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

IN RE THE PERSONAL RESTRAINT  
PETITION OF:

JOSEPH LEIF WOLF,  
  
Petitioner.

NO. 47455-7

STATE'S RESPONSE TO PERSONAL  
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. 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?

2. Where the defendant has an adequate remedy at law, and where he cannot satisfy procedural requirements of a successful personal restraint petition, should his petition as to his legal financial obligations be dismissed?

B. STATUS OF PETITIONER:

Petitioner Joseph Wolf (the "defendant") is presently restrained under a Pierce County judgment and sentence entered on February 24, 2012, following a revocation hearing. Appendices A and B. He pleaded guilty in 2008, and on November 14, 2008,

1 was sentenced to a suspended sentence and sexual deviancy treatment pursuant to the  
2 special sex offender sentencing alternative (“SSOSA”). Appendix A.

3 The defendant had mixed success in treatment for approximately three years.  
4 Appendix C, p. 2. He violated the conditions of his SSOSA sentence several times  
5 between 2009 and 2012. *Id.* The most serious violation was in 2011 when the trial court  
6 found seven violations ranging from termination from treatment to using drugs. After a  
7 revocation hearing in July 2011, the trial court gave the defendant one last chance. *Id.* It  
8 modified his SSOSA treatment order and returned him to supervision. *Id.*

9 The defendant did not take advantage of his last chance. In January 2012 he was  
10 shown to be in compliance [Appendix D], but less than two weeks later his community  
11 corrections officer filed a violation report alleging drug use [Appendix E]. At a February  
12 24, 2012, revocation hearing, the defendant stipulated to three violations, argued for a short  
13 jail sanction and asked for a chance to bring himself into compliance. Appendix C, pp. 2-  
14 3. The State recommended revocation. The court accepted the State’s position and  
15 sentenced the defendant to 131.9 months in prison. Appendix B.

16 At the time of the revocation hearing, the trial court had extensive knowledge of the  
17 defendant’s individual circumstances. Appendix C, pp. 7-8. The trial court’s knowledge  
18 came from having found the defendant in violation at least four times prior to revoking his  
19 SSOSA sentence [Appendix C, p. 2], and having reviewed more than 30 written  
20 submissions by his juvenile advocate, treatment provider and community corrections  
21 officer [Appendix E]. After revoking the defendant’s SOSSA sentence, and with that  
22 wealth of information about the defendant’s individual circumstances at its disposal, the  
23 trial court left intact its order from the original sentencing hearing that the defendant pay a  
24 total of \$1,200.00 in legal financial obligations. Appendix A.

1 Following an unsuccessful motion to reconsider, the defendant filed a timely notice  
2 of appeal. Appendix E, p. 4. This Court affirmed the trial court's revocation order and  
3 prison sentence in an unpublished opinion filed December 31, 2013. Appendix C. The  
4 mandate was filed on May 23, 2014, and this personal restraint petition was timely filed on  
5 April 9, 2015.

6 C. INCORPORATION OF RECORD FROM APPEAL:

7 The State hereby incorporates by reference the record from the direct appeal, *State*  
8 *v. Joseph Lief Wolf*, No. 43448-2-II.

9 D. ARGUMENT:

- 10 1. THIS PETITION SHOULD BE DISMISSED WHERE THE DEFENDANT  
11 HAS NOT BROUGHT FORWARD EVIDENCE SUFFICIENT TO  
12 SATISFY THE DEMANDING FOUR PART TEST FOR AN EIGHTH  
13 AMENDMENT CRUEL AND UNUSUAL PUNISHMENT  
14 CHALLENGE.

15 In a 1996 Spokane murder case committed by a sixteen year old, a case that was  
16 consolidated with a robbery case committed by a seventeen year old, the Washington  
17 Supreme Court held that the auto decline statute did not violate the Eighth Amendment's  
18 prohibition of cruel and unusual punishment. *In re: Personal Restraint of Boot*, 130  
19 Wn.2d 553, 569-70, 925 P.2d 964(1996), citing *State v. Massey*, 60 Wn. App. 131, 803  
20 P.2d 340, *review denied*, 115 Wn.2d 1021, 802 P.2d 126 (1990), *cert. denied*, 499 U.S.  
21 960, 111 S. Ct. 1584, 113 L. Ed. 2d 648 (1991). That holding was reaffirmed in 2007 in a  
22 rape and assault case committed by a sixteen year old where the court observed that the  
23 auto decline statute "furthers the legislative intent to punish with certainty and more  
24 severity those juvenile offenders *who commit* violent crimes rather than those youthful  
25 offenders who commit other crimes." (emphasis in the original) *State v. Posey*, 161 Wn.  
2d 638, 644, 167 P.3d 560, 562 (2007), citing *State v. Mora*, 138 Wn.2d 43, 50, 977 P.2d  
564 (1999).

1           Those decisions have not been overturned. While the United States Supreme Court  
2 may have established limits on the states from imposing the death penalty or life without  
3 parole on juvenile offenders, those limits do not explicitly or implicitly invalidate the  
4 statutes that led to the 131 month sentence in this case. *Roper v. Simmons*, 543 U.S. 551,  
5 578-79, 125 S. Ct. 1183, 161 L. Ed. 2d 1(2005)(“The Eighth and Fourteenth Amendments  
6 forbid imposition of the death penalty on offenders who were under the age of 18 when  
7 their crimes were committed.”), *Miller v. Alabama*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 2455, 2469,  
8 183 L. Ed. 2d 407(2012)(“We therefore hold that the Eighth Amendment forbids a  
9 sentencing scheme that mandates life in prison without possibility of parole for juvenile  
10 offenders.”), citing *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 2030, 176 L. Ed. 2d  
11 825 (2010).

12           Although a life sentence is not at issue in this case, it is important to note that the  
13 United States Supreme Court explicitly left open the possibility of a life sentence for a  
14 juvenile offender. *Graham v. Florida*, *supra*, at 75. *Miller v. Alabama*, 132 S. Ct. at 2469  
15 (“Because that holding is sufficient to decide these cases, we do not consider Jackson's and  
16 Miller's alternative argument that the Eighth Amendment requires a categorical bar on life  
17 without parole for juveniles.”).

18           The defendant’s Eighth Amendment arguments are not valid under *Boot*. They  
19 should also not be held to be valid as an extension of the Eighth Amendment into  
20 unexplored territory. In Eighth Amendment cases, “a heavy burden rests on those who  
21 would attack the judgment of the representatives of the people.” *Gregg v. Georgia*, 428  
22 U.S. 153, 175, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976). Moreover, in “a democratic  
23 society legislatures, not courts, are constituted to respond to the will and consequently the  
24 moral values of the people.” *Id.*, quoting, *Furman v. Georgia*, 408 U.S. 238, 383, 92 S.  
25 Ct. 2726, 33 L. Ed. 2d 346 (1972).

1 In Washington, the heavy burden in cruel and unusual punishment cases is  
2 encapsulated in a demanding four part test. *State v. Witherspoon*, 180 Wn.2d 875, 329  
3 P.3d 888 (2014). The Court considers four factors “in analyzing whether punishment is  
4 prohibited as cruel under article I, section 14: '(1) the nature of the offense, (2) the  
5 legislative purpose behind the statute, (3) the punishment the defendant would have  
6 received in other jurisdictions, and (4) the punishment meted out for other offenses in the  
7 same jurisdiction.’ ” *Id.* at 888, quoting *State v. Fain*, 94 Wn.2d 387, 392–93, 617 P.2d  
8 720 (1980).

9 In this case the defendant falls far short of satisfying the four part test. As to the  
10 first factor, the nature of the offense, the defendant in this case was convicted of first  
11 degree child rape, RCW 9A.44.073. That offense is classified as a Class A felony sex  
12 offense with a seriousness level of twelve. RCW 9A.44.073(2). RCW 9.94A.515. Only  
13 eight crimes have a higher seriousness level. *Id.* First degree child rape is also classified as  
14 a most serious offense under both of Washington’s persistent offender provisions, and thus  
15 is one of a few crimes that are eligible for a life sentence. RCW 9.94A.030(33) and (38)(a)  
16 and (b). Lastly, the offense is classified as a serious violent offense under RCW  
17 9.94A.030(46), and thus is also eligible for consecutive sentencing under RCW  
18 9.94A.589(b). Considering this consistent and persistent legislative judgment that first  
19 degree child rape is one of this state’s most egregious offenses, the defendant can hardly  
20 make a case that the first factor, the nature of the offense, supports his argument.

21 The remaining three factors offer no better support. The second factor was  
22 addressed explicitly in *State v. Posey*, 161 Wn. 2d 638, 644, 167 P.3d 560, 562 (2007).  
23 There the Supreme Court held that the purpose of the auto decline statute was “to punish  
24 with certainty and more severity those juvenile offenders *who commit* violent crimes”. *Id.*  
25 (emphasis in the original). As to the fourth factor, a cursory examination of the statute

1 shows that the legislature imposed the same severe punishment, with the same adult-court  
2 certainty, for similar violent crimes committed by sixteen and seventeen year olds. RCW  
3 13.04.030(e)(v). First degree child rape is treated the same as all other level twelve or  
4 higher offenses. There is no support for the argument that Washington treats other similar  
5 offenses differently.

6 The remaining factor, the punishment that the defendant would have received in  
7 other jurisdictions, also does not support the defendant's argument. In fact this factor  
8 refutes the defense position better than the other three. Two tables included in the  
9 defendant's own submissions in this case are entitled (1) "Most states have multiple ways  
10 to impose adult sanctions on offenders of juvenile age" and (2) "Most states allow juvenile  
11 court judges to waive jurisdiction over certain cases and transfer them to criminal court".  
12 Brief of Petitioner, Appendix K, p.3-4. Those tables show that in 2011 the U.S. Justice  
13 Department found that Washington was in the mainstream in transfers of juveniles to adult  
14 jurisdiction because its auto decline statute is similar to statutes in 29 states. *Id.*

15 A more recent report from the U.S. Justice Department from 2014 shows that  
16 Washington continues to be in the mainstream. Washington's approach to serious violent  
17 juvenile offenders differs little from its sister states. Appendix G, p. 100-03. In particular  
18 the report states: "As of the end of the 2011 legislative session, 29 states have statutory  
19 exclusion provisions. State laws typically set age and offense limits for excluded offenses.  
20 The offenses most often excluded are murder, capital crimes, and other serious person  
21 offenses." Appendix G, p. 103. There can hardly be more supportive evidence that "the  
22 punishment the defendant would have received in other jurisdictions" is much the same as  
23 the punishment he received in Washington in this case. *State v. Witherspoon*, 180 Wn.2d  
24 at 888.

1 In this case, the defendant did not provide analysis of the four factors. Instead he  
2 argues “that reconsideration of the auto decline statute is supported by research. . . .” Brief  
3 of Petitioner, p. 31. The research that the defendant relies upon consists of two reports  
4 submitted as appendices to his petition. One of those reports included the tables discussed  
5 above that show that Washington is in the mainstream in its treatment of serious violent  
6 juvenile offenders. The other report is of limited utility in that it is little more than an  
7 opinion poll. Brief of Petitioner, Appendix L, p. 12. In a reference section at the end of  
8 the report entitled “About the Poll and Methodology” the authors indicated that their  
9 conclusions were drawn from focus groups and opinion surveys from approximately 800  
10 people. *Id.* While opinion polls may be interesting on the evening news, they are hardly  
11 the kind of scholarly evidence that policy makers or a legislature might consult when  
12 setting state-wide juvenile justice policy.

13 The 2014 U.S. Department of Justice report suggests another reason to be wary of  
14 opinion poll research. That report shows that Washington is one of eleven states that do  
15 not publicly report recidivism data. Appendix G, p. 111-12. That reality limits the value  
16 of studies that purport to rely on such data. In Washington, more so than most states,  
17 committee hearings and policy debates in the legislature are the proper means by which the  
18 success of juvenile justice policy can be weighed and where the success of current policy  
19 can be taken into account. This highlights the wise caution from the United States  
20 Supreme Court in cruel and unusual punishment cases that “legislatures, not courts, are  
21 constituted to respond to the will and consequently the moral values of the people”. ***Gregg***  
22 ***v. Georgia***, 428 U.S. at 175-76.

23 In a personal restraint petition it is the defendant's burden to present competent,  
24 admissible evidence to support his claim. ***In re: Personal Restraint of Rice***, 118 Wn.2d  
25 876, 886, 828 P.2d 1086(1992). Furthermore “naked castings into the constitutional sea

1 are not sufficient to command judicial consideration and discussion.” *In re: Personal*  
2 *Restraint of Williams*, 111 Wn.2d 353, 365, 759 P.2d 436 (1988), quoting *In re: Personal*  
3 *Restraint of Rozier*, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986), quoting *United States v.*  
4 *Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970). Because collateral attacks, such as personal  
5 restraint petitions, may undermine the principles of finality of litigation, degrade the  
6 prominence of trial, and sometimes cost society the right to punish admitted offenders, our  
7 courts have purposefully imposed limitations on these collateral attacks. *In re: Personal*  
8 *Restraint of Cook*, 114 Wn.2d 802, 809, 792 P.2d 506 (1990), citing *In re: Personal*  
9 *Restraint of Hews*, 99 Wn.2d 80, 86, 660 P.2d 263 (1983). In this case, because the  
10 defendant has not sufficiently supported his petition with evidence and argument  
11 addressing the four factors from *Witherspoon* his petition should be dismissed.

12 2. THE DEFENDANT’S CHALLENGE TO HIS LEGAL FINANCIAL  
13 OBLIGATIONS BY PERSONAL RESTRAINT PETITION SHOULD BE  
14 DISMISSED WHERE HE HAS AN ADEQUATE REMEDY AT LAW,  
15 AND WHERE HE HAS NOT SATISFIED THE PROCEDURAL  
16 REQUIREMENTS OF A SUCCESSFUL COLLATERAL ATTACK.

17 A defendant may not collaterally attack his sentence via personal restraint petition  
18 where he has an adequate remedy at law. RAP 16.4(d). The defendant has an adequate  
19 statutory remedy in this case under RCW 10.01.160(4). Under that provision, a defendant  
20 is entitled to petition the sentencing court for remission of legal financial obligations as  
21 follows:

22 (4) A defendant who has been ordered to pay costs and who is not in  
23 contumacious default in the payment thereof may *at any time* petition  
24 the sentencing court for remission of the payment of costs or of any  
25 unpaid portion thereof. If it appears to the satisfaction of the court that  
payment of the amount due will impose manifest hardship on the  
defendant or the defendant's immediate family, the court may remit  
all or part of the amount due in costs, or modify the method of  
payment under RCW 10.01.170. (emphasis supplied)

*Id.*

1           Since a motion for remission may be filed at any time, and since there is no limit to  
2 the number of such motions, there is no reason the defendant could not file such a motion  
3 after his release from prison and after he has made an honest effort to support himself and  
4 pay his legal financial obligations through work. To grant this petition now would be  
5 premature and contrary to RAP 16.4(d).

6           It is the defendant's burden to bring before this Court competent, admissible  
7 evidence to establish the facts that entitle him to relief. *In re: Personal Restraint of Rice*,  
8 118 Wn.2d 876, 886, 828 P.2d 1086(1992). This he cannot do under present  
9 circumstances.

10           A person is "indigent" in the constitutional sense only when he lacks resources that  
11 could be utilized to satisfy his legal obligations. *State v. Johnson*, 179 Wn.2d 534, 553-  
12 54, 315 P.3d 1090, *cert. denied*, 83 U.S.L.W. 3188 (2014). "Indigence is a relative term,  
13 and must be considered and measured in each case by reference to the need or service to be  
14 met or furnished." *State v. Rutherford*, 63 Wn. 2d 949, 953, 389 P.2d 895 (1964). While  
15 he is incarcerated, the defendant is not indigent with respect to his legal financial  
16 obligations because he was ordered to pay them "per CCO", that is as directed by the  
17 defendant's community corrections officer after he is released on community custody. All  
18 of the defendant's other housing and nutrition needs are presently met by the Department  
19 of Corrections. It remains to be seen whether he will be indigent once he is released.  
20 Requiring the defendant to pay legal financial obligations after he is released may or may  
21 not impose a hardship on him "but not such a hardship that the constitution forbids it."  
22 *State v. Johnson, supra* at 555.

23           This case is readily distinguishable from *State v. Blazina*, 182 Wn.2d 827, 833, 344  
24 P.3d 680 (2015). *Blazina* was a direct appeal. "Unpreserved LFO errors do not command  
25 review as a matter of right". *Id.* In *Blazina*, the Supreme Court noted that, "National and

1 local cries for reform of broken LFO systems demand that this court exercise its RAP  
2 2.5(a) discretion and reach the merits of this case." *Id.* at 835. The court determined that  
3 there was urgency in the "cries for reform" that warranted its review of the issue despite  
4 lack of an objection in the trial court. What *Blazina* did not hold was that it was  
5 abandoning the rather extensive and carefully crafted system of procedural restrictions that  
6 apply to collateral attack cases.

7       There is no indication that heretofore valid limitations on personal restraint  
8 petitions are no longer valid. One such restriction in a first personal restraint petition is the  
9 need for a non-constitutional issue to constitute "a fundamental defect which inherently  
10 results in a complete miscarriage of justice". *In re: Personal Restraint of Cook*, 114  
11 Wn.2d 802, 813, 792 P.2d 506 (1990). There is no fundamental defect and no miscarriage  
12 of justice here. The defendant has not been released, has not attempted to pay his legal  
13 financial obligations, has not been sanctioned for non-payment, and thus is prematurely  
14 pessimistic as to his prospects after release. There can be no miscarriage of justice where  
15 the feared outcome has not happened.

16       For the sake of argument, if the Court were to speculate about the defendant's  
17 future earning potential as is urged by the defendant, the petition should still be dismissed.  
18 The defendant is a 23 year old man with no reported physical infirmity that would prevent  
19 him from securing a job once he is released. He claims that at the time of his arrest in  
20 2008 he suffered from mental health problems, that he was a foster child and that he was  
21 unemployed. Brief of Petitioner, p.45. Despite these challenges he undertook sexual  
22 deviancy treatment that can be a challenge for even the most mentally sound. What's  
23 more, these facts were before the trial court when it granted the defendant's SSOSA  
24 sentence; the court was aware of the fact that the defendant had to pay for sexual deviance  
25 treatment but still imposed minimal legal financial obligations as part of his sentence. It

1 can hardly be said that the trial court did not make “an individualized inquiry as into the  
2 defendant's current and future ability to pay” as required by *Blazina* when it granted  
3 SSOSA, required the defendant to pay for treatment but also imposed minimal and  
4 standard legal financial obligations. *State v. Blazina*, 182 Wn. 2d at 838.

5       The inquiry that the trial court made at the original sentencing hearing was a small  
6 part of what it knew of the defendant’s circumstances at the time of the revocation. The  
7 defendant did not petition for relief from his legal financial obligations at the revocation  
8 hearing. Nevertheless by that time the trial court was “intimately familiar with this case”.  
9 Appendix C, slip opinion, p.7. As any trial judge or lawyer would know, Class A, serious  
10 violent sex offenders undergo intensive supervision and scrutiny by the trial court. More  
11 so than in any other class of cases, a trial court becomes familiar with the circumstances of  
12 sex offenders that it supervises during SSOSA treatment. This defendant was no different.  
13 It is reasonable to infer that the trial court did not think there was serious concern about the  
14 defendant’s ability to pay, otherwise it would have modified the legal financial obligation  
15 order. In short, compared to defendants, such as the defendant in *Blazina*, who appear at a  
16 single sentencing hearing, the trial court in this case had intimate knowledge of this  
17 defendant’s individual circumstances. There is no basis for the claim that it did not factor  
18 in that knowledge when it revoked the defendant’s SSOSA sentence.

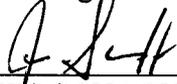
19       Upon considering the impact of the *Blazina* in this case, there is no reason to grant  
20 the defendant's personal restraint petition. The defendant has not, and likely at the present  
21 time, cannot show that he has no adequate remedy at law. Nor can he show that he has met  
22 the procedural requirements for a successful collateral attack by personal restraint petition.  
23 As to the challenge to the legal financial obligations, the petition should be dismissed.

1 E. CONCLUSION:

2 For the foregoing reasons the State urges the Court to dismiss the defendant's  
3 personal restraint petition.

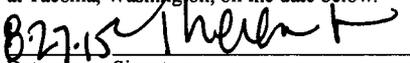
4 DATED: Thursday, August 27, 2015.

5 MARK LINDQUIST  
6 Pierce County  
7 Prosecuting Attorney

8   
9 JAMES SCHACHT  
Deputy Prosecuting Attorney  
WSB #17298

10 Certificate of Service:

11 The undersigned certifies that on this day she delivered by  mail or  
12 ABC-LMI delivery to the petitioner true and correct copies of the document to  
13 which this certificate is attached. This statement is certified to be true and  
14 correct under penalty of perjury of the laws of the State of Washington. Signed  
15 at Tacoma, Washington, on the date below.

16   
17 Date Signature

## **APPENDIX A**

Case Number: 08-1-02972-9 Date: August 27, 2008  
SerialID: 70388062-F20F-6452-DF60008EA5408A1  
Certified By: Kevin Stock Pierce County Clerk, Washington



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 08-1-02972-9

vs.

JOSEPH LEIF WOLF,

Defendant.

WARRANT OF COMMITMENT

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

NOV 14 2008

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

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

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

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

Case Number: 08-1-02972-9 Date: August 27, 2008  
SerialID: 70388062-F20F-6452-DF609-8EA5408A1  
Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-02972-9

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

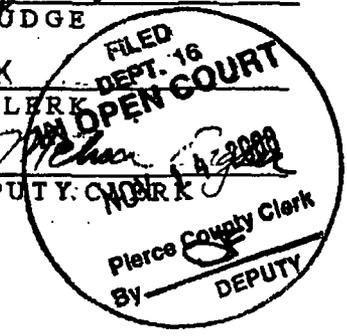
Dated: 11/14/08

By direction of the Honorable

*Kevin Stock*  
\_\_\_\_\_  
JUDGE

KEVIN STOCK  
\_\_\_\_\_  
CLERK

By: *Michael Engler*  
\_\_\_\_\_  
DEPUTY CLERK



CERTIFIED COPY DELIVERED TO SHERIFF

NOV 14 2008 *Michael Engler*  
Deputy

STATE OF WASHINGTON

ss:

County of Pierce

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

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

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

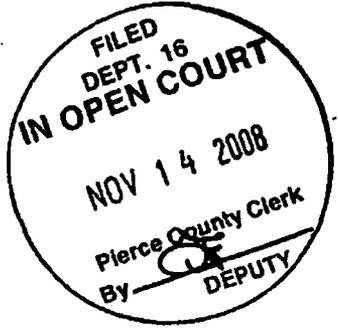
KEVIN STOCK, Clerk

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

tc

Case Number: 08-1-02972-9 Date: August 27, 2008  
SerialID: 70388062-F20F-6452-DF60-38EA5408A1  
Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-02972-9



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

NOV 14 2008  
NGO

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-02972-9

vs.

JUDGMENT AND SENTENCE (FJS)

JOSEPH LEIF WOLF

Defendant.

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

SID: WA24583921  
DOB: 11/16/1981

I. HEARING

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

II. FINDINGS

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

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

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

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. 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(8). (If the crime is a drug offense, include the type of drug in the second column.)

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

08-9-14347-4

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

as charged in the AMENDED Information

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

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

2.3 SENTENCING DATA:

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

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

- within  below the standard range for Count(s) \_\_\_\_\_
  - above the standard range for Count(s) \_\_\_\_\_
  - The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
  - Aggravating factors were  stipulated by the defendant,  found by the court after the defendant waived jury trial,  found by jury by special interrogatory.
- Findings of fact and conclusions of law are attached in Appendix 2.4.  Jury's special interrogatory is attached. The Prosecuting Attorney  did  did not recommend a similar sentence.

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

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

\_\_\_\_\_

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

\_\_\_\_\_

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

III. JUDGMENT

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

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

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

JASS CODE

RTN/RJN	\$ <u>LoC</u>	Restitution to: _____
	\$ _____	Restitution to: _____
	(Name and Address--address may be withheld and provided confidentially to Clerk's Office).	
PCV	\$ <u>500.00</u>	Crime Victim assessment
DNA	\$ <u>100.00</u>	DNA Database Fee
PUB	\$ <u>400.00</u>	Court-Appointed Attorney Fees and Defense Costs
FRC	\$ <u>200.00</u>	Criminal Filing Fee
FCM	\$ _____	Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ 1200.00 TOTAL

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

shall be set by the prosecutor.

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

RESTITUTION. Order Attached

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

All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ pwcco per month commencing pwcco. 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 [X] DNA TESTING. The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

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

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

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

4.4 OTHER:


4.4a BOND IS HEREBY EXONERATED

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

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

131.9 months on Court I months on Court \_\_\_\_\_  
31.9 months on Court II months on Court \_\_\_\_\_

Actual number of months of total confinement ordered is: 131.9 months w/ 119.9 suspended

CONSECUTIVE CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the following which shall be served consecutively:

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

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

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

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

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

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

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

for a period of 3 yrs

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

Serve 12 days/months of total confinement. Work Crew and

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

Obtain and maintain employment: Per CEO

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

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

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

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

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

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

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

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

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

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

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

\_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_  
\_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_  
\_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

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

COMMUNITY CUSTODY is ordered as follows:

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

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

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

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

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

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

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

- The defendant shall not consume any alcohol.
- Defendant shall have no contact with: Moms; see NCO's
- Defendant shall remain [ ] within [ ] outside of a specified geographical boundary, to wit: Wallo
- Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). (RCW 9.94A.030(8))
- [ ] The defendant shall participate in the following crime-related treatment or counseling services: \_\_\_\_\_
- [ ] The defendant shall undergo an evaluation for treatment for [ ] domestic violence [ ] substance abuse [ ] mental health [ ] anger management and fully comply with all recommended treatment.
- [ ] The defendant shall comply with the following crime-related prohibitions: \_\_\_\_\_

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

See App H

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

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

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

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

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

08-1-02972-9

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

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

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

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

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

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

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

V. NOTICES AND SIGNATURES

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

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

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

5.4 **RESTITUTION HEARING.**

Defendant waives any right to be present at any restitution hearing (sign initials): J/N 07

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

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

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

1. **General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW) where the victim is a minor defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

2. **Offenders Who Leave the State and Return:** If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three (3) business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within three (3) business days after starting

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.

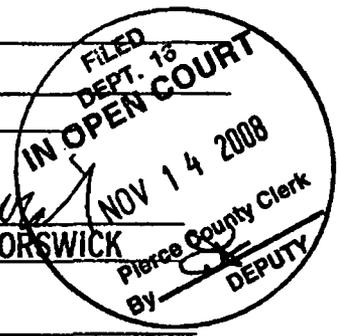
5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 OTHER: Due to D's age DOC is to pay for txt while D in  
compliance w/ SSO SA program

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

JUDGE  
Print name

Lisa Worwick  
LISA WORSWICK



Deputy Prosecuting Attorney

Print name: Lexi Korman  
WSB # 30370

Attorney for Defendant

Print name: Mark Quisley  
WSB # 64496

Defendant

Print name: JOSEPH WOLF

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

Defendant's signature: [Signature]

Case Number: 08-1-02972-9 Date: August 27,  
SerialID: 70388062-F20F-6452-DF6038EA5408A1  
Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-02972-9

**CERTIFICATE OF CLERK**

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

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

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

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

**IDENTIFICATION OF COURT REPORTER**

**SUZANNE TRIMBLE**

Court Reporter

APPENDIX "G" - CONDITIONS FOR SSOSA SENTENCE

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

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

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

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

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

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

V. The defendant shall not consume alcohol.

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

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

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

Case Number: 08-1-02972-9 Date: August 27, 2008  
SerialID: 70388062-F20F-6452-DF60308EA5408A1  
Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-02972-9

**IDENTIFICATION OF DEFENDANT**

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

Date of Birth ~~11/16/1981~~ 1991

FBI No. 996452WC1

Local ID No. PCSO302897

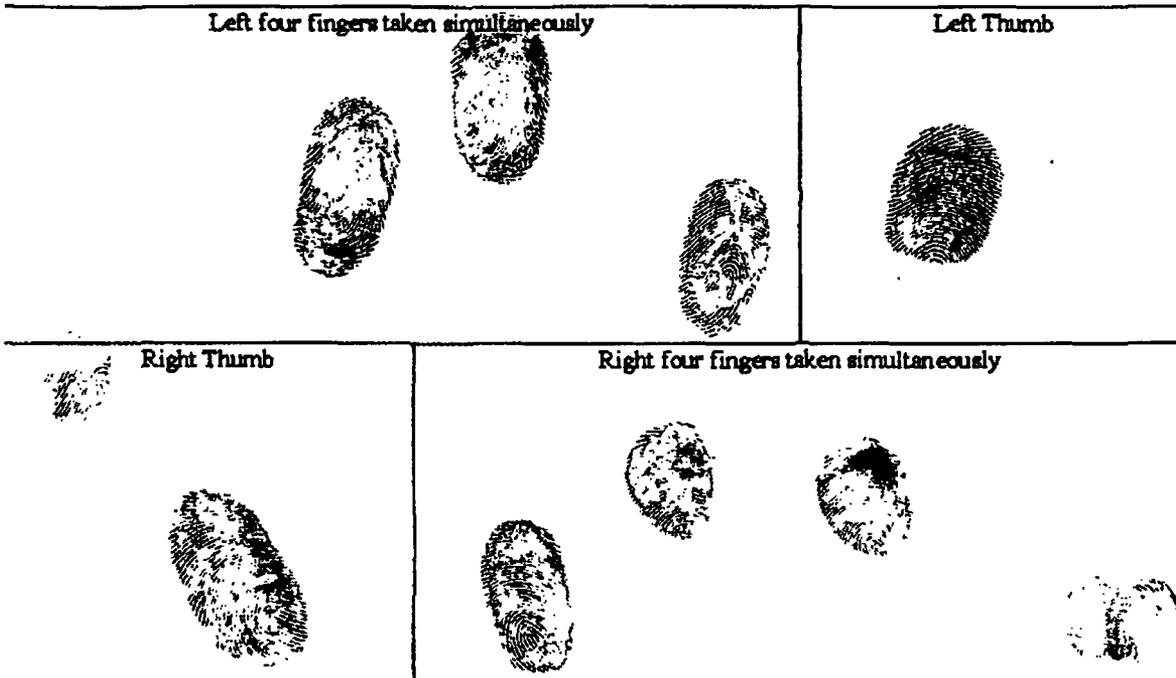
PCN No. 539490893

Other

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

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

**FINGERPRINTS**



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

DEFENDANT'S SIGNATURE: [Signature]

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

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned 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 herunto set my hand and the Seal of said  
Court this 27 day of August, 2015



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Aug 27, 2015 10:33 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

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enter **SerialID: 70388062-F20F-6452-DF609968EA5408A1**.

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## **APPENDIX B**



08-1-02972-9

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Case Number: 08-1-02972-9 Date: August 27, 2015  
SerialID: 7038A04E-110A-9BE2-A9F5-1100511810  
Certified By: Kevin Stock Pierce County Clerk, Washington



**SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY**

**STATE OF WASHINGTON,**

**Plaintiff,**

**CAUSE NO. 08-1-02972-9**

**vs.**

**JOSEPH LEIF WOLF,**

**Defendant.**

**ORDER REVOKING SENTENCE**

**FEB 27 2012**

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

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

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

**IT IS FURTHER ORDERED:**

all conditions as previously outlined in J's S, App H, App F  
or found violations as stipulated 1) use of Methamphetamine on  
or about 2/4/12, 2) use of Synthetic Cocaine on  
or about 2/4/12; 3) Disobey of Chemical Dep. test  
prior on or about 2/6/12

DOC # 323839

08-1-02972-9

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

SIGNED IN THE PRESENCE OF THE DEFENDANT.

Presented by:

[Signature]  
GRANT E. BLINN *Lori Kosman*  
Deputy Prosecuting Attorney  
WSB # 25570 30370

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

wjj

[Signature]  
Defendant

[Signature] 14496  
x Mark Angley

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APPENDIX "F"

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

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

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

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

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

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

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

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

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

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

(I) The offender shall remain within, or outside of, a specified geographical boundary:

*per CCO*  
D to comply with Regs. orders

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

previously filed NCO's, No contact with others

(III) The offender shall participate in crime-related treatment or counseling services;

(IV) The offender shall not consume alcohol;

(V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections, or

(VI) The offender shall comply with any crime-related prohibitions.

(VII) Other Chemical dependency eval & No test  
Psycho social eval & No test

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned 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 herunto set my hand and the Seal of said  
Court this 27 day of August, 2015



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Aug 27, 2015 10:33 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

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This document contains 3 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

## **APPENDIX C**

May 23 2014 11:55 AM

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

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JOSEPH WOLF,

Appellant.

No. 43448-2-II

MANDATE

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

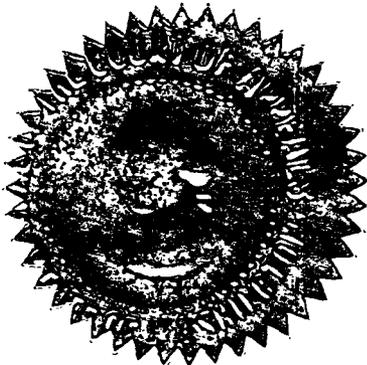
The State of Washington to: The Superior Court of the State of Washington  
in and for Pierce County

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

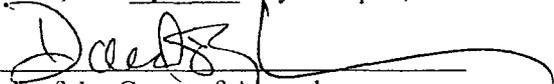
Judgment Creditor: State of Washington - \$6.43

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

Judgment Debtor: Joseph Wolf - \$3,579.64



IN TESTIMONY WHEREOF, I have hereunto set  
my hand and affixed the seal of said Court at  
Tacoma, this 9th day of April, 2014.

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

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

Hon. Elizabeth Martin

Maureen Marie Cyr  
Washington Appellate Project  
1511 3rd Ave Ste 701  
Seattle, WA, 98101-3635  
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Melody M Crick  
Pierce County Prosecuting Attorney  
930 Tacoma Ave S Rm 946  
Tacoma, WA, 98402-2171  
mcrick@co.pierce.wa.us

FILED  
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DIVISION II

2013 DEC 31 AM 9:16

STATE OF WASHINGTON

BY lo  
DEPUTY

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

JOSEPH LIEF WOLF,

Appellant.

No. 43448-2-II

UNPUBLISHED OPINION

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

**FACTS**

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

---

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

No. 43448-2-II

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

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

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

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

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

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

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

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

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

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

ANALYSIS

A. DUE PROCESS

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

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

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

No. 43448-2-II

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

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

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

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

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

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

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

No. 43448-2-II

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

B. INEFFECTIVE ASSISTANCE OF COUNSEL

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

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

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

No. 43448-2-II

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

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

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

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

No. 43448-2-II

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

C. REVOCATION DECISION

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

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

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

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

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

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

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

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

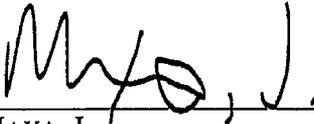
No. 43448-2-II

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

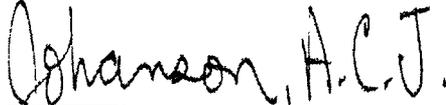
RP (Apr. 27, 2012) at 52-54. Wolf fails to show that this well-reasoned approach was an abuse of discretion.

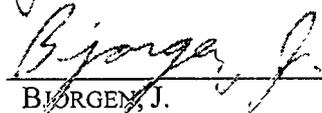
We affirm.

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

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

We concur:

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

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

## **APPENDIX D**

January 24 2012 1:20 PM

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



Advocacy for Youth

January 24, 2012

Hon. Elizabeth Martin  
Pierce County Superior Court, Department 16  
930 Tacoma Ave  
Tacoma, WA 98402

Case Number: 08-1-02972-9 Date: August 27, 2015  
SerialID: 7038A242-110A-9BE2-A93E7D2F7ED48FD2  
Certified By: Kevin Stock Pierce County Clerk, Washington

**Re: Wolf, Joseph (DOB: 11/16/1991)**  
**Pierce County Superior Court Cause Number 08-1-02972-9**  
**SSOSA Review Hearing 1/27/12**

Dear Judge Martin:

This letter is written on behalf of Joseph Wolf in support of his Special Sex Offender Sentencing Alternative (SSOSA) review hearing scheduled before you on January 27, 2012.

Joseph has been working with TeamChild<sup>1</sup> since his release from Pierce County jail at age 17 and his subsequent transition into young adulthood from a life in foster care. He stays in regular contact with me to address civil legal issues that are key to his successful completion of his SSOSA supervision and treatment. Joseph has had 14 review hearings before the court since the SSOSA program was initiated on November 14, 2008.

The purpose of this letter is to update the Court on Joseph's success in the community since his last SSOSA review hearing of October 28, 2011. Joseph has many positive accomplishments since his last review hearing that are detailed in this letter. These include:

- Making great progress in his sex offender treatment.
- Graduating from intensive outpatient treatment and transitioning to weekly outpatient.
- Continuing to work closely with Pierce County Alliance's, Independent Youth Housing Program (IYHP).<sup>2</sup>
- Meeting regularly with Mr. Arthur Williams, his Community Corrections Officer (CCO) and providing safety plans and other reports concerning his activities in addition to clean urine analysis specimens and successfully passing a polygraph.

<sup>1</sup> TeamChild is a non-profit legal services agency that assists youth involved in the juvenile justice system in securing the education, health, housing and other supports they need to stay safe and successful in the community and achieve positive outcomes in their lives.

<sup>2</sup> IYHP secures housing for youth aging out of foster care with case management and financial assistance. IYHP assists Joseph with his rent to keep him in stable housing. As part of IYHP Joseph must contribute part of his income to rent payments that IYHP makes on his behalf. Joseph's IYHP case manager expects him to increase his rent contributions over the time that he participates in the program in addition to complying with a detailed case management plan.

**Offices in King ♦ Pierce ♦ Snohomish ♦ Spokane ♦ Yakima Counties**

- Resuming his college education by enrolling full-time in Pierce College for Winter term with a focus in Journalism.

### **1. Sexual Offender Treatment**

Joseph is making great strides in his treatment with Mr. Robert Parham, MA, CSOTP. He and Mr. Parham meet weekly for individual counseling. Mr. Parham continues to take a very active role in Joseph's treatment and community success. Mr. Parham is also in regular contact with Mr. Williams. The program Mr. Parham has developed is appropriate and individually tailored to meet Joseph's unique needs. Mr. Parham has prepared a report for this court.

### **2. Multi-Agency Staffing**

As you are aware from his last report, when Joseph began his treatment with Mr. Parham and resumed his supervision in the community under Mr. Williams a multi-agency staffing was held at Mr. Parham's office. It is planned that a staffing like this will be held on a quarterly basis throughout the year to help Joseph throughout the duration of his court supervision and beyond if necessary.

Since our last SOSSA review a second meeting was held on November 16, 2011. The meeting happened to coincide with Joseph's 20<sup>th</sup> birthday. Joseph, Mr. Williams, Ms. Laura Willett, Ms. Kathy Bannon, both of Pierce County Alliance, and I attended this meeting with Mr. Parham. During the meeting we were able to cooperatively address, through a multi-disciplinary approach, the various activities that Joseph is working on in addition to any issues that Joseph or the professionals identified. The agenda for the meeting included, planning for Joseph's financial aid application and college enrollment and coordinating his community access plan. The later included a detailed discussion of safety plans that Joseph submits to Mr. Williams and Mr. Parham in connection with all community events, the arrangement of chaperones when necessary, and Mr. William's approval of Joseph's chosen associates.

### **3. Supervision**

Joseph feels that his supervision with Mr. Arthur Williams his CCO is going well. Mr. Williams takes a very active role and Joseph keeps him informed about everything. Joseph provides random urine analysis specimens for Mr. Williams each month, submits to unannounced home visits, and successfully completed another polygraph on December 13, 2011.

Joseph takes his supervision with Mr. Williams so seriously that he even arrived at the CCO office on Wednesday, January 18, 2012 despite that the fact that the CCO office and the courts were closed that day due to the severe snow storm. Mr. Williams also happened to be working in his office despite the weather and waived at Joseph from the window.

#### **4. Mental Health Treatment**

Joseph participates in mental health counseling sessions with Mr. Steve Adams, MA, LCSW, at Greater Lakes Mental Health (GLMH). Mr. Adams has provided Joseph with treatment for almost two years and is very familiar with his situation. They currently meet for individual counseling sessions every other week. Mr. Adams is also in regular contact with the health care professional that manages Joseph's medication through GLMH, Ms. Nancy Holzinger, LNP. Joseph keeps Mr. Parham and Mr. Williams informed of any changes in his mental health treatment and medication.

Case Number: 08-1-02972-9 Date: August 27, 2015

SerialID: 7038A242-110A-9BE2-A93E7D2F7ED48FD2

On Tuesday, December 13, 2011, Joseph voluntarily informed Mr. Williams that he had attempted suicide at his home the previous Sunday, December 11, 2011. It is my understanding the Mr. Williams has separately provided details of this event. Mr. Williams took Joseph to the GLMH office and he was subsequently hospitalized for two and a half days to undergo psychiatric observation. Joseph was discharged on Thursday, December 15, 2011. Joseph's suicide attempt was triggered by the recent death of his grandmother, negative interactions with his mother, and depression connected to being alone during the holiday season. After admission to the hospital Joseph made sure that Mr. Parham, TeamChild, Pioneer Human Services, and Pierce County Alliance were aware of what had happened and coordinated appropriately with each of these agencies as well as his CCO and Mr. Quigley at the Department of Assigned counsel upon his release. Since his discharge from the hospital Joseph's mental health condition is much improved. He has met with Mr. Adams and has had his medication reviewed for any needed adjustments since his hospitalization.

#### **5. Substance Abuse Treatment**

Joseph enrolled in intensive out-patient treatment through Pioneer Human Services in August 2011. On January 10, 2012 Joseph graduated intensive outpatient treatment. He has now transitioned to weekly outpatient treatment and continues to work with Pioneer Human Services. In addition to the treatment through Pioneer, Joseph attends Narcotics Anonymous meetings as needed.

#### **6. Independent Youth Housing Program (IYHP)**

Joseph's case manager with IYHP is Ms. Laura Willett (253) 502-5459. IYHP has been one of Joseph's primary case management supports in the community since he transitioned from foster care. Joseph's relationship with Ms. Willett continues to progress very well. Ms. Willett and Joseph developed a "Safety and Independent Living" plan that has provided him with goals for independent living. Primary among those goals is maintaining his housing while complying with his treatment and court obligations and completing his college education.

#### **7. Pierce College**

Working closely with IYHP Joseph applied to Pierce College and also applied for financial aid for the Winter term. Obtaining financial aid was not easy for Joseph this term because last year's incarceration and subsequent withdrawal from the 2011 Spring semester caused him to have to appeal a determination that he had not made adequate academic progress. However, IYHP and TeamChild were able to support Joseph in making this successful appeal.

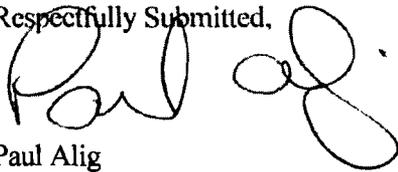
Joseph began college full-time as a continuing Freshman on January 9, 2012. His classes include Journalism, Sociology and Math, totaling 15 credits. He is very excited to resume his education and has thrown himself into his studies.

**Conclusion**

Joseph is on track to successfully complete the SSOSA program. I plan to be present at Joseph's SOSSA review on January 27, 2012 to answer any questions you may have. I can also be reached at (253) 274-9929.

Case Number: 08-1-02972-9 Date: August 27, 2016  
**SerialID: 7038A242-110A-9BE2-A93E7D2F7ED48FD2**  
Certified By: Kevin Stock Pierce County Clerk, Washington

Respectfully Submitted,



Paul Alig  
TeamChild Staff Attorney, WSBN 34937

cc: Mr. Joseph Wolf, youth  
Mr. Mark Quigley, Pierce County Department of Assigned Council  
Ms. Lori Kooiman, Pierce County Prosecutor  
Mr. Arthur Williams, Community Corrections Officer, Lakewood/512 Office  
Mr. Robert Parham  
Ms. Laura Willett, IYHP  
TC/PC file

Case Number: 08-1-02972-9 Date: August 27, 2015  
SerialID: 7038A242-110A-9BE2-A93E7D2F7ED48FD2  
Certified By: Kevin Stock Pierce County Clerk, Washington

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned 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 herunto set my hand and the Seal of said  
Court this 27 day of August, 2015



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Aug 27, 2015 10:33 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter SerialID: 7038A242-110A-9BE2-A93E7D2F7ED48FD2.

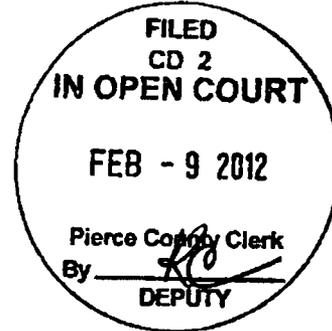
This document contains 4 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

## **APPENDIX E**

Case Number: 08-1-02972-9 Date: August 27, 2015  
 SerialID: 7038A1A6-110A-9BE2-A9EB74E3A6DF5E49  
 Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-02972-9 37978830 VIOR 02-10-12



STATE OF WASHINGTON  
 DEPARTMENT OF CORRECTIONS

COURT-NOTICE OF VIOLATION

<b>REPORT TO:</b>	The Honorable Lisa R Worswick Pierce County Superior Court	<b>DATE:</b> <b>DOC NUMBER:</b>	02/08/2012 323839
<b>OFFENDER NAME:</b>	WOLF, Joseph L.		
<b>AKA:</b>	Wolf, Joseph L	<b>DOB:</b>	11/16/1991
<b>CRIME:</b>	Count 1: Rape of a Child 1 Count 2: Rape of a Child 1	<b>COUNTY CAUSE #:</b>	08-1-02972-9(AA)
<b>SENTENCE:</b>	Count 1: 36 months to 48 months Sex Offender Community Custody Count 2: 36 months to 48 months Sex Offender Community Custody	<b>DATE OF SENTENCE:</b>	11/14/2008
<b>LAST KNOWN ADDRESS</b>	12836 LINCOLN AVE. SW Lakewood, WA 98499	<b>TERMINATION DATE:</b>	Count 1: 6/21/2013 Count 2: 6/21/2013
<b>MAILING ADDRESS:</b>	12836 LINCOLN AVE. SW Lakewood, WA 98499	<b>STATUS:</b>	Field
		<b>CLASSIFICATION:</b>	MOD

**PREVIOUS ACTION:**

According to the Court-Notice of Violation, dated 03/08/10, Mr. Wolf was charged with a violation of traveling out of county without permission and failing to pay towards legal financial obligations. A Court Special was submitted, dated 03/19/10, which amended the violation of traveling out of county to viewing pornography on or about 02/14/10. Mr. Wolf was sanctioned to 30 days of confinement for his violation behaviors.

On 11/30/09, Mr. Wolf was charged with a violation for leaving the county without permission. He received no sanction for his violation.

On 07/24/09 Mr. Wolf was charged with violations for having contact with minors on several different occasions. Mr. Wolf was sanctioned to seven days for his violation behaviors.

A Special Sex Offender Sentencing Alternative (SSOSA) revocation hearing was held on or about 06/23/11, Mr. Wolf was terminated from Sex Offender Treatment with Ms. Jeanglee Tracer of Tracer Therapy, Inc. for his current violation behavior, and his failure to participate in Sex Offender Treatment. Mr. Wolf was set for revocation, but the court ruled that he should be allowed to change treatment providers and continue the SSOSA sentence. Mr. Wolf's new treatment provider is a Mr. Robert W. Parham M.A. of Parham & Associates, P.C. located at 1944 Pacific Avenue, Suite 309, Tacoma, Washington 98402.

**TOLLING - SRA & PAROLE**

Tolling Type	Action Date	Start Date	End Date	Days
Confinement	11/14/2008	6/22/2009	220	

**SUPERVISION VIOLATION PROCESSES**

None

**VIOLATIONS(S) SPECIFIED:**

**Violation 1:**

Ingesting a controlled substance, Methamphetamine, on or about 02/04/12.

**Violation 2:**

Ingesting a controlled substance, synthetic cannabis, on or about 02/04/12.

**WITNESS(ES):**

A Department of Corrections Community Corrections Officer will testify

**SUPPORTING EVIDENCE:**

According to the Judgment and Sentence, dated 11/04/08, Mr. Wolf was ordered to serve 119.9 months of confinement. The terms of incarceration were suspended under the Special Sexual Offender Sentencing Alternative (SSOSA). As a result, Mr. Wolf was ordered to serve 12 months of confinement, and upon release, immediately begin serving 36-48 months of Community Custody Supervision. In addition, Mr. Wolf was ordered to comply with all rules regulations and requirements of the Department of Corrections. Mr. Wolf signed the Judgment and Sentence in open Court agreeing to comply with all Court-ordered and Department conditions. On 06/24/09, Mr. Wolf signed the Department's Conditions, Requirements and Instructions Form further acknowledging his understanding and agreement to comply with all Court and Department conditions.

**Violation 1 and 2 combined:**

According to the Judgment and Sentence, dated 11/04/08, Mr. Wolf was ordered to not consume controlled substances except pursuant to lawfully issued prescriptions. Mr. Wolf signed the Judgment and Sentence in open Court agreeing to comply with this condition. In addition, Mr. Wolf signed the Department's Conditions, Requirements and Instructions Form further acknowledging his understanding and agreement to comply with this condition. According to the Order Continuing SSOSA Treatment, dated 03/12/10, Mr. Wolf signed the order in open Court agreeing to comply with the conditions of SSOSA supervision.

On 02/07/12, CCO Arthur Williams was contacted by TeamChild Staff Attorney Paul Alig by phone. Joseph Wolf from reports has been working with TeamChild since his release from Pierce County Jail at the age of (17) yrs. old. Mr. Alig was in his office with Joseph Wolf and Kimberly Gordon, Attorney with Gordon & Saunders 1111 Third Ave. Suite 2220, Seattle, Wa 98101. Paul Alig indicated Mr. Wolf disclosed that he had relapsed. CCO Williams asked, Mr. Wolf if this was true and Mr. Wolf did inform his supervising Corrections Officer that he used (Methamphetamine) with his mother on or about 02/04/12 at his residence. Mr. Wolf was ordered to report to the Parkland Field Office by close of business to meet with his supervising

Community Corrections Officer (Williams). Mr. Wolf reported and provided a urinalysis for testing, and the test results were positive for Methamphetamine.

During a later conversation, Mr. Wolf admitted that he attempted to use "Spice" synthetic cannabis in order to slow or alter the mood of the influence of the (Methamphetamine) affects. Mr. Wolf mentioned he felt a need to use, in an attempt to bond with his mother, to only realize the mistake he had made and felt the need to report the use to Mr. Paul Alig staff Attorney with TeamChild and Kimberly Gordon Attorney with Gordon & Saunders. Mr. Wolf signed a Drug Use Admission Form admitting to Methamphetamine and "Spice" (synthetic cannabis) use. All other substances tested resulted in negative test samples. The Department of Corrections currently contracts with Sterling Labs and currently has no contract testing for these synthetic substances.

On 02/03/12 prior to any of the above reported information, CCO Williams received a call from a Laura Payne of Pioneer Human Services, Mr. Wolf's newly assigned outpatient treatment counselor, that a number of clients expressed concern that Joseph Wolf was using mood altering substances. Ms. Payne mentioned she would have Joseph submit to a urinalysis test on 02/06/12 and address these concerns or suspicions. The treatment provider mentioned that she would administer a test for "Spice" and "Bath Salts". On 02/06/12 Ms. Payne informed Joseph Wolf that he would be required to provide a urinalysis test prior to the conclusion of treatment group. Ms. Payne mentioned she immediately noticed a change in his mood during the remainder of group. Mr. Wolf was able to provide a urine sample after being told if he failed to provide a sample he would be considered positive. Joseph Wolf provided a test sample without mentioning that the sample would be positive for illegal controlled substances.

CCO Arthur Williams mentioned the above information from the treatment provider to Joseph Wolf and asked why he failed to inform Ms. Payne of the positive urinalysis sample provided. Mr. Wolf responded that he was not comfortable discussing the positive results of the sample with his new treatment counselor, but did call the next morning to speak with his former intensive out-patient treatment counselor Kimmy Lake of (Pioneer Counseling Services).

Joseph Wolf mentioned that his mother disagreed with his plans to report his relapse and from what he claims she assaulted him. This report will be forward to local authorities for review in regards to an alleged assault.

**ADJUSTMENT:**

Risk Management Identification (RMI): High Non-Violent

Reporting: As directed

Employment: Attending Community College (Pierce)

Associations/Peers: Some negative influences

Programming: Participating as directed

Substance Abuse/Treatment: Non-compliance (Positive Meth)

Mr. Wolf has been scheduled for a polygraph examination on 03/13/12 to determine if there are any further violations of his supervision.

Case Number: 08-1-02972-9 Date: August 27, 2015  
SerialID: 7038A1A6-110A-9BE2-A9EB74E3A6DF5E49  
Certified By: Kevin Stock Pierce County Clerk, Washington

**RECOMMENDATION:**

I recommend the Court schedule a noncompliance hearing and summons for Mr. Wolf to appear. At the time of the hearing, an appropriate sanction will be recommended.

*I certify or declare under penalty of perjury of the laws of the state of Washington that the foregoing statements are true and correct to the best of my knowledge and belief.*

Submitted By:

*Arthur Williams*

Date

Approved By:

*Scott Harris*

Date

Arthur Williams  
Community Corrections Officer  
Pierce County Sex Offender-PSI Unit  
10109 South Tacoma Way Bldg C-4  
Lakewood, Wa  
Telephone: (253) 983-7124

Scott Harris  
Community Corrections Supervisor

ABW/ABW/0208/2012

Distribution ORIGINAL - Court COPY - Prosecuting Attorney, Defense Attorney, File

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

Case Number: 08-102972-9, Date: 1/27/2015  
SerialID: 7038A7A6-110A-9BE2-A9EB74E3A6DF5E49  
Certified By: Kevin Stok Pierce County Clerk, Washington



DRUG USE ADMISSION

I, Joseph Wolfe DOC# 323839 make the following statement freely and voluntarily to Department of Corrections staff. I fully acknowledge that this statement, in whole or in part, may be used against me at a later appearance before the court or at a Department of Corrections Administrative Hearing. There has been no force, fear, or duress used, nor have any threats or promises been made to me for making this statement.

I freely and voluntarily admit that I used: methamphetamine and synthetic marijuana on the following date(s):

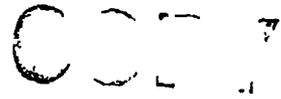
2/4/12

The reasons for this use are:

My Mom was using meth with people after a dispute with my stepdad, and I joined them after feeling the effects. I tried to counter act it with the synthetic Marijuana to reduce to anxiety and panic

Offender Signature: [Signature]  
Date: 2/8/12 Time: 4:24 Location: \_\_\_\_\_  
Witness Name/Title: [Signature]  
Witness Signature: [Signature]

State law (RCW 70.02; RCW 70.24 105, RCW 71.05.390) and/or federal regulations (42 CFR Part 2; 45 CFR Part 164) prohibit disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law.



**TeamChild**

*Advocacy for Youth*

February 7, 2012

Arthur Williams  
Lakewood / 512 Office  
Community Corrections Division  
10109 So. Tacoma Way, Building C-4  
Lakewood, WA 98499

**Re: Wolf, Joseph (DOB: 11/16/1991)**  
**Pierce County Superior Court Cause Number 08-1-02972-9**  
**Special Sex Offender Sentencing Agreement (SSOSA) Supervision Protocols**

Dear Mr. Williams:

Thank you for speaking with Joseph and I today about Joseph Wolf's current situation. This letter is to document several protocols we have indentified today to address: (1) Joseph's recent relapse; and (2) the negative influence his mother, Virginia King and her ex-husband, Johnny King represent to Joseph.

As we discussed with you today, these protocols will be implemented immediately and continue throughout the remainder of the SSOSA. Joseph has committed to following each of these tasks and abiding by them. He is bringing to you today a copy of this letter and plans to discuss the details of his relapse or any other questions you may have.

- o Safe Housing: Joseph will work with TeamChild to obtain safe long-term housing that meets DOC approval;
- o Protective Order: Joseph is taking steps today with the assistance of attorney Kim Gordon to obtain a protective order against his mother and if possible against Mr. King.
- o No contact with Virginia King and Johnny King: in accordance with the recommendations of his treatment providers Joseph will not have further contact.
- o Weekly UAs: Joseph will submit to random weekly UAs conducted by his CCO
- o Intensive supervision: Joseph will meet with you today to discuss the increased supervision steps that you plan to implement and cooperate with these steps. This may include but not be limited to:
  - o two or more unannounced home visits per week;
  - o weekly office visits;
  - o increased polygraphs;
  - o more frequent staffings;
  - o any other steps you identify as necessary.
- o Mental Health Treatment: To the extent appropriate Joseph will seek the assistance of his Sex

*Offices in King ♦ Pierce ♦ Snohomish ♦ Spokane ♦ Yakima Counties*

Wolf, Joseph (DOB: 11/16/1991); Cause Number 08-1-02972-9

Page 2 of 2

February 7, 2012

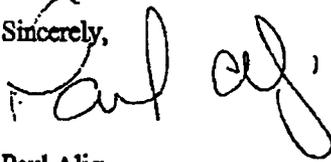
Offender Treatment Provider and Greater Lakes Mental Health to address his relationship with his mother and how to respond to negative influences.

- Substance Abuse Treatment: Joseph voluntarily disclosed his recent relapse to his current treatment provider, Pioneer Counseling. His provider has already made recommendations for treatment. Joe will share these recommendations with you and follow through with that treatment.

Joseph will make each member of his support team aware of these protocols. He has already disclosed his relapse to Mr. Quigley, Mr. Parham, Pioneer Counseling and yourself. He will continue to provide full-disclosure to his team.

Thank you again for your help on Joseph's behalf. If you have any questions about this letter or if there are protocols that we need to add to these please let me know. I can also be reached at (253) 274-9929.

Sincerely,



Paul Alig  
TeamChild Staff Attorney

cc: Mr. Joseph Wolf, youth  
Mr. Mark Quigley, Pierce County Department of Assigned Council  
Mr. Robert Parham  
Ms. Laura Willett, IYHP  
Ms. Kim Gordon, Gordon and Saunders, PLLC  
TC/PC file

Case Number: 08-1-02972-9 Date: August 27, 2015  
 SerialID: 7038A1A6-110A-9BE2-A9EB74E3A6DF5E49  
 Certified By: Kevin Stock Pierce County Clerk, Washington

Wolf, Joseph

Confidential

**Parham & Associates, P.C.**

1944 Pacific Avenue, Suite 309  
 Tacoma, WA 98402  
 Phone: (253) 691-5472 Fax: (253) 572-9958

Name: Joseph Wolf	DOB: 11/16/1991	Date of Report: 12/01/2011	
Therapist Name: Robert W. Parham, M.A.		Reporting Period: 08/17/2011 to 12/01/2011	
Community Corrections Officer: Arthur Williams		Treatment Start Date: 08/17/2011	
Total Number of Sessions During This Period: 17	Individual: 15 Family: 0	Group: 0 Team: 2	Cancel: 0 No Show: 0

**REASON FOR REFERRAL:**  
*(Include information concerning legal charges and disposition, including conditions of release.)*  
 Joseph pled guilty to four counts of Rape of a Child in the First Degree and was awarded the Sex Offender Sentencing Alternative (SOSSA). While the offenses occurred as a juvenile, Joseph was tried as an adult. Joseph was in treatment with Jeanglee Tracer when he was terminated for violations to the conditions of his release, treatment contract, and community safety plan. He was set for revocation; however, the court ruled that he should be allowed to change treatment providers and continue on SOSSA. This writer accepted Joseph into treatment after reviewing his case and determining that he continued to be at low risk for sexual recidivism and amenable to treatment in the community.

**SEX OFFENDER TREATMENT OUTCOME STATEMENT:** Learn and apply skills specific to offense and personal history. Responsibly manage age and developmentally appropriate sexual behavior, which is legal, does not victimize others, and assures community safety.

TREATMENT GOALS	Addressed	Not Addressed	Completed	N/A
Understands and follows his/her conditions of probation and community safety plan.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Accepts responsibility for all sexually abusive behavior.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Understands and is sensitive to the effects of the abuse on the victim(s), the victim's family, and their own family.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Understands the thoughts, feelings, behaviors, and circumstances that led to the sexually abusive behavior.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Meets emotional, social, and sexual needs in healthy, responsible, and legal ways.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has a support system of people who will support making healthy choices.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has a comprehensive relapse prevention and/or healthy living plan, which other people in his/her support system have read and signed.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Identifies and corrects thinking errors.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Identifies and understands impact of his/her own history of victimization.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Identifies and expresses feelings in an honest and assertive manner.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Understands the effects of drugs/alcohol in his/her offense.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Joseph will be evaluated and participate in treatment for substance abuse.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Joseph will maintain gainful employment and/or be enrolled in college or a vocational training program.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Joseph will continue in counseling and medication management at Greater Lakes Mental Health.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Joseph will demonstrate increased will to live and decreased suicidal ideations and gestures.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Wolf, Joseph

Confidential

**SUMMARY OF PROGRESS THIS REVIEW PERIOD:**

*(Include overall progress towards goals addressed, strengths, barriers to treatment, and/or other factors that have impacted progress of treatment)*

Joseph attends all scheduled appointments and has always been on time. He actively participates in session by discussing his activities of daily living, social interactions, progress in his other treatment programs, and his treatment goals in this program. Joseph is asked at the beginning of every session whether or not he has any violations of his conditions of probation or community safety plan and he has denied these every week.

Joseph was instructed at the beginning of his treatment with this writer that there were conditions under which he is being accepted as a client. One was that he continue in counseling at Greater Lakes Mental Health where he would also have his medication regimen monitored and managed. Another was that he undergo a long overdue substance abuse evaluation and follow the recommendations for treatment. Joseph has met both of these expectations. He continues to attend counseling at Greater Lakes on a weekly basis with Steve Adams, M.A. and he is attending substance abuse treatment at Pioneer Community Services. He was attending AA and NA meetings on a regular basis, but has since decreased his involvement due to frustrations with the manner in which attendees participate.

Joseph continued to exhibit symptoms of mania and obsessive-compulsive thinking and behavior. He is very insightful and intelligent and realizes that he needs his medication to function. Joseph has been very forthcoming about his intrusive thoughts, his racing thoughts, and his pattern of relating to others. He continues to actively participate in young adult activities at his church (LDS), including attending dances sponsored by the church. Due to the emotional stress that comes with trying to maintain a relationship with his mother and stepfather, Joseph chose to cease communication and interaction with them. This writer agreed with this decision and Joseph had begun reporting a decrease in stress over the first few weeks after making this decision. However, this was short-lived as his mother and step-father continued to try and communicate with him via telephone.

Another condition of this writer accepting Joseph as a client was that regular team meetings be held at least quarterly. The first such meeting occurred on 9/30/11 and the following people present: Joseph Wolf, Arthur Williams (CCO), Paul Alig (Team Child), Sarah ??? (Team Child), Laura Willett (PCA). We reviewed Joseph's progress since starting treatment with this writer and his current expectations. We discussed his short-term goals regarding abstinence from drugs, enrolling back in school, looking for a job, etc. Team Child is assisting Joseph with barriers to getting enrolled in school and Joseph expressed a great deal of anxiety about how the court would respond to his having not yet started classes. The next team meeting was held on 11/16/11 and the following people were present: Paul Alig (TeamChild), Laura Willett (PCA), Kathy Bannon (PCA), Arthur Williams (DOC). It should be noted that reports were obtained from Joseph's Greater Lakes Mental Health therapist and his drug counselor regarding his progress with them. All reports were good. At that time it was reported that Joseph's Intensive Outpatient Program would continue until January, then he will transition to once a week sessions. He is attempting to get enrolled at Pierce College and begin classes Winter term.

Joseph's maternal grandmother died in November the week before Thanksgiving. He was sad about this, but it was confounded by his foreknowledge that he would be alone for Thanksgiving. We talked about how he would spend the day and cope with feelings of loneliness. He said that the best way he knew of to cope was to just stay in bed and sleep all day. The following week he reported that he had some suicidal ideations. This writer conducted a brief suicide risk assessment and Joseph did not disclose the presence of elements that constituted high risk.

During his treatment appointments, Joseph began the process of reviewing his treatment work from when he was with Jeanglee Tracer. There was a considerable amount of written work and the process is slow; however, Joseph does appear motivated to do the work and to make any modifications necessary. He continues to battle feelings brought on by the stigma of being a registered sex offender. He becomes very emotional and cries whenever the subject of safety planning comes up, because he feels like "everyone thinks I'm going to reoffend."

Wolf, Joseph

Confidential

This writer is unaware of whether or not Joseph has had a periodic polygraph during this review period. If he has, this writer has not seen the report.

**CURRENT LEVEL OF SEXUAL RECDIVISM RISK:**

*(Include presence or absence of static and dynamic risk factors.)*

Joseph was evaluated by Michael Comte for SOSSA and assessed as low risk. His former treatment provider, Jeanglee Tracer, also assessed him as low risk; even as she terminated him from treatment. This writer agrees with these assessments of Josephs risk for sexual recidivism at this time.

**PROVIDER CREDENTIALS:**

*Robert W. Parham, M.A.*

**Primary Treatment Provider**

Robert W. Parham, M.A.

LMHC #LH00007800

CSOTP #FC00000183

**Parham & Associates, P.C.**

1944 Pacific Avenue, Suite 309

Tacoma, WA 98402

Phone: (253) 691-5472 Fax: (253) 572-9958

*Licensed Mental Health Counselor*

*National Certified Counselor*

*Certified Sex Offender Treatment Provider*

February 8, 2012

Arthur Williams, CCO  
Department of Corrections

Re: Joseph Wolf – Addendum to Quarterly Report dated 12/1/11

Dear Mr. Williams,

As required, the December 1<sup>st</sup> quarterly report has been completed; however, in the interim there have been a number of significant incidents/issues that need to be noted at this time instead of waiting until the next quarterly report due date of March 1<sup>st</sup>.

- Joseph presented to his 12/7/11 session with a markedly more mellow mood. He described an incident that past weekend when his neighbor above him was being physically attacked by her boyfriend. He heard screaming and she eventually came knocking on his door. He allowed her to use his phone and then helped her clean up the blood from the boyfriend's punching the walls. Joseph appears to have had a trauma reaction to this situation and has been experiencing some psychic numbing whereby his mood has been much more restrained and void of intense emotions. He described it as feeling "normal." He says that his mind feels like it's "under water." Joseph also found out that because his financial aid hasn't been resolved he is unable to register for winter quarter. This writer e-mailed Paul Alig about this. Joseph denied having suicidal ideations at that time, but this writer instructed him to call and check-in with how he is doing prior to his next week appointment.
- On 12/9/11 Joseph called and left a voice mail message for this writer stating that he was feeling more depressed, but did not indicate having suicidal ideations. His tone was void of emotional intensity.
- On 12/13/11 Paul Alig called to inform me that Joseph was in Western State Hospital after attempting suicide. I contacted Arthur Williams who confirmed this and added more detail to what actually happened. Arthur took Joseph to Greater Lakes and from there he was put in Western State Hospital. Joseph had, evidently, taped a plastic bag around his head after huffing from a can of cool whip.
- Joseph was released from Western State and met with this writer on 12/16/11. A plan was made for dealing with his suicidal ideations, including contracting with this writer about calling when he feels suicidal.

Case Number: 08-1-02972-9 Date: August 27, 2015  
SerialID: 7038A1A6-110A-9BE2-A9EB74E3A6DF5E49  
Certified By: Kevin Stock Pierce County Clerk, Washington

- On 12/21/11 Joseph rated his suicidal ideations as a "1" on a scale of 1 to 5. He verbally committed to making no suicidal gestures prior to his session the next week. This writer continued to conduct a suicidal risk assessment on a weekly basis. Joseph reported being more optimistic and not having the same level of suicidal ideations.
- On 1/11/12 Joseph reported that his financial aid finally came through and he had been able to register for the Winter Term at Pierce College and had already begun classes. He was visibly more happy and motivated.
- On 1/25/12 Joseph reported that school was becoming more stressful, but that he believed he was managing it well.
- On 2/1/12 Joseph began watching a DVD during his session called Speak Out. This DVD portrays several adolescent sexual offenders speaking about their offenses and then a group of adult survivors of sexual abuse speak about their reactions to those adolescent's stories. Joseph was visibly shaken by some of the comments on the DVD and expressed how it made him feel bad.
- On 2/7/12 this writer was contacted by Kimberly Gordon, Paul Alig, and Joseph via speaker phone to inform me that Joseph had relapsed and used drugs with his mother and stepfather the previous weekend. This writer had not met with Joseph prior to writing this note; therefore a lot of the details are unknown at this time. A plan to pursue a restraining order is in place to prevent any further contact between Joseph and his mother and stepfather. This writer fully supports this and views Joseph's parents as a barrier to his success.

Respectfully submitted,

*Robert W. Parham, M.A.*

Robert W. Parham, M.A.

FEB/09/2012/THU 11 48 AM

FAX No. 2535897091 ~~2-18-2012 12:01/09:50~~

Case Number: 08-1-02972-9 Date: August 27, 2015

SerialID: 7038A1A6-110A-9BE2-A9EB74E3A6DF5E49

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**Confirm  
attendance**

Please accept calendar appointment on Outlook to confirm this scheduled event. Reschedules should be requested through your supervisor back to me.

FEB/08/2012/THU 11:46 AM

FAX No. 2535897094

Case Number: 08-1-02972-9 Date: August 27, 2015  
SerialID: 7038A1A6-110A-9BE2-A9EB74E3A6DF5E40

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2/9/12  
1:30 PM  
CD2

**DEPARTMENT OF CORRECTIONS**

**OFFICE OF CORRECTIONAL OPERATIONS**

**LAKESWOOD/PARKLAND S./PSOSU S.**

10109 S Tacoma Way, Building C-4, Lakewood, Washington 98499

Fax: (253) 589-7091

Office: (253) 983-7120

**Fax Cover Sheet**

DATE: 02/08/12

# OF PAGES: 15

FROM: *Arthur Williams*

TO: *Pros Attny / Judge Admin / Dept of Assisn Counsel Quiggley*

Location:

Fax #

COMMENTS *Wolf, Joseph*  
*(SSO/A) 08-1-02972-9 AA*  
*Violation Report*  
*Tx Summary*  
*Team Child Report*



WORKING TOGETHER FOR SAFE COMMUNITIES

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned 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 herunto set my hand and the Seal of said  
Court this 27 day of August, 2015



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Aug 27, 2015 10:33 AM



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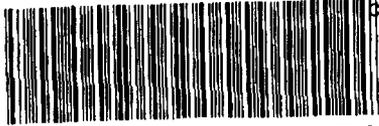
## **APPENDIX F**

7-23-2012 10:22:18 10163

Case Number: 08-1-02972-9 Date: August 27, 2015

SerialID: 705B6946-F20F-6452-D33C2D622EF26C6D

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-02972-9 38897081 CLPP 07-23-12

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PIERCE COUNTY WASHINGTON  
KEVIN STOCK County Clerk  
BY *[Signature]* DEPUTY

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**SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY**

State of Washington

Plaintiff

July 23, 2012

vs

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

JOSEPH LEIF WOLF

Defendant

CLERK'S PAPERS PER  
REQUEST OF APPELLANT  
TO THE  
COURT OF APPEALS,  
DIVISION II

HONORABLE LISA WORSWICK  
Trial Judge

SHERI LYNN ARNOLD  
PO Box 7718  
TACOMA, WA 98417

ATTORNEY FOR APPELLANT

KATHLEEN PROCTOR  
946 COUNTY CITY BLDG  
FELONY DIVISION  
TACOMA, WA 98402

ATTORNEY FOR RESPONDENT

**SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY**

State of Washington

Plaintiff

July 23, 2012

vs

No : 08-1-02972-9

JOSEPH LEIF WOLF

Defendant

Court of Appeals No.. 43448-2

CLERK'S PAPERS PER  
REQUEST OF APPELLANT  
TO THE  
COURT OF APPEALS,  
DIVISION II

**Index**

**Pages**

ADDENDUM TO SUPPLEMENTAL INFORMATION IN SUPPORT OF MOTION TO RECONSIDER, FILED April 26, 2012.....	593	-	604
AMENDED INFORMATION, FILED October 09, 2008.....	6	-	7
APPENDIX C - RECOMMENDATION OF STATE - STATEMENT OF DEFENDANT ON PLEA OF GUILTY, FILED October 09, 2008.....	21	-	22
COURT - NOTICE OF VIOLATION FROM DEPARTMENT OF CORRECTION, FILED March 10, 2010.....	136	-	142
COURT - NOTICE OF VIOLATION FROM DEPARTMENT OF CORRECTION, FILED October 23, 2009.....	81	-	85
COURT - NOTICE OF VIOLATION FROM DEPARTMENT OF CORRECTION, FILED July 24, 2009.....	65	-	69
COURT - NOTICE OF VIOLATION FROM DEPARTMENT OF CORRECTIONS, FILED February 09, 2012. ....	432	-	446
COURT - NOTICE OF VIOLATION FROM DEPARTMENT OF CORRECTIONS, FILED May 04, 2011 .....	224	-	227
COURT - NOTICE OF VIOLATION FROM DEPARTMENT OF CORRECTIONS, FILED April 25, 2011.. .....	215	-	219
COURT - SPECIAL REPORT FROM DEPARMTENT OF CORRECTION, FILED February 12, 2010.....	111	-	116
COURT - SPECIAL REPORT FROM DEPARTMENT OF CORRECTIONS, FILED October 28, 2011.....	410	-	425

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
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15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

Index	Pages
COURT - SPECIAL REPORT FROM DEPARTMENT OF CORRECTIONS, FILED March 08, 2011.. . . . .	200 - 208
COURT - SPECIAL REPORT FROM DEPARTMENT OF CORRECTIONS, FILED June 11, 2010... . . . .	156 - 159
COURT - SPECIAL REPORT FROM DEPARTMENT OF CORRECTIONS, FILED April 16, 2010.. . . . .	148 - 149
COURT - SPECIAL REPORT FROM THE DEPARTMENT OF CORRECTIONS, FILED September 10, 2010 .. . . . .	173 - 192
COURT - SUPPLEMENTAL NOTICE OF VIOLATION FROM DEPARTMENT OF CORRECTIONS, FILED May 26, 2011.....	228 - 254
DECLARATION FOR DETERMINATION OF PROBABLE CAUSE, FILED June 23, 2008.. . . . .	4 - 5
DECLARATION IN SUPPORT OF MOTION TO MODIFY RELEASE CONDITIONS, FILED July 21, 2009.....	56 - 57
DECLARATION OF DEFENSE COUNSEL RE: DOCUMENTS SUBMITTED IN OPPOSITION TO STATE'S MOTION FOR REVOCATION, FILED July 20, 2011.....	316 - 404
DECLARATION OF KIMBERLY GORDON, FILED February 24, 2012.....	462 - 477
DOC REPORT, FILED November 18, 2009..... . . . .	94 - 104
EXHIBIT RECORD - SSOSA REVOCATION HEARING, FILED July 20, 2011 . . . . .	- 298
INFORMATION, FILED June 23, 2008..... . . . .	1 - 3
JUDGMENT AND SENTENCE (FELONY) APPENDIX H COMMUNITY PLACEMENT/CUSTODY, FILED November 14, 2008..... . . . .	49 - 51
LETTER FROM DEFENDANT, FILED July 20, 2011.....	312 - 313
LETTER FROM JOHN RINGENER CCO-2, FILED February 12, 2010..... . . . .	124 - 125
LETTER FROM PARHAM & ASSOCIATES, P.C., FILED February 24, 2012..... . . . .	478 - 479

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

Index	Pages
LETTER FROM TEACHCHILD ADVOCACY FOR YOUTH, FILED February 08, 2010.....	105 - 110
LETTER FROM TEAMCHILD ADVOCACY FOR YOUTH, FILED February 22, 2012.....	447 - 461
LETTER FROM TEAMCHILD ADVOCACY FOR YOUTH, FILED January 24, 2012..	426 - 429
LETTER FROM TEAMCHILD ADVOCACY FOR YOUTH, FILED October 26, 2011...	405 - 409
LETTER FROM TEAMCHILD ADVOCACY FOR YOUTH, FILED June 21, 2011.....	283 - 291
LETTER FROM TEAMCHILD ADVOCACY FOR YOUTH, FILED March 08, 2011. ....	196 - 199
LETTER FROM TEAMCHILD ADVOCACY FOR YOUTH, FILED September 09, 2010.....	168 - 172
LETTER FROM TEAMCHILD ADVOCACY FOR YOUTH, FILED June 14, 2010.....	160 - 163
LETTER FROM TEAMCHILD ADVOCACY FOR YOUTH, FILED June 09, 2010.....	150 - 153
LETTER FROM TEAMCHILD ADVOCACY FOR YOUTH, FILED March 10, 2010.....	130 - 135
LETTER FROM TEAMCHILD ADVOCACY FOR YOUTH, FILED November 12, 2009.....	89 - 91
LETTER FROM TEAMCHILD ADVOCACY FOR YOUTH, FILED October 23, 2009.....	78 - 80
LETTER FROM TEAMCHILD ADVOCACY FOR YOUTH, FILED July 23, 2009...	61 - 62
LETTER FROM TEAMCHILD ADVOCACY FOR YOUTH, FILED July 23, 2009.....	58 - 60
LETTER FROM TRACER THERAPY, INC., FILED April 15, 2011.....	212 - 214

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

Index	Pages
LETTER FROM TRACER THERAPY, INC., FILED January 05, 2011.....	193 - 195
LETTER FROM TRACER THERAPY, INC., FILED July 07, 2010.....	164 - 167
LETTER FROM TRACER THERAPY, INC., FILED March 12, 2010....	145 - 147
LETTER FROM TRACER THERAPY, INC., FILED November 06, 2009. . . . .	86 - 88
LETTER FROM TRACER THERAPY, INC., FILED October 22, 2009. . . . .	74 - 77
LETTER TO THE COURT REGARDING SSOSA REVOCATION, FILED June 23, 2011.....	292 - 297
MOTION TO MODIFY RELEASE CONDITIONS, FILED July 20, 2009.....	52 - 55
MOTION TO RECONSIDER, FILED March 09, 2012.....	491 - 515
NOTICE OF APPEAL, FILED May 18, 2012.....	606 - 633
NOTICE OF APPEARANCE, FILED March 09, 2012.....	488 - 490
NOTICE OF APPOINTMENT OF APPELLATE COUNSEL, FILED May 23, 2012.....	- 637
NOTICE OF DELINQUENCY, FILED March 25, 2011.....	- 211
NOTICE OF LIMITED APPEARANCE, FILED July 20, 2011. . . . .	314 - 315
OFFENDER QUARTERLY EVALUATION, FILED February 12, 2010... . . . .	117 - 123
ORDER PARTIAL REVOKING SENTENCE, FILED July 24, 2009 . . . . .	63 - 64
ORDER AUTHORIZING APPEAL IN FORMA PAUPERIS AND APPOINTMENT OF COUNSEL, FILED May 18, 2012... . . . .	634 - 636
ORDER CONTINUING SOSA TREATMENT, FILED June 11, 2010. . . . .	154 - 155

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

Index

Pages

ORDER CONTINUING SSOSA TREATMENT, FILED January 27, 2012.....	430 - 431
ORDER CONTINUING SSOSA TREATMENT, FILED March 11, 2011.....	209 - 210
ORDER CONTINUING SSOSA TREATMENT, FILED March 12, 2010.....	143 - 144
ORDER CONTINUING SSOSA TREATMENT, FILED November 13, 2009.....	92 - 93
ORDER DENYING DEFENSE MOTION FOR RECONSIDERATION OF REVOCATION, FILED April 27, 2012..	- 605
ORDER FIXING TIME FOR SENTENCING AND FOR PRE-SENTENCE REPORT, FILED October 09, 2008 .....	- 25
ORDER MODIFYING SENTENCE, FILED July 20, 2011.....	299 - 300
ORDER PROHIBITING CONTACT, FILED November 14, 2008.....	30 - 31
ORDER PROHIBITING CONTACT, FILED November 14, 2008... ..	28 - 29
ORDER PROHIBITING CONTACT, FILED November 14, 2008.....	26 - 27
ORDER REVOKING SENTENCE, FILED February 24, 2012. ....	482 - 484
PETITION FOR HEARING TO DETERMINE NONCOMPLIANCE WITH CONDITION OR REQUIREMENT OF SENTENCE, FILED July 27, 2009.. ..	70 - 73
PETITION FOR HEARING TO DETERMINE NONCOMPLIANCE WITH CONDITION OR REQUIREMENT OF SENTENCE AND MOTION FOR BENCH WARRANT, FILED February 27, 2012. . . . .	485 - 487
PETITION FOR HEARING TO DETERMINE NONCOMPLIANCE WITH CONDITION OR REQUIREMENT OF SENTENCE AND MOTION FOR BENCH WARRANT, FILED April 28, 2011. ....	220 - 223
PETITION FOR HEARING TO DETERMINE NONCOMPLIANCE WITH CONDITIONS OR REQUIREMENT OF SENTENCE, FILED February 25, 2010 .....	126 - 129

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
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15  
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17  
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19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

Index	Pages
PHYCHOSEXUAL EVALUATION AND TREATMENT PLAN, FILED July 20, 2011.. . . . .	301 - 311
PROSECUTOR'S STATEMENT REGARDING AMENDED INFORMATION, FILED October 09, 2008 . . . . .	- 8
STATE'S RESPONSE TO DEFENDANT'S MOTION TO RECONSIDER REVOCATION OF SSOSA SENTENCE, FILED April 24, 2012.....	516 - 563
STATEMENT OF DEFENDANT ON PLEA OF GUILTY TO SEX OFFENSE, FILED October 09, 2008.....	9 - 20
STIPULATION ON PRIOR RECORD AND OFFENDER SCORE, FILED October 09, 2008.....	23 - 24
SUPPLEMENTAL INFORMATION IN SUPPORT OF MOTION TO RECONSIDER, FILED April 25, 2012.....	564 - 592
SUPPLEMENTAL PETITION FOR HEARING TO DETERMINE NONCOMPLAINE WITH CONDITION OR REQUIREMENT OF SENTENCE, FILED June 09, 2011.....	255 - 282
WARRANT OF COMMITMENT, FILED February 24, 2012.....	480 - 481
WARRANT OF COMMITMENT AND JUDGMENT AND SENTENCE, FILED November 14, 2008.....	32 - 48
DESIGNATION OF CLERK'S PAPERS, FILED June 20, 2012.....	638 - 642

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aforementioned 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 herunto set my hand and the Seal of said  
Court this 27 day of August, 2015



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Aug 27, 2015 11:11 AM



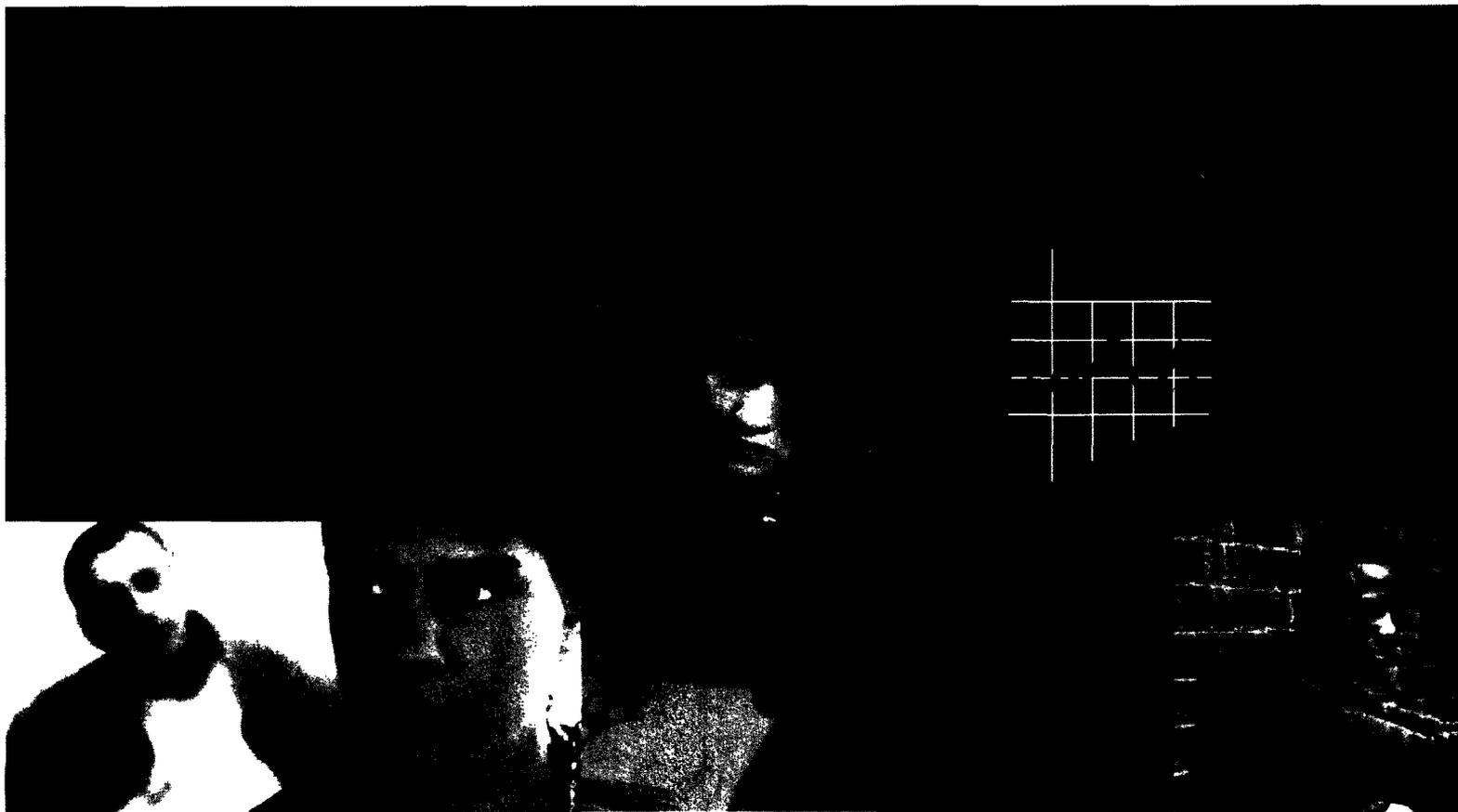
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## **APPENDIX G**



# Juvenile Offenders and Victims:

2014 NATIONAL REPORT



**NCJJ**

National Center  
for Juvenile Justice

**OJJDP**

Office of  
Juvenile Justice  
and Delinquency  
Prevention



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# **Juvenile Offenders and Victims: 2014 National Report**

**Melissa Sickmund and Charles Puzzanchera, Editors**

**National Center for Juvenile Justice**

**December 2014**



This report was prepared by the National Center for Juvenile Justice, the research division of the National Council of Juvenile and Family Court Judges, and was supported by cooperative agreement #2010–MU–FX–K0058 and grant #2013–MU–FX–0005 awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice.

The opinions, findings, and conclusions or recommendations expressed in this publication are those of the authors and do not necessarily reflect those of the Department of Justice.

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National Center for Juvenile Justice  
3700 S. Water Street, Suite 200  
Pittsburgh, PA 15203

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# Chapter 4

## Juvenile justice system structure and process

The first juvenile court in the United States was established in Chicago in 1899, more than 100 years ago. In the long history of law and justice, juvenile justice is a relatively new development. The juvenile justice system has changed drastically since the late 1960s, due to Supreme Court decisions, federal legislation, and changes in state statutes.

Perceptions of a juvenile crime epidemic in the early 1990s, brought about by a number of reasons, including media scrutiny, focused the public's attention on the juvenile justice system's ability to effectively control violent juvenile offenders. As a reaction, states adopted numerous legislative changes in an effort to crack down on juvenile crime. In fact, through the mid-1990s, nearly every state broadened the scope of their transfer laws, exposing more youth to criminal court prosecution. Although the juvenile and criminal justice systems have grown similar in recent years, the juvenile justice system remains unique, guided by its own philosophy—with an emphasis on individualized justice and serving the best interests of the child—and legislation, and implemented by its own set of agencies.

This chapter describes the structure and process of the juvenile justice system, focusing on delinquency and status offense matters. (Chapter 2 discusses the handling of child maltreatment matters.) Parts of this chapter provide an overview of the history of juvenile justice in the United States, lay out the significant Supreme Court decisions that have shaped and affected the juvenile justice system, and describe standardized case processing in the juvenile justice system. Also summarized in this chapter are changes that states have made with regard to the juvenile justice system's jurisdictional authority, sentencing, corrections, programming, confidentiality of records and court hearings, and victim involvement in court hearings. Much of this information was drawn from National Center for Juvenile Justice analyses of juvenile codes in each state. (Note: For ease of discussion, the District of Columbia is often referred to as a state.)

This chapter also includes information on juveniles processed in the federal justice system, as well as a discussion on measuring recidivism in the justice system.

# The juvenile justice system was founded on the concept of rehabilitation through individualized justice

## Early in U.S. history, children who broke the law were treated the same as adult criminals

Throughout the late 18th century, “infants” below the age of reason (traditionally age 7) were presumed to be incapable of criminal intent and were, therefore, exempt from prosecution and punishment. Children as young as 7, though, could stand trial in criminal court for offenses committed, and if found guilty, could be sentenced to prison or even given a death sentence.

The 19th century movement that led to the establishment of the juvenile court in the U.S. had its roots in 16th century European educational reform movements. These earlier reform movements changed the perception of children from one of miniature adults to one of persons with less than fully developed moral and cognitive capacities. As early as 1825, the Society for the Prevention of Juvenile Delinquency established a facility specifically for the housing, education, and rehabilitation of juvenile offenders. Soon, facilities exclusively for juveniles were established in most major cities. By mid-century, these privately operated youth “prisons” were under criticism for various abuses. Many states then took on the responsibility of operating juvenile facilities.

## The first juvenile court in the United States was established in Cook County, Illinois, in 1899

Illinois passed the Juvenile Court Act in 1899, which established the nation’s first separate juvenile court. The British doctrine of *parens patriae* (the state as parent) was the rationale for the right of the state to intervene in the lives of children in a manner different from the way it dealt with the lives of adults. The doctrine was interpreted to mean that because children were not of full legal capacity, the state had the inherent power and responsibility to provide

protection for children whose natural parents were not providing appropriate care or supervision. A key element was the focus on the welfare of the child. Thus, the delinquent child was also seen as in need of the court’s benevolent intervention.

## Juvenile courts flourished for the first half of the 20th century

By 1910, 32 states had established juvenile courts and/or probation services. By 1925, all but two states had followed suit. Rather than merely punishing delinquents for their crimes, juvenile courts sought to turn delinquents into productive citizens—through rehabilitation and treatment.

The mission to help children in trouble was stated clearly in the laws that established juvenile courts. This mission led to procedural and substantive differences between the juvenile and criminal justice systems.

In the first 50 years of the juvenile court’s existence, most juvenile courts had exclusive original jurisdiction over all youth under age 18 who were charged with violating criminal laws. Only if the juvenile court waived its jurisdiction in a case, a child could be transferred to criminal court and tried as an adult. Transfer decisions were made on a case-by-case basis using a “best interests of the child and public” standard and were within the realm of individualized justice.

## The focus on offenders and not offense, on rehabilitation and not punishment, had substantial procedural impact

Unlike the criminal justice system, where district attorneys selected cases for trial, the juvenile court controlled its own intake. And unlike criminal prosecutors, juvenile court intake considered extra-legal as well as legal factors in deciding how to handle cases.

Juvenile court intake also had discretion to handle cases informally, bypassing judicial action altogether.

In the courtroom, juvenile court hearings were much less formal than criminal court proceedings. In this benevolent court—with the express purpose of protecting children—due process protections afforded to criminal defendants were deemed unnecessary. In the early juvenile courts, and even in some to this day, attorneys for the state and the youth are not considered essential to the operation of the system, especially in less serious cases.

A range of dispositional options was available to a judge wanting to help rehabilitate a child. Regardless of offense, outcomes ranging from warnings to probation supervision to training school confinement could be part of the treatment plan. Dispositions were tailored to the “best interests of the child.” Treatment lasted until the child was “cured” or became an adult (age 21), whichever came first.

## As public confidence in the treatment model waned, due process protections were introduced

In the 1950s and 1960s, society came to question the ability of the juvenile court to succeed in rehabilitating delinquent youth. The treatment techniques available to juvenile justice professionals often failed to reach the desired levels of effectiveness. Although the goal of rehabilitation through individualized justice—the basic philosophy of the juvenile justice system—was not in question, professionals were concerned about the growing number of juveniles institutionalized indefinitely in the name of treatment.

In a series of decisions beginning in the 1960s, the U.S. Supreme Court changed the juvenile court process. Formal hearings were now required in

## The first cases in juvenile court

After years of development and months of compromise, the Illinois legislature passed, on April 14, 1899, a law permitting counties in the state to designate one or more of their circuit court judges to hear all cases involving dependent, neglected, and delinquent children younger than age 16. The legislation stated that these cases were to be heard in a special courtroom that would be designated as "the juvenile courtroom" and referred to as the "Juvenile Court." Thus, the first juvenile court opened in Cook County on July 3, 1899, was not a new court, but a division of the circuit court with original jurisdiction over juvenile cases.

The judge assigned to this new division was Richard Tuthill, a Civil War veteran who had been a circuit court judge for more than 10 years. The first case heard by Judge Tuthill in juvenile court was that of Henry Campbell, an 11-year-old who had been arrested for larceny. The hearing was a public event. While some tried to make the juvenile proceeding secret, the politics of the day would not permit it. The local papers carried stories about what had come to be known as "child saving" by some and "child slavery" by others.\*

At the hearing, Henry Campbell's parents told Judge Tuthill that their son was a good boy who had been led into trouble by others, an argument consistent with the underlying philosophy of the court—that individuals (especially juveniles) were not solely

responsible for the crimes they commit. The parents did not want young Henry sent to an institution, which was one of the few options available to the judge. Although the enacting legislation granted the new juvenile court the right to appoint probation officers to handle juvenile cases, the officers were not to receive publicly funded compensation. Thus, the judge had no probation staff to provide services to Henry. The parents suggested that Henry be sent to live with his grandmother in Rome, New York. After questioning the parents, the judge agreed to send Henry to his grandmother's in the hope that he would "escape the surroundings which have caused the mischief." This first case was handled informally, without a formal adjudication of delinquency on the youth's record.

Judge Tuthill's first formal case is not known for certain, but the case of Thomas Majcheski (handled about two weeks after the Campbell case) might serve as an example. Majcheski, a 14-year-old, was arrested for stealing grain from a freight car in a railroad yard, a common offense at the time. The arresting officer told the judge that the boy's father was dead and his mother (a washerwoman with nine children) could not leave work to come to court. The officer also said that the boy had committed similar offenses previously but had never been arrested. The boy admitted the crime. The judge then asked the nearly 300 people in the courtroom if they had anything to say. No one responded. Still

without a probation staff in place, the judge's options were limited: dismiss the matter, order incarceration at the state reformatory, or transfer the case to adult court. The judge decided the best alternative was incarceration in the state reformatory, where the youth would "have the benefit of schooling."

A young man in the audience then stood up and told the judge that the sentence was inappropriate. Newspaper accounts indicate that the objector made the case that the boy was just trying to obtain food for his family. Judge Tuthill then asked if the objector would be willing to take charge of the boy and help him become a better citizen. The young man accepted. On the way out of the courtroom, a reporter asked the young man of his plans for Thomas. The young man said "Clean him up, and get him some clothes and then take him to my mother. She'll know what to do with him."

In disposing of the case in this manner, Judge Tuthill ignored many possible concerns (e.g., the rights and desires of Thomas's mother and the qualifications of the young man—or more directly, the young man's mother). Nevertheless, the judge's actions demonstrated that the new court was not a place of punishment. The judge also made it clear that the community had to assume much of the responsibility if it wished to have a successful juvenile justice system.

\* Beginning in the 1850s, private societies in New York City rounded up street children from the urban ghettos and sent them to farms in the Midwest. Child advocates were concerned that these home-finding agencies did not properly screen or monitor the foster homes, pointing out that the societies were paid by the county to assume responsibility for the children and also by the families who received the children. Applying this concern to the proposed juvenile court, the Illinois legislation stated that juvenile court hearings should be open to the public so the public could monitor the activities of the court to ensure that private organizations would not be able to gain custody of children and then "sell" them for a handsome profit and would not be able to impose their standards of morality or religious beliefs on working-class children.

Source: Authors' adaptation of Tanenhaus' *Juvenile Justice in the Making*.

waiver situations, and delinquents facing possible confinement were given 5th amendment protection against self-incrimination and rights to receive notice of the charges against them, to present witnesses, to question witnesses, and to have an attorney. The burden of proof was raised from “a preponderance of evidence” to a “beyond a reasonable doubt” standard for an adjudication. The Supreme Court, however, still held that there were enough “differences of substance between the criminal and juvenile courts ... to hold that a jury is not required in the latter.” (See Supreme Court decisions later in this chapter.)

Meanwhile, Congress, in the Juvenile Delinquency Prevention and Control Act of 1968, recommended that children charged with noncriminal (status) offenses be handled outside the court system. A few years later, Congress passed the Juvenile Justice and Delinquency Prevention Act of 1974, which as a condition for state participation in the Formula Grants Program required deinstitutionalization of status offenders and nonoffenders as well as the separation of juvenile delinquents from adult offenders. In the 1980 amendments to the 1974 Act, Congress added a requirement that juveniles be removed from adult jail and lockup facilities, and the 1992 amendment added requirements to reduce disproportionate minority confinement (later contact). Community-based programs, diversion, and deinstitutionalization became the banners of juvenile justice policy in the 1970s.

### **In the 1980s, the pendulum began to swing toward law and order**

During the 1980s, the public perceived that serious juvenile crime was increasing and that the system was too lenient with offenders. Although there was a substantial misperception regarding increases in juvenile crime, many states

responded by passing more stringent laws. Some laws removed certain classes of offenders from the juvenile justice system and handled them as adult criminals in criminal court. Others required the juvenile justice system to be more like the criminal justice system and to treat certain classes of juvenile offenders as criminals but in juvenile court.

As a result, offenders charged with certain offenses now are excluded from juvenile court jurisdiction or face mandatory or automatic waiver to criminal court. In several states, concurrent jurisdiction provisions give prosecutors the discretion to file certain juvenile cases directly in criminal court rather than juvenile court. In some states, certain adjudicated juvenile offenders face mandatory sentences.

### **The 1990s saw unprecedented change as state legislatures cracked down on juvenile crime**

Five areas of change emerged as states passed laws designed to combat juvenile crime. These laws generally involved expanded eligibility for criminal court processing and adult correctional sanctioning, and reduced confidentiality protections for a subset of juvenile offenders. Between 1992 and 1997, all but three states changed laws in one or more of the following areas:

- **Transfer provisions:** Laws made it easier to transfer juvenile offenders from the juvenile justice system to the criminal justice system (45 states).
- **Sentencing authority:** Laws gave criminal and juvenile courts expanded sentencing options (31 states).
- **Confidentiality:** Laws modified or removed traditional juvenile court confidentiality provisions by making records and proceedings more open (47 states).

In addition to these areas, there was change relating to:

- **Victims’ rights:** Laws increased the role of victims of juvenile crime in the juvenile justice process (22 states).
- **Correctional programming:** As a result of new transfer and sentencing laws, adult and juvenile correctional administrators developed new programs.

The 1980s and 1990s saw significant change in terms of treating more juvenile offenders as criminals. Changes since 2000 have been minor by comparison. No major new expansion of the juvenile justice system has occurred. On the other hand, states have shown little tendency to reverse or even reconsider the expanded transfer and sentencing laws already in place. Despite the steady decline in juvenile crime and violence rates since 1994, there has, at the time of this publication, been no discernible pendulum swing back toward the 1970s approach to transfer. However, many of the other juvenile justice mechanisms, such as community-based programs and diversion, are still in use.

### **Some juvenile codes emphasize prevention and treatment goals, some stress punishment, but most seek a balanced approach**

States vary in how they express the purposes of their juvenile courts—not just in the underlying assumptions and philosophies but also in the approaches they take to the task. Some declare their goals and objectives in great detail; others mention only the broadest of aims. Many juvenile court purpose clauses have been amended over the years, reflecting philosophical or rhetorical shifts and changes in emphasis in the states’ overall approaches to juvenile delinquency. Others have been

## Several core requirements of the Juvenile Justice and Delinquency Prevention Act address custody issues

The Juvenile Justice and Delinquency Prevention Act of 2002 (the Act) establishes four custody-related requirements.

The “deinstitutionalization of status offenders and nonoffenders” requirement (1974) specifies that juveniles not charged with acts that would be crimes for adults “shall not be placed in secure detention facilities or secure correctional facilities.” This requirement does not apply to juveniles charged with violating a valid court order or possessing a handgun, or those held under interstate compacts.

The “sight and sound separation” requirement (1974) specifies that “juveniles alleged to be or found to be delinquent and [status offenders and nonoffenders] shall not be detained or confined in any institution in which they have contact with adult inmates” in custody because they are awaiting trial on criminal charges or have been convicted of a crime. This requires that juvenile and adult inmates cannot see each other and no conversation between them is possible.

The “jail and lockup removal” requirement (1980) states that juveniles shall not be detained or confined in adult jails or lockups. There are, however, several exceptions. There is a 6-hour grace period that allows adult jails and lockups to hold delinquents temporarily while awaiting transfer to a juvenile facility or making court appearances. (This exception applies only if the facility can maintain sight and sound separation.) Under certain conditions, jails and lockups in rural areas may hold delinquents awaiting initial court appearance up to 48 hours. Some jurisdictions have obtained approval for separate juvenile detention centers that are collocated

with an adult facility; in addition, staff who work with both juveniles and adult inmates must be trained and certified to work with juveniles.

Regulations implementing the Act exempt juveniles held in secure adult facilities if the juvenile is being tried as a criminal for a felony or has been convicted as a criminal felon. Regulations also allow adjudicated delinquents to be transferred to adult institutions once they have reached the state’s age of full criminal responsibility, where such transfer is expressly authorized by state law.

In the past, the “disproportionate minority confinement” (DMC) requirement (1988) focused on the extent to which minority youth were confined in proportions greater than their representation in the population. The 2002 Act broadened the DMC concept to encompass all stages of the juvenile justice process; thus, DMC has come to mean **disproportionate minority contact**.

States must agree to comply with each requirement to receive Formula Grants funds under the Act’s provisions. States must submit plans outlining their strategy for meeting these and other statutory requirements. Noncompliance with core requirements results in the loss of at least 20% of the state’s annual Formula Grants Program allocation per requirement.

As of 2012, 56 of 57 eligible states and territories were participating in the Formula Grants Program. Annual state monitoring reports show that the vast majority were in compliance with the requirements, either reporting no violations or meeting *de minimis* or other compliance criteria.

left relatively untouched for decades. Given the changes in juvenile justice in recent decades, it is remarkable how many states still declare their purposes in language first developed by standards-setting agencies in the 1950s and 1960s.

Most common in state purpose clauses are components of Balanced and Restorative Justice (BARJ). BARJ advocates that juvenile courts give balanced attention to three primary interests: public safety, individual accountability to victims and the community, and development of skills to help offenders live law-abiding and productive lives. Some states are quite explicit in their adoption of the BARJ model. Others depart somewhat from the model in the language they use, often relying on more traditional terms (treatment, rehabilitation, care, guidance, assistance, etc.).

Several states have purpose clauses that are modeled on the one in the Standard Juvenile Court Act. The Act was originally issued in 1925 and has been revised numerous times. The 1959 version appears to have been the most influential. According to its opening provision, the purpose of the Standard Act was that “each child coming within the jurisdiction of the court shall receive... the care, guidance, and control that will conduce to his welfare and the best interest of the state, and that when he is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which they should have given him.”

Another group of states uses all or most of a more elaborate, multipart purpose clause contained in the Legislative *Guide for Drafting Family and Juvenile Court Acts*, a late 1960s publication. The *Guide’s* opening section lists four purposes:

- To provide for the care, protection, and wholesome mental and physical development of children involved with the juvenile court.
- To remove from children committing delinquent acts the consequences of criminal behavior and to substitute therefore a program of supervision, care, and rehabilitation.
- To remove a child from the home only when necessary for his welfare or in the interests of public safety.
- To assure all parties their constitutional and other legal rights.

Purpose clauses in some states can be loosely characterized as “tough” in that they stress community protection, offender accountability, crime reduction through deterrence, or outright punishment. Texas and Wyoming, for instance, having largely adopted the multipurpose language of the Legislative Guide, pointedly insert two extra items—“protection of the public and public safety” and promotion of “the concept of punishment for criminal acts”—at the head of the list.

A few jurisdictions have statutory language that emphasizes promotion of the welfare and best interests of the juvenile as the sole or primary purpose of the juvenile court system. For example, Massachusetts has language stating that accused juveniles should be “treated, not as criminals, but as children in need of aid, encouragement and guidance.”

### States juvenile code purpose clauses vary in their emphasis

State	BARJ features	Juvenile Court Act language	Legislative Guide language	Accountability/protection emphasis	Child welfare emphasis
Alabama	■				
Alaska	■				
Arizona					■
Arkansas		■	■		
California	■	■			
Colorado	■				
Connecticut				■	
Delaware		■			
Dist. of Columbia	■				
Florida	■	■			
Georgia		■			
Hawaii				■	
Idaho	■				
Illinois	■	■			
Indiana	■				
Iowa		■			
Kansas	■				
Kentucky					■
Louisiana		■			
Maine		■	■		
Maryland	■				
Massachusetts		■			■
Michigan		■			
Minnesota	■	■			
Mississippi		■			
Missouri		■			
Montana	■		■		
Nebraska	■				
Nevada		■			
New Hampshire			■		
New Jersey	■	■	■		
New Mexico			■		
New York		■			
North Carolina				■	
North Dakota					■
Ohio			■		
Oklahoma	■				
Oregon	■				
Pennsylvania	■				
Rhode Island		■			
South Carolina		■			
South Dakota		■			
Tennessee			■		
Texas			■	■	
Utah				■	
Vermont	■				
Virginia			■		
Washington	■				
West Virginia					■
Wisconsin	■				
Wyoming			■	■	

Source: Authors' adaptation of OJJDP's *Statistical Briefing Book* [online].

# U.S. Supreme Court cases have had an impact on the character and procedures of the juvenile justice system

## The Supreme Court has made its mark on juvenile justice

Issues arising from juvenile delinquency proceedings rarely come before the U.S. Supreme Court. Beginning in the late 1960s, however, the Court decided a series of landmark cases that dramatically changed the character and procedures of the juvenile justice system.

### ***Kent v. United States*** 383 U.S. 541, 86 S. Ct. 1045 (1966)

In 1961, while on probation from an earlier case, Morris Kent, age 16, was charged with rape and robbery. Kent confessed to the charges as well as to several similar incidents. Assuming that the District of Columbia juvenile court would consider waiving jurisdiction to the adult system, Kent's attorney filed a motion requesting a hearing on the issue of jurisdiction.

The juvenile court judge did not rule on this motion filed by Kent's attorney. Instead, he entered a motion stating that the court was waiving jurisdiction after making a "full investigation." The judge did not describe the investigation or the grounds for the waiver.

Kent was subsequently found guilty in criminal court on six counts of house-breaking and robbery and sentenced to 30 to 90 years in prison.

Kent's lawyer sought to have the criminal indictment dismissed, arguing that the waiver had been invalid. He also appealed the waiver and filed a writ of habeas corpus asking the state to justify Kent's detention. Appellate courts rejected both the appeal and the writ, refused to scrutinize the judge's "investigation," and accepted the waiver as valid. In appealing to the U.S. Supreme Court, Kent's attorney argued that the judge had not made a complete investigation and that Kent was denied constitutional rights simply because he was a minor.

The Court ruled the waiver invalid, stating that Kent was entitled to a hearing that measured up to "the essentials of due process and fair treatment," that Kent's counsel should have had access to all records involved in the waiver, and that the judge should have provided a written statement of the reasons for waiver.

Technically, the *Kent* decision applied only to D.C. courts, but its impact was more widespread. The Court raised a potential constitutional challenge to *parens patriae* as the foundation of the juvenile court. In its past decisions, the Court had interpreted the equal protection clause of the Fourteenth Amendment to mean that certain classes of people could receive less due process if a "compensating benefit" came with this lesser protection. In theory, the juvenile court provided less due process but a greater concern for the interests of the juvenile. The Court referred to evidence that this compensating benefit may not exist in reality and that juveniles may receive the "worst of both worlds"—"neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children."

### ***In re Gault*** 387 U.S. 1, 87 S. Ct. 1428 (1967)

Gerald Gault, age 15, was on probation in Arizona for a minor property offense when, in 1964, he and a friend made a prank telephone call to an adult neighbor, asking her, "Are your cherries ripe today?" and "Do you have big bombers?" Identified by the neighbor, the youth were arrested and detained.

The victim did not appear at the adjudication hearing and the court never resolved the issue of whether Gault made the "obscene" remarks. Gault was committed to a training school for the period of his minority. The maxi-

mum sentence for an adult would have been a \$50 fine or 2 months in jail.

An attorney obtained for Gault after the trial filed a writ of habeas corpus that was eventually heard by the U.S. Supreme Court. The issue presented in the case was that Gault's constitutional rights (to notice of charges, counsel, questioning of witnesses, protection against self-incrimination, a transcript of the proceedings, and appellate review) were denied.

The Court ruled that in hearings that could result in commitment to an institution, juveniles have the right to notice and counsel, to question witnesses, and to protection against self-incrimination. The Court did not rule on a juvenile's right to appellate review or transcripts but encouraged the states to provide those rights.

The Court based its ruling on the fact that Gault was being punished rather than helped by the juvenile court. The Court explicitly rejected the doctrine of *parens patriae* as the founding principle of juvenile justice, describing the concept as murky and of dubious historical relevance. The Court concluded that the handling of Gault's case violated the due process clause of the Fourteenth Amendment: "Juvenile court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure."

### ***In re Winship*** 397 U.S. 358, 90 S. Ct. 1068 (1970)

Samuel Winship, age 12, was charged with stealing \$112 from a woman's purse in a store. A store employee claimed to have seen Winship running from the scene just before the woman noticed the money was missing; others in the store stated that the employee was not in a position to see the money being taken.

Winship was adjudicated delinquent and committed to a training school. New York juvenile courts operated under the civil court standard of a “preponderance of evidence.” The court agreed with Winship’s attorney that there was “reasonable doubt” of Winship’s guilt but based its ruling on the “preponderance” of evidence.

Upon appeal to the Supreme Court, the central issue in the case was whether “proof beyond a reasonable doubt” should be considered among the “essentials of due process and fair treatment” required during the adjudicatory stage of the juvenile court process. The Court rejected lower court

arguments that juvenile courts were not required to operate on the same standards as adult courts because juvenile courts were designed to “save” rather than to “punish” children. The Court ruled that the “reasonable doubt” standard should be required in all delinquency adjudications.

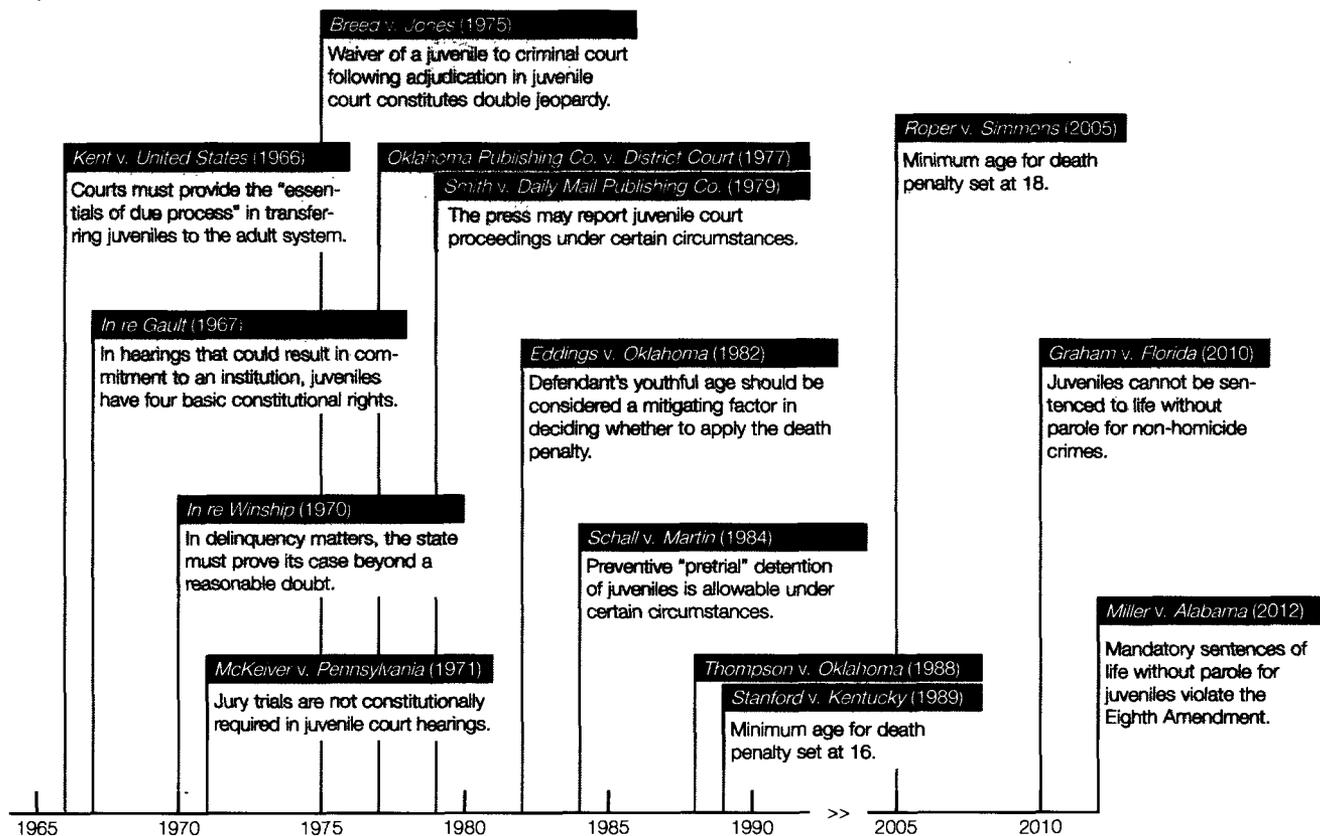
**McKeiver v. Pennsylvania**  
403 U.S. 528, 91 S. Ct. 1976 (1971)

Joseph McKeiver, age 16, was charged with robbery, larceny, and receiving stolen goods. He and 20 to 30 other youth allegedly chased 3 youth and took 25 cents from them.

McKeiver met with his attorney for only a few minutes before his adjudicatory hearing. At the hearing, his attorney’s request for a jury trial was denied by the court. He was subsequently adjudicated and placed on probation.

The state supreme court cited recent decisions of the U.S. Supreme Court that had attempted to include more due process in juvenile court proceedings without eroding the essential benefits of the juvenile court. The state supreme court affirmed the lower court, arguing that, of all due process rights, trial by jury is most likely to “destroy the traditional character of juvenile proceedings.”

**A series of U.S. Supreme Court decisions made juvenile courts more like criminal courts but maintained some important differences**



The U.S. Supreme Court found that the due process clause of the Fourteenth Amendment did not require jury trials in juvenile court. The impact of the Court's *Gault* and *Winship* decisions was to enhance the accuracy of the juvenile court process in the fact-finding stage. In *McKeiver*, the Court argued that juries are not known to be more accurate than judges in the adjudication stage and could be disruptive to the informal atmosphere of the juvenile court, tending to make it more adversarial.

***Breed v. Jones***  
421 U.S. 519, 95 S. Ct. 1779 (1975)

In 1970, Gary Jones, age 17, was charged with armed robbery. Jones appeared in Los Angeles juvenile court and was adjudicated delinquent on the original charge and two other robberies.

At the dispositional hearing, the judge waived jurisdiction over the case to criminal court. Counsel for Jones filed a writ of habeas corpus, arguing that the waiver to criminal court violated the double jeopardy clause of the Fifth Amendment. The court denied this petition, saying that Jones had not been tried twice because juvenile adjudication is not a "trial" and does not place a youth in jeopardy.

Upon appeal, the U.S. Supreme Court ruled that an adjudication in juvenile court, in which a juvenile is found to have violated a criminal statute, is equivalent to a trial in criminal court. Thus, Jones had been placed in double jeopardy. The Court also specified that jeopardy applies at the adjudication hearing when evidence is first presented. Waiver cannot occur after jeopardy attaches.

***Oklahoma Publishing Company v. District Court in and for Oklahoma City***  
480 U.S. 308, 97 S. Ct. 1045 (1977)

The Oklahoma Publishing Company case involved a court order prohibiting the press from publishing the name and photograph of a youth involved in a juvenile court proceeding. The material in question was obtained legally from a source outside the court. The U.S. Supreme Court found the court order to be an unconstitutional infringement on freedom of the press.

***Smith v. Daily Mail Publishing Company***  
443 U.S. 97, 99 S. Ct. 2667 (1979)

The Daily Mail case held that state law cannot stop the press from publishing a juvenile's name that it obtained independently of the court. Although the decision did not hold that the press should have access to juvenile court files, it held that if information regarding a juvenile case is lawfully obtained by the media, the First Amendment interest in a free press takes precedence over the interests in preserving the anonymity of juvenile defendants.

***Schall v. Martin***  
467 U.S. 253, 104 S. Ct. 2403 (1984)

Gregory Martin, age 14, was arrested in 1977 and charged with robbery, assault, and possession of a weapon. He and two other youth allegedly hit a boy on the head with a loaded gun and stole his jacket and sneakers.

Martin was held pending adjudication because the court found there was a "serious risk" that he would commit another crime if released. Martin's attorney filed a habeas corpus action challenging the fundamental fairness of

preventive detention. The lower appellate courts reversed the juvenile court's detention order, arguing in part that pretrial detention is essentially punishment because many juveniles detained before trial are released before, or immediately after, adjudication.

The U.S. Supreme Court upheld the constitutionality of the preventive detention statute. The Court stated that preventive detention serves a legitimate state objective in protecting both the juvenile and society from pretrial crime and is not intended to punish the juvenile. The Court found that enough procedures were in place to protect juveniles from wrongful deprivation of liberty. The protections were provided by notice, a statement of the facts and reasons for detention, and a probable cause hearing within a short time. The Court also reasserted the *parens patriae* interests of the state in promoting the welfare of children.

Within the past decade, the U.S. Supreme Court has taken a closer look at juvenile detention as well as the juvenile death penalty and juvenile life without parole.

***Roper v. Simmons***  
543 U.S. 551, 125 S. Ct. 1183 (2005)

Christopher Simmons, age 17, committed murder. The facts of the case were not in dispute. Simmons and two other accomplices conspired to burglarize a home and kill the occupant, one Shirley Crook. Simmons was arrested and, after a waiver of his right to an attorney, confessed to the murder of Shirley Crook. Missouri had set 17 as the age barrier between juvenile and adult court jurisdiction, so Simmons was tried as an adult. The state of Missouri sought the death penalty in the case, and the jury recommended the

sentence, which the trial judge imposed.

After *Simmons* had been decided, the Supreme Court ruled in *Atkins v. Virginia* that the execution of a mentally retarded person was prohibited by the Eighth and Fourteenth Amendments. Simmons filed a petition with the Missouri Supreme Court, arguing that following the same logic used in *Atkins*, the execution of a juvenile who committed a crime under the age of 18 was prohibited by the Constitution. The Missouri Supreme Court agreed with Simmons and set aside his death penalty sentence.

The U.S. Supreme Court reviewed the case and reversed the imposition of the death penalty on any juvenile under the age of 18 on the grounds that it violated the Eighth Amendment prohibition of cruel and unusual punishment. The Court cited factors such as the “lack of maturity and an underdeveloped sense of responsibility, juvenile’s susceptibility to peer pressure, and that the personality traits of juveniles are not as fixed as adults” in their decision. The Court also looked to other nation’s practices as well as the evolving standards of decency in society to make their decision.

***Graham v. Florida***  
560 U.S. 48, 130 S. Ct. 2011 (2010)

Terrance Graham, age 16, was arrested and charged with the crimes of burglary and robbery in 2003. Graham accepted a plea deal, part of which was a 3-year probationary period and a prison term requiring him to spend 12 months in the county jail. Graham was released from prison 6 months later on June 25, 2004.

Not 6 months later, Graham was arrested for armed robbery. The state of Florida charged him with violations of the terms and conditions of his probation. The trial court held a hearing on these violations in 2005 and 2006 and passed down a sentence of life imprisonment. Florida had abolished their system of parole; Graham could only be released by executive pardon.

Graham filed an appeal claiming that his Eighth Amendment rights against cruel and unusual punishment were being violated by the length of the sentence. The Supreme Court agreed, ruling that the sentencing of a juvenile offender to life without parole for a non-homicidal case was a violation of the cruel and unusual punishment clause of the Eighth Amendment. The Court found that there was no national consensus for life without parole sentences, juvenile offenders had limited culpability, and life sentences were extremely punitive for juvenile non-homicide offenders.

***Miller v. Alabama***  
567 U.S. \_\_\_, 132 S. Ct. 2455 (2012)

Evan Miller was 14 when he and a friend beat his neighbor with a baseball bat and set fire to his trailer, killing him in the process. Miller was tried as a juvenile at first, but was then transferred to criminal court, pursuant to Alabama law. He was charged by the district attorney with murder in the course of arson, a crime with a mandatory minimum sentence of life without parole. The jury found Miller guilty, and he was summarily sentenced to a life without parole term.

Miller filed an appeal claiming that his sentence was in violation of the Eighth Amendment clause against cruel and unusual punishment. The Supreme Court held that the Eighth Amendment forbid a mandatory sentence of life in prison without parole for juvenile homicide offenders. The Court based their reasoning on prior rulings in *Roper* and *Graham*, which had prohibited capital punishment for children and prohibited life without parole sentences for non-homicide offenses, respectively. Combining the rationales from these precedential cases, the Court ruled that juveniles could not be mandatorily sentenced to serve a life without parole term.

# State statutes define who is under the jurisdiction of juvenile court

## Statutes set age limits for original jurisdiction of the juvenile court

In most states, the juvenile court has original jurisdiction over all youth charged with a law violation who were younger than age 18 at the time of the offense, arrest, or referral to court. Since 1975, five states have changed their age criteria: Alabama raised its upper age from 15 to 16 in 1976 and to 17 in 1977; Wyoming lowered its upper age from 18 to 17 in 1993; New Hampshire and Wisconsin lowered their upper age from 17 to 16 in 1996; and in 2007, Connecticut passed a law that gradually raised its upper age from 15 to 17 by July 1, 2012.

Oldest age for original juvenile court jurisdiction in delinquency matters, 2010:

Age	State
15	New York, North Carolina
16	Connecticut, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, Wisconsin
17	Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming

Many states have higher upper ages of juvenile court jurisdiction in status offense, abuse, neglect, or dependency matters—typically through age 20. In many states, the juvenile court has original jurisdiction over young adults who committed offenses while juveniles.

States often have statutory exceptions to basic age criteria. For example,

many states exclude married or otherwise emancipated juveniles from juvenile court jurisdiction. Other exceptions, related to the youth's age, alleged offense, and/or prior court history, place certain youth under the original jurisdiction of the criminal court. In some states, a combination of the youth's age, offense, and prior record places the youth under the original jurisdiction of both the juvenile and criminal courts. In these states, the prosecutor has the authority to decide which court will initially handle the case.

As of the end of the 2010 legislative session, 16 states have statutes that set the lowest age of juvenile court delinquency jurisdiction. Other states rely on case law or common law. Children younger than a certain age are presumed to be incapable of criminal intent and, therefore, are exempt from prosecution and punishment.

Youngest age for original juvenile court jurisdiction in delinquency matters, 2010:

Age	State
6	North Carolina
7	Maryland, Massachusetts, New York
8	Arizona
10	Arkansas, Colorado, Kansas, Louisiana, Minnesota, Mississippi, Pennsylvania, South Dakota, Texas, Vermont, Wisconsin

## Juvenile court authority over youth may extend beyond the upper age of original jurisdiction

Through extended jurisdiction mechanisms, legislatures enable the court to provide sanctions and services for a duration of time that is in the best interests of the juvenile and the public, even for older juveniles who have reached the age at which original juvenile court jurisdiction ends. As of the end of the

2011 legislative session, statutes in 33 states extend juvenile court jurisdiction in delinquency cases until the 21st birthday.

Oldest age over which the juvenile court may retain jurisdiction for disposition purposes in delinquency matters, 2011:

Age	State
18	Alaska, Iowa, Kentucky, Nebraska, Oklahoma, Rhode Island, Texas
19	Mississippi
20	Alabama, Arizona*, Arkansas, Connecticut, Delaware, District of Columbia, Georgia, Idaho, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada**, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, Washington, West Virginia, Wyoming
21	Florida, Vermont
22	Kansas
24	California, Montana, Oregon, Wisconsin
***	Colorado, Hawaii, New Jersey, Tennessee

Note: Extended jurisdiction may be restricted to certain offenses or juveniles.

\*Arizona statute extends jurisdiction through age 20, but a 1979 state supreme court decision held that juvenile court jurisdiction terminates at age 18.

\*\* Until the full term of the disposition order for sex offenders.

\*\*\* Until the full term of the disposition order.

In some states, the juvenile court may impose adult correctional sanctions on certain adjudicated delinquents that extend the term of confinement well beyond the upper age of juvenile jurisdiction. Such sentencing options are included in the set of dispositional options known as blended sentencing.

# Most young law violators enter the juvenile justice system through law enforcement agencies

## Local processing of juvenile offenders varies

From state to state, case processing of juvenile law violators varies. Even within states, case processing may vary from community to community, reflecting local practice and tradition. Any description of juvenile justice processing in the U.S. must, therefore, be general, outlining a common series of decision points.

## Law enforcement agencies divert many juvenile offenders out of the juvenile justice system

At arrest, a decision is made either to send the matter further into the justice system or to divert the case out of the system, often into alternative programs. Generally, law enforcement makes this decision after talking to the victim, the juvenile, and the parents and after reviewing the juvenile's prior contacts with the juvenile justice system. In 2010, 23% of all juvenile arrests were handled within the police department and resulted in release of the youth; in 68 of 100 arrests, the cases were referred to juvenile court. The remaining arrests were referred for criminal prosecution or to other agencies.

## Most delinquency cases are referred by law enforcement agencies

Law enforcement accounted for 83% of all delinquency cases referred to juvenile court in 2010. The remaining referrals were made by others, such as parents, victims, school personnel, and probation officers.

## Intake departments screen cases referred to juvenile court for formal processing

The court intake function is generally the responsibility of the juvenile probation department and/or the

prosecutor's office. Intake decides whether to dismiss the case, to handle the matter informally, or to request formal intervention by the juvenile court.

To make this decision, an intake officer or prosecutor first reviews the facts of the case to determine whether there is sufficient evidence to prove the allegation. If not, the case is dismissed. If there is sufficient evidence, intake then determines whether formal intervention is necessary.

Nearly half of all cases referred to juvenile court intake are handled informally. Many informally processed cases are dismissed. In the other informally processed cases, the juvenile voluntarily agrees to specific conditions for a specific time period. These conditions often are outlined in a written agreement, generally called a "consent decree." Conditions may include such things as victim restitution, school attendance, drug counseling, or a curfew.

In most jurisdictions, a juvenile may be offered an informal disposition only if he or she admits to committing the act. The juvenile's compliance with the informal agreement often is monitored by a probation officer. Thus, this process is sometimes labeled "informal probation."

If the juvenile successfully complies with the informal disposition, the case is dismissed. If, however, the juvenile fails to meet the conditions, the case is referred for formal processing and proceeds as it would have if the initial decision had been to refer the case for an adjudicatory hearing.

If the case is to be handled formally in juvenile court, intake files one of two types of petitions: a delinquency petition requesting an adjudicatory hearing or a petition requesting a waiver hearing to transfer the case to criminal court.

A delinquency petition states the allegations and requests that the juvenile court adjudicate (or judge) the youth a delinquent, making the juvenile a ward of the court. This language differs from that used in the criminal court system, where an offender is convicted and sentenced.

In response to the delinquency petition, an adjudicatory hearing is scheduled. At the adjudicatory hearing (trial), witnesses are called and the facts of the case are presented. In nearly all adjudicatory hearings, the determination that the juvenile was responsible for the offense(s) is made by a judge; however, in some states, the juvenile has the right to a jury trial.

## During the processing of a case, a juvenile may be held in a secure detention facility

Juvenile courts may hold delinquents in a secure juvenile detention facility if this is determined to be in the best interest of the community and/or the child.

After arrest, law enforcement may bring the youth to the local juvenile detention facility. A juvenile probation officer or detention worker reviews the case to decide whether the youth should be detained pending a hearing before a judge. In all states, a detention hearing must be held within a time period defined by statute, generally within 24 hours. At the detention hearing, a judge reviews the case and determines whether continued detention is warranted. In 2010, juveniles were detained in 21% of delinquency cases processed by juvenile courts.

Detention may extend beyond the adjudicatory and dispositional hearings. If residential placement is ordered but no placement beds are available, detention may continue until a bed becomes available.

**The juvenile court may transfer the case to criminal court**

A waiver petition is filed when the prosecutor or intake officer believes that a case under jurisdiction of the juvenile court would be handled more appropriately in criminal court. The court decision in these matters follows a review of the facts of the case and a determination that there is probable cause to believe that the juvenile committed the act. With this established, the court then decides whether juvenile court jurisdiction over the matter should be waived and the case transferred to criminal court.

The judge's decision in such cases generally centers on the issue of the

juvenile's amenability to treatment in the juvenile justice system. The prosecution may argue that the juvenile has been adjudicated several times previously and that interventions ordered by the juvenile court have not kept the juvenile from committing subsequent criminal acts. The prosecutor may also argue that the crime is so serious that the juvenile court is unlikely to be able to intervene for the time period necessary to rehabilitate the youth.

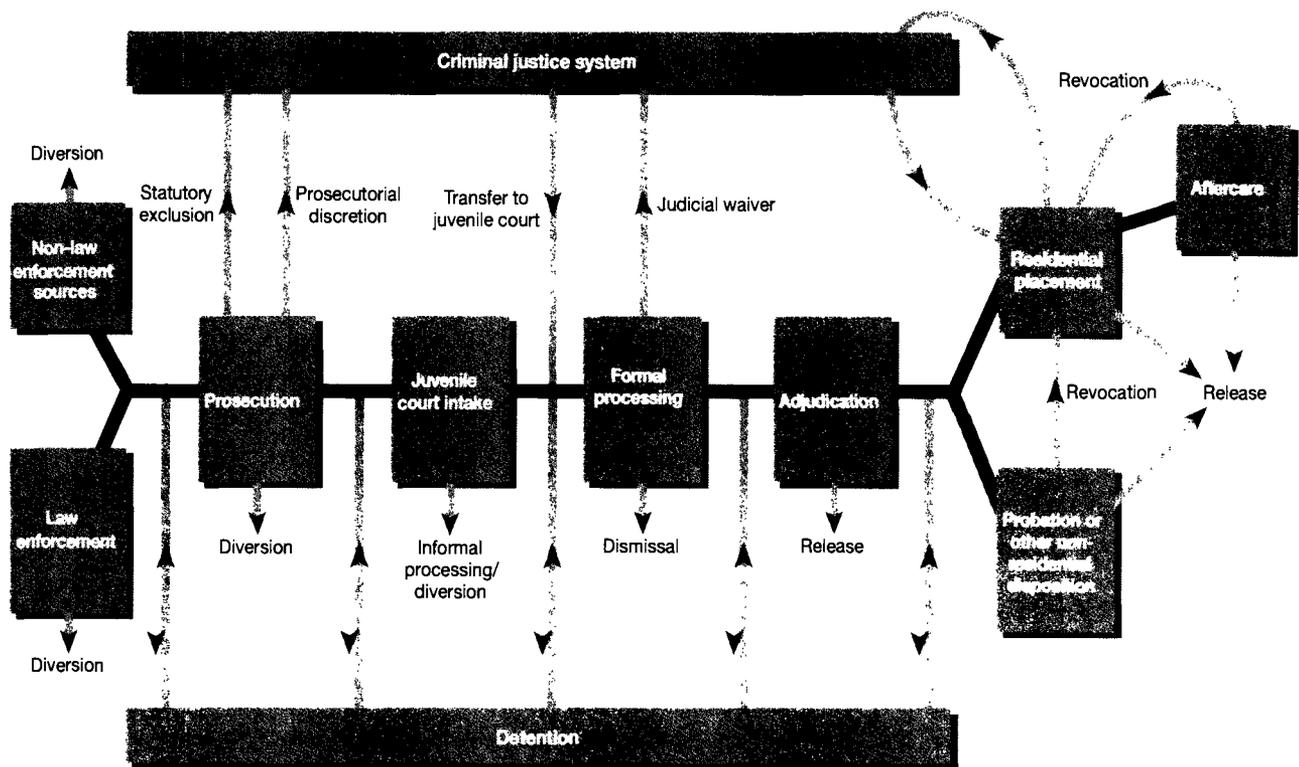
If the judge decides that the case should be transferred to criminal court, juvenile court jurisdiction is waived and the case is filed in criminal court. In 2010, juvenile courts waived 1% of all formally processed delinquency cases. If the judge does not approve

the waiver request, generally an adjudicatory hearing is scheduled in juvenile court.

**Prosecutors may file certain cases directly in criminal court**

In more than half of the states, legislatures have decided that in certain cases (generally those involving serious offenses), juveniles should be tried as criminal offenders. The law excludes such cases from juvenile court; prosecutors must file them in criminal court. In a smaller number of states, legislatures have given both the juvenile and adult courts original jurisdiction in certain cases. Thus, prosecutors have discretion to file such cases in either criminal or juvenile court.

**What are the stages of delinquency case processing in the juvenile justice system?**



Note: This chart gives a simplified view of caseload through the juvenile justice system. Procedures may vary among jurisdictions.

### **After adjudication, probation staff prepare a disposition plan**

Once the juvenile is adjudicated delinquent in juvenile court, probation staff develop a disposition plan. To prepare this plan, probation staff assess the youth, available support systems, and programs. The court may also order psychological evaluations, diagnostic tests, or a period of confinement in a diagnostic facility.

At the disposition hearing, probation staff present dispositional recommendations to the judge. The prosecutor and the youth may also present dispositional recommendations. After considering the recommendations, the judge orders a disposition in the case.

### **Most youth placed on probation also receive other dispositions**

Most juvenile dispositions are multifaceted and involve some sort of supervised probation. A probation order often includes additional requirements such as drug counseling, weekend confinement in the local detention center, or restitution to the community or victim. The term of probation may be for a specified period of time or it may be open-ended. Review hearings are held to monitor the juvenile's progress. After conditions of probation have been successfully met, the judge terminates the case. In 2010, formal probation was the most severe disposition ordered in 61% of the cases in which the youth was adjudicated delinquent.

### **The judge may order residential placement**

In 2010, juvenile courts ordered residential placement in 26% of the cases in which the youth was adjudicated delinquent. Residential commitment may be for a specific or indeterminate time period. The facility may be publicly or

privately operated and may have a secure, prison-like environment or a more open (even home-like) setting. In many states, when the judge commits a juvenile to the state department of juvenile corrections, the department determines where the juvenile will be placed and when the juvenile will be released. In other states, the judge controls the type and length of stay; in these situations, review hearings are held to assess the progress of the juvenile.

### **Juvenile aftercare is similar to adult parole**

Upon release from an institution, the juvenile is often ordered to a period of aftercare or parole. During this period, the juvenile is under supervision of the court or the juvenile corrections department. If the juvenile does not follow the conditions of aftercare, he or she may be recommitted to the same facility or may be committed to another facility.

### **Status offense and delinquency case processing differ**

A delinquent offense is an act committed by a juvenile for which an adult could be prosecuted in criminal court. There are, however, behaviors that are law violations only for juveniles and/or young adults because of their status. These "status offenses" may include behaviors such as running away from home, truancy, alcohol possession or use, incorrigibility, and curfew violations.

In many ways, the processing of status offense cases parallels that of delinquency cases. Not all states, however, consider all of these behaviors to be law violations. Many states view such behaviors as indicators that the child is in need of supervision. These states handle status offense matters more like

### **A juvenile court by any other name is still a juvenile court**

Every state has at least one court with juvenile jurisdiction, but in most states it is not actually called "juvenile court." The names of the courts with juvenile jurisdiction vary by state—district, superior, circuit, county, family, or probate court, to name a few. Often, the court of juvenile jurisdiction has a separate division for juvenile matters. Courts with juvenile jurisdiction generally have jurisdiction over delinquency, status offense, and abuse/neglect matters and may also have jurisdiction in other matters such as adoption, termination of parental rights, and emancipation. Whatever their name, courts with juvenile jurisdiction are generically referred to as juvenile courts.

dependency cases than delinquency cases, responding to the behaviors by providing social services.

Although many status offenders enter the juvenile justice system through law enforcement, in many states the initial, official contact is a child welfare agency. About 3 in 5 status offense cases referred to juvenile court come from law enforcement.

The federal Juvenile Justice and Delinquency Prevention Act states that jurisdictions shall not hold status offenders in secure juvenile facilities for detention or placement. This policy has been labeled deinstitutionalization of status offenders. There is an exception to the general policy: a status offender may be confined in a secure juvenile facility if he or she has violated a valid court order, such as a probation order requiring the youth to attend school and observe a curfew.

## Once a mainstay of juvenile court, confidentiality has given way to substantial openness in many states

### The first juvenile court was open to the public, but confidentiality became the norm over time

The legislation that created the first juvenile court in Illinois stated that the hearings should be open to the public. Thus, the public could monitor the activities of the court to ensure that the court handled cases in line with community standards.

In 1920, all but 7 of the 45 states that established separate juvenile courts permitted publication of information about juvenile court proceedings. The Standard Juvenile Court Act, first published in 1925, did not ban the publication of juveniles' names. By 1952, however, many states that adopted the Act had statutes that excluded the general public from juvenile court proceedings. The commentary to the 1959 version of the Act referred to the hearings as "private, not secret." It added that reporters should be permitted to attend hearings with the understanding that they not disclose the identity of the juvenile. The rationale for this confidentiality was "to prevent the humiliation and demoralizing effect of publicity." It was also thought that publicity might propel youth into further delinquent acts to gain more recognition.

As juvenile courts became more formalized and concerns about rising juvenile crime increased, the pendulum began to swing back toward more openness. By 1988, statutes in 15 states permitted the public to attend certain delinquency hearings.

### Delinquency hearings are open to the public in 18 states

As of the end of the 2010 legislative session, statutes or court rules in 18 states either permit or require open delinquency hearings to the general public. Such statutes typically state that all hearings must be open to the public,

except on special order of the court. The judge has the discretion to close the hearing when it is in the best interests of the child and the public or good cause is shown. In 3 of the 18 states, the state constitution has broad open court provisions.

### In 20 states, limits are set on access to delinquency hearings

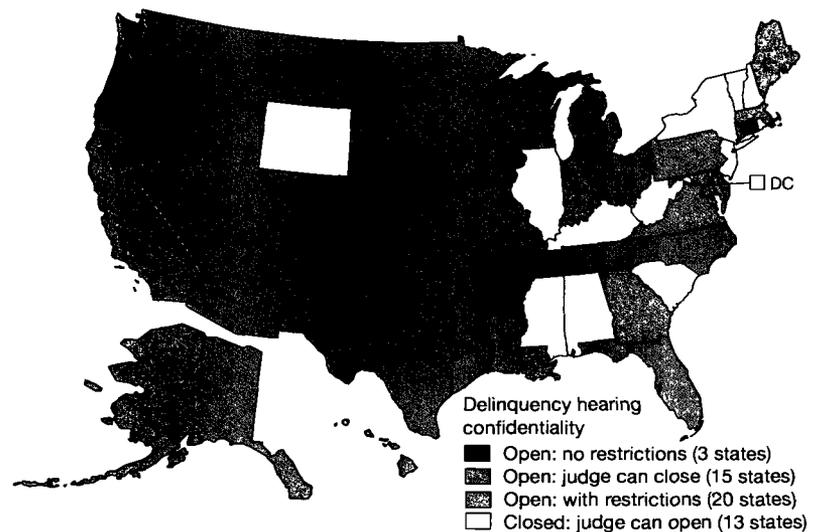
In addition to the states with open delinquency hearings that a judge can close, 20 states have statutes that open delinquency hearings for some types of cases. The openness restrictions typically involve age and/or offense criteria. For example, a statute might allow open hearings if the youth is charged with a felony and was at least 16 years

old at the time of the crime. Some statutes also limit open hearings to those involving youth with a particular criminal history. For example, hearings might be open only if the youth met age and offense criteria and had at least one prior felony conviction (criminal court) or felony adjudication (juvenile court).

### In 13 states, delinquency hearings are generally closed

As of the 2010 legislative session, 13 states had statutes and/or court rules that generally close delinquency hearings to the general public. A juvenile court judge can open the hearings for compelling reasons, such as if public

### Delinquency proceedings are open in some states, closed in others, and in some states, it depends on the type of case



- In 13 states, statutes or court rules generally close delinquency hearings to the public.
- In 20 states, delinquency hearings are open to the public, conditioned on certain age and offense requirements.

Note: Information is as of the end of the 2010 legislative session.

Source: Authors' adaptation of Szymanski's What States Allow for Open Juvenile Delinquency Hearings? *NCJJ Snapshot*.

safety outweighs confidentiality concerns.

### Most states specify exceptions to juvenile court record confidentiality

Although legal and social records maintained by law enforcement agencies and juvenile courts have traditionally been confidential, legislatures have made significant changes over the past decade in how the justice system treats information about juvenile offenders. In almost every state, the juvenile code specifies which individuals or agencies are allowed access to such records.

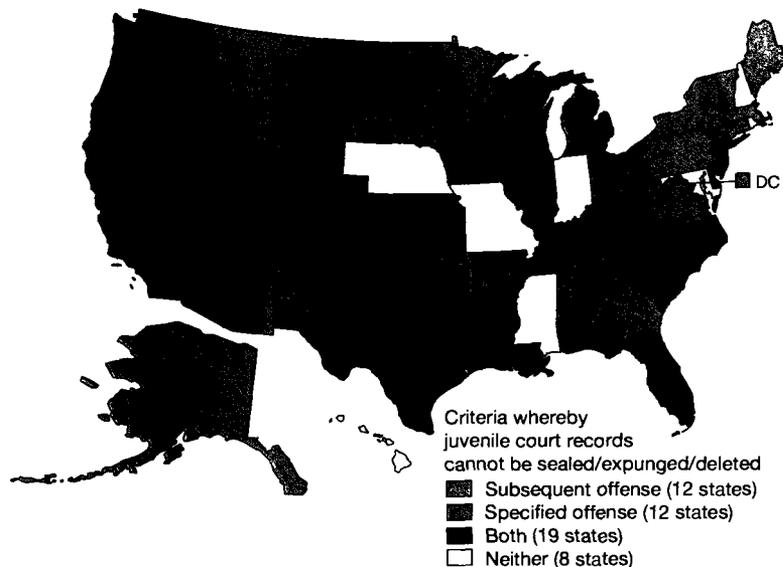
### All states allow certain juvenile offenders to be fingerprinted under specific circumstances

All states have a statute or court rule that governs the fingerprinting of alleged or adjudicated juveniles under specified circumstances. As of the end of 2009, 10 states (Hawaii, Indiana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Utah, and Wisconsin) have specific statutory age restrictions concerning the fingerprinting of juveniles. The age restrictions range between 10 and 14 as the lowest age that a juvenile can be fingerprinted. In the other 41 states, there are no age restrictions for fingerprinting by law enforcement individuals.

### School notification laws are common

As of the end of the 2008 legislative session, 46 states have school notification laws. Under these laws, schools are notified when students are involved with law enforcement or courts for committing delinquent acts. Some statutes limit notification to youth charged with or convicted of serious or violent crimes.

### Some juvenile court records cannot be sealed



- In 31 states, juvenile court records cannot be sealed/expunged/deleted if the court finds that the petitioning juvenile has subsequently been convicted of a felony or misdemeanor, or adjudicated delinquent.
- In 31 states, juvenile records cannot be sealed/expunged/deleted if the adjudication is for a statutorily specified offense. In some states, these are the offenses for which a juvenile can be transferred to criminal court.

Note: Information is as of the 2009 legislative session.

Source: Authors' adaptation of Szymanski's Are There Some Juvenile Court Records That Cannot Be Sealed? *NCJJ Snapshot*.

# All states allow certain juveniles to be tried in criminal court or otherwise face adult sanctions

## Transferring juveniles to criminal court is not a new phenomenon

Juvenile courts have always had mechanisms for removing the most serious offenders from the juvenile justice system. Traditional transfer laws establish provisions and criteria for trying certain youth of juvenile age in criminal court. Blended sentencing laws are also used to impose a combination of juvenile and adult criminal sanctions on some offenders of juvenile age.

Transfer laws address which court (juvenile or criminal) has jurisdiction over certain cases involving offenders of juvenile age. State transfer provisions are typically limited by age and offense criteria. Transfer mechanisms vary regarding where the responsibility for transfer decisionmaking lies. Transfer provisions fall into the following three general categories.

**Judicial waiver:** The juvenile court judge has the authority to waive juvenile court jurisdiction and transfer the case to criminal court. States may use terms other than judicial waiver. Some call the process certification, remand, or bind over for criminal prosecution. Others transfer or decline rather than waive jurisdiction.

**Prosecutorial discretion:** Original jurisdiction for certain cases is shared by both criminal and juvenile courts, and the prosecutor has the discretion to file such cases in either court. Transfer under prosecutorial discretion provisions is also known as prosecutorial waiver, concurrent jurisdiction, or direct file.

**Statutory exclusion:** State statute excludes certain juvenile offenders from juvenile court jurisdiction. Under statutory exclusion provisions, cases originate in criminal rather than juvenile court. Statutory exclusion is also known as legislative exclusion.

## In many states, criminal courts may send transferred cases to juvenile court

Several states have provisions for sending transferred cases from criminal to juvenile court for adjudication under certain circumstances. This procedure, sometimes referred to as “reverse waiver,” generally applies to cases initiated in criminal court under statutory exclusion or prosecutorial discretion provisions. Of the 36 states with such provisions at the end of the 2011 legislative session, 21 also have provisions that allow certain transferred juveniles to petition for a “reverse.” Reverse decision criteria often parallel a state’s discretionary waiver criteria. In some states, transfer cases resulting in conviction in criminal court may be reversed to juvenile court for disposition.

## Most states have “once an adult, always an adult” provisions

In 34 states, juveniles who have been tried as adults must be prosecuted in criminal court for any subsequent offenses. Nearly all of these “once an adult, always an adult” provisions require that the youth must have been convicted of the offenses that triggered the initial criminal prosecution.

## Blended sentencing laws give courts flexibility in sanctioning

Blended sentencing laws address the correctional system (juvenile or adult) in which certain offenders of juvenile age will be sanctioned. Blended sentencing statutes can be placed into the following two general categories.

### Juvenile court blended sentencing:

The juvenile court has the authority to impose adult criminal sanctions on certain juvenile offenders. The majority of these blended sentencing laws authorize the juvenile court to combine a juvenile disposition with a criminal sentence that is suspended. If the youth successfully completes the juvenile disposition and does not commit a new offense, the criminal sanction is not imposed. If, however, the youth does not cooperate or fails in the juvenile sanctioning system, the adult criminal sanction is imposed. Juvenile court blended sentencing gives the juvenile court the power to send uncooperative youth to adult prison, giving teeth to the typical array of juvenile court dispositional options.

### Criminal court blended sentencing:

Statutes allow criminal courts sentencing certain transferred juveniles to impose sanctions otherwise available only to offenders handled in juvenile court. As with juvenile court blended sentencing, the juvenile disposition may be conditional—the suspended criminal sentence is intended to ensure good behavior. Criminal court blended sentencing gives juveniles prosecuted in criminal court one last chance at a juvenile disposition, thus mitigating the effects of transfer laws on an individual basis.

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

State	Judicial waiver			Prosecutorial discretion	Statutory exclusion	Reverse waiver	Once an adult/ always an adult	Blended sentencing	
	Discretionary	Presumptive	Mandatory					Juvenile	Criminal
Number of states	45	15	15	15	29	24	34	14	17
Alabama	■				■		■		
Alaska	■	■			■			■	
Arizona	■			■	■		■		
Arkansas	■			■		■		■	■
California	■	■		■	■	■	■		■
Colorado	■	■		■		■		■	■
Connecticut			■			■		■	
Delaware	■		■		■	■	■		
Dist. of Columbia	■	■		■			■		
Florida	■			■	■		■		■
Georgia	■		■	■	■	■			
Hawaii	■						■		
Idaho	■				■		■		■
Illinois	■	■	■		■		■	■	■
Indiana	■		■		■		■		
Iowa	■				■	■	■		■
Kansas	■	■					■	■	
Kentucky	■		■			■			■
Louisiana	■		■	■	■				
Maine	■	■					■		
Maryland	■				■	■	■		
Massachusetts					■			■	■
Michigan	■			■			■	■	■
Minnesota	■	■			■		■	■	
Mississippi	■				■	■	■		
Missouri	■						■		■
Montana				■	■			■	
Nebraska				■		■			■
Nevada	■	■			■	■	■		
New Hampshire	■	■					■		
New Jersey	■	■	■						
New Mexico					■			■	■
New York					■	■			
North Carolina	■		■				■		
North Dakota	■	■	■				■		
Ohio	■		■				■	■	
Oklahoma	■			■	■	■	■		■
Oregon	■				■	■	■		
Pennsylvania	■	■			■	■	■		
Rhode Island	■	■	■				■	■	
South Carolina	■		■		■				
South Dakota	■				■	■	■		
Tennessee	■					■	■		
Texas	■						■	■	
Utah	■	■			■		■		
Vermont	■			■	■	■			
Virginia	■		■	■		■	■		■
Washington	■				■		■		
West Virginia	■		■						■
Wisconsin	■				■	■	■		■
Wyoming	■			■		■			

■ In states with a combination of provisions for transferring juveniles to criminal court, the exclusion, mandatory waiver, or prosecutorial discretion provisions generally target the oldest juveniles and/or those charged with the most serious offenses, whereas younger juveniles and/or those charged with relatively less serious offenses may be eligible for discretionary waiver.

Note: Table information is as of the end of the 2011 legislative session.

Source: Authors' adaptation of OJJDP's *Statistical Briefing Book* [online].

# In most states, age and offense criteria limit transfer provisions

## Judicial waiver remains the most common transfer provision

As of the end of the 2011 legislative session, a total of 45 states have laws designating some category of cases in which waiver of jurisdiction by juvenile court judges transfers certain cases to criminal court. Such action is usually in response to a request by the prosecutor. In several states, however, juveniles or their parents may request judicial waiver. In most states, waiver is limited by age and offense boundaries.

Waiver provisions vary in terms of the degree of decisionmaking flexibility allowed. The decision may be entirely discretionary, there may be a rebuttable presumption in favor of waiver, or it may be a mandatory decision. Mandatory decisions arise when a law or provision requires a judge to waive the child after certain statutory criteria have been met. Most states set a minimum threshold for eligibility, but these are often quite low. In a few states, such as Alaska, Kansas, and Washington, prosecutors may ask the court to waive virtually any juvenile delinquency case. Nationally, the proportion of juvenile cases in which waiver is granted is less than 1% of petitioned delinquency cases.

## Some statutes establish waiver criteria other than age and offense

In some states, waiver provisions target youth charged with offenses involving firearms or other weapons. Most state statutes also limit judicial waiver to juveniles who are no longer “amenable to treatment.” The specific factors that determine lack of amenability vary, but they typically include the juvenile’s offense history and previous dispositional outcomes. Such amenability criteria are generally not included in statutory exclusion or concurrent jurisdiction provisions.

## In most states, juvenile court judges may waive jurisdiction over certain cases and transfer them to criminal court

Judicial waiver offense and minimum age criteria, 2011

State	Any criminal offense	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Alabama	14							
Alaska	NS				NS			
Arizona		NS						
Arkansas		14	14	14	14			14
California	16	14		14	14	14	14	
Colorado		12		12	12			
Connecticut		14	14	14				
Delaware	NS	15		NS	NS	16	16	
Dist. of Columbia	16	15		15	15	15		NS
Florida	14							
Georgia	15		13	14	13	15		
Hawaii		14		NS				
Idaho	14	NS		NS	NS	NS	NS	
Illinois	13	15					15	
Indiana	14	NS		10			16	
Iowa	14							
Kansas	10	14			14		14	
Kentucky		14	14					
Louisiana				14	14			
Maine		NS		NS	NS			
Maryland	15		NS					
Michigan		14						
Minnesota		14						
Mississippi	13							
Missouri		12						
Nevada	14	14			16			
New Hampshire		15		13	13		15	
New Jersey	14	14		14	14	14	14	14
North Carolina		13	13					
North Dakota	16	14		14	14		14	
Ohio		14		14	16	16		
Oklahoma		NS						
Oregon		15		NS	NS	15		
Pennsylvania		14			14	14		
Rhode Island	NS	16	NS	17	17			
South Carolina	16	14		NS	NS		14	14
South Dakota		NS						
Tennessee	16			NS	NS			
Texas		14	14				14	
Utah		14						16
Vermont				10	10	10		
Virginia		14		14	14			
Washington	NS							
West Virginia		NS		NS	NS	NS	NS	
Wisconsin	15	14		14	14	14	14	
Wyoming	13							

Notes: An entry in the column below an offense category means that there is at least one offense in that category for which a juvenile may be waived from juvenile court to criminal court. The number indicates the youngest possible age at which a juvenile accused of an offense in that category may be waived. “NS” means no age restriction is specified for an offense in that category. Table information is as of the end of the 2011 legislative session.

Source: Authors’ adaptation of OJJDP’s *Statistical Briefing Book* [online].

Many statutes instruct juvenile courts to consider other factors when making waiver decisions, such as the availability of dispositional alternatives for treating the juvenile, the time available for sanctions, public safety, and the best interest of the child. The waiver process must also adhere to certain constitutional principles of due process.

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

Laws allowing juvenile courts to waive jurisdiction over individual youth can be found in some of the earliest juvenile courts and have always been relatively common. Most states had enacted judicial waiver laws by the 1950s, and they had become nearly universal by the 1970s.

For the most part, these laws made transfer decisions individual ones at the discretion of the juvenile court. Laws that made transfer “automatic” for certain categories were rare and tended to apply only to rare offenses such as murder and capital crimes. Before 1970, only 8 states had such laws.

Prosecutorial discretion laws were even rarer. Only 2 states, Florida and Georgia, had prosecutorial discretion laws before 1970.

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

During the next 2 decades, automatic transfer and prosecutorial discretion steadily proliferated. In the 1970s, 5 states enacted prosecutorial discretion laws, and 7 more states added some form of automatic transfer.

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

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

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

Between 1986 and the end of the century, the number of states with automatic transfer laws jumped from 20 to 38, and the number with prosecutorial

discretion laws rose from 7 to 15. Moreover, many states that had automatic or prosecutor-controlled transfer statutes expanded their coverage drastically. In Pennsylvania, for example, an automatic transfer law had been in place since 1933 but had applied only to murder charges. Amendments that took place in 1996 added a long list of violent offenses to this formerly narrow automatic transfer law.

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

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

**In states with concurrent jurisdiction, the prosecutor has discretion to file certain cases in either criminal or juvenile court**

Prosecutorial discretion offense and minimum age criteria, 2011

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

Notes: An entry in the column below an offense category means that there is at least one offense in that category that is subject to criminal prosecution at the option of the prosecutor. The number indicates the youngest possible age at which a juvenile accused of an offense in that category is subject to criminal prosecution. “NS” means no age restriction is specified for an offense in that category. Table information is as of the end of the 2011 legislative session.

Source: Authors’ adaptation of OJJDP’s *Statistical Briefing Book* [online].

changed or modified their laws, but there is no countrywide movement away from expansive transfer laws.

As of the end of the 2011 legislative session, 15 states have prosecutorial discretion provisions, which give both juvenile and criminal courts original jurisdiction in certain cases. Under such provisions, prosecutors have discretion to file eligible cases in either court. Prosecutorial discretion is typically limited by age and offense criteria. Cases

involving violent or repeat crimes or weapons offenses usually fall under prosecutorial discretion statutes. These statutes are usually silent regarding standards, protocols, or considerations for decisionmaking, and no national data exists on the number of juvenile cases tried in criminal court under prosecutorial discretion provisions. In Florida, which has a broad prosecutor discretion provision, prosecutors sent more than 2,900 youth to criminal court in fiscal year 2008. In compari-

son, juvenile court judges nationwide waived 7,700 cases to criminal court in 2008.

State appellate courts have taken the view that prosecutorial discretion is equivalent to the routine charging decisions prosecutors make in criminal cases. Prosecutorial discretion in charging is considered an executive function, which is not subject to judicial review and does not have to meet the due process standards established by the Supreme Court. Some states, however, do have written guidelines for prosecutorial discretion.

### In states with statutory exclusion provisions, certain serious offenses are excluded from juvenile court jurisdiction

Statutory exclusion offense and minimum age criteria, 2011

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

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

Notes: An entry in the column below an offense category means that there is at least one offense in that category that is excluded from juvenile court jurisdiction. The number indicates the youngest possible age at which a juvenile accused of an offense in that category is subject to exclusion.

"NS" means no age restriction is specified for an offense in that category. Table information is as of the end of the 2011 legislative session.

Source: Authors' adaptation of OJJDP's *Statistical Briefing Book* [online].

### Statutory exclusion accounts for the largest number of transfers

Legislatures transfer large numbers of young offenders to criminal court by enacting statutes that exclude certain cases from original juvenile court jurisdiction. As of the end of the 2011 legislative session, 29 states have statutory exclusion provisions. State laws typically set age and offense limits for excluded offenses. The offenses most often excluded are murder, capital crimes, and other serious person offenses. (Minor offenses such as wildlife, traffic, and watercraft violations are often excluded from juvenile court jurisdiction in states where they are not covered by concurrent jurisdiction provisions.)

### Jurisdictional age laws may transfer as many as 137,000 additional youth to criminal court

Although not typically thought of as transfers, large numbers of youth younger than age 18 are tried in criminal court. States have always been free to define the respective jurisdictions of their juvenile and criminal courts.

Nothing compels a state to draw the line between juvenile and adult at age 18. In 13 states, the upper age of juvenile court jurisdiction in 2010 was set at 15 or 16 and youth could be held criminally responsible at the ages of 16

and 17, respectively. The number of youth younger than 18 prosecuted as adults in these states can only be estimated. But it almost certainly dwarfs the number that reaches criminal courts as a result of transfer laws in the nation as a whole.

In 2010, more than 2 million 16- and 17-year-olds were considered criminally responsible adults under the jurisdictional age laws of the states in which they resided. If national petitioned delinquency case rates (the number of delinquency referrals petitioned per 1,000 juveniles) are applied to this population group based on specific age, race, and county size factors, and if it is assumed that this population would have been referred to criminal court at the same rates that 16- and 17-year-olds were referred to juvenile courts in other states, then as many as 137,000 offenders younger than age 18 would have been referred to criminal courts in 2010.

It should be noted, however, that this estimate is based on an assumption

that is at least questionable: that juvenile and criminal courts would respond in the same way to similar offending behavior. In fact, it is possible that some conduct that would be considered serious enough to merit referral to and formal processing in juvenile court—such as vandalism, trespassing, minor thefts, and low-level public order offenses—would not receive similar handling in criminal court.

#### **Many states allow transfer of certain very young offenders**

In 22 states, no minimum age is specified in at least one judicial waiver, concurrent jurisdiction, or statutory exclusion provision for transferring juveniles to criminal court. For example, Pennsylvania's murder exclusion has no specified minimum age. Other transfer provisions in Pennsylvania have age minimums set at 14 and 15. Among states where statutes specify age limits for all transfer provisions, age 14 is the most common minimum age specified across provisions.

Minimum transfer age specified in statute, 2011:

Age	State
None	Alaska, Arizona, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Indiana, Maine, Maryland, Nebraska, Nevada, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Washington, West Virginia
10	Kansas, Vermont, Wisconsin
12	Colorado, Missouri, Montana
13	Illinois, Mississippi, New Hampshire, New York, North Carolina, Wyoming
14	Alabama, Arkansas, California, Connecticut, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, New Jersey, North Dakota, Ohio, Texas, Utah, Virginia
15	New Mexico

# Like transfer laws, juvenile court blended sentencing allows imposition of adult sanctions on juveniles

## Transfer laws and juvenile court blended sentencing laws have a similar impact

As of the end of the 2011 legislative session, 14 states have blended sentencing laws that enable juvenile courts to impose criminal sanctions on certain juvenile offenders. Although the impact of juvenile blended sentencing laws depends on the specific provisions (which vary from state to state), in general, juvenile court blended sentencing expands the sanctioning powers of the juvenile court such that juvenile offenders may face the same penalties as adult offenders. Thus, like transfer laws, juvenile court blended sentencing provisions define certain juvenile offenders as eligible to be handled in the same manner as adult offenders and expose those juvenile offenders to harsher penalties.

The most common type of juvenile court blended sentencing provision allows juvenile court judges to order both a juvenile disposition and an adult criminal sentence. The adult sentence is suspended on the condition that the juvenile offender successfully completes the terms of the juvenile disposition and refrains from committing any new offenses. The criminal sanction is intended to encourage cooperation and serve as a deterrent to future offending. This type of arrangement is known as inclusive blended sentencing.

Most states with juvenile court blended sentencing have inclusive blends (10 of 14). Generally, statutes require courts to impose a combination of juvenile and adult sanctions in targeted cases. In Massachusetts and Michigan, though, the court is not required to order a combined sanction. The court has the option to order a juvenile disposition, a criminal sentence, or a combined sanction.

Among the four states that do not have inclusive juvenile court blended

## As with transfer laws, states' juvenile court blended sentencing provisions are limited by age and offense criteria

Juvenile court blended sentencing offense and minimum age criteria, 2011

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

Notes: An entry in the column below an offense category means that there is at least one offense in that category for which a juvenile may receive a blended sentence in juvenile court. The number indicates the youngest possible age at which a juvenile committing an offense in that category is subject to blended sentencing. "NS" indicates that, in at least one of the offense restrictions indicated, no minimum age is specified. Table information is as of the end of the 2011 legislative session.

Source: Authors' adaptation of OJJDP's *Statistical Briefing Book* [online].

sentencing, three (Colorado, Rhode Island, and Texas) have some type of contiguous blended sentencing arrangement. Under the contiguous model, juvenile court judges can order a sentence that would extend beyond the state's age of extended jurisdiction. The initial commitment is to a juvenile facility, but later the offender may be transferred to an adult facility. The fourth state without an inclusive juvenile blend, New Mexico, simply gives the juvenile court the option of ordering an adult sentence instead of a juvenile disposition. This is referred to as an exclusive blend.

### Criminal court blended sentencing laws act as a fail-safe for juvenile defendants

Under criminal court blended sentencing, juvenile offenders who have been convicted in criminal court can receive juvenile dispositions. Criminal court

blended sentencing provisions give juvenile defendants an opportunity to show that they belong in the juvenile court system. These laws act as a "safety valve" or "emergency exit" because they allow the court to review the circumstances of an individual case and make a decision based on the particular youth's amenability and suitability for juvenile or criminal treatment. Youth are given a last chance to receive a juvenile disposition.

Eighteen states allow criminal court blended sentencing. Of these states, 11 have exclusive blended sentencing arrangements where the criminal court has an either/or choice between criminal and juvenile sanctions. The other seven states have an inclusive model, where juvenile offenders convicted in criminal court can receive a combination sentence. The criminal court can also suspend the adult sanction or tie it conditionally to the youth's good behavior.

Criminal court blended sentencing provisions, 2011:

Provision	State
Exclusive	California, Colorado, Illinois, Kentucky, Massachusetts, Nebraska, New Mexico, Oklahoma, Vermont, West Virginia, Wisconsin
Inclusive	Arkansas, Florida, Idaho, Iowa, Michigan, Missouri, Virginia

The scope of criminal court blended sentencing varies from state to state, depending on the individual state statutes. The broadest criminal court blended statutes allow juvenile sanctions in any case where a juvenile was prosecuted in criminal court. Other states exclude juveniles who are convicted of a capital offense from blended sentencing. In still other states, statutes require a hearing to determine whether the disposition for a lesser offense should be a juvenile sanction. The court must base its decision on criteria similar to those used in juvenile court discretionary waiver decisions.

### States “fail-safe” mechanisms—reverse waiver and criminal court blended sentencing—vary in scope

Many states that transfer youth to criminal court either automatically or at the discretion of the prosecutor also provide a “fail-safe” mechanism that gives the criminal court a chance to review the case and make an individualized decision as to whether the case should be returned to the juvenile system for trial or sanctioning. The two basic types of fail-safes are reverse waiver and criminal court blended sentencing. With such combinations of provisions, a state can define cases to be handled in criminal court and at the same time ensure that the court can decide whether such handling is appropriate in individual cases. Of the 44 states with mandatory waiver, statutory exclusion, or concurrent jurisdiction provisions, 30 also have reverse waiver and/or criminal court blended sentencing as a fail-safe.

**Reverse waiver.** In 24 states, provisions allow juveniles whose cases are handled in criminal court to petition to have the case heard in juvenile court.

**Criminal court blended sentencing.** In 17 states, juveniles convicted in criminal court are allowed the

opportunity to be sanctioned in the juvenile system.

Some states have comprehensive fail-safes; others do not.

**Comprehensive fail-safes.** In 15 states, no juvenile can be subject to criminal court trial and sentencing either automatically or at the prosecutor’s discretion without a chance to prove his or her individual suitability for juvenile handling.

**Partial fail-safes.** In 15 states, fail-safe mechanisms do not cover every transferred case.

**No fail-safe.** In 14 states, juveniles have no chance to petition for juvenile handling or sanctioning: Alabama, Alaska, District of Columbia, Indiana, Louisiana, Minnesota, New Jersey, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, Utah, and Washington.

**Need no fail-safe.** Seven states need no fail-safe because cases only reach criminal court through judicial waiver: Hawaii, Kansas, Maine, Missouri, New Hampshire, Tennessee, and Texas.

# Juvenile indigent defense is primarily a state- or county-based system of public defense

## Juvenile criminal defense came about in the 1960s, following two Supreme Court decisions

From the inception of the modern juvenile court in Chicago in 1889, the juvenile court process was non-adversarial. The court stood *in loco parentis* to its juvenile wards, there to provide guidance. The concept of juvenile criminal defense was first instituted by two U.S. Supreme Court cases from the 1960s, *In re. Gault* and *Gideon v. Wainwright*. *In re. Gault* extended the due process rights and protections that had always been available to adults to juveniles as well, including the right to an attorney. *Gideon v. Wainwright* created a right to government-provided counsel for indigent defendants. These two cases combined to create the right to an attorney for a juvenile indigent criminal defendant.

## There are three primary types or methods of providing indigent defense

Indigent defense can take three main forms. The first form is that of a public defender. These are full- or part-time salaried attorneys who provide representation, generally in a central office with paralegal and administrative support. The second form is that of contract counsel. Contract counsel are private attorneys selected by the court to provide representation for an individual case or for a whole year. This contract is often awarded through a bidding process. The third form is that of assigned counsel. Assigned counsel are private attorneys picked to take cases and compensated by the hour or per case. They are generally used when the public defender's office has a conflict of interest or in other situations where public defenders or contract counsel

cannot take a case. Additionally, non-profit defender services such as legal aid societies may provide indigent defense services.

## Public defender's offices are provided for by states or counties in 49 states and the District of Columbia

As of 2007, 49 states and the District of Columbia have state- or county-based public defender offices that are funded at either the state or county level. Maine is the sole state without a centrally organized public defender office, operating a system of court-appointed attorneys in place of a designated public defender office. Twenty-two states have a state-based system, and 28 have a county-based system.

The Bureau of Justice Statistics' 2007 Census of Public Defender Offices collected data on 427 public defender offices across the country. This program did not report data on contract or assigned counsel. State-based public defender offices had 208,400 juvenile-related cases out of a total caseload of 1,491,420 in 2007 in 21 states (Alaska did not release caseload data, and Missouri and New Mexico only released aggregate data). This includes delinquency, delinquency appeals, and transfer/waiver cases. County-based public defender offices received 375,175 juvenile-related cases out of a total caseload of 4,081,030 in 2007. These data did not include public defender offices providing primarily appellate or juvenile representation.

Both state- and county-based public defender offices offered professional development services and training for attorneys who handled juvenile cases. Professional development includes

## Current juvenile indigent defense reforms are being spearheaded by the National Juvenile Defender Center and the MacArthur Foundation

The MacArthur Foundation launched the Juvenile Indigent Defense Action Network (JIDAN) in 2008, an initiative to improve juvenile indigent defense policy and practice. Coordinated by the National Juvenile Defender Center, JIDAN is active in California, Florida, Illinois, Louisiana, Massachusetts, New Jersey, Pennsylvania, and Washington State, focusing on access to counsel and the creation of resource centers at the state, regional, and local levels. The access to counsel workgroup is focusing on timely access to counsel, with an emphasis on early appointment of counsel, postdisposition representation, and increased training for juvenile public defenders, as well as the development of standards and guidelines. The resource center workgroup is focused on building capacity, providing leadership, and establishing a mentoring structure for juvenile defenders.

continuing legal education courses, mentoring of junior attorneys by senior attorneys, and training and refresher courses for attorneys. Twenty state-based public defender offices offered professional development training for attorneys on juvenile delinquency issues. Most (76%) county-based public defender offices offered professional development training opportunities for attorneys on juvenile delinquency issues.

## States have responded to *Miller v. Alabama* by changing mandatory sentencing laws for juveniles

### ***Miller v. Alabama* eliminated mandatory life without parole sentences for juveniles**

The 2012 U.S. Supreme Court decision *Miller v. Alabama* struck down mandatory sentences of life without the possibility of parole for juvenile offenders. Previous Supreme Court decisions had struck down statutes that allowed the death penalty for juveniles and statutes that allowed for a life without parole sentence for a non-homicide offense. At the time of *Miller v. Alabama*, 29 jurisdictions had statutes that made life without parole mandatory for a juvenile convicted of murder. As a result of this ruling, various state legislative bodies have enacted statutes to change their life without parole laws.

### **Several states have already passed laws codifying the judicial ruling of *Miller v. Alabama***

Pennsylvania passed Senate Bill 850 in 2012. This bill allows juveniles above the age of 15 to be sentenced to terms of 35 years to life and those under 15 to be sentenced to terms of 25 years to life. The life without parole sentencing option is no longer mandatory, and a court has the discretion, after looking at a list of factors, to not sentence a juvenile to life without parole.

North Carolina passed Senate Bill 635 in 2012. Under this new bill, any person under age 18 who is convicted of first-degree murder is sentenced to life imprisonment with the possibility of parole. The court must also consider

mitigating factors or circumstances in determining the sentence. Additionally, the bill lays out procedures for resentencing juveniles who had previously been sentenced to life without parole prison terms.

California passed Senate Bill 9 in 2012 in response to the *Miller v. Alabama* ruling. This bill allowed a prisoner who had been sentenced while a juvenile to a term of life without parole to petition for a new sentencing hearing based on certain criteria. The petition would have to include a statement of remorse by the prisoner as well as their efforts to rehabilitate themselves. The court would have to hold a hearing if they found the petition to be true. Prisoners who had killed a public safety official or tortured their victim were not allowed to file a petition.

Montana passed House Bill 137 in 2013. This bill carved out exceptions to the mandatory minimum sentencing scheme and parole eligibility requirements in Montana. Mandatory life sentences and the restrictions on parole do not apply if the offender was under the age of 18 when they committed the offense for which they are being sentenced.

South Dakota passed Senate Bill 39 in 2013. This bill mandated a presentence hearing to allow mitigating and aggravating factors to be heard before a juvenile could be sentenced to a term of life imprisonment, complying with the requirements of *Miller v. Alabama* and eliminating mandatory sentences in South Dakota.

Wyoming passed House Bill 23 in 2013. This bill eliminated life sentences without the possibility of parole for crimes committed as a juvenile, and a person sentenced to life imprisonment would have parole eligibility after 25 years of incarceration.

### **Other states are in the process of modifying laws to conform with the judicial ruling of *Miller v. Alabama***

Other states have either passed executive orders or are currently discussing policies or laws to modify existing juvenile life without parole laws. The governor of Iowa commuted the life without parole sentences of 38 inmates to 60-year terms shortly after *Miller v. Alabama* was handed down. The Arkansas Supreme Court, permitted by state law to remove provisions that are unconstitutional, changed language in the capital murder statute to exclude juveniles. Other states have laws that are moving through the legislative process but have not yet been enacted or ratified. As of July 1, 2013, Alabama, Connecticut, Delaware, Florida, Illinois, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Mexico, Texas, Utah, Virginia, and Washington all have bills pending as a result of the decision in *Miller v. Alabama*. Arizona, Idaho, Mississippi, Montana, New Hampshire, and New Jersey have not yet passed laws in reaction to the *Miller v. Alabama* decision.

# Few juveniles enter the federal justice system

## There is no separate federal juvenile justice system

Juveniles who are arrested by federal law enforcement agencies may be prosecuted and sentenced in U.S. District Courts and even committed to the Federal Bureau of Prisons. The Federal Juvenile Delinquency Act, Title 18 U.S.C. 5031, lays out the definitions of a juvenile and juvenile delinquency as well as the procedures for the handling of juveniles accused of crimes against the U.S. Although it generally requires that juveniles be turned over to state or local authorities, there are limited exceptions.

Juveniles initially come into federal law enforcement custody in a variety of ways. The federal agencies that arrest the most young people are the Border Patrol, Drug Enforcement Agency, U.S. Marshals Service, and FBI. A report by Adams and Samuels of the Urban Institute, which documents the involvement of juveniles in the federal justice system, states that federal agencies arrested an average of 320 juveniles each year between 1999 and 2008.\*

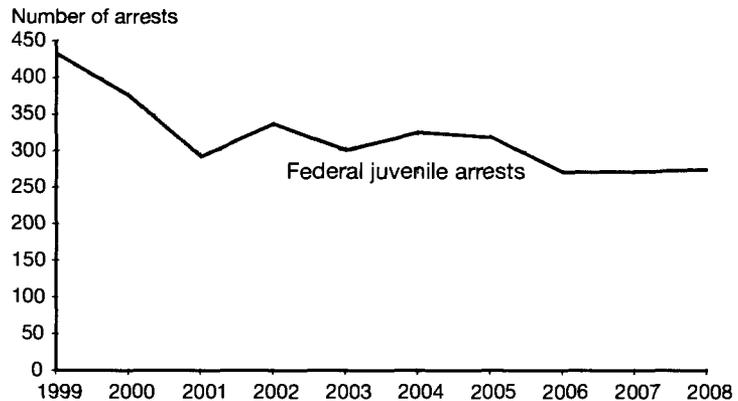
Federal juvenile arrest profile:

Demographic	1999	2008
Total arrests	432	275
Gender	100%	100%
Male	86	91
Female	14	9
Race	100%	100%
White	42	51
Black	12	13
American Indian	43	32
Other/unknown	2	4
Age at offense	100%	100%
Age 15 or younger	25	17
Age 16	27	17
Age 17	46	58
Age 18 or older	3	8

Note: Detail may not total 100% because of rounding.

\* Most juvenile arrests involve persons ages 10–17 but include a small number (16 per year on average) of youth ages 18–20 determined to have a juvenile legal status.

## From 1999 to 2008, the number of federal arrests involving juveniles fell by more than one-third

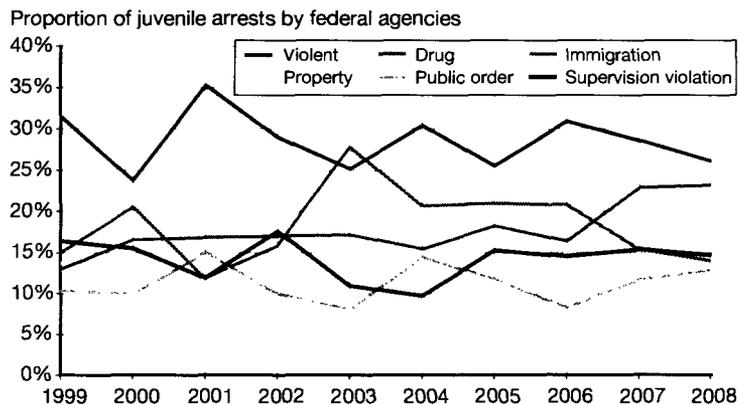


■ Federal agencies reported nearly 3,200 arrests of juveniles between 1999 and 2008. The U.S. Marshals Service accounted for 22% of these arrests and the FBI accounted for nearly one-fifth (18%).

Note: Annual arrests involve persons ages 10–17 as well as a small number ages 18–20 who were determined to have a juvenile legal status.

Source: Authors' adaptation of Adams and Samuels' *Tribal Youth in the Federal Justice System: Final Report (Revised)*.

## Together, violent crimes and immigration offenses accounted for half of all federal juvenile arrests in 2008



■ The proportion of federal arrests for immigration offenses nearly doubled between 1999 and 2008—from 13% in 1999 to 23% in 2008.

Note: Annual arrests involve persons ages 10–17 as well as a small number ages 18–20 who were determined to have a juvenile legal status.

Source: Authors' adaptation of Adams and Samuels' *Tribal Youth in the Federal Justice System: Final Report (Revised)*.

**Federal prosecutors may retain certain serious cases involving a “substantial federal interest”**

Following a federal arrest of a person under 21, federal law requires an investigation to determine whether the offense was a delinquent offense under state law. If so, and if the state is willing and able to deal with the juvenile, the federal prosecutor may forego prosecution and surrender the juvenile to state authorities. However, a case may instead be “certified” by the Attorney General for federal delinquency prosecution, if one of the following conditions exists: (1) the state does not have or refuses to take jurisdiction over the case; (2) the state does not have adequate programs or services for the needs of the juvenile; or (3) the juvenile is charged with a violent felony, drug trafficking, or firearms offense and the case involves a “substantial federal interest.”

A case certified for federal delinquency prosecution is heard in U.S. District Court by a judge sitting in closed session without a jury. Following a finding of delinquency, the court has disposition powers similar to those of state juvenile courts. For instance, it may order the juvenile to pay restitution, serve a period of probation, or undergo “official detention” in a correctional facility. Generally, neither probation nor official detention may extend beyond the juvenile’s 21st birthday or the maximum term that could be imposed on an adult convicted of an equivalent offense, whichever is shorter. But for juveniles who are between ages 18 and 21 at the time of sentencing, official detention for certain serious felonies may last up to 5 years.

**A juvenile in the federal system may also be “transferred” for criminal prosecution**

When proceedings in a federal case involving a juvenile offender are transferred for criminal prosecution, they actually remain in district court but are governed by federal criminal laws rather than state laws or the Juvenile Justice and Delinquency Prevention Act. Federal law authorizes transfer at the written request of a juvenile of at least age 15 who is alleged to have committed an offense after attaining the age of 15 or upon the motion of the Attorney General in a qualifying case where the court finds that “the interest of justice” requires it. Qualifying cases include those in which a juvenile is charged with (1) a violent felony or drug trafficking or importation offense committed after reaching age 15; (2) murder or aggravated assault committed after reaching age 13; or (3) possession of a firearm during the commission of any offense after reaching age 13. However, transfer is mandatory in any case involving a juvenile age 16 or older who was previously found guilty of a violent felony or drug trafficking offense and who is now accused of committing a drug trafficking or importation offense or any felony involving the use, attempted use, threat, or substantial risk of force.

**Most federal juvenile arrests result in a guilty plea or a conviction at trial**

The U.S. Marshals Service reports data on the disposition of federal arrests and bookings. The Urban Institute report found that about 85% of all juvenile defendants in cases terminated in U.S. District Court were convicted or adjudicated, mostly through use of the guilty plea. The other 15% were not convicted because of case dismissal or a finding of not guilty.

**Juveniles may be committed to the Federal Bureau of Prisons as delinquents or adults**

From fiscal years 1999 through 2008, a little over 3,500 juveniles were committed to the custody of the Federal Bureau of Prisons (BOP) for offenses committed while under age 18. Of these, 2,193 were committed to BOP custody as delinquents and 1,335 as adults. The majority of these juveniles were male (92%), American Indian (53%), and older than 15 (65%). Most juvenile delinquents were committed to BOP custody by probation confinement conditions, a probation sentence that requires a special condition of confinement or a term of supervised release (54%), whereas most juveniles with adult status were committed to BOP custody by a U.S. District Court (48%).

Profile of juveniles (younger than age 18 at the time of offense) committed to BOP custody:

Demographic	1999	2008
Total	513	156
Gender	100%	100%
Male	93	92
Female	7	8
Race	100%	100%
White	31	33
Black	16	17
American Indian	51	50
Asian	2	0
Ethnicity	100%	100%
Hispanic	17	23
Non-Hispanic	83	77
Age at offense	100%	100%
Younger than 15	19	15
Age 15	18	14
Age 16	22	25
Age 17	38	45
Older than 17	3	1
Committed as	100%	100%
Juvenile delinquent	64	57
Juvenile charged as adult	36	43

Note: Detail may not total 100% because of rounding.

# Measures of subsequent reoffending can be indicators of system performance

## What is recidivism?

Recidivism is the repetition of criminal behavior. A recidivism rate may reflect any number of possible measures of repeated offending—self-report, arrest, court referral, conviction, correctional commitment, and correctional status changes within a given period of time. Most measures of recidivism underestimate reoffending because they only include offending that comes to the attention of the system. Self-reported reoffending is also likely to be inaccurate (an over- or underestimate).

The most useful recidivism analyses include the widest possible range of system events that correspond with actual reoffending and include sufficient detail to differentiate offenders by offense severity in addition to other characteristics. Recidivism findings should include clearly identified units of count and detail regarding the length of time the subject population was in the community.

## Measuring recidivism is complex

The complexities of measuring subsequent offending begin with the many ways that it can be defined. There are a number of decision points, or marker events, that can be used to measure recidivism, including rearrest, re-referral to court, readjudication, or reconfinement. The resulting recidivism rate can vary drastically, depending on the decision point chosen as a marker event. For example, when rearrest is counted as the point of recidivism, the resulting rate is much higher than when reconfinement is the measure. Of the youth who are rearrested, only a portion will be reconfined.

The followup time in a study can have a similar impact on recidivism rates. When subsequent offending is tracked over a short timeframe (i.e., 6 months, 1 year), there is less opportunity to reoffend, and rates are logically lower

than when tracked over a longer timeframe (i.e., 2 or 3 years). Additionally, recidivism rates over a long time period may increase as benefits from treatment or other interventions subside.

Data availability can also impact how recidivism is defined. Recidivism studies often require information from multiple sources (e.g., juvenile court, criminal court, probation agencies, corrections agency). For example, an offender may first be confined as a juvenile, and later rearrested and enter the criminal justice system. In this case, it is necessary to have data from the

juvenile corrections agency, the criminal court, and law enforcement to be able to measure subsequent offending.

## Recidivism as a performance measure

Although there are a number of obstacles to obtaining meaningful recidivism rates, they are still valuable indicators of how a system is functioning. Juvenile justice practitioners can use recidivism rates to develop benchmarks to determine the impacts of programming, policies, or practices. Although using recidivism rates as a point of

## Common uses of recidivism data

**Recidivism data can serve a number of purposes. Each of these purposes should be considered in advance of data collection and at times in the design of the information system.**

**Systems diagnosis and monitoring:** Recidivism data can enable systems to examine the impact of policy changes, budget reductions, new programs and/or practices, and changes in offender characteristics on system-level performance.

**Evaluation against prior performance:** This involves tracking outcome data and examining performance in previous outcomes. When purposeful changes are made to a program in order to improve outcomes, sustained trends tell us something about the likely impact of these program modifications.

**Comparing different offender groups:** Differentiating offenders in terms of demographic, risk, or assessment information can help to pinpoint differential impacts of interventions. Interventions can then be matched to youths likely to benefit from a specific set of methods.

**Source:** Authors' adaptation of Harris, Lockwood, and Mengers' *A CJCA White Paper: Defining and Measuring Recidivism*.

**Program evaluation:** Studies involving comparison groups make it possible to test the impact or effectiveness of a program. Experiments are most effective for this purpose—they isolate the effects of an intervention from all other factors that may also influence outcomes. There are a variety of quasi-experimental designs available if random assignment is not possible or desirable.

**Cost-benefit analysis:** To influence public policy, cost-benefit analyses, which examine variations in cost associated with different program or policy options, should be pursued. Policymakers responsible for allocating tax dollars find such analyses particularly persuasive.

**Comparing systems:** Classifying systems on factors likely to affect outcomes, making comparisons within groups of similar systems, and comparing similar populations of individuals will decrease error. Here again, risk levels and other population attributes should be accounted for in the analysis.

comparison with other jurisdictions is a risky proposition, the reality is that such comparisons will be made. Any recidivism statistics developed should be well defined so users inclined to make jurisdictional comparisons can at least do so in an informed way. Depending on data availability, useful comparisons might include:

- System penetration groups: probation vs. placement vs. secure confinement.
- Demographics: gender, race/ethnicity, and age groups.

- Risk factor groups: offense seriousness, prior history, gang involvement, risk assessment groups.
- Needs groups: based on assessments of various social characteristics, substance abuse, mental health, etc.

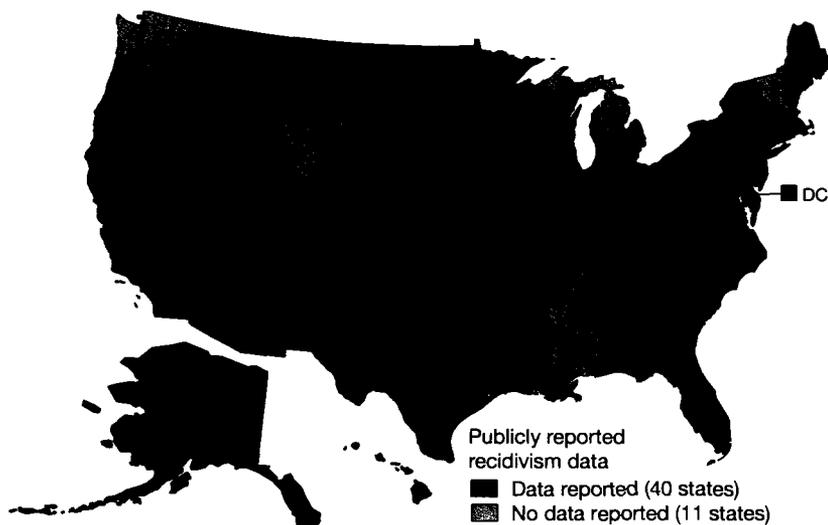
#### There is no national recidivism rate for juveniles

Each state's juvenile justice system differs in organization, administration, and data capacity. These differences influence how states define, measure, and report recidivism rates. This also makes

it challenging to compare recidivism rates across states.

There are general guidelines that increase the ability for recidivism studies to be compared. Studies should take into account multiple system events, such as rearrest, readjudication (reconviction), and reconfinement (reincarceration). Including information on severity of subsequent offenses, time to reoffend, and frequency of reoffending maximizes possibilities for making comparisons. Calculating recidivism rates for more than one timeframe (6 months, 1 year, 2 years, etc.) also increases comparison flexibility.

#### Most states publicly report recidivism data



- Agencies within the same state may report differing recidivism rates based on the characteristics they use to define the measure. For example, Missouri's correctional agency reports recidivism as recommitment or involvement in the adult system within a specified time period. Missouri's Office of State Courts Administrator reports recidivism as a law violation within 1 year of the initial referral's disposition.
- Other states have declared a state definition of recidivism to standardize measurements. Pennsylvania defines recidivism as, "a subsequent delinquency adjudication or conviction in criminal court for either a misdemeanor or felony offense within 2 years of case closure."

Note: Measures of subsequent offending vary, depending on the purpose for the collection.

Source: Authors' analyses of publicly available state agency reports, and authors' adaptation of the Pew Center for the States' *Juvenile Recidivism Infographic*.

#### CJCA offers recommendations for correctional agencies to measure recidivism

**Clear measure:** The Council of Juvenile Correctional Administrators (CJCA) recommendations emphasize the importance of identifying a clear measure of recidivism. This includes defining the population, multiple marker events, followup timeframe, and data sources. The CJCA recommends using readjudication and reconviction as marker events, although using multiple measures of recidivism is encouraged.

**Timeframe:** The CJCA recommends beginning data collection with the date of disposition. The timeframe for measurement recommended by the CJCA is at least 24 months; however, data must be collected for a longer time period to account for delays between arrest and adjudication. Including multiple timeframes is useful for comparing rates.

**Sufficient detail for comparisons:** The CJCA recommends collecting all subsequent charges, demographics, and risk levels so that similar groups can be compared.

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**PIERCE COUNTY PROSECUTOR**

**August 27, 2015 - 3:10 PM**

**Transmittal Letter**

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Case Name: In Re: THE PRP of Wolf

Court of Appeals Case Number: 47455-7

**Is this a Personal Restraint Petition?**  Yes  No

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Statement of Arrangements

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Answer/Reply to Motion:

Brief:

Statement of Additional Authorities

Cost Bill

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Letter

Copy of Verbatim Report of Proceedings - No. of Volumes:

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Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other:

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