liberties that was actually committed with forcible compulsion; and
- Full restitution has been paid.

The court shall grant a motion to seal records for class B, class C, gross misdemeanor, and misdemeanor offenses and diversions if:

- Since the date of last release from confinement, including full-time residential treatment, or entry of disposition, or completion of the diversion agreement, the person spent two consecutive years in the community without being convicted of any offense or crime;
No proceeding is pending against the moving party that seeks the conviction of a juvenile offense or a criminal offense;
No proceeding is pending that seeks the formation of a diversion agreement with that person;
- The person is no longer required to register as a sex offender under RCW 9A.44.130 or is relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense; and
- Full restitution has been paid.

The court shall grant any motion to seal records of any deferred disposition vacated under RCW 13.40.127(9) prior to June 7, 2012, if restitution is paid and the person is eighteen or older at the time of the motion.

The court shall immediately seal an official juvenile court record upon the acquittal after a fact finding or upon dismissal of charges. If the subject of the juvenile records receives a full and unconditional pardon, the proceedings shall be treated as if they never occurred.

Effect of Sealing. When a motion to seal records is granted, the order shall seal the official juvenile court record, the social file, and other records relating to the case as named in the order. The proceedings in the case are to be treated as if they never occurred. However, identifying information held by the Washington State Patrol in accordance with chapter 43.43 RCW is not subject to destruction or sealing described above. Subsequent adjudication of a juvenile offense or a crime voids a sealing order and the case will be publicly accessible. However the court may order the juvenile court record resealed upon disposition of the subsequent matter if the case meets the sealing criteria described above and the court record was not previously resealed. Any charging of an adult felony after the sealing voids the sealing order.

The record of an employee is not admissible in an action for liability against the employer based on the former juvenile offender's conduct to show that the employer knew or should have known of the juvenile record of the employee. The record may be admissible if a background check conducted or authorized by the employer contained information in the sealed record.

Destroying. Juvenile records, including those maintained by any court, the prosecutor's office or law enforcement agency are eligible for destruction when:

- The person who is the subject of the information or complaint is at least 18 years old;
- The person's criminal history consists entirely of one juvenile diversion agreement or counsel and release entered on or after June 12, 2008;
- Two years have passed since completion of the juvenile diversion agreement or counsel and release;
No proceeding is pending that seeks conviction of the person for a criminal offense; and

There is no restitution owing in the case.

State and local governments and their officers and employees are not liable for civil damages for failure to destroy records.

All records maintained by any court, prosecutor's office or law enforcement agency shall be automatically destroyed within thirty days of being notified by the governor's office that the person received a full and unconditional pardon.

A person 23 years of age or older whose criminal history consists only of referrals for juvenile diversion may request that the court order destruction of those case records. Reasonable notice of the motion must be given to the prosecuting attorney and to any agency whose record are sought to be destroyed. The request is granted if the court finds that all diversion agreements have been successfully completed and no proceeding is pending that seeks conviction of the person for a criminal offense. Identifying information described in RCW 13.50.050(13) is not subject to destruction or sealing.

A person 18 years of age or older whose criminal history consists only of one juvenile diversion agreement or counsel and release entered prior to June 12, 2008, may request that the court order destruction of the case records. Reasonable notice of the motion must be given to the prosecuting attorney and to any agency whose record are sought to be destroyed. The request is granted if the court finds that two years have elapsed since the completion of the agreement or counsel and release. Identifying information described in RCW 13.50.050(13) is not subject to destruction or sealing.

Deferred Disposition. If a juvenile is granted a deferral of disposition under RCW 13.40.127, the court may dismiss the deferred disposition and vacate the conviction if:

- The deferred disposition was not previously revoked;
- The terms of supervision were completed;
- There are no pending motions concerning lack of compliance; and
- Restitution was paid in full or there was a good faith effort to pay the full amount of restitution during the period of supervision.

A conviction under RCW 16.52.205 (first degree animal cruelty) shall not be vacated. If a case is dismissed with restitution still owing, the court shall enter a restitution order for any unpaid restitution.

If the court vacates a conviction as described above, the case shall be sealed if:

- The deferred disposition was vacated after June 7, 2012;
- If the juvenile is eighteen years of age or older; and
- The full amount of restitution ordered is paid.

If the juvenile is not eighteen years or older, but the deferred disposition was vacated after June 7, 2012, and full restitution was paid, the court shall schedule an administrative hearing to take place within thirty days after the juvenile's eighteenth birthday and enter a written order sealing the case. Juveniles can petition the court to seal records under RCW 13.50.050 for deferred dispositions vacated prior to June 7, 2012.

Adult Court Records

Sealing and Destroying. Under General Rule 15, sealing a court record may be ordered when a conviction has been vacated or when the court finds that compelling privacy or safety concerns outweigh the public interest in access to the record. **Current law does not allow for destroying the court record of a criminal action against an adult that results in a conviction or some adverse findings.**

Vacating Misdemeanors. RCW 9.96.060 authorizes a sentencing court to vacate a conviction for a misdemeanor or a gross misdemeanor if:

- For any offense other than those described in RCW 9.96.060(2)(e), the offender has completed all the terms of his or her sentence, including financial obligations, and more than three years have passed since completion;
- The offender has no criminal charges pending or has not been convicted of a new crime in any state or federal court;
The offender does not have another conviction vacated; or
- The offender has not been restrained within the last five years by a domestic violence protection order, a no-contact order, an anti-harassment order, or a civil restraining order.

In addition, the offense must not be:

- A violent offense, as defined in RCW 9.94A.030, or an attempt to commit a violent offense;
- A violation of RCW 46.61.502 (driving under the influence), RCW 46.61.504 (physical control of a vehicle while under the influence), RCW 9.91.020 (operating a railroad, steamboat, or vehicle while intoxicated), or the offense is considered a "prior offense" under RCW 46.61.5055 and there is a subsequent alcohol or drug violation within ten years of the date of arrest for the prior offense;
- A violation, including attempt, of chapter 9.68 RCW (obscenity and pornography), chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44 RCW (sex offenses); or
- An offense involving domestic violence in some circumstances and as described in RCW 9.96.060(2)(e).

Tribal Fishing Activities

Persons convicted prior to January 1, 1975, of violating any statute or rule regarding the regulation of fishing activities and claimed to be exercising a treaty Indian fishing right, may apply to the sentencing court to vacate the conviction. If the person is deceased, a family member or an official representative of the tribe of which the person was a member, may apply to the court on behalf of the deceased person. The court shall vacate a conviction if:

- The person is a member of a tribe that may exercise treaty Indian fishing rights at the location where the offense occurred; and
- The state is enjoined from taking enforcement action of the statute or rule to the extent that it interferes with a treaty Indian fishing right as determined under case law listed in RCW 9.96.060(4)(b).

Prostitution Convictions

Persons convicted of prostitution under RCW 9A.88.030 that committed the offense as a result of being a victim of trafficking per RCW 9A.40.100, of promoting prostitution in the first degree per RCW 9A.88.070, promoting commercial sexual abuse of a minor per RCW 9.86A.101, or of trafficking in persons under the Trafficking Victims Protection Act of 2000, 22 U.S.C. Sec. 7101 et seq., may apply to the sentencing court for vacation of the conviction for the prostitution offense.

The conviction may not be vacated if:

- The applicant has pending criminal charges in any state or federal court for any crime other than prostitution; or
- The applicant was convicted of another crime, except prostitution, in any state or federal court since the date of conviction.

In order to vacate a prostitution conviction as a result of being a victim of trafficking per RCW 9A.40.100, the applicant must prove by a preponderance of evidence either:

- The applicant was recruited, harbored, transported, provided, obtained, bought, purchased, or received by another person;
- The person who committed any of the acts previously listed against the applicant acted knowingly or in reckless disregard for the fact that force, fraud, or coercion would be used to cause the applicant to engage in a sexually explicit act or commercial sex act; and
- The applicant's conviction record for prostitution resulted in such acts.

Or:

- The applicant was recruited, harbored, transported, provided, obtained, bought, purchased, or received by another person;
- The person who committed any of the acts previously listed against the applicant acted knowingly or in reckless disregard for the fact that the applicant was not the age of eighteen and would be caused to engage in a sexually explicit act or commercial sex act; and
- The applicant's conviction record for prostitution resulted in such acts.

In order to vacate a prostitution conviction as a result of being a victim of promoting prostitution in the first degree per RCW 9A.88.070, the applicant must prove by a preponderance of evidence either:

- The applicant was compelled by threat or force to engage in prostitution;
- The person who compelled the applicant acted knowingly; and
- The applicant's conviction record for prostitution resulted from the compulsion.

Or:

- The applicant has a mental incapacity or developmental disability that renders the applicant incapable of consent;
- The applicant was compelled to engage in prostitution;
- The person who compelled the applicant acted knowingly; and
- The applicant's conviction record for prostitution resulted from the compulsion.

In order to vacate a prostitution conviction as a result of being a victim of promoting commercial sexual abuse of a minor per RCW 9.68A.101, the applicant must prove by a preponderance of evidence:

- The applicant was not eighteen at the time of the prostitution offense;
- A person advanced commercial sexual abuse or a sexually explicit act, as defined in chapter 9.96 RCW, of the applicant at the time he or she was not eighteen;
- The person who committed these acts to the applicant acted knowingly; and
- The applicant's conviction record for prostitution resulted from the acts.

In order to vacate a prostitution conviction as a result of being a victim of trafficking under the Trafficking Victims Protection Act of 2000, 22 U.S.C. Sec. 7101 et seq., the applicant must prove by a preponderance of evidence:

- The applicant was induced by force, fraud, or coercion to engage in a commercial sex act and the prostitution conviction resulted from the inducement; or
- The applicant was induced to engage in a commercial sex act prior to being eighteen and the prostitution conviction resulted from the inducement.

Forms to request that a misdemeanor or gross misdemeanor conviction be vacated may be obtained from the courts, online at <http://www.courts.wa.gov/forms/>, or from the Administrative Office of the Courts at (360) 705-5328.

Vacating Felonies. RCW 9.94A.640 provides for vacating some felony convictions. An offender who has been discharged may request, by motion, that the sentencing court vacate the conviction. But the record of conviction may not be cleared if:

- Criminal charges are pending against the offender in any state or federal court;
- The conviction was for a violent offense as defined in RCW 9.94A.030 or a crime against persons as defined in RCW 43.43.830;
- The offender has been convicted of a new crime in any state or federal court since discharge;
- The offense is a class B felony and less than ten years have passed since discharge;
- The offense is a class C felony described in RCW 46.61.502(6) or RCW 46.61.504(6);

- The offense is any class C felony, other than those described in RCW 46.61.502(6) or RCW 46.61.504(6), and less than five years have passed since discharge.

Forms to request that a felony conviction be vacated may be obtained from the courts, online at <http://www.courts.wa.gov/forms/>, or from the Administrative Office of the Courts at (360) 705-5328.

Effect of Vacating Conviction. An offender whose conviction has been vacated may state for all purposes that he or she has not been convicted of that crime. When a conviction is vacated, however, the court file is not destroyed and, unless it is sealed, the court file is still accessible to the public. The conviction may be used in a later criminal prosecution.

Deferred Sentence. If an offender receives a deferred sentence and successfully completes probation, he or she may need to file a motion for dismissal with the court.

Civil Cases. Under GR 15, a party may request a hearing to seal or redact court records. A party may request a hearing to destroy court records in a civil case only if there is express statutory authority to permit it.

Criminal History Records

Criminal history record information includes descriptions and notations of detentions, arrests, indictments, informations or other formal criminal charges, and any dispositions. "Criminal history records" are maintained by law enforcement and other criminal justice agencies and should not be confused with "court records," which are maintained by the courts. You have the right to inspect your criminal history record on file with a local police agency or with the Washington State Patrol.

Local police agencies submit criminal history record information to the State Patrol, which maintains the information in a statewide repository. Whether information contained in a law enforcement agency's files may be modified, sealed, or deleted depends on the outcome of the case (acquittal or conviction) and on the court that heard the case (juvenile or adult). Modifying or deleting criminal history records (law enforcement records) does not necessarily change the records maintained by the courts (court records).

A request to modify, seal, or destroy a court record must be directed to the court in which that record is filed.

Juvenile Criminal History Records

A court order to seal a juvenile record results in the removal of references to his or her arrest and disposition from the records maintained by the State Patrol. Identifying information such as photographs, fingerprints, and any other data that identifies a person by name, birthdate, address, or physical characteristics, are not subject to sealing or destruction.

Deletion of Criminal History Records

Under RCW 10.97.060, a criminal history record on file with a law enforcement agency is to be deleted at the request of the person who is the subject of the record if:

- The file consists of only nonconviction data;
At least two years have elapsed since the record became nonconviction data as the result of entry of a disposition favorable to the defendant, or at least three years have elapsed from the date of arrest or issuance of a citation or warrant for which a conviction was not obtained (unless the defendant is a fugitive or the case is under active prosecution);
- The disposition was not a deferred prosecution or similar diversion of the alleged offender;
- The person has not had a prior conviction for a felony or gross misdemeanor; and
- The person has not been arrested for or charged with another crime during the intervening period.

Information about deleting nonconviction criminal record information from the State Patrol repository files may be obtained online at <http://www.wsp.wa.gov/crime/crimhist.htm> or by calling the Criminal History Support Unit at (360) 534 -2000. A separate request must be made to the local (arresting) police agency, in accordance with that agency's procedure, to seek deletion of records in its possession.

Deletion of criminal history records is not available for cases that result in convictions or other dispositions adverse to the defendant, unless the criminal justice agency has been ordered by a court to delete the criminal history record.

Challenges to Criminal History Records

A person who is the subject of a criminal history record may challenge the accuracy or completeness of that record. Challenges must be made in writing. Under RCW 43.43.730, a State Patrol decision declining a request to modify a record may be appealed.

Glossary

CHALLENGE: To assert that a criminal history record on file with a law enforcement agency is inaccurate or incomplete.

CONVICTION OR OTHER DISPOSITION ADVERSE TO THE DEFENDANT: A disposition of charges other than a decision not to prosecute, a dismissal, or an acquittal.

CONVICTION RECORD: Criminal history record information relating to an incident that has led to a conviction or other disposition adverse to the subject.

CRIMINAL HISTORY RECORD INFORMATION: Data contained in records collected by criminal justice agencies other than courts, consisting of descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any dispositions, including sentences, correctional supervision, and release.

DEFERRED SENTENCE: A sentence that will not be carried out if the defendant meets certain requirements, such as complying with conditions of probation. A deferred sentence is considered adverse to the defendant.

DELETE: To eliminate existing information.

DISCHARGE: An offender's release from confinement or supervision after completing sentence requirements.

DISMISSAL: The court-ordered termination of a case.

DISPOSITION: The formal conclusion of a criminal proceeding.

EXPUNGE: To physically destroy information.

FELONY: The offense classification for serious crimes. Felonies are designated class A, class B, and class C, with class A felonies subject to the longest terms of confinement.

GROSS MISDEMEANOR: An offense punishable by no more than 365 days in jail and \$5,000. Gross misdemeanors may be filed in either courts of limited jurisdiction (district or municipal courts) or superior court.

JUVENILE OFFENDER: A person under the age of 18 years who has not been transferred to adult court and who has been found to have committed an offense by the juvenile court. Individuals 18 years of age or older over whom jurisdiction has been extended are also juvenile offenders.

MISDEMEANOR: An offense punishable by no more than 90 days in jail and \$1000. May be filed in either courts of limited jurisdiction (district or municipal courts) or superior court.

MODIFY: To change existing information.

NONCONVICTION DATA: Criminal history record information relating to an incident that has not led to a conviction or other disposition adverse to the individual, and for which proceedings are no longer actively pending.

SEAL: To prevent access to a record.

SUSPENDED SENTENCE: A sentence postponed so the defendant is not required to serve time unless he or she commits another crime or violates a court-imposed condition. A suspended sentence is considered adverse to the defendant.

VACATE: To set aside a conviction.

Statutes, Rules, and Regulations

The following statutes, rules, and regulations concern court records and criminal history records:

Revised Code of Washington (RCW)

| | |
|-----------|--|
| 9.92.066 | Termination of Suspended Sentence-Vacation of Conviction |
| 9.94A.640 | Vacation of Offender's Record of Conviction |
| 9.95.240 | Dismissal -Vacation of Conviction |
| 9.96.060 | Misdemeanor Offenses -Vacating Records |
| 10.97.060 | Deletion of Certain Information, Conditions |
| 13.40.127 | Deferred Disposition |
| 13.50.050 | Records of Juvenile Offenses |
| 43.43.730 | Criminal History Records |

General Rules (GR)

Rule 15 Destruction, Sealing, and Redaction of Court Records
Rule 31 Access to Court Records

Washington Administrative Code (WAC)

446-16-025 Deletion of Arrest Records
446-16-030 Inspection by the Subject of Their Record (Courts may also have local rules governing access to court records.)

Resources

Washington Courts:

<http://www.courts.wa.gov/index.cfm>

This site includes a statewide directory of courts, court rules, the most current version of this brochure, forms, and information about legal research and the State Law Library. The Administrative Office of the Courts may be contacted at (360) 357-2130, but **agency personnel cannot provide legal advice.**

Washington State Legislature:

<http://apps.leg.wa.gov/rcw/> and <http://apps.leg.wa.gov/wac/>

These sites contain the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC). Copies of the RCW and the WAC are also available at local libraries.

Washington State Patrol:

<http://www.wsp.wa.gov/crime/crimhist.htm>

This site provides information about criminal history records. Call (360) 534-2000 for assistance from a State Patrol customer service representative.

Washington State Bar Association:

<http://www.wsba.org/atj/contact/lawref.htm>

This site offers contact information about lawyer referral services. The Service Center may be reached at 1-800-945-9722 or (206) 443-9722.

APPENDIX D

Less Guilty by Reason of Adolescence

Adolescent Development and Juvenile Justice

In 2005, in a landmark decision, the U.S. Supreme Court outlawed the death penalty for offenders who were younger than 18 when they committed their crimes. The ruling centered on the issue of culpability, or criminal blameworthiness. Unlike competence, which concerns an individual's ability to serve as a defendant during trial or adjudication, culpability turns on the offender's state of mind at the time of the offense, including factors that would mitigate, or lessen, the degree of responsibility.

The Court's ruling, which cited the Network's work, ran counter to a nationwide trend toward harsher sentences for juveniles. Over the preceding decade, as serious crime rose and public safety became a focus of concern, legislators in virtually every state had enacted laws lowering the age at which juveniles could be tried and punished as adults for a broad range of crimes. This and other changes have resulted in the trial of more than 200,000 youths in the adult criminal system each year.¹

Proponents of the tougher laws argue that youths who have committed violent crimes need more than a slap on the wrist from a juvenile court. It is naïve, they say, to continue to rely on a juvenile system designed for a simpler era, when youths were getting into fistfights in the schoolyard; drugs, guns, and other serious crimes are adult offenses that demand adult punishment. Yet the premise of the juvenile justice system is that adolescents are different from adults, in ways that make them potentially less blameworthy than adults for their criminal acts.

The legal system has long held that criminal punishment should be based not only on the harm caused, but also on the blameworthiness of the offender. How blameworthy a person is for a crime depends on the circumstances of the crime and of the person committing it. Traditionally, the courts have considered several categories of mitigating factors when determining a defendant's culpability. These include:

- Impaired decision-making capacity, usually due to mental illness or disability,
- The circumstances of the crime—for example, whether it was committed under duress,
- The individual's personal character, which may suggest a low risk of continuing crime.

Such factors don't make a person exempt from punishment—rather, they indicate that the punishment should be less than it would be for others committing similar crimes, but under different circumstances.

Should developmental immaturity be added to the list of mitigating factors? Should juveniles, in general, be treated more leniently than adults? A major study by the Research Network on Adolescent Development and Juvenile Justice now provides strong evidence that the answer is yes.

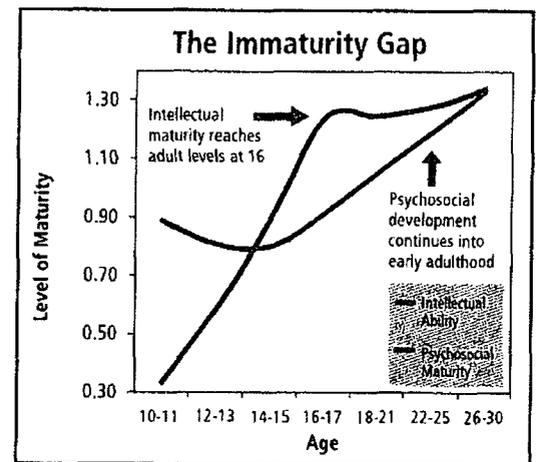
The Network's Study of Juvenile Culpability

The study of juvenile culpability was designed to provide scientific data on whether, in what ways, and at what ages adolescents differ from adults.

Many studies have shown that by the age of sixteen, adolescents' cognitive abilities—loosely, their intelligence or ability to reason—closely mirrors that of adults. But how people reason is only one influence on how they make decisions. In the real world, especially in high-pressure crime situations, judgments are made in the heat of the moment, often in the company of peers. In these situations, adolescents' other common traits—their short-sightedness, their impulsivity, their susceptibility to peer influence—can quickly undermine their decision-making capacity.

The investigators looked at age differences in a number of characteristics that are believed to undergird decision-making and that are relevant to mitigation, such as impulsivity and risk processing, future orientation, sensation-seeking, and resistance to peer pressure. These characteristics are also thought to change over the course of adolescence and to be linked to brain maturation during this time. The subjects—close to 1,000 individuals between the ages of 10 and 30—were drawn from the general population in five regions. They were ethnically and socioeconomically diverse.

The study's findings showed several characteristics of adolescence that are relevant to determinations of criminal culpability. As the accompanying figure indicates, although intellectual abilities stop maturing around age 16, psychosocial capability continues to develop well into early adulthood.



Short-Sighted Decision-Making

One important element of mature decision-making is a sense of the future consequences of an act. A variety of studies in which adolescents and adults are asked to envision themselves in the future have found that adults project their visions over a significantly longer time, suggesting much greater future orientation.

These findings are supported by data from the Network's culpability study. Adolescents characterized themselves as less likely to consider the future consequences of their actions than did adults. And when subjects in the study were presented with various choices measuring their preference for smaller, immediate rewards versus larger, longer-term rewards (for example, "Would you rather have \$100 today or \$1,000 a year from now?"), adolescents had a lower "tipping point"—the amount of money they would take to get it immediately as opposed to waiting.

How might these characteristics carry over into the real world? When weighing the long-term consequences of a crime, adolescents may simply be unable to see far enough into the future to make a good decision. Their lack of foresight, along with their tendency to pay more attention to immediate gratification than to long-term consequences, are among the factors that may lead them to make bad decisions.

Poor Impulse Control

The Network's study also found that as individuals age, they become less impulsive and less likely to seek thrills; in fact, gains in these aspects of self-control continue well into early adulthood. This was evident in individuals' descriptions of themselves and on tasks designed to measure impulse control. On the "Tower of London" task, for example—where the goal

is to solve a puzzle in as few moves as possible, with a wrong move requiring extra moves to undo it—adolescents took less time to consider their first move, jumping the gun before planning ahead.

Network research also suggests that adolescents are both less sensitive to risk and more sensitive to rewards—an attitude that can lead to greater risk-taking. The new data confirm and expand on earlier studies gauging attitudes toward risk, which found that adults spontaneously mention more potential risks than teens. Juveniles' tendency to pay more attention to the potential benefits of a risky decision than to its likely costs may contribute to their impulsivity in crime situations.

Vulnerability to Peer Pressure

The law does not require exceptional bravery of citizens in the face of threats or other duress. A person who robs a bank with a gun in his back is not as blameworthy as another who willingly robs a bank; coercion and distress are mitigating factors. Adolescents, too, face coercion, but of a different sort.

Pressure from peers is keenly felt by teens. Peer influence can affect youths' decisions directly, as when adolescents are coerced to take risks they might otherwise avoid. More indirectly, youths' desire for peer approval, or their fear of rejection, may lead them to do things they might not otherwise do. In the Network's culpability study, individuals' reports of their vulnerability to peer pressure declined over the course of adolescence and young adulthood. Other Network research now underway is examining how adolescent risk-taking is "activated" by the presence of peers or by emotional arousal. For example, an earlier Network study, involving a computer car-driving task, showed that the mere presence of friends increased risk-taking in adolescents and college undergraduates, though not adults.¹

Although not every teen succumbs to peer pressures, some youths face more coercive situations than others. Many of those in the juvenile justice system live in tough neighborhoods, where losing face can be not only humiliating but dangerous. Capitulating in the face of a challenge can be a sign of weakness, inviting attack and continued persecution. To the extent that coercion or duress is a mitigating factor, the situations in which many juvenile crimes are committed should lessen their culpability.

Confirmation from Brain Studies

Recent findings from neuroscience line up well with the Network's psychosocial research, showing that brain maturation is a process that continues through adolescence and into early adulthood. For example, there is good evidence that the brain systems that govern impulse control, planning, and thinking ahead are still developing well beyond age 18. There are also several studies indicating that the systems governing reward sensitivity are "amped up" at puberty, which would lead to an increase in sensation-seeking and in valuing benefits over risks. And there is emerging evidence that the brain systems that govern the processing of emotional and social information are affected by the hormonal changes of puberty in ways that make people more sensitive to the reactions of those around them—and thus more susceptible to the influence of peers.²

Policy Implications:

A Separate System for Young Offenders

The scientific arguments do not say that adolescents cannot distinguish right from wrong, nor that they should be exempt from punishment. Rather, they point to the need to consider the developmental stage of adolescence as a mitigating factor when juveniles are facing criminal prosecution. The same factors that make youths ineligible to vote or to serve on a jury require us to treat them differently from adults when they commit crimes.

Some have argued that courts ought to assess defendants' maturity on a case-by-case basis, pointing to the fact that older adolescents, in particular, vary in their capacity for mature decision-making. But the tools needed to measure psychosocial maturity on an individual basis are not well developed, nor is it possible to distinguish reliably between mature and immature adolescents on the basis of brain images. Consequently, assessing maturity on an individual basis, as we do with other mitigating factors, is likely to produce many errors. However, the maturing process follows a similar pattern across virtually all teenagers. Therefore it is both logical and efficient to treat adolescents as a special legal category—and to refer the vast majority of offenders under the age of 18 to juvenile court, where they will be treated as responsible but less blameworthy, and where they will receive less punishment and more rehabilitation and treatment than typical adult offenders. The juvenile system does not excuse youths of their crimes; rather, it acknowledges the development stage and its role in the crimes committed, and punishes appropriately.

At the same time, any legal regime must pay attention to legitimate concerns about public safety. There will always be some youths—such as older, violent recidivists—who have exhausted the resources and patience of the juvenile justice system, and whose danger to the community warrants adjudication in criminal court. But these represent only a very small percentage of juvenile offenders. Trying and punishing youths as adults is an option that should be used sparingly.

Legislatures in several states have begun to reconsider the punitive laws enacted in recent decades. They have already recognized that prosecuting and punishing juveniles as adults carries high costs, for the youths and for their communities. Now we can offer lawmakers in all states a large body of research on which to build a more just and effective juvenile justice system.

¹ Allard, P., & Young, M. (2002). Prosecuting juveniles in adult court: Perspectives for policymakers and practitioners. *Journal of Forensic Psychology Practice*, 6, 65-78.

² Gardner, M., & Steinberg, L. (2005). Peer influence on risk-taking, risk preference, and risky decision-making in adolescence and adulthood: An experimental study. *Developmental Psychology*, 41, 625-635.

³ Nelson, E., Leibenluft, E., McClure, E., & Pine, D. (2005) The social re-orientation of adolescence: A neuroscience perspective on the process and its relation to psychopathology. *Psychological Medicine*, 35, 163-174.

For more information

MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice
Temple University, Department of Psychology
Philadelphia, PA 19122
www.adjj.org

The Research Network on Adolescent Development and Juvenile Justice is an interdisciplinary, multi-institutional program focused on building a foundation of sound science and legal scholarship to support reform of the juvenile justice system. The network conducts research, disseminates the resulting knowledge to professionals and the public, and works to improve decision-making and to prepare the way for the next generation of juvenile justice reform.

APPENDIX E

Tacoma, Pierce County team up to open youth shelter

HIGHLIGHTS

When complete, teens and young adults will be able to drop in to start the process to reunite with family, seek mental health treatment, get a meal or just have a safe place to hang out for a while.

By Kate Martin - Staff writer

The city of Tacoma and Pierce County have selected the operator of two Olympia youth shelters to open a shelter for teens and young adults in Tacoma next year.

The project grew out of interviews Pierce County officials did more than a year ago to ask homeless and about-to-be homeless youth what kind of help they needed. Many expressed a need for a crisis shelter.

The county, city and other groups have spent more than a year planning for this shelter, said Tess Colby, Pierce County's manager of housing, homelessness and community development programs. When complete, teens and young adults will be able to drop in to start the process to reunite with family, seek mental health treatment, get a meal or just have a safe place to hang out for a while.

Community Youth Services of Olympia will phase in various services over time, beginning with a drop-in day shelter that could open by next fall. An overnight 20-bed shelter is to follow by summer 2016. The shelter will initially serve young adults, ages 18-24, and permit stays of up to 90 days.

While other organizations offer emergency housing to anyone over 18, young adults don't often feel comfortable in adult shelters, said Charles Shelan, CEO of Community Youth Services, which has worked with youths in crisis for 45 years.

Youths are often afraid of so-called "mass shelters," and they often do not expose youths to positive role models, Shelan said.

"Uniformly throughout the country, young adults feel intimidated and victimized in mass shelters," Shelan said. "They will sleep in the woods someplace, or in other unsafe locations."

Organizers of the Tacoma shelter hope to eventually expand services to include a 10-bed shelter for teens as young as 13. Currently, the state pays Community Youth Services to reserve three beds at one of its Olympia shelters for Pierce County teens ages 13-17. The nonprofit has helped 120 youths from Pierce County this year.

Kurt Miller, a Tacoma School Board member, will be leaving his post as director of the REACH Center to serve as the executive director for Community Youth Services' Pierce County operations.

Miller said many youths just don't have a place to go, and that hurts their chances for a better life. He said he often sees this dynamic at the REACH Center, which helps people aged 16-24 get more education and find jobs. There are an estimated 3,000 youths and young adults in Pierce County who experience homelessness each year.

"Their family situation is very desperate," Miller said. The young adults he sees are often in "survival mode."

"When they go into survival mode, the only thing that counts is where they are going to stay the night and what they are going to eat," Miller said. "When they get into stable housing it takes a long time for them to understand they are safe."

At this new shelter, youths will have the opportunity to seek a more permanent living situation. Sometimes it doesn't take much to turn a life around.

"When somebody's housed, they get a job. They get promoted. ... They get their high school diploma," Miller said. "It happens quickly in a lot of cases."

First, though, Tacoma and Pierce County are seeking a location for the shelter and drop-in day center. They expect to spend up to a combined \$1.5 million for a building and remodeling.

Tacoma has pledged \$1 million to operate the shelter in the next two years from the city's one-tenth of 1 percent sales tax to pay for mental health and substance abuse services.

"We currently have nothing that is available for this population," said Shelley Koeppen, a contract and program auditor with the city of Tacoma. "... A lot of these individuals, they have experienced a lot of trauma. They are going to have mental health issues related to the trauma they've experienced."

Pierce County will not commit money toward the operations until a site is found, said Tess Colby, county manager of housing, homelessness and community development programs. The money it does eventually spend will come from the fund it uses to pay for homeless programs, she said.

Shelan said CYS will also seek donations from foundations and businesses to round out its funding. He expects to need \$300,000 for the first full year of operations after the city and county chip in.



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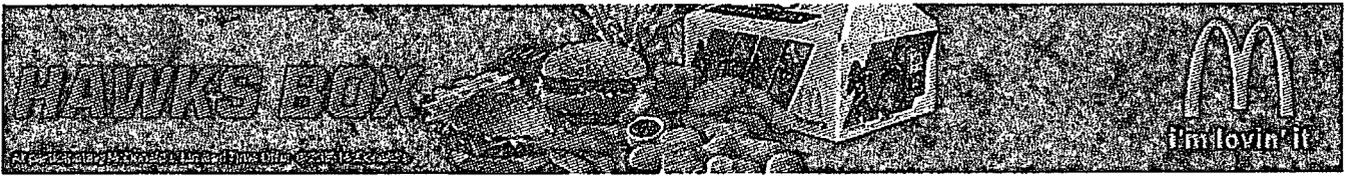
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Local News

Tacoma program helps troubled youths build more than boats



TACOMA, Wash. (AP) — Meet Kyle.

He's 16 and from Fife.



He's got the long, lean look of a basketball forward and the buzz cut of an Army private.

His handshake is strong. His diction clear.

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His record, alas, is muddy. He got caught doing something wrong and ended up with a juvenile criminal record.

In that strange way life sometimes works, a turn through the juvenile justice system turned out to be a bit of a blessing for Kyle, who got referred to the Tacoma Community Boat Builders program as part of his probation.

To say the program saved his life would be hyperbole, but it certainly showed him a path he otherwise might not have taken.

That path includes the smell of sawdust, the screech of a circular saw, the comfort of fellowship, the satisfaction of hard work and that beautiful feeling of being at the oars of a floating boat and commanding, if only for a sunny summer afternoon, your own destiny.

“You feel more free out there,” he said of his time on the water.

Standing next to him, Paul Birkey, 66, smiles the smile of a man seeing his dream come to fruition.



Tacoma Community Boat Builders is Birkey's brainchild and baby.

A Wyoming native, Birkey moved to Washington four decades ago and “became a boat builder somehow.” He’s now president and founder of Belina Interiors, which has earned an international reputation for outfitting luxury yachts.

A few years back, he began sniffing around for a project that would allow him to give something back to the town he loves.

“Tacoma’s of a scale that it still feels like a community,” he said as he showed a visitor around the Tacoma Community Boat Builders facility on the Thea Foss Waterway last week. “I love that about it.”

Birkey had heard of other programs across the country that paired at-risk kids with master craftsmen and craftswomen.



Birkey knew a lot of people skilled in the trades. He knew Tacoma had a population of at-risk kids. He knew people he thought could help him bring the two together, including now-retired Superior Court Judge Tom Larkin.

“I was just thinking maybe we could leverage all this into something,” Birkey said.

And so, with the help of his friend John Richards and others, he did.

The program kicked off in May 2014, at first bringing kids like Kyle down to the boat shop once a week to learn how to build a boat, and, on occasion, sail or row one.

The kids range in age from 13 to 18 and are either on juvenile court probation or in the court’s diversion program.

Birkey said he soon discovered the kids, the volunteers, even himself, were building something bigger than boats: camaraderie, responsibility, friendship, “all kinds of positive things.”



The first sessions of the program were so successful, Birkey and executive director Shannon Shea decided to expand it to two days a week.

Nearly 60 kids have gone through the program since then, and Birkey and Shea would like to expand it to even more, including maybe opening it up to families whose kids haven't been in trouble with the law.

"We're trying to get upstream of the problems if we can," Shea said.

Money, of course, is an issue.

The program's annual budget of less than \$100,000 is funded by private donations, grants and corporate gifts.

Birkey pointed out that it costs about \$21 an hour to put a kid through the 10-week program.



"You can't send a kid to counseling for that," he said.

As a Pierce County juvenile probation officer, Tim Westman knows the costs of young lives wasted by bad choices.

Westman also knows the power of one-on-one relationships, especially between a caring man and an impressionable boy who might not have a positive male role model in his life.

The beauty of Tacoma Community Boat Builders, the thing that really makes it work, is that each kid is assigned to work with a sole adult, Westman said. They form a team that works together, talks together, builds trust together.

“That’s worked wonderfully,” he said. “We realized that when we can do a one-on-one, give them a mentor, it was like night and day. The kids engage more.”



The volunteers assembled by Birkey include retire mental-health professionals, master marine craftsmen, a former technical college instructor, a retired Marine and a logistics specialist at Amazon.

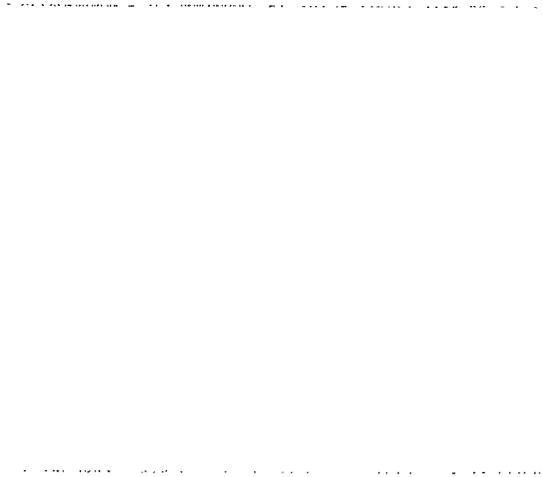
On a recent Thursday, they paired up with their protégés and dove into the work.

Some operated sawdust-spewing table saws. Others climbed aboard the hulls of overturned dories to replace planks. Some grabbed chisels and sandpaper to remove the fading paint from a 1941 Penguin sailboat.

There was little chatter, aside from the occasional suggestion from a volunteer or a quiet question from a boy.

The boat shop is run like a business.

The kids are expected to show up on time, be ready to work, be respectful to their peers and the volunteers and to clean up their tools and shop at the end of their three-hour shift.



Oh, and no cussing.

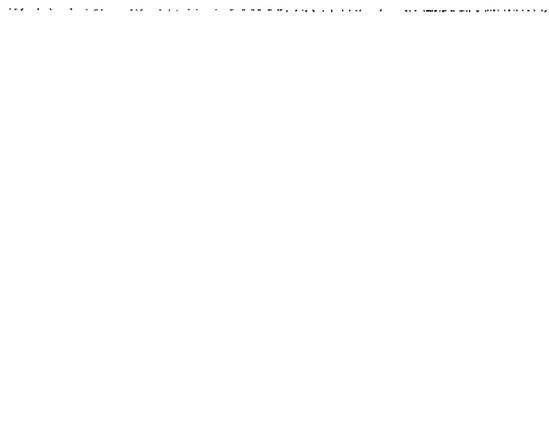
The idea, Westman said, is for the boys to learn skills they can transfer to the workforce someday, not just how to operate power tools, but how to be responsible, how to function as a team, how to solve problems, how to be punctual.

“The work is a teacher in and of itself,” Westman said.

There are other lessons he hopes the boys learn.

“We want them to see they’re not only building something, but building something they’re going to use, to get on, to be out in nature with,” Westman said. “Coaching boys into men is kind of theme.”

The men get something out of it, too, aside from the access to power tools.



“It’s the best part of my week, being here to see these kids grow and achieve something,” said Westman, who is often at the boat shop on Thursdays to supervise and help out on projects. “It’s been great.”

Volunteers Ammon Schwanger and Reid Morrow agree.

Schwanger is a former teacher who now works in the construction trade. He said the team at Tacoma Community Boat Builders has become another family for him.

“We eat together. We work together. We play together,” Schwanger said. “If that’s not family, I don’t know what is.”

Morrow is a former member of the U.S. Navy who moved to the Puget Sound area upon discharge. His skills in logistics were highly prized by Amazon, where he now works.

Morrow demanded a few concessions before taking the Amazon job. One was Thursdays off so he could fulfill his volunteer commitment to Tacoma Community Boat Builders.

“It was absolutely a condition of employment,” said Morrow, sawdust coating his T-shirt, his safety goggles smudged with sweat, a smile on his face.

Tacoma Community Boat Builders is Shea’s full-time job. There’s a certain incongruity to that, she said.

A seasoned advocate for child welfare who’s worked with at-risk kids in Mexico and Africa, she knows much about achieving positive outcomes, the power of one-on-one mentoring and the importance of structure in a young person’s life.

What she doesn’t know anything about is boats.

“That’s the funny thing about where I am,” she said.

Still, Birkey saw in her the skills and passion he wanted for the professional leader of Tacoma Community Boat Builders and hired her as the nonprofit program’s one paid employee.

Shea saw a chance to help kids who need it and likes the fact they get one-on-one attention.

“They get 100 percent of their mentors’ time from the minute they walk in the door,”

she said.

Now that the program has been proven to work, the goal is to expand it, Shea said.

She and Birkey would like to have Tacoma Community Boat Builders grow into a five-day-a-week concern.

That would cost about \$250,000 a year.

“We’ve got some work to do,” Shea said.

Sixteen-year-old Kyle, it’s clear, was eager to get back to work.

A graduate of Tacoma Community Boat Builder’s summer session, he received special permission to come back and work at the boat shop this fall, and the whine of the band saw was calling.

“One of the things I like about it is you never run out of something to do,” Kyle said. “There’s always another job for you.”

Now it was his mentor Peter Hales’ turn to smile.

Hales retired from Belina Interiors and now volunteers at Tacoma Community Boat Builders.

“When these kids first get in a boat, it’s a challenge for them,” Hales said. “But at the end of the last session, these kids were in those boats rowing in a straight line. It really was great to see.”

It was, in its way, an illustration of what’s important, and what’s not.

Information from: The News Tribune, <http://www.thenewstribune.com>

Adam Lynn



APPENDIX F



Connect with Us

NEWSLETTERS

COMMUNITY

Attendance: Every day counts | Federal Way School District

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Aug 27, 2015 at 6:28PM

School attendance is among the biggest predictors of academic success, and the importance of establishing good attendance habits begins in kindergarten. Missing just two or three days each month can quickly add up, said Jennie Tibbitts with the Federal Way School District. Chronic absences can translate into third-graders unable to master reading, sixth-graders failing courses and ninth-graders dropping out of high school. "Students must be in school to learn, succeed and prepare for a bright future," Tibbitts said. "The link between attendance and academic achievement is clear. It's crucial for families, school staff and the community to work together to prevent chronic school absence."

Named in memory of a runaway teenager murdered in 1993, the Becca Law was passed by the Washington state Legislature in 1995. The law requires schools to monitor attendance and to contact and work with families when their child starts missing school without permission. If those unexcused absences reach seven in a month or 10 in a year, the district can file a truancy petition with the local county juvenile court.

Tibbitts' goal is to prevent that threshold from being crossed by shifting the emphasis of the Federal Way BECCA office from one of punishment to a prevention focus.

The message to students: It's hard to achieve your goals in life without an education, and regular school attendance is critical for academic success. After schools have exhausted their resources in addressing a student's attendance, community truancy boards provide one last intervention before referral to the courts. Truancy boards are made up of school staff and representatives of relevant nondistrict social agencies, all brought to the table by Tibbitts. They meet with the student and family to discuss issues contributing to the student's absenteeism. The goal is to develop a plan that addresses the causes of the absences and provide a "warm hand-off" to community agencies that provide resources and support.

A systemic approach to keeping kids in school

Chronic absenteeism, even when excused by the parent, is now attracting attention and outreach by the school. "Every parent wants his or her kid to be successful, but they aren't always aware of the connection between attendance and success," Tibbitts points out.

This fall, the district is participating in the "Every Day Counts" campaign, designed to raise the awareness of the importance of regular attendance. Students are more likely to attend regularly when they feel comfortable in the school environment and find relevance in their education. This adds importance to the district's work to ensure that every student has a skillful teacher in every class, and that he or she understands the expectations of the school.

Schools across the district have initiated efforts like Positive Behavior Intervention and Supports (PBIS), a process for clearly defining and reinforcing expected behaviors. Read more about PBIS in the Spring 2014 edition of the Progress Report to the Community (pages 2-3).

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APPENDIX G



**Seattle School District #1
Board Resolution**

Resolution No. 2014/15-35

A RESOLUTION of the Board of Directors of Seattle School District No. 1, King County, Seattle, Washington to have Seattle Public Schools take actions to break the School to Prison pipeline by eliminating out of school suspensions for students in the ~~pre-Kindergarten through 5th grade for District Offenses D-110 (Disruptive Conduct), D-120 (Rule Breaking), D-130 (Disobedience), levels except in cases of health and safety to themselves or others of physical harm to themselves or others.~~

WHEREAS, according to research, zero tolerance and exclusionary discipline policies, namely out-of-school suspensions, have negative effects on both suspended and non-suspended students; and

WHEREAS, data shows an alarming rate of suspensions and expulsions during the critical learning years of elementary students, which removes the opportunity to teach appropriate behavior at an early age and affects future academic success; and

WHEREAS, ~~there is disproportionality in the discipline rates for above total student population for Special Education, Native American, African American, Hawaiian/Pacific Islander, English Language Learners and Latino children that has negative impacts on these groups. (put the remainder in the BAR) at 9.43%, 8.57%, 7.6%, 5%, 2.89% and 2.84%, respectively, while making up 11%, 0.8%, 16.5%, 0.5%, 15% and 12.8%, respectively, of the student K-5 population in Seattle, compared to Boston with rates above total student population for Special Education and African American children at 2.71% and 2.22%, respectively, while making up 17% and 33.8%, respectively, of the student K-5 population in Boston; and~~

WHEREAS, ~~historically 2.48% of K-5 Seattle children in grades K-5 receive at least one suspension; the District recognizes that valuable instructional time is lost when students are not in the classroom; and~~

WHEREAS, as shown by Baltimore City Public Schools, suspension reform can have a significant impact on rates of out-of-school suspensions dropping from 26,300 to 9,000 over a five year period, from 2009 to 2014; and

WHEREAS, students that are suspended in elementary school are more like to be suspended in middle and high school; and

WHEREAS, according to the University of California Los Angeles (UCLA) Civil Rights Projects, African American students were found to be three times as likely as their peers to be issued an out-of-school suspension, along with almost 1 in 13 Latinos which align to the data from Seattle Public Schools suspension rates; and

WHEREAS, compared to Boston, Seattle had more than double the rate of suspension in children K-5, at 2.48% versus 1.22% in Boston; and

WHEREAS, in Seattle compared to their White peers, Special Education, Native American, African American, Hawaiian/Pacific Islander, English Language Learners and Latino children have suspension rates that are double, and in some cases triple, the overall district suspension rates; and

WHEREAS, relative to their percentage of the total K-5 student population of 16% for Native American and African American students, they account for 44% of the suspensions. Similar trends are found in Boston and Portland; and

WHEREAS, the majority of suspended students in Seattle fall within the “other behavior” category which includes suspensions for non-violent, non-drug related and non-criminal reasons, for which K-5 students overwhelmingly receive short-term, out-of-school suspensions; and

WHEREAS, the State Board of Education, pursuant to WAC 392-400-215, states: “Students may not be denied equal educational opportunity or be discriminated against because of national origin, race, or a physical, mental or sensory handicap” without good and sufficient cause; and

WHEREAS, it is inconsistent with the mission and duty of Seattle Public Schools for disproportionate suspensions to continue to exist.

NOW THEREFORE, BE IT

RESOLVED, that starting with the 2015-16 school year ~~that~~ the Seattle School Board of Directors, instructs the Superintendent to implement ~~that~~ effective the 2015-16 school year, a moratorium on all elementary student out-of-school suspensions, ~~except to protect health and safety of the students and others, will go into effect~~ for District Offenses D-110 (Disruptive Conduct), D-120 (Rule Breaking), D-130 (Disobedience); and

BE IT FURTHER RESOLVED, that the Superintendent will develop a proposal by June 2016 for a district-wide system to significantly reduce out-of-school suspensions for all grade levels, paying particular attention to the disproportionality in discipline particularly for students of color, Special Education, needs and English Language Learners; and

BE IT FURTHER RESOLVED, the Superintendent’s proposal will include adequate definitions, enhanced Multitiered System of Support (MTSS), effective alternative to

suspension programs, staff training, case management support, and adequate budget to equip teachers and administrators for successful student support; and

BE IT FURTHER RESOLVED, that the Superintendent will develop a district-wide method of detailed data collection of both school based in-school and interventions and out-of-school suspensions and expulsions; and

BE IT FURTHER RESOLVED, that Seattle Public Schools begin work with the Office of Superintendent of Public Instruction (OSPI) to disaggregate the very large "other" category in incident reporting that includes violence and other exceptional incidents, rather than consolidating into one category.

BE IT FURTHER RESOLVED, the Superintendent will develop a student, staff and community engagement plan to support the efforts to reduce out of classroom discipline and increase instructional time.

ADOPTED this ____ day of _____, 2015

Sherry Carr, President

Sharon Peaslee, Vice-President

Stephan Blanford, Member

Harium Martin-Morris, Member

Martha McLaren, Member

Betty Patu, Member

Sue Peters, Member

ATTEST: _____
Dr. Larry Nyland, Superintendent
Secretary, Board of Directors
Seattle School District No. 1
King County, WA

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Record No: Res 31614 Version: 1 2

Type: Resolution (Res)

Council Bill No:

Status: Adopted

Current Controlling Legislative Body: [Public Safety, Civil Rights, and Technology Committee](#)

Final Action: 9/21/2015

Ordinance No:

Title: A RESOLUTION endorsing a vision for The City of Seattle to become a city with zero use of detention for youth, and establishing a path forward to develop policies that eliminate the need for youth detention.

Sponsors: Mike O'Brien

Supporting documents: 1. [Proposed Amendment](#), 2. [Summary and Fiscal Note](#)

[History \(6\)](#) [Text](#)

| Date | Ver | Action By | Action | Result | Action Details | Meeting Details | Seattle Channel |
|-----------|-----|---|------------------------|--------|--------------------------------|---------------------------------|-----------------|
| 9/21/2015 | 2 | City Clerk | attested by City Clerk | | Action details | Meeting details | |
| 9/21/2015 | 1 | Full Council | | | | Meeting details | |
| 9/16/2015 | 1 | Public Safety, Civil Rights, and Technology Committee | adopt | Pass | Action details | Meeting details | |
| 9/14/2015 | 1 | Full Council | referred | | Action details | Meeting details | |
| 9/14/2015 | 1 | Council President's Office | sent for review | | Action details | Meeting details | |
| 9/2/2015 | 1 | City Clerk | sent for review | | Action details | Meeting details | |

SUMMARY and FISCAL NOTE*

| | | |
|--------------------|------------------------------|---------------------------------|
| Department: | Contact Person/Phone: | Executive Contact/Phone: |
| LEG | Esther Handy / 4-5323 | N/A |

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title:

A RESOLUTION declaring The City of Seattle to be on a zero-use detention plan for youth and establishing a path forward to execute the plan.

Summary and background of the Legislation:

This legislation endorses the recommendation for Seattle to be a city with zero use of detention for juveniles, as recommended by the Seattle Office for Civil Rights (OCR) in the Racial Equity Analysis of the King County Children and Family Justice Center, in order to achieve the racial equity goals highlighted in the Analysis. The racial equity goals highlighted in OCR's analysis include: eliminating the need to detain or incarcerate youth; eliminating racial inequities in arrest rates, detention, sentencing and prison population; and centering communities of color and other youth facing oppression in the provision, creation, and use of community-based alternatives to secure confinement. The resolution outlines a series of steps to achieve the vision of zero youth detentions, including collaboration with King County, an action plan from Seattle's OCR and the allocation of City resources.

2. CAPITAL IMPROVEMENT PROGRAM

This legislation creates, funds, or amends a CIP Project.

(If box is checked, please attach a new (if creating a project) or marked-up (if amending) CIP Page to the Council Bill. Please include the spending plan as part of the attached CIP Page.)

| Project Name: | Project I.D.: | Project Location: | Start Date: | End Date: | Total Cost: |
|---------------|---------------|-------------------|-------------|-----------|-------------|
| | | | | | |

3. SUMMARY OF FINANCIAL IMPLICATIONS

Please check one:

This legislation has direct financial implications. (If the legislation has direct fiscal impacts (appropriations, revenue, positions), fill out the relevant sections below. If the financial implications are indirect or longer-term, describe them in narrative in the "Other Implications" section.)

This legislation does not have direct financial implications.
 (Please skip to "Other Implications" section at the end of the document and answer questions a-1)

| | | | | |
|---|--------------------------------|-------------|-------------------------------|-------------|
| Budget program(s) affected: | | | | |
| Estimated \$ Appropriation change: | General Fund \$ | | Other \$ | |
| | 2015 | 2016 | 2015 | 2016 |
| Estimated \$ Revenue change: | Revenue to General Fund | | Revenue to Other Funds | |
| | 2015 | 2016 | 2015 | 2016 |
| Positions affected: | No. of Positions | | Total FTE Change | |
| | 2015 | 2016 | 2015 | 2016 |
| Other departments affected: | | | | |

3.a. Appropriations

This legislation adds, changes, or deletes appropriations.
 (If this box is checked, please complete this section. If this box is not checked, please proceed to Revenues)

| Fund Name and number | Dept | Budget Control Level Name/##* | 2015 Appropriation Change | 2016 Estimated Appropriation Change |
|----------------------|------|-------------------------------|---------------------------|-------------------------------------|
| | | | | |
| TOTAL | | | | |

*See budget book to obtain the appropriate Budget Control Level for your department.
 (This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation please provide details in the Appropriation Notes section below. If the appropriation is not completely supported by revenue/reimbursements listed below, please identify the funding source (e.g. available fund balance) to cover this appropriation in the notes section. Also indicate if the legislation changes appropriations one-time, ongoing, or both.)

Appropriations Notes:

3.b. Revenues/Reimbursements

This legislation adds, changes, or deletes revenues or reimbursements.
 (If this box is checked, please complete this section. If this box is not checked, please proceed to Positions)

Anticipated Revenue/Reimbursement Resulting from this Legislation:

| Fund Name and Number | Dept | Revenue Source | 2015 Revenue | 2016 Estimated Revenue |
|----------------------|------|----------------|--------------|------------------------|
| | | | | |
| TOTAL | | | | |

(This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below. Do the revenue sources have match requirements? If so, what are they?)

Revenue/Reimbursement Notes:

3.c. Positions

This legislation adds, changes, or deletes positions.
 (If this box is checked, please complete this section. If this box is not checked, please proceed to Other Implications)

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

| Position # for Existing Positions | Position Title & Department* | Fund Name & # | Program & BCL | PT/FT | 2015 Positions | 2015 FTE | Does it sunset? (If yes, explain below in Position Notes) |
|-----------------------------------|------------------------------|---------------|---------------|-------|----------------|----------|---|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| TOTAL | | | | | | | |

* List each position separately

(This table should only reflect the actual number of positions created by this legislation. In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below.)

Position Notes:

4. OTHER IMPLICATIONS

a) **Does the legislation have indirect or long-term financial impacts to the City of Seattle that are not reflected in the above? No.**

(If yes, explain here.)

The resolution requests the City’s Criminal Justice Equity Team to develop an action plan by September 2016 for the City to work toward zero use of youth detention. It also requests a report by January 1, 2016 that outlines a strategy for engaging City departments including law enforcement, community members, and community-based agencies, and partner agencies in the development of the City’s Action Plan. OCR has estimated that this will require a full-time staff person. The Resolution expresses the intent that any positions needed to perform the responsibilities created by this legislation will be authorized in the 2016 Adopted Budget.

The resolution also expresses the intent to allocate City resources for alternatives to detention and incarceration for youth, but allocations may not be specified until after the Action Plan is developed.

b) **Is there financial cost or other impacts of not implementing the legislation? Yes**

(Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs or consequences.)

Youth detention continues to have profound fiscal and societal implications for the City. At a minimum, the economic cost of incarcerating youth has been estimated at \$95,805 per youth for every year of incarceration. The commitment in this resolution looks to decrease this cost to the City and convert some portion of this amount for evidence-based alternatives to detention for youths.

c) Does this legislation affect any departments besides the originating department? No

(If so, please list the affected department(s), the nature of the impact (financial, operational, etc), and indicate which staff members in the other department(s) are aware of the proposed legislation.)

d) Is a public hearing required for this legislation? No

(If yes, what public hearing(s) have been held to date, and/or what public hearing(s) are planned for the future?)

e) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation? No

(For example, legislation related to sale of surplus property, condemnation, or certain capital projects with private partners may require publication of notice. If you aren't sure, please check with your lawyer. If publication of notice is required, describe any steps taken to comply with that requirement.)

f) Does this legislation affect a piece of property? No

(If yes, and if a map or other visual representation of the property is not already included as an exhibit or attachment to the legislation itself, then you must include a map and/or other visual representation of the property and its location as an attachment to the fiscal note. Place a note on the map attached to the fiscal note that indicates the map is intended for illustrative or informational purposes only and is not intended to modify anything in the legislation.)

g) Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? Yes

(If yes, please explain how this legislation may impact vulnerable or historically disadvantaged communities. Using the racial equity toolkit is one way to help determine the legislation's impact on certain communities.)

According to the Washington State Budget and Policy Center, African-American children in Washington are detained at a rate four times higher than the average for the general youth population. According to King County juvenile detention data, two-thirds of all individuals booked in 2012 were youth of color. By eliminating the need to incarcerate youth, the City can center communities of color and other youth facing oppression in the provision, creation, and use of community-based alternatives to secure confinement, and address racial disproportionalities in other areas of life, such as education and employment.

h) If this legislation includes a new initiative or a major programmatic expansion: What are the long-term and measurable goals of the program? Please describe how this legislation would help achieve the program's desired goals.

(This answer should highlight measurable outputs and outcomes.)

The Resolution does create a new initiative, but with the intent to outline the goals, outputs and outcomes in an Action Plan by September 2016.

i) Other Issues:

Esther Handy
LEG Detention Zero SUM
Version 3

List attachments/exhibits below: