

NO. 79003-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JACOB L.T. MINOR,

Petitioner.

CLERK

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SUPREME COURT
STATE OF WASHINGTON

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON OF GRAYS HARBOR COUNTY

The Honorable Gordon L. Godfrey, Judge

SUPPLEMENTAL BRIEF OF PETITIONER

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A. ISSUES PERTAINING TO PETITIONER'S ASSIGNMENTS OF ERROR

1. Division 2 of the Court of Appeals acknowledged in *State v. Minor*, 133 Wn. App. 636, 137 P.3d 872 (2006) that a juvenile court did not comply with RCW 9.41.047 when it failed to provide written notice that the Petitioner was prohibited from possessing a firearm. Does a conviction for unlawful possession of a firearm violate due process if the Petitioner was misled by a juvenile court judge's failure to provide, pursuant to RCW 9.41.047, the statutorily required advisement that as result of a juvenile conviction for residential burglary the Petitioner's right to possession of firearms will be unlawful?

2. Was a disposition of 190 to 238 weeks clearly excessive in light of the aggravating factors presented at the disposition hearing and the availability of an adequate remedy of 15 to 36 weeks' commitment?¹

B. STATEMENT OF THE CASE

1. Procedural Facts:

Ocean Shores, Washington, police officer Christian Iversen investigated the theft of a .38 handgun from Richard Frost's house. Report of Proceedings [RP] at 4. Frost suspected that Jacob Minor had taken the gun because his daughters had heard rumors at school that Minor had stolen the handgun and

¹Petitioner submits no additional argument regarding this issue and relies on the argument

subsequently sold it. RP at 4, 5.

Katie Robinson was arrested on an unrelated matter and was contacted by Iversen. Iversen obtained a statement from Robinson that she saw Minor in possession of a handgun. RP at 5. Robinson told Iversen that she had seen Minor at a friend's house with a black, "fully loaded" handgun sometime between spring and fall of 2004. RP at 6, 7, 8, 9, 11. She testified that that Minor told her to lie about her seeing the handgun and "not to get him into trouble." RP at 9, 10.

Jacob Minor was charged with two counts of unlawful possession of a firearm in the first degree. Clerk's Paper's [CP] at 1-3. The State alleged in Count 2 that during the spring or summer of 2004, Minor, having previously been convicted of residential burglary, knowingly owned or had in his possession a .38 caliber revolver. CP at 1-2. The State alleged in Count 1 that Minor had a black revolver in his possession at a residence in Ocean Shores in the period between September 1, 2004 and October 31, 2004. CP at 1. Count 1 was continued pursuant to the State's request due to the absence of a subpoenaed witness and was ultimately dismissed without prejudice by the State. RP at 3, 21-22. CP at 25. The fact-finding proceeded regarding Count 2 on March 24, 2005.

At trial, Minor denied possessing a gun and denied showing a gun to

contained in his Petition for Review.

Robinson. RP at 14-15, 16. He also denied telling Robinson to lie or not to testify. RP at 15.

Minor acknowledged that he was previously convicted of multiple offenses. RP at 17. The State entered as Exhibit 1 a certified copy of Order on Adjudication and Disposition dated November 6, 2003, in which Minor was adjudicated guilty of residential burglary. CP at 16; Appendix A-1 through A-7. Minor said that he had not been told that as a convicted felon he could not possess a firearm. RP at 17-18.

The Order on Adjudication and Disposition is a pre-prepared form presented by a Grays Harbor County Deputy Prosecuting Attorney. To the left side of each provision or clause in the form are brackets that appear as “[].” Some of the brackets are interlineated with a manuscript “X”, denoting those provisions that the court imposed on Minor at disposition. Appendix A-1, A-2, A-4, A-5, A-6, A-7. At page 7 the Order on Adjudication and Disposition provides:

4.18 [] FELONY FIREARM PROHIBITION: Respondent shall not use or possess firearm, ammunition or other dangerous weapon until his or her right to do so is restored by a court of record. The court clerk is directed to immediately forward a copy of the respondent's driver's license or identicard, or comparable information, along with the date of conviction, to the Department of Licensing. RCW 9.41.047

Exhibit 1; Appendix A-7.

Section 4.18 is not marked with an “[X]” on or otherwise denoted as

applicable to Minor. Minor did not sign the disposition form and did not review it with his counsel. The record is silent as to whether the court advised Minor orally at disposition on November 6, 2003 that he could not possess a firearm.

The juvenile court ruled that Minor committed first degree unlawful possession of a firearm as charged in Count 2. RP at 19-20.

Based on his criminal history, Minor faced a standard range of 15 to 36 weeks in the custody of the Juvenile Rehabilitation Administration [JRA]. RP at 25.

The Juvenile Rehabilitation Administration probation officer prepared a Predisposition Investigative Report, filed March 30, 2005. CP at 20-24. Minor was granted a diversion in his first three offenses, which date back to June 2000. CP at 21. He was granted a Chemical Dependency Dispositional Alternative [CDDA] in Juvenile Division of the Pierce County Superior Court on August 7, 2002. CP at 21; RP at 22. Minor's CDDA was revoked on September 23, 2002 and he was committed to JRA in November, 2003 pursuant to a 26 week manifest injustice disposition that was previously suspended. CP at 21.

Minor was later committed to the JRA pursuant to the 2003 conviction for residential burglary. He received a manifest injustice disposition of 30 to 40 weeks. CP at 21.

In the instant case, the JRA representative recommended a manifest injustice disposition of 60 weeks. RP at 23.

The trial court imposed a disposition of 190 weeks to 238 weeks. CP at

29. The court entered the following Findings of Fact and Conclusions of Law:

II. FINDINGS OF FACT

- [X] Respondent was found guilty [sic] at an adjudicatory hearing of: Count II UPSFR1 Committed on or about 09-30-04.
- [X] Respondent's offender score is 2.25, which is based upon his/her criminal history.
- [X] The court considered the respondent's eligibility for the chemical dependency disposition alternative.
- [X] A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).
- [X] The following aggravating factors exist in this case:
 - [X] The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement.
- [X] There are other complaints which [sic] have resulted in diversion or a finding or plea of guilty which [sic] are not included as criminal history; and
- [X] The standard range disposition is clearly too lenient considering the seriousness of the juvenile's prior adjudications.
- [X] Other: Jacob is a continuing threat to the community & himself. Jacob is in need of more substance abuse counseling.

III. CONCLUSIONS OF LAW

- [X] A respondent is guilty of the offense(s) as stated in the finding.
- [X] A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).

CP at 26-33. Appendix B-2 through B-3.

On review, Division 2 of the Court of Appeals held that although the

trial court failed to comply with the notice requirement of RCW 9.41.047, Minor did not “demonstrate any reliance on the trial court’s oversight.” *Minor*, 133 Wn. App. 636, 644, 137 P.3d 872 (2006). The court also found that despite the failure of the trial court to advise Minor in compliance with the statute, RCW 9.41.047 imposes no sanction for the “court’s failure to comply with the statute’s express oral and written notice requirements.” *Minor*, 133 Wn. App. at 645. The court found that it was not a judicial but “a legislative task to prescribe a remedy for failing to inform a convicted felon of the loss of the right to possess firearms.” *Id.*

In addition, the court found that the disposition of 190 to 238 weeks was not an excessive manifest injustice disposition and that Minor’s “lengthy and continuous criminal history, his substance abuse, and his refusal to participate in drug treatment outside incarceration” supports the disposition. *Minor*, 133 Wn. App. at 647.

C. ARGUMENT

1. **DUE TO FAILURE OF THE PREDICATE OFFENSE COURT TO PROVIDE WRITTEN NOTICE TO MINOR PURSUANT TO RCW 9.41.047 THAT HE COULD NOT LAWFULLY POSSESS A FIREARM, HIS CURRENT CONVICTION VIOLATES DUE PROCESS.**

The trial court failed to advise Minor in writing that it was unlawful for him to possess a firearm at the time of his disposition for residential burglary.

In 1994, the Washington Legislature added a notice requirement regarding possession of firearms. The statute requires the court to give the person who has been convicted of a crime that made him or her ineligible to possess a firearm both oral and written notice that he or she may not possess a firearm unless the right to do so is restored by the court. RCW 9.41.047. RCW 9.41.047(1) provides in pertinent part:

At the time a person is convicted of an offense making the person ineligible to possess a firearm, the convicting court shall notify the person, **orally and in writing**, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record.

RCW 9.41.047(1) (emphasis added.) Appendix C-1. See also, *State v. Blum*, 121 Wn. App. 1, 4, 85 P.3d 373 (2004). This statute requires that persons convicted after July 1994 must be given notice of the loss of their right to possess firearms. *State v. Reed*, 84 Wn. App. 379, 386, 928 P.2d 469 (1997); *State v. Stevens*, 137 Wn. App. 460, 467, 153 P.3d 903(2007).

Former RCW 9.41.040(1)(a) (2003) provides:

A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted in this state or elsewhere of any serious offense as defined in this chapter.

Appendix D-1.

RCW 9.41.010(12)(a) includes any crime of violence as a serious

offense. Appendix E-1. RCW 9.41.010(11)(a) includes residential burglary as a crime of violence. Conviction for residential burglary falls within the classes of crimes for which the Legislature has prohibited firearm possession. RCW 9.41.040(1)(b)(i).

Although ignorance of the law is generally not a defense, the Court of Appeals has held that a narrowly-defined class of cases has determined that affirmative, misleading information from a governmental entity is a violation of due process. *State v. Leavitt*, 107 Wn. App. 361, 371, 27 P.3d 622 (2001).

Minor was convicted by plea of one count of residential burglary and an Order of Adjudication was entered November 6, 2003. Exhibit 1; Appendix A-1. After Minor was convicted of residential burglary, RCW 9.41.047(1) required the sentencing court to advise him both orally and in writing that he could no longer possess a firearm. The statute explicitly requires both verbal and written advisement, and therefore the question of whether Minor was advised orally at the time of disposition is moot; the statute requirements both forms of notice.

Minor's conviction compromised his 14th amendment right to due process. U.S. Const. amend. XIV, § 1. The Due Process Clause prevents conviction of an individual who reasonably relies on the implied assurances of an appropriate government official that he is entitled to engage in conduct that is arguably unlawful. *Cox v. Louisiana*, 379 U.S. 536, 571, 85 S. Ct. 453, 13 L.

Ed. 2d 471 (1965); *Raley v. Ohio*, 360 U.S. 423, 439, 79 S. Ct. 1257, 3 L. Ed. 2d 1344 (1959). “The ultimate due process inquiry is whether a defendant’s conviction, for reasonably and in good faith doing that which he was told he could do, is fundamentally unfair in light of the content of the information he received and its source.” *State v. Leavitt*, 107 Wn. App. at 368 (quoting *Miller v. Commonwealth*, 25 Va. App. 727, 492 S.E.2d 482 487, 488-89 (Va. Ct. App. 1997)).

A challenge to due process is implicated “when the source of the information is a public officer or body charged by law with responsibility for defining permissible conduct with respect to the offense at issue.” *Miller v. Commonwealth*, 492 S.E.2d at 487 (quoted by *Leavitt*, 107 Wn. App. at 368.) In applying due process in this context, a reviewing court appropriately considers a number of factors, including the source of misleading information, the nature of the information given or omitted, uncertainty as to the meaning of the law to be enforced, the seriousness of the offense for which conviction is sought, whether the defendant actually relied on the misinformation, and whether such reliance was reasonable. See *Raley v. Ohio*, 360 U.S. at 437-38; *Cox v. Louisiana*, 397 U.S. at 568-72; *State v. Locati*, 111 Wn. App. 222, 43 P.3d 1288 (2002); *State v. Leavitt*, 107 Wn. App. at 368-72.

Knowledge that the possession is illegal is not an element of the offense of unlawful possession of a firearm. *State v. Semakula*, 88 Wn. App. 719, 946

P.2d 795 (1997). Nevertheless, when a court fails to provide in its orders the notice required by statute, “a due process violation may occur.” *State v. Wilson*, 17 Wn. App. 1, 75 P.3d 573 (2003). Thus when a convicting court fails to inform the convicted defendant that he has lost the right to possess a firearm and therefore misleads the defendant about his legal obligations, however inadvertently, conviction of a defendant who is actually prejudiced by the court’s failure to comply with the statutory mandate violates due process. *Leavitt*, 107 Wn. App. at 372-73.

Denial of due process need not entail “express affirmative assurances.” *Leavitt*, 107 Wn. App at 372. In cases such as *Minor*’s, where it’s clear by the language of RCW 9.41.047 that the Legislature expressly requires a court to advise a juvenile respondent or adult defendant of a restriction on his or her future conduct, and where the court fails to give the requisite advice, the logical remedy is to relieve the defendant of the restriction otherwise imposed by statute; to do otherwise would be render the notice requirement of the statute a dead letter. *See In re Personal Restraint of Vega*, 118 Wn.2d 449, 829 P.2d 1111 (1992).

In the present case, *Minor* was misled by the trial court at the time that it entered its disposition by failing to comply with the statutory notice requirement of RCW 9.41.047. The court found *Minor* had committed residential burglary yet failed to provide the requisite notice that this would preclude his future

possession of firearms without further court order. The Court of Appeals distinguished the holdings of *Leavitt* and *State v. Blum*, 121 Wn. App. 1, 85 P.3d 373 (2004) from the facts of Minor's case.

In *Leavitt*, Division 2 ruled on the consequences of a sentencing court's failure to comply with the statutory notice requirement of RCW 9.41.047(1). In *Leavitt*, the appellant entered a guilty plea to violation of a protection order. The court imposed a one-year suspended sentence, which included conditions that Leavitt may not possess firearms. The court did not instruct Leavitt that RCW 9.41.047's prohibition against possession of firearms applied and that it extended beyond his one-year probationary period. In addition, in the Conditions, Requirements and Instructions that the Department of Corrections provided to Leavitt, the box next to the paragraph explaining the firearm prohibition under RCW 9.41.047 was left blank. Leavitt turned his firearms over to his brother for a one year period. At the end of one-year, Leavitt received a letter stating his probation had ended. Leavitt then retrieved his firearms from his brother. *Leavitt*, 107 Wn. App. at 363-64.

Leavitt was subsequently arrested at his home in 1999 on a new charge. He was later charged with six counts of unlawful possession of a firearm. *Leavitt*, 107 Wn. App. at 364. On appeal, Division 2 reversed his convictions. The court ruled that the actions and inactions of the State, both in failing to give him the required advisement under RCW 9.41.047 and in leading him to believe

that his prohibition against firearm possession lasted only one year, misled Leavitt to believe he could legally possess firearms. *Id.* at 372. The court ruled that Leavitt's reliance on the court's actions prejudiced him because he brought guns back into his possession, leading to his arrest and conviction. *Id.* at 366-67.

The court agreed with Leavitt that "the failure to provide this notice must have some consequence to the state, or there is little or no motivation on the part of the judge or the prosecutor to insure that the statute is followed." *Id.* at 367. The trial court, through its words and actions, misled the defendant into believing that any restriction on firearm possession was limited to his one-year probationary period. The court held that Leavitt's subsequent conviction for illegal possession of firearms violated due process. *Id.* at 371.

In *Blum*, the Colorado Department of Corrections provided no written notice informing Blum that he could no longer possess firearms following convictions for second degree burglary and attempted sexual assault of a child. Blum was later charged in Washington with second degree unlawful possession of a firearm. Division 2 found that Blum was not misled by any State agency about his right to possess a firearm and therefore did not apply *Leavitt*. *Blum*, 121 Wn. App. at 3.

Division 2, while acknowledging that court failed to comply with RCW 9.21.047 by not checking the box on the disposition, nevertheless found that Minor "fails to demonstrate any reliance on the trial court's oversight." *Minor*,

133 Wn. App. at 644. Moreover, Division 2 found that the facts were different from *State v. Moore* 121 Wn. App. 889, 91 P.3d 136 (2004) and *Leavitt* in that the court did nothing to affirmatively indicate that Minor could possess a firearm. *Minor*, 133 Wn. App. at 643-44. Minor disagrees with the court's reasoning, and argues that the mere fact that he was in possession of the weapon *a priori* shows reliance on the failure of the predicate court to inform him that he could not be involved with firearms. Division 2 held that Minor was required to show reliance on the trial court's error. The reliance is self-evident; Minor was afforded no notice that he could not legally possess firearms, he subsequently possessed a firearm and he found himself charged with unlawful possession of a firearm as a result. Here, there is no evidence anyone ever disabused Minor of the impression that he was free to acquire firearms.² Minor's apparent reliance on the misimpression he derived from the court's omission is demonstrated by the fact that approximately ten months later he in fact had possession of a firearm.

Division 2 tries to have it both ways: while agreeing with Minor that the court did not comply with RCW 9.41.047, the court nevertheless found that "we can no consequence the legislature spelled out for violating this statute[.]" and laid the task to prescribe a remedy at the feet of the legislature. *Minor*, 133 Wn.

² Minor acknowledges that he was suspected of having stolen the firearm. The fact remains, however, that he was convicted of possession of the firearm, not theft.

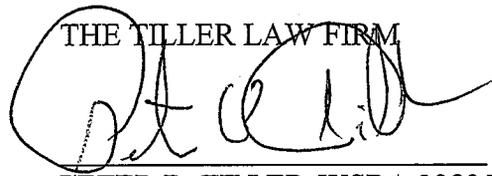
App. at 645. The Court's ruling provides no incentive for courts and prosecutors to abide by the notice requirement of RCW 9.41.047 when there is no consequence for failing to do so.

D. CONCLUSION

The conviction should be reversed, and the charge dismissed, because the charge violates due process.

DATED: May 31, 2007.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter B. Tiller', is written over a horizontal line. The signature is stylized and somewhat cursive.

THE TILLER LAW FIRM

PETER B. TILLER-WSBA 20835
Of Attorneys for Jacob L.T. Minor

APPENDIX A

103
4

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GRAYS HARBOR CO. WA.

2003 NOV -6 1 P 1:49

CHERYL BROWN
COUNTY CLERK

Certificate of Clerk of the Superior Court of
Washington in and for Grays Harbor County.
The above is a true and correct copy of the
original instrument which is on file or
record in this court.

Done this 25th day of Jan. 2005
Cheryl Brown, Clerk By B. McCall
Deputy Clerk



SUPERIOR COURT OF WASHINGTON
COUNTY OF GRAYS HARBOR
JUVENILE COURT

STATE OF WASHINGTON v.

Jacob Lucas Minor

Respondent(s).

D.O.B.: 10/13/88

NO: 03-8-00453-5

ORDER ON ADJUDICATION AND
DISPOSITION

J031092

Clerk's Action Required. Paragraphs 4.1, 4.6,
4.11, 4.17, 4.18

I. HEARING

1.1 Respondent appeared for a disposition hearing on 11/06/03 (Date).

1.2 Persons appearing were:

- Respondent
- Respondent's Attorney
- Prosecuting Attorney
- Probation Counselor
- Parent(s)
- Other

1.3 The court heard evidence and argument, reviewed the files, and now enters the following:

II. FINDINGS OF FACT

Respondent pled guilty to: Respondent was found guilty at an adjudicatory hearing of:

| | | |
|------------------|-----------------------------------|---------------------------------------|
| Count: <u>I</u> | Offense: <u>Residential Burg.</u> | Committed on or about: <u>10/8/03</u> |
| Count: <u> </u> | Offense: <u> </u> | Committed on or about: <u> </u> |
| Count: <u> </u> | Offense: <u> </u> | Committed on or about: <u> </u> |

The State failed to prove the following offense(s) and Count(s)

SAME COURSE OF CONDUCT. The conduct in Count(s) is the same course of conduct.

Respondent waived the right to counsel, arraignment on amended information, and/or speedy disposition.

13

- Respondent has violated the terms of his/her DEFERRED DISPOSITION entered on _____
- Respondent's offender score is 1.50 which is based upon his/her criminal history.
- The court considered the respondent's eligibility for the chemical dependency disposition alternative.
- Respondent has declined to enter a Diversion Agreement.
- Respondent may be ordered to pay restitution pertaining to matters not here adjudicated, and/or Count(s) _____, notwithstanding dismissal, because respondent, with counsel, so agreed and stipulated.
- A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).
- The following mitigating factors exist in this case.
 - The respondent's conduct neither caused nor threatened serious bodily injury, or the respondent did not contemplate that his/her conduct would cause or threaten serious bodily injury;
 - The respondent acted under strong and immediate provocation;
 - The respondent was suffering from a mental or physical condition that significantly reduced his/her culpability for the offense through failing to establish a defense;
 - Prior to his or her detection, the respondent compensated or made a good faith attempt to compensate the victim for the injury or loss sustained; and
 - There has been at least one year between the respondent's current offense and any prior criminal offense.
 - Other: _____

- The following aggravating factors exist in this case:
 - In the commission of the offense, or in flight therefrom, the respondent inflicted or attempted to inflict serious bodily injury to another;
 - The offense was committed in an especially heinous, cruel, or depraved manner;
 - The victim was particularly vulnerable;
 - The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;
 - The current offense included a finding of sexual motivation pursuant to RCW 13.40.135;
 - The respondent was the leader of a criminal enterprise involving several persons;
 - There are other complaints which have resulted in diversion or a finding or plea of guilty which are not included as criminal history; and
 - The standard range disposition is clearly too lenient considering the seriousness of the juvenile's prior adjudications.
 - Other: Youth is A Threat to the Community & to Self, NEED FOR TREATMENT.

III. CONCLUSIONS OF LAW

- Respondent is guilty of the offense(s) as stated in the findings.
- Respondent is not guilty of the offense(s) as stated in the findings.

- A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).
- Respondent is eligible for the chemical dependency disposition alternative on Count _____.
A standard range disposition for that Count would constitute a manifest injustice.
- Respondent's Deferred Disposition is revoked.

IV. ORDER

IT IS HEREBY ORDERED that:

4.1 The state's motion respondent's motion to dismiss Count(s) _____
 Crimes(s) _____
 Statute(s) _____
 is granted, and said Count(s) shall be dismissed.

RANGE OF DISPOSITION:

- 4.2 Count _____. Disposition shall be within the standard range.
- 4.3 Count _____. Disposition within the standard range for this offense would effectuate a manifest injustice.
- 4.4 Count _____. Disposition shall be within the Special Sex Offender Dispositional Alternative.
- 4.5 Count _____. Chemical Dependency Disposition Alternative (RCW 13.40.165):
 Respondent is committed to the Department of Social and Health Services, Juvenile Rehabilitation Administration for a total of _____ weeks. Disposition is suspended. If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition.

4.6 COMMUNITY SUPERVISION:

| | |
|--------------|--------------|
| Count: _____ | _____ months |
| Count: _____ | _____ months |
| Count: _____ | _____ months |

4.7 COMMUNITY RESTITUTION WORK:

| | | |
|--------------|-----------------------------------|---|
| Count: _____ | _____ hours community restitution | with _____ hours credited for _____ days served |
| Count: _____ | _____ hours community restitution | with _____ hours credited for _____ days served |
| Count: _____ | _____ hours community restitution | with _____ hours credited for _____ days served |

4.8 CONFINEMENT:

| | | |
|--------------|------------|-----------------------------------|
| Count: _____ | _____ days | With credit for _____ days served |
| Count: _____ | _____ days | With credit for _____ days served |
| Count: _____ | _____ days | With credit for _____ days served |

These days are to be served immediately, upon negative progress review.

Temporary releases from confinement for school, work, medical appointments, etc. are authorized at the discretion of the probation counselor.

4.9 **COMMITMENT** to the custody of the Department of Social and Health Services, Juvenile Rehabilitation Administration for institutional placement:

| | | |
|-----------------|------------------------------------|---------------------------------------|
| Count: <u>1</u> | <u>30</u> weeks to <u>40</u> weeks | With credit for <u>28</u> days served |
| Count: _____ | _____ weeks to _____ weeks | With credit for _____ days served |
| Count: _____ | _____ weeks to _____ weeks | With credit for _____ days served |

Respondent shall be held in detention facility pending transportation.

4.10 STATUTORY FIREARMS ENHANCEMENTS:

- The court finds that respondent possessed a firearm in violation of RCW 9.41.040(1)(e). In addition to the sentence otherwise imposed herein, respondent is sentenced to _____ days confinement (10 days minimum). If the total period of confinement ordered herein exceeds 30 days, respondent is committed to the custody of JRA to serve the ordered confinement.
- The court finds that respondent or an accomplice was armed with a firearm while committing a felony, and thus hereby imposes:
- 6 months (Class A felony) 4 months (Class B felony) 2 months (Class C felony) confinement in addition to any other sentence imposed herein and respondent is committed to the custody of JRA to serve said confinement.
- Any term of confinement ordered in this paragraph 4.10 shall run consecutively to any other term of confinement ordered.

4.11 CONDITIONS OF SUPERVISION:

- A. The respondent is ordered to refrain from committing new offenses.
- B. Respondent is further ordered to comply with the **MANDATORY SCHOOL ATTENDANCE** provisions of RCW 28A.225, and to inform respondent's school of the existence of this requirement. I attend _____ School.
- C. Respondent shall report regularly, and on time, to the assigned probation counselor (or probation counselor's designee), as the probation counselor shall schedule or direct.
- D. Respondent shall keep probation counselor informed of respondent's current address and telephone number and shall notify probation counselor before moving to a different address.
- E. Respondent shall attend information classes and/or other educational programs, as directed by probation counselor.

(Items F through M apply only if the box is checked)

- F. **CURFEW** to be set at the discretion of the probation counselor.

_____ p.m. - _____ a.m.

- G. Respondent shall NOT USE OR POSSESS FIREARMS, AMMUNITION OR OTHER DANGEROUS WEAPONS during this period of community supervision. Probation counselor is authorized to search respondent and items carried or controlled by respondent at scheduled appointments and other reasonable times, and may specify in writing further details of this prohibition.
- H. Respondent shall participate in counseling, in/outpatient substance abuse treatment programs, outpatient mental health programs, sex offender, and/or anger management classes, as probation counselor directs. Respondent shall cooperate fully.
- I. Respondent shall be EVALUATED FOR ALCOHOL OR OTHER DRUG DEPENDENCY at the direction of the probation counselor and shall comply with all treatment recommendations.
- J. Respondent shall refrain from using illegal drugs and alcohol and is subject to RANDOM URINALYSIS as directed by the probation counselor and shall fully cooperate.
- K. Respondent is ordered not to go upon the following premises or geographic areas:

L. MEETING: The minor shall meet with a probation counselor when scheduled to do so, shall obtain permission prior to any change of residence or travel out of state, and shall attend any counseling and/or contact his/her probation counselor as deemed necessary by his/her probation counselor.

M. Respondent shall not contact, except through counsel or a probation counselor, the following person(s): _____

N. Respondent shall reside in a placement approved by the supervising probation counselor or approved by court order.

O. Respondent shall not knowingly associate with any person, adult or juvenile, who is under the supervision of any court of this or any other state for any juvenile offense or crime.

P. Other conditions: _____

Q. The previously ordered conditions of release are dismissed.
 The Department of Social and Health Services may consent to necessary medical, surgical, dental or psychiatric care for respondent, including immunization required for public school students.

The minor shall pay the following costs, fees, and restitution to the
 Grays Harbor County Clerk
 102 West Broadway, Room 203
 Montesano, Washington 98563

4.12 Respondent is ordered to pay:

- A FINE of \$ _____, which respondent shall pay as scheduled by probation counselor.
- Court costs of \$5.00.
- Victims' Compensation Fund statutory ASSESSMENT: \$100 \$75
- Pursuant to RCW 43.43.690 Washington crime laboratory fees: \$100 Waived.
- Restitution in the total sum of \$ TBD

COUNT I: ^{NOT AWARD} 1,15680 Payable to: Ginnin & Bruce Kruger
Address: PO BOX 93 Moclips WA 98563

COUNT II: _____ Payable to: _____
Address: _____

COUNT III: _____ Payable to: _____
Address: _____

- A hearing to confirm restitution discovery is set for _____
- A restitution hearing is set ^{to be} _____
- Juvenile Rehabilitation Administration is ordered to provide transportation of respondent to and from the above-ordered restitution hearing.
- The respondent waives his/her right to be present at the restitution hearing.
- Restitution liability is joint and several with: (if and when convicted)

Cause No.: _____

Cause No.: _____

Cause No.: _____

Monetary amounts ordered shall be paid at the rate of at least \$ _____ per month.
The probation counselor may revise this schedule in writing.

All payments shall be paid as follows:

Respondent shall remain under the court's jurisdiction for a maximum term of ten (10) years after respondent's 18th birthday (unless extended for an additional 10 years) for the collection of ordered restitution and penalty assessment, unless these amounts have been converted to a civil judgment pursuant to RCW 9.94A.145 and/or RCW 13.40.192 and/or RCW 13.40.198.

4.13 HIV TESTING. The Department of Health or designee shall test and counsel the respondent for HIV as soon as possible and the respondent shall fully cooperate in the testing. RCW 70.24.340.

4.14 DNA TESTING. The respondent shall have a biological sample collected for purposes of DNA identification analysis and the respondent shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the respondent's release from confinement. RCW 43.43.754.

4.15 JURISDICTION IS HEREBY TRANSFERRED TO _____ County for supervision of this order. IT IS FURTHER ORDERED that the clerk of this court shall transfer the file in this matter to the clerk of _____ County Superior Court.

4.16 EXTENDED JURISDICTION: Jurisdiction is extended beyond the minor's eighteenth birthday until _____ to accommodate the terms of this order pursuant to RCW 13.40.300.

4.17 DRIVER'S LICENSE REVOCATION: The court finds that Count _____ is a felony in the commission of which a motor vehicle was used; or the unlawful possession of a firearm in a motor vehicle; or unlawful possession of a firearm 2nd; or _____. The court clerk 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 46.20.265, RCW 9.41.040(5), RCW 46.20.285, RCW 13.40.265.

4.18 FELONY FIREARM PROHIBITION: Respondent shall not use or possess a firearm, ammunition or other dangerous weapon until his or her right to do so is restored by a court of record. The court clerk is directed to immediately forward a copy of the respondent's driver's license or identicard, or comparable information, along with the date of conviction, to the Department of Licensing. RCW 9.41.047

4.19 OTHER ORDERS:

75% of AM monies earned within JRA shall
be sent to the County Clerk for disposal

DATED: 11/6/03

James J. [Signature]
JUDGE/COMMISSIONER

Presented by:

Robert A. [Signature]
DEPUTY PROSECUTING ATTORNEY
WSBA # 11342

Copy Received; Approved for Entry; Notice of Presentation Waived:

ADMINISTRATIVE MEMORANDUM
Does conviction require a license surrender?
 Yes No
Surrendered Refused
No/Lost license affidavit given Yes No
Respondent held in custody Yes No
RCW 46.20.270

ATTORNEY FOR RESPONDENT
WSBA #

[Signature]
RESPONDENT

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.

APPENDIX B

2005 APR -51 A 10: 58

CHERYL BROWN
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON
COUNTY OF GRAYS HARBOR
JUVENILE COURT

J050289

STATE OF WASHINGTON v.

NO: 05-8-00018-8

JACOB LUCAS MINOR

ORDER ON ADJUDICATION AND
DISPOSITION
(ORD)

Respondent(s).

D.O.B.: 10-13-88

Clerk's Action Required. Paragraphs 4.1, 4.6,
4.11, 4.17, 4.18

I. HEARING

1.1 Respondent appeared for a disposition hearing on 03-31-05 (Date).

1.2 Persons appearing were:

Respondent

Prosecuting Attorney

Parent(s)

Respondent's Attorney

Probation Counselor

Other

1.3 The court heard evidence and argument, reviewed the files, and now enters the following:

II. FINDINGS OF FACT

Respondent pled guilty to:

Respondent was found guilty at an adjudicatory hearing of:

| | | |
|------------------|------------------------|--|
| Count: <u>II</u> | Offense: <u>UPSFR1</u> | Committed on or about: <u>09-30-04</u> |
| Count: _____ | Offense: _____ | Committed on or about: _____ |
| Count: _____ | Offense: _____ | Committed on or about: _____ |

The State failed to prove the following offense(s) and Count(s) _____

SAME COURSE OF CONDUCT. The conduct in Count(s) _____ is the same course of conduct.

Respondent waived the right to counsel, arraignment on amended information, and/or speedy disposition.

Respondent has violated the terms of his/her DEFERRED DISPOSITION entered on _____.

Respondent's offender score is 2.25, which is based upon his/her criminal history.

The court considered the respondent's eligibility for the chemical dependency disposition alternative.

Respondent has declined to enter a Diversion Agreement.

Respondent may be ordered to pay restitution pertaining to matters not here adjudicated, and/or Count(s) _____, notwithstanding dismissal, because respondent, with counsel, so agreed and stipulated.

A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).

The following mitigating factors exist in this case:

The respondent's conduct neither caused nor threatened serious bodily injury, or the respondent did not contemplate that his/her conduct would cause or threaten serious bodily injury;

The respondent acted under strong and immediate provocation;

The respondent was suffering from a mental or physical condition that significantly reduced his/her culpability for the offense through failing to establish a defense;

Prior to his or her detection, the respondent compensated or made a good faith attempt to compensate the victim for the injury or loss sustained; and

There has been at least one year between the respondent's current offense and any prior criminal offense.

Other: _____

The following aggravating factors exist in this case:

In the commission of the offense, or in flight therefrom, the respondent inflicted or attempted to inflict serious bodily injury to another;

The offense was committed in an especially heinous, cruel, or depraved manner;

~~The victim was particularly vulnerable;~~

The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;

The current offense included a finding of sexual motivation pursuant to RCW 13.40.135;

The respondent was the leader of a criminal enterprise involving several persons;

There are other complaints which have resulted in diversion or a finding or plea of guilty which are not included as criminal history; and

The standard range disposition is clearly too lenient considering the seriousness of the juvenile's prior adjudications.

Other: Jacob is a continuing threat to the community & himself. Jacob is in need of more substance abuse counseling.

III. CONCLUSIONS OF LAW

Respondent is guilty of the offense(s) as stated in the findings.

Respondent is not guilty of the offense(s) as stated in the findings.

A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).

Respondent is eligible for the chemical dependency disposition alternative on Count _____.
A standard range disposition for that Count would constitute a manifest injustice.

Respondent's Deferred Disposition is revoked.

IV. ORDER

IT IS HEREBY ORDERED that:

4.1 The state's motion respondent's motion to dismiss Count(s) _____
Crimes(s) _____
Statute(s) _____
is granted, and said Count(s) shall be dismissed.

RANGE OF DISPOSITION:

4.2 Count _____: Disposition shall be within the standard range.

4.3 Count _____: Disposition within the standard range for this offense would effectuate a manifest injustice.

4.4 Count _____: Disposition shall be within the Special Sex Offender Dispositional Alternative.

4.5 Count _____: Chemical Dependency Disposition Alternative (RCW 13.40.165):

Respondent is committed to the Department of Social and Health Services, Juvenile Rehabilitation Administration for a total of _____ weeks. Disposition is suspended. If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition.

4.6 COMMUNITY SUPERVISION:

| | |
|--------------|--------------|
| Count: _____ | _____ months |
| Count: _____ | _____ months |
| Count: _____ | _____ months |

4.7 COMMUNITY RESTITUTION WORK:

| | | |
|--------------|-----------------------------------|---|
| Count: _____ | _____ hours community restitution | with _____ hours credited for _____ days served |
| Count: _____ | _____ hours community restitution | with _____ hours credited for _____ days served |
| Count: _____ | _____ hours community restitution | with _____ hours credited for _____ days served |

4.8 CONFINEMENT:

| | | |
|--------------|------------|-----------------------------------|
| Count: _____ | _____ days | With credit for _____ days served |
| Count: _____ | _____ days | With credit for _____ days served |
| Count: _____ | _____ days | With credit for _____ days served |

These days are to be served immediately, upon negative progress review.

Temporary releases from confinement for school, work, medical appointments, etc. are authorized at the discretion of the probation counselor.

4.9 COMMITMENT to the custody of the Department of Social and Health Services, Juvenile Rehabilitation Administration for institutional placement:

BC

| | | |
|----------------------|--|---------------------------------------|
| Count: 11 | 11 weeks to 11 weeks | With credit for _____ days served |
| Count: <u>11</u> | <u>190</u> weeks to <u>238</u> weeks | With credit for <u>60</u> days served |
| Count: _____ | _____ weeks to _____ weeks | With credit for _____ days served |

Respondent shall be held in detention facility pending transportation.

4.10 STATUTORY FIREARMS ENHANCEMENTS:

The court finds that respondent possessed a firearm in violation of RCW 9.41.040(1)(e). In addition to the sentence otherwise imposed herein, respondent is sentenced to _____ days confinement (10 days minimum). If the total period of confinement ordered herein exceeds 30 days, respondent is committed to the custody of JRA to serve the ordered confinement.

The court finds that respondent or an accomplice was armed with a firearm while committing a felony, and thus hereby imposes:

6 months (Class A felony) 4 months (Class B felony) 2 months (Class C felony) confinement in addition to any other sentence imposed herein and respondent is committed to the custody of JRA to serve said confinement.

Any term of confinement ordered in this paragraph 4.10 shall run consecutively to any other term of confinement ordered.

4.11 CONDITIONS OF SUPERVISION:

A. The respondent is ordered to refrain from committing new offenses.

B. Respondent is further ordered to comply with the **MANDATORY SCHOOL ATTENDANCE** provisions of RCW 28A.225, and to inform respondent's school of the existence of this requirement. I attend _____ School.

C. Respondent shall report regularly, and on time, to the assigned probation counselor (or probation counselor's designee), as the probation counselor shall schedule or direct.

D. Respondent shall keep probation counselor informed of respondent's current address and telephone number and shall notify probation counselor before moving to a different address.

E. Respondent shall attend information classes and/or other educational programs, as directed by probation counselor.

(Items F through M apply only if the box is checked)

F: CURFEW to be set at the discretion of the probation counselor.

_____ p.m. - _____ a.m.

- G. Respondent shall NOT USE OR POSSESS FIREARMS, AMMUNITION OR OTHER DANGEROUS WEAPONS during this period of community supervision. Probation counselor is authorized to search respondent and items carried or controlled by respondent at scheduled appointments and other reasonable times, and may specify in writing further details of this prohibition.
- H. Respondent shall participate in counseling; in/outpatient substance abuse treatment programs, outpatient mental health programs, sex offender, and/or anger management classes, as probation counselor directs. Respondent shall cooperate fully.
- I. Respondent shall be EVALUATED FOR ALCOHOL OR OTHER DRUG DEPENDENCY at the direction of the probation counselor and shall comply with all treatment recommendations.
- J. Respondent shall refrain from using illegal drugs and alcohol and is subject to RANDOM URINALYSIS as directed by the probation counselor and shall fully cooperate.
- K. Respondent is ordered not to go upon the following premises or geographic areas:

- L. MEETING: The minor shall meet with a probation counselor when scheduled to do so, shall obtain permission prior to any change of residence or travel out of state, and shall attend any counseling and/or contact his/her probation counselor as deemed necessary by his/her probation counselor.
- M. Respondent shall not contact, except through counsel or a probation counselor, the following person(s): _____
- N. Respondent shall reside in a placement approved by the supervising probation counselor or approved by court order.
- O. Respondent shall not knowingly associate with any person, adult or juvenile, who is under the supervision of any court of this or any other state for any juvenile offense or crime.
- P. Other conditions: _____

- Q. The previously ordered conditions of release are dismissed.

The Department of Social and Health Services may consent to necessary medical, surgical, dental or psychiatric care for respondent, including immunization required for public school students.

The minor shall pay the following costs, fees, and restitution to the
Grays Harbor County Clerk
102 West Broadway, Room 203
Montesano, Washington 98563

4.12 Respondent is ordered to pay:

- A FINE of \$ _____, which respondent shall pay as scheduled by probation counselor.
- Court costs of \$5.00.
- Victims' Compensation Fund statutory ASSESSMENT: \$100 \$75
- Pursuant to RCW 43.43.690 Washington crime laboratory fees: \$100 Waived.
- Restitution in the total sum of \$ _____

COUNT I: _____ Payable to: _____

Address: _____

COUNT II: _____ Payable to: _____

Address: _____

COUNT III: _____ Payable to: _____

Address: _____

BC

A hearing to confirm restitution discovery is set for _____

A restitution hearing is set for ~~To be determined~~ _____

Juvenile Rehabilitation Administration is ordered to provide transportation of respondent to and from the above-ordered restitution hearing.

The respondent waives his/her right to be present at the restitution hearing.

Restitution liability is joint and several with: (if and when convicted)

_____ Cause No.: _____

_____ Cause No.: _____

_____ Cause No.: _____

Monetary amounts ordered shall be paid at the rate of at least \$ _____ per month. The probation counselor may revise this schedule in writing.

All payments shall be paid as follows:

Respondent shall remain under the court's jurisdiction for a maximum term of ten (10) years after respondent's 18th birthday (unless extended for an additional 10 years) for the collection of ordered restitution and penalty assessment, unless these amounts have been converted to a civil judgment pursuant to RCW 9.94A.145 and/or RCW 13.40.192 and/or RCW 13.40.198.

4.13 HIV TESTING. The Department of Health or designee shall test and counsel the respondent for HIV as soon as possible and the respondent shall fully cooperate in the testing. RCW 70.24.340.

4.14 DNA TESTING. The respondent shall have a biological sample collected for purposes of DNA identification analysis and the respondent shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the respondent's release from confinement. RCW 43.43.754.

4.15 JURISDICTION IS HEREBY TRANSFERRED TO _____ County for supervision of this order. IT IS FURTHER ORDERED that the clerk of this court shall transfer the file in this matter to the clerk of _____ County Superior Court.

4.16 [] EXTENDED JURISDICTION: Jurisdiction is extended beyond the minor's eighteenth birthday until _____ to accommodate the terms of this order pursuant to RCW 13.40.300.

4.17 [] DRIVER'S LICENSE REVOCATION: The court finds that Count _____ is [] a felony in the commission of which a motor vehicle was used; or [] the unlawful possession of a firearm in a motor vehicle; or [] unlawful possession of a firearm 2nd; or [] _____. The court clerk 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 46.20.265, RCW 9.41.040(5), RCW 46.20.285, RCW 13.40.265.

4.18 [] FELONY FIREARM PROHIBITION: Respondent shall not use or possess a firearm, ammunition or other dangerous weapon until his or her right to do so is restored by a court of record. The court clerk is directed to immediately forward a copy of the respondent's driver's license or identicard, or comparable information, along with the date of conviction, to the Department of Licensing. RCW 9.41.047

4.19 [x] OTHER ORDERS:

75% of any monies earned in JRA shall be sent to the
clerk's office for dispersal toward monies owed.

DATED: April 5, 2005

[Signature]
JUDGE/COMMISSIONER

Presented by:

[Signature]

DEPUTY PROSECUTING ATTORNEY
WSBA #

As To Form

Copy Received; Approved for Entry; Notice of Presentation Waived:

[Signature]

ATTORNEY FOR RESPONDENT
WSBA # 21310

ADMINISTRATIVE MEMORANDUM

Does conviction require a license surrender?
[] Yes [] No
Surrendered [] Refused []
No/Lost license affidavit given [] Yes [] No
Respondent held in custody [] Yes [] No
RCW 46.20.270

[Signature]
RESPONDENT

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.

IN THE JUVENILE COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON,)

Plaintiff,)

Vs.)

JACOB L MINOR)

Respondent.)

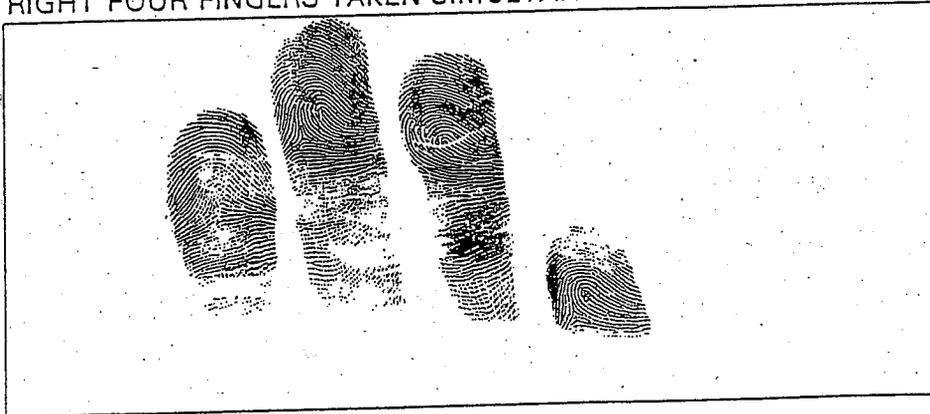
D.O.B 10/13/88)

No. 05-8-00018-8

FINGERPRINTS OF RESPONDENT

I hereby certify that I am the Clerk of Grays Harbor County Superior Court, and I hereby attest that the fingerprints affixed below are those of the respondent herein, said fingerprints having been affixed in my presence.

RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY



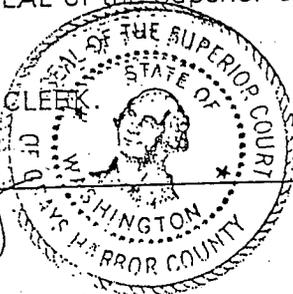
x Jacob L Minor

Signature of Respondent Fingerprinted

WITNESS MY HAND AND SEAL of the Superior Court this 5th day of April, 2005

CHERYL BROWN, COUNTY CLERK

By B. Merrially
Deputy County Clerk



APPENDIX C

RCW 9.41.047

Restoration of possession rights.

(1) At the time a person is convicted or found not guilty by reason of insanity of an offense making the person ineligible to possess a firearm, or at the time a person is committed by court order under RCW 71.05.320, *71.34.090, or chapter 10.77 RCW for mental health treatment, the convicting or committing court shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record. For purposes of this section a convicting court includes a court in which a person has been found not guilty by reason of insanity.

The convicting or committing court also shall forward a copy of the person's driver's license or identicard, or comparable information, to the department of licensing, along with the date of conviction or commitment.

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall determine if the convicted or committed person has a concealed pistol license. If the person does have a concealed pistol license, the department of licensing shall immediately notify the license-issuing authority which, upon receipt of such notification, shall immediately revoke the license.

(3)(a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under RCW 71.05.320, *71.34.090, chapter 10.77 RCW, or equivalent statutes of another jurisdiction may, upon discharge, petition a court of record to have his or her right to possess a firearm restored. At the time of commitment, the court shall specifically state to the person that he or she is barred from possession of firearms.

(b) The secretary of social and health services shall develop appropriate rules to create an approval process under this subsection. The rules must provide for the restoration of the right to possess a firearm upon a showing in a court of competent jurisdiction that the person is no longer required to participate in an inpatient or outpatient treatment program, is no longer required to take medication to treat any condition related to the commitment, and does not present a substantial danger to himself or herself, others, or the public. Unlawful possession of a firearm under this subsection shall be punished as a class C felony under chapter 9A.20 RCW.

(c) A person petitioning the court under this subsection (3) shall bear the burden of proving by a preponderance of the evidence that the circumstances resulting in the commitment no longer exist and are not reasonably likely to recur. If a preponderance of the evidence in the record supports a finding that the person petitioning the court has engaged in violence and that it is more likely than not that the person will engage in violence after his or her right to possess a firearm is restored, the person shall bear the burden of proving by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

(4) No person who has been found not guilty by reason of insanity may petition a court for restoration of the right to possess a firearm unless the person meets the requirements for the restoration of the right to possess a firearm under RCW 9.41.040(4).

APPENDIX D

RCW 9.41.040

Unlawful possession of firearms -- Ownership, possession by certain persons -- Penalties.

(1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

(ii) After having previously been involuntarily committed for mental health treatment under RCW 71.05.320, *71.34.090, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

(iii) If the person is under eighteen years of age, except as provided in RCW 9.41.042; and/or

(iv) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010.

(b) Unlawful possession of a firearm in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not

limited to sentencing or disposition, post-trial or post-factfinding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state. A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4) Notwithstanding subsection (1) or (2) of this section, a person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction or finding of not guilty by reason of insanity. Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(a) Under RCW 9.41.047; and/or

(b)(i) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(ii) If the conviction or finding of not guilty by reason of insanity was for a nonfelony offense, after three or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall

notify the department of licensing within twenty-four hours and the person's privilege to drive shall be revoked under RCW 46.20.265.

(6) Nothing in chapter 129, Laws of 1995 shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense.

[2005 c 453 § 1; 2003 c 53 § 26; 1997 c 338 § 47; 1996 c 295 § 2. Prior: 1995 c 129 § 16 (Initiative Measure No. 159); 1994 sp.s. c 7 § 402; prior: 1992 c 205 § 118; 1992 c 168 § 2; 1983 c 232 § 2; 1961 c 124 § 3; 1935 c 172 § 4; RRS § 2516-4.]

APPENDIX E

RCW 9.41.010
Terms defined.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder.

(2) "Pistol" means any firearm with a barrel less than sixteen inches in length, or is designed to be held and fired by the use of a single hand.

(3) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(4) "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

(5) "Shotgun" means a weapon with one or more barrels, designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(6) "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

(7) "Machine gun" means any firearm known as a machine gun, mechanical rifle, submachine gun, or any other mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into the firearm, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second.

(8) "Antique firearm" means a firearm or replica of a firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, including any matchlock, flintlock, percussion cap, or similar type of ignition system and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(9) "Loaded" means:

(a) There is a cartridge in the chamber of the firearm;

(b) Cartridges are in a clip that is locked in place in the firearm;

(c) There is a cartridge in the cylinder of the firearm, if the firearm is a revolver;

(d) There is a cartridge in the tube or magazine that is inserted in the action; or

(e) There is a ball in the barrel and the firearm is capped or primed if the firearm is a muzzle loader.

(10) "Dealer" means a person engaged in the business of selling firearms at wholesale or retail who has, or is required to have, a federal firearms license under 18 U.S.C. Sec. 923(a). A person who does not have, and is not required to have, a federal firearms license under 18 U.S.C. Sec. 923(a), is not a dealer if that person makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or sells all or part of his or her personal collection of firearms.

(11) "Crime of violence" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, burglary in the second degree, residential burglary, and robbery in the second degree;

(b) Any conviction for a felony offense in effect at any time prior to June 6, 1996, which is comparable to a felony classified as a crime of violence in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a crime of violence under (a) or (b) of this subsection.

(12) "Serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

(a) Any crime of violence;

(b) Any felony violation of the uniform controlled substances act, chapter 69.50 RCW, that is classified as a class B felony or that has a maximum term of imprisonment of at least ten years;

- (c) Child molestation in the second degree;
- (d) Incest when committed against a child under age fourteen;
- (e) Indecent liberties;
- (f) Leading organized crime;
- (g) Promoting prostitution in the first degree;
- (h) Rape in the third degree;
- (i) Drive-by shooting;
- (j) Sexual exploitation;

(k) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(l) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(m) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under RCW 9.94A.030;

(n) Any other felony with a deadly weapon verdict under RCW 9.94A.602; or

(o) Any felony offense in effect at any time prior to June 6, 1996, that is comparable to a serious offense, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious offense.

(13) "Law enforcement officer" includes a general authority Washington peace officer as defined in RCW 10.93.020, or a specially commissioned Washington peace officer as defined in RCW 10.93.020. "Law enforcement officer" also includes a limited authority Washington peace officer as defined in RCW 10.93.020 if such officer is duly authorized by his or her employer to carry a concealed pistol.

(14) "Felony" means any felony offense under the laws of this state or any federal or out-of-state offense comparable to a felony offense under the laws of this state.

(15) "Sell" refers to the actual approval of the delivery of a firearm in consideration of payment or promise of payment of a certain price in money.

(16) "Barrel length" means the distance from the bolt face of a closed action down the

length of the axis of the bore to the crown of the muzzle, or in the case of a barrel with attachments to the end of any legal device permanently attached to the end of the muzzle.

(17) "Family or household member" means "family" or "household member" as used in RCW 10.99.020.

[2001 c 300 § 2; 1997 c 338 § 46; 1996 c 295 § 1. Prior: 1994 sp.s. c 7 § 401; 1994 c 121 § 1; prior: 1992 c 205 § 117; 1992 c 145 § 5; 1983 c 232 § 1; 1971 ex.s. c 302 § 1; 1961 c 124 § 1; 1935 c 172 § 1; RRS § 2516-1.]