

CHAPTER 8

The Juvenile Justice System & Sex Offenses

I. Introduction

The purpose of this chapter is to provide an overview of Juvenile Justice and youth who sexually offend. One in ten children in the United States experiences sexual abuse before the age of 18.¹ Child sexual abuse is not perpetrated by adults only, in fact, the younger the child victim, the more likely it is that the perpetrator is another juvenile.² Youth offenders account for more than one third of sexual offenses against other minors, with early adolescence being the peak age for offenses against younger children.³ Understanding the rights, characteristics, and risk factors of youth who sexually offend is critical to sex offense prevention, youth accountability, and community protection. This chapter will discuss victim support concerns, interactions with the courts, jurisdictional issues, and rehabilitation and recidivism rates of youth who sexually offend. The Prison Rape Elimination Act, (PREA) will also be referred to.⁴

Washington State Juvenile Justice is governed by the Juvenile Justice Act of 1977.⁵ Juvenile Rehabilitation in Washington State employs a rehabilitative and accountability-based model that uses evidence-based integrative treatment⁶ across all levels of intervention and care.⁷ This chapter will touch on this integrated treatment model which “views all behavior, including a youth’s criminal behavior as occurring in a larger social and historical context, serving a specific function.”⁸ In addition to how socialization impacts criminal behavior, there are distinct developmental features that affect youth behavior and thinking. Advances in the study of developmental neurobiology reveal that child and adolescent brains experience the world differently than adult brains do.⁹ The brain development of a youth is marked by changes to the parts of the brain that control impulse, reasoning, and reactivity. While the brain of a young child is developing an awareness of negative consequences, at adolescence this awareness regresses.

¹ Townsend, C., & Rheingold, A.A., (2013). *Estimating a child sexual abuse prevalence rate for practitioners: studies*. Charleston, S.C., Darkness to Light www.D2L.org

² Snyder, H. N. (2000). *Sexual assault of young children as reported to law enforcement: Victim, incident, and offender characteristics*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics

³ Id.

⁴ Pub. L. 108-79, Sept. 4, 2003, 117 Stat. 972 (42 U.S.C. 15601 et seq.)

⁵ Title 13 RCW

⁶ Juvenile Rehabilitation Administration. (2002). *Integrated Treatment Model report*. Olympia, WA: Washington State Department of Social and Health Services

⁷ Lucenko, B., Mancuso, D., *Integrated Treatment Model improves employment and re-arrest outcomes for youth served in Washington State's Juvenile Rehabilitation Administration*. Olympia, WA: Washington State Dept. of Social & Health Services, Research & Data Analysis Division (2011) <https://www.dshs.wa.gov/sites/default/files/SESA/rda/documents/research-2-22.pdf>

⁸ Juvenile Rehabilitation Administration, *Integrated Treatment Model report*. Olympia, WA: Washington State Department of Social and Health Services at p. 4 (2002)

⁹ Somerville, L. H., & Casey, B. J. (January 01, 2010). Developmental neurobiology of cognitive control and motivational systems. *Current Opinion in Neurobiology*, 20, 2, 236-41.

The susceptibility to peer pressure increases.¹⁰ As courts come to understand these unique attributes in children and particularly in adolescents, views on the culpability and rights of youth who sexually offend shift.

II. Competing Interests in Juvenile Justice

The Washington State Partnership Council on Juvenile Justice (WA-PCJJ) is the primary planning council for Juvenile Justice related issues in Washington State. In its mission statement, WA-PCJJ outlines the challenge of competing interests in juvenile justice. Judges are encouraged to bear in mind both offender rehabilitation and victim protection. The Juvenile Justice Act highlights the particular importance of providing support and restitution for the victims of juveniles, who in instances of sexual offenses are frequently juveniles themselves^{11 12}. The Act also clearly articulates the importance of rehabilitation rather than solely the punishment of youth who have offended.¹³

The WA-PCJJ seeks to promote and support partnerships that improve outcomes for juveniles who offend, and their victims. Through community capacity, research, and innovation, WA-PCJJ provides expertise and analysis to state and local policymakers.”¹⁴ To increase fairness, victim restoration, community protection, youth accountability, and rehabilitation the organization adheres to the following principles, all consistent with State law:¹⁵

- **Prevention:** Reducing the involvement of youth in the juvenile justice system begins with prevention, and prevention requires collaboration among all youth-serving systems.
- **Rehabilitation:** Adjudicated juvenile offenders have strengths, are capable of change, can earn redemption, and can become responsible and productive members of their communities. Fundamental developmental differences in adolescents must be taken into account when designing programs of prevention and intervention.
- **Community Protection:** All Washington’s citizens deserve to be and feel safe from crime.

¹⁰ Id.

¹¹ Anda, R.F., Felitti, V.J., Bremner, J.D. et al. “The enduring effects of abuse and related adverse experiences in childhood. *Eur Arch Psychiatry Clin Neurosci* 256:174. Doi: 10.1007/s00406-005- 0624-4 (2006)

¹² Finkelhor, D. (2012). *Characteristics of crimes against juveniles*. Durham, NH: Crimes against Children Research Center, cites statistics related to sexual abuse of children, including that as many as 40% of children who are victims of sexual abuse are abused by other, older, or more powerful children.

¹³ RCW 13.40.010 articulates several ways in which juvenile justice should provide support for rehabilitation rather than focusing solely on punishment of juvenile offenders, including “Provide for the rehabilitation and reintegration of juvenile offenders” (RCW 13.40.010(f)); “Provide necessary treatment, supervision, and custody for juvenile offenders” (RCW 13.40.010(g)); “Provide for the handling of juvenile offenders by communities whenever consistent with public safety” (RCW 13.40.010(h))

¹⁴*The Washington State Partnership Council on Juvenile Justice*, Office of Juvenile Justice, Rehabilitation Administration, DSHS <https://www.dshs.wa.gov/ra/office-juvenile-justice/washington-state-partnership-council-juvenile-justice-wa-pcjj>

¹⁵ Id.

- **Youth Accountability/Restorative Justice:** Youth who offend should understand how their actions impact the victim and the community, accept responsibility for their actions and experience consequences that balance the impact of their actions with what will be effective for their rehabilitation.
- **Victim Support:** A juvenile who commits a crime harms the victim and the community and thereby incurs an obligation to repair harm to the greatest extent possible.
- **Fairness:** All hearings and decisions under the Juvenile Justice Act and all services and strategies implemented to achieve system missions should be provided in a fair and unbiased manner to all participants.
- **Racial and Ethnic Disparities:** The juvenile justice system must be free of any bias based on race or ethnicity; the well-being of minority communities and of our whole society requires affirmative steps to reduce racial and ethnic disparities in the justice system.¹⁶
- **Juvenile Justice System Operations:** Washington’s juvenile justice system should be driven by its mission, focused on outcomes, and measured by its performance.

III. Juvenile Sexual Offense Statistics

Sexual offenses by juveniles do not share all of the same characteristics of those committed by adults.

A. Relevant Statistics

- Juveniles commit 23.2% of all reported sexual assaults.^{17 18}
- In cases in which the victim was younger than 6 years old, 40% of the persons who offended were juveniles.¹⁹
- For cases in which the victim was 6–11 years old, 39% of the persons who sexually offended were juveniles²⁰

¹⁶ Disproportionate over-representation of Youth of Color in JR is being intentionally addressed through the JR program, “Models for Change.” *Disproportionate Minority Confinement | DSHS*, (22 May 2014), Washington State. www.dshs.wa.gov/ra/juvenile-rehabilitation/disproportionate-minority-confinement; Id. at “In Washington State, youth of color between the ages of 10 – 19 represent 39% of the general population but 55% of the youth involved in JR.”

¹⁷ U.S. Department of Health and Human Services, Administration on Children, Youth, and Families, (2007). *Child Maltreatment 2005*. Washington, DC: U.S. Government Printing Office <http://www.acf.hhs.gov/programs/cb/pubs/cm05/cm05.pdf>

¹⁸ Snyder, H. N. (2000). *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*. United States

¹⁹ Id.

²⁰ Id.

- For older juvenile victims aged 12–17, 27% were victimized by juvenile offenders.²¹
- Only 4% of adult victim cases involve juveniles who sexually offend.²²

B. Recidivism Rates

Studies show that most adolescents who have engaged in sexually abusive behavior do not continue to engage in these behaviors once detected.^{23 24} When provided with appropriate treatment and supervision, juveniles do not tend to offend into adulthood.²⁵ An aggregation of several studies on sex offense recidivism rates among juveniles, showed a range of 7% across a 5 year follow up period.²⁶ Statistics based on re-arrest, re-conviction, or re-incarceration note that if these youth do re-offend, the offenses are more likely to be non-sexual than sexual.²⁷ Despite relatively low demonstrated recidivism, early intervention and treatment are still important tools in preventing adult perpetration.²⁸

C. History of Victimization

Although childhood sexual victimization can inform sexually aggressive behavior, it does not automatically lead victims to perpetrate sexual offenses. Statistics on the victim-to-offender cycle are difficult to calculate, but one study found that 88% of men who were sexually abused as children did not become individuals who sexually offended, either as youth or adults.²⁹ It is noted that while not all offenders have themselves been sexually assaulted, many have experienced some kind of trauma or lack of significant emotional support in their childhood.³⁰

²¹ Snyder, H. N. (2000). *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*. United States

²² Id.

²³ Caldwell, M. F. (2010). Study characteristics and recidivism base rates in juvenile sex offender recidivism. *International Journal of Offender Therapy and Comparative Criminology*, 54, 197-212

²⁴ Tabachnick, J. & Klein, A. (2011) *ATSA: A Reasoned Approach: Reshaping Sex Offender Policy To Prevent Child Sexual Abuse*. Beaverton, OR: Associate for the Treatment of Sexual Abusers <http://www.atsa.com/sites/default/files/ppResonableApproach.pdf>

²⁵ Association for the Treatment of Sexual Abusers (ATSA). (2000). *The effective legal management of juvenile sex offender* www.atsa.com/ppjuvenile.html

²⁶ Caldwell, M. F. (2010). Study characteristics and recidivism base rates in juvenile sex offender recidivism. *International Journal of Offender Therapy and Comparative Criminology*, 54, 197-212.

²⁷ Id.

²⁸ Troy Allard, James Ogilvie and Anna Stewart, *The Efficacy of Strategies to Reduce Juvenile Offending*, Griffith University (25) https://www.griffith.edu.au/__data/assets/pdf_file/0013/208120/Efficacy-of-Strategies-to-Reduce-JJ-Offending-2007-Report.pdf (finding that early intervention programs resulted in 18–91% reduction in recidivism)

²⁹ *Addressing the Victim to Offender Cycle*, Living Well <https://www.livingwell.org.au/managing-difficulties/addressing-the-victim-to-offender-cycle/>

³⁰ Ian Lambie, Fred Seymour, Alan Lee and Peter Adams, *Resiliency in the Victim—Offender Cycle in Male Sexual Abuse*, *Sexual Abuse, A Journal of Research and Treatment*, Vol. 4, No. 1, 31–48, 44 (2002)

D. Risk Factors and Protective Factors

Longitudinal studies of risk and protective factors associated with criminal behaviors in youth, reveal that similar factors are associated with both youth who sexually offend and youth who commit non-sexual offenses.^{31 32}

Protective factors are “the events, opportunities and experiences in the lives of young people that diminish or buffer against the likelihood of involvement in behaviour risky to youth and/or to others.”³³ It is notable that these factors are also known to decrease the likelihood of suicide and substance use.³⁴ Among these are:

- positive family functioning to include supervision and consistent and fair discipline;
- healthy peer social group(s) and access to a supportive adult;
- a commitment to school and educational activities;
- access to and participation in pro-social activities;
- emotional maturity; and
- resilience characteristics such as problem-solving skills, self-management and emotional regulation.

Because both risk and protective factors are similar among youth who commit all kinds of offenses, experts doubt the validity of tests designed to determine a youth’s risk of sexual reoffense.^{35 36}

These tools demonstrate an incapacity to control for social and cultural influence. Among the ethical issues that may arise in using physiological risk assessments are questions concerning gender identity and biological sex and what influence either may have upon risk and protective factors. While we know that male-identified youth are at highest risk to sexually offend, we cannot empirically attribute this to biological distinctions. It has been suggested that socio-cultural notions of hyper-masculinity or toxic-masculinity³⁷ could be an influential risk factor

³¹ Worling, J. R., Litteljohn, A., & Bookalam, D. (2010). *20-year prospective follow-up study of specialized treatment for adolescents who offended sexually*. Behavioral Sciences and the Law, 28, 46-57

³² Elliott, D. S. (1994). *Serious violent offenders: Onset, developmental course, and termination*. The American Society of Criminology 1993 President Address. *Criminology*, 32, 1-21

³³ Resnick MD, Ireland M, Borowsky I. *Youth violence perpetration: what protects? What predicts?* Findings from the National Longitudinal Study of Adolescent Health. *Journal of Adolescent Health* 2004; 35: 424.e1–e10

³⁴ Id. at 424.e7

³⁵ Id.

³⁶ Chaffin, M. (2010). *The case of juvenile polygraphy as a clinical ethics dilemma*. *Sexual Abuse: A Journal of Research and Treatment*, 23, 314-328

³⁷ The term “toxic masculinity” can be used to describe a set of very rigid expectations and norms for boyhood, manhood, and masculinity. These standards value dominance, power, and control, and actively devalue

regardless of sex assigned at birth, given that mainstream U.S culture associates masculinity with power.^{38 39}

Any risk assessment tool that is limited in its accuracy and usability across identities could have a detrimental effect on long-term outcomes for youth who have sexually offended. Similarly, biases and myths related to risk factors for sexually offending must be explored. In an effort to combat the myth that gay males are more likely to sexually offend, PREA Standard 115.342 (c) states explicitly that “LGBTQI status must not be treated as an indicator of likely sexual abusiveness.” In conclusion, when significant determinations about placement, registration, or release are to be made, comprehensive and evidence-based risk assessments that also consider the individual’s protective factors, should be used.⁴⁰

IV. Juvenile Probation Counselors

Juvenile Probation Counselors (JPCs) are employed by the court and are assigned to work with the juvenile defendant and their family from intake through disposition of the case. Pursuant to RCW 13.04.040, JPCs’ duties include:

- arranging and supervising diversion agreements;
- preparing predisposition studies;
- attending disposition hearings and responding to questions regarding the predisposition study; and
- supervising court orders of disposition.

JPCs can be a helpful resource to the court as they are uniquely situated to look at the whole pre-disposition picture prior to making their recommendations.

V. Juvenile Court Jurisdiction

A. Original jurisdiction

RCW 13.04.040(e) provides that Washington juvenile courts have original jurisdiction over matters relating to juveniles alleged or found to have committed criminal offenses or civil

femininity, empathy, and the acknowledgment of emotions. Thompkins-Jones, MSW, LLMSW, R. (2017). *Toxic Masculinity is a Macro Social Work Issue*, The New Social Worker, White Hat Communications <http://www.socialworker.com/feature-articles/practice/toxic-masculinity-is-a-macro-social-work-issue/>

³⁸ Katz, J. (2006). *The macho paradox: Why some men hurt women and how all men can help*. Naperville, Ill: Sourcebooks, Inc.

³⁹ Kimmel, M. S. (2008). *Guyland: The perilous world where boys become men*. New York: Harper

⁴⁰ Viljoen, J. L., Mordell, S., & Beneteau, J. L. (2012, February 20). *Prediction of adolescent sexual reoffending: A meta-analysis of the J-SOAP-II, ERASOR, J-SORRAT-II, and Static-99*. Law and Human Behavior. Advance online publication. Doi: 10:1037/h0093938

infractions. In certain criminal cases however, the juvenile court may or must decline to exercise its jurisdiction and instead refer the case to adult criminal prosecution.

B. Cases in which the defendant is automatically tried as an adult

“Auto-adult” cases are cases in which the juvenile courts lack jurisdiction and must refer the case to adult criminal court, satisfying the requirements of RCW 13.04.030(e)(v). The following two criteria must be met for a case to be deemed “auto-adult”:

- The defendant is 16 or 17 years old on the date of the alleged offense, *and*
- The alleged offense is one of the following:
 - A serious violent offense, as defined by RCW 9.94A.030.
 - A violent offense, as defined by RCW 9.94A.030, *and* the defendant has a criminal history including:
 - One or more prior serious violent offenses;
 - Two or more prior violent offenses; or
 - Three or more of any combination of the following offenses:
 - Any class A felony,
 - Any class B felony,
 - Vehicular assault,
 - Or manslaughter in the second degree,
 - All of which must have been committed after the juvenile's thirteenth birthday and prosecuted separately.
 - A violent offense, as defined by RCW 9.94A.030, *and* the defendant is alleged to have been armed with a firearm.
 - Rape of a child in the first degree, robbery in the first degree, or drive-by shooting (committed after July 1, 1997).
 - Burglary in the first degree (committed on or after July 1, 1997), *and* the juvenile has a criminal history consisting of one or more prior felony or misdemeanor offenses.

In these matters, juvenile courts are not permitted to exercise their jurisdiction and must refer the case for prosecution in adult criminal courts. However, RCW 13.04.030(e)(v)(E)(II) provides that if a juvenile’s case is transferred to adult criminal court pursuant to the above requirements and the juvenile is found not guilty of the offense that required transfer, *or* if the

juvenile is convicted in adult criminal court of a lesser offense not listed above, then the juvenile courts have exclusive jurisdiction over any remaining charges in that case.

C. Declination hearings and the *Kent* factors

Juvenile courts may decline to exercise their jurisdiction over a case pursuant to a declination hearing. RCW 13.40.110 provides that there are two types of declination hearings:

Discretionary decline hearings may occur if the prosecutor or respondent files a motion for a hearing requesting the court transfer the proceeding to adult criminal court. The court may also set such a hearing on its own motion prior to a hearing on the information on the merits.

Mandatory decline hearings must occur, absent waiver by the court, the parties, and their counsel, if any of the following are true:

- the respondent is sixteen or seventeen years old and the crime alleged is a class A felony or an attempt, solicitation, or conspiracy to commit a class A felony;
- the respondent is seventeen years old and the crime alleged is assault in the second degree, extortion in the first degree, indecent liberties, child molestation in the second degree, kidnapping in the second degree, or robbery in the second degree; or
- the information alleges an escape by the respondent and the respondent is serving a minimum juvenile sentence to age twenty-one.

At a declination hearing, the court must determine whether declining jurisdiction is in the best interest of the juvenile and the public.⁴¹ In making this determination, the court should consider the eight factors set out in *Kent v. United States*.⁴² Those factors are:

- the seriousness of the alleged offense and whether the protection of the community requires prosecution in adult court;
- whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
- whether the alleged offense was against persons or property;
- the prosecutive merit of the case;
- whether the defendant had an adult accomplice;
- the defendant's sophistication and maturity;

⁴¹ RCW 13.40.110(3) <http://apps.leg.wa.gov/RCW/default.aspx?cite=13.40.110>

⁴² 383 U.S. 541 (1996)

- the defendant’s prior record; and
- the prospects for adequate protection of the public and rehabilitation of the juvenile in the juvenile system.

The *Kent* factors need not all be met in order for a juvenile court to decline jurisdiction. They simply provide guidance to the court in determining whether, by a preponderance of the evidence, decline of jurisdiction is in the best interest of the juvenile and the community.

Finally, any juvenile tried in adult court—whether pursuant to the “auto adult” statute or a decline hearing—retains statutory and constitutional rights to have the trial court exercise discretion in sentencing. *State v. Houston-Sconiers*, 188 Wn.2d 1, 21, 391 P.3d 409 (2017) (consistent with Eighth Amendment protections for juvenile offenders, trial court must “consider mitigating qualities of youth at sentencing and must have discretion to impose any sentence below the otherwise applicable [standard] range and/or sentence enhancements”); *State v. O’Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015) (under the Sentencing Reform Act, youth itself can be a mitigating factor justifying an exceptional sentence below the standard range).

D. Jurisdictional issues for offenders ages 18-21

Because juvenile court jurisdiction is based on the age of the respondent at the time of the alleged crime, respondents ages 18 and older may find themselves in the juvenile court system. RCW 13.40.300(1) provides that a juvenile court only has jurisdiction over a respondent age 18 or older if one the following occurs prior to the respondent’s 18th birthday:

- Proceedings are pending seeking the adjudication of a juvenile offense and the court extends jurisdiction of the juvenile court over the juvenile beyond his or her eighteenth birthday. This must be done by written order setting forth the court’s reasons for doing so.
- The juvenile has been found guilty after a fact finding or after a guilty plea and an automatic extension is necessary to allow for the imposition of disposition.
- Disposition has been held and an automatic extension is necessary to allow for the execution and enforcement of the court's order of disposition.
- While proceedings are pending in a case in which jurisdiction has been transferred to the adult criminal court pursuant to RCW 13.04.030, the juvenile turns eighteen years of age and is subsequently found not guilty of the charge for which they were transferred, or is convicted in the adult criminal court of a lesser included offense, and an automatic extension is necessary to impose the disposition as required by RCW 13.04.030(1)(e)(v)(E).

RCW 13.40.300(2) further notes that if the juvenile court has already extended its jurisdiction past the juvenile’s 18th birthday and the extension period has not yet expired, it may further extend its jurisdiction by means of a written order. However, RCW.13.40.300(3)

prohibits any juvenile courts from extending their jurisdiction past a juvenile’s 21st birthday except for restitution or penalty assessment proceedings. When a juvenile court has jurisdiction over a defendant age 18 or older, RCW 13.40.300(1) prohibits commitment of the defendant to juvenile correctional facilities past their 21st birthday.

VI. Prison Rape Elimination Act (PREA)

The Prison Rape Elimination Act (PREA, P.L. 108-79) is a federal law passed in 2003 to prevent and deter sexual abuse in public and private correctional facilities for both adults and juveniles. The major provisions of PREA include:

- adherence to a zero-tolerance standard for inmate or staff sexual assault;
- a development of standards for detection, prevention, reduction, and discipline of prison sexual assault and rape;
- collection and dissemination of information on incidents; and
- grant awards to assist governments implementing the Act.⁴³

PREA sets forth Juvenile Facility Standards for preventing, detecting, and reporting rape, sexual abuse and sexual harassment as well as investigating allegations. The Washington State Juvenile Justice and Rehabilitation Administration has codified these standards in Policy 5.90 (49) “Applying The PREA Juvenile Standards In JR.” In this policy, staff and youth conduct, sanctions, reporting, response, investigations, staff training, administrative structure, post-incident review, and data collection are all clearly outlined.⁴⁴ Additionally, in response to alarming national statistics documenting the particular vulnerability of LGBTQI (Lesbian, Gay, Bisexual, Transgender, Queer, Intersex) people in correctional facilities,⁴⁵ Washington State JR issued an update to their Policy 4.60, “Ensuring the Health and Safety of LGBTQI Youth in JR.” This policy seeks to directly address the disproportionate rate of sexual harassment, abuse and rape against LGTQI youth through gender-identity and sexual orientation-affirming prevention, education, guidance, and on-going training. This policy acts as an enhancement to the PREA standards and requires that all Washington State JR Staff will “protect youth from discrimination, physical and sexual harassment or assault, and verbal harassment by other youth, based on a youth’s actual or perceived sexual orientation, gender identity or gender expression.”⁴⁶

⁴³ <https://nicic.gov/prea>

⁴⁴ JR Policy 5.90, *Applying PREA Juvenile Standards in JR*, JR Policy 5.91 *Reporting Abuse and Neglect of JR Youth*

⁴⁵ Allen, J., Beck & Page M. Harrison, (2007) *Bureau of Justice Statistics, Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007* <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1149>

⁴⁶ JR Policy 4.60 § 3.2

VII. Juvenile Offender Rights

As it is the purpose of Juvenile Justice to implement an effective, developmentally appropriate rehabilitative treatment model, juvenile offenders retain certain rights that adult offenders do not. This section describes several categories of juvenile offender rights.

A. Juvenile Detention

There are two types of disciplinary consequences for convicted juveniles: local sanctions and detention at juvenile facilities.⁴⁷

Local sanctions may include immediate release to the community or release after a short (up to 30 day) detention. Typically, local sanctions involve up to 150 hours of community service, community supervision for as long as 12 months, and/or a fine of up to \$500.

The Department of Social and Health Services (DSHS) runs the State's Juvenile Rehabilitation facilities. Detention at a juvenile facility is usually ordered by number of weeks.

Declined youth committed to the custody of the Department of Corrections (DOC) become part of the Youthful Offender Program.⁴⁸ This program is jointly operated by the DOC and JR. Generally, declined youth less than 18 years of age are housed at a JR facility. If the youth is expected to complete the term of confinement before age 21, that youth remains in a JR facility. If the youth is expected to serve a term of confinement beyond age 21, the case is reviewed when the youth turns 18 to determine if that youth is able to serve the remaining time at an adult DOC facility.

B. *Decker* Orders

Decker Orders are a narrow exception to the general rule that granting immunity is normally a prosecutorial function. Based on *State v. Decker*,⁴⁹ a court may issue a protective order granting immunity to a juvenile with regard to psychological evaluations ordered before charges are pending against the youth.⁵⁰

C. Case-sealing procedures

Unlike most states, Washington does not automatically seal juvenile case records. These records remain open and available to the general public until they are sealed by order of the court. In order to have one's juvenile records sealed, a previous offender must comply with procedural requirements. An individual wishing to seal their records must go through the following process:⁵¹

⁴⁷ Juvenile Disposition Manual 2015, p. 19–20

⁴⁸ <http://www.doc.wa.gov/information/policies/showFile.aspx?name=320500>

⁴⁹ 68 Wn. App. 246 (2007)

⁵⁰ Sexually/mentally Dangerous Persons, 25 Mental & Physical Disability L. Rep. 481 (2001)

⁵¹ http://www.teamchild.org/docs/uploads/SealingPacket2015rev_112015.pdf

1. First, the individual must obtain a complete copy of their criminal history from a Superior Court clerk or juvenile court.
2. Second, the juvenile offenses must each be considered for determination of whether they may be sealed. Juvenile offenses are categorized on a scale from A+ to E pursuant to RCW 13.40.0357. For each offense an individual wishes to have sealed, the answer to the following questions must be *yes*:
 - i. I do not have any criminal charges pending in juvenile or adult court;
 - ii. I am not currently completing a diversion agreement;
 - iii. I do not owe any restitution to the named victim (excluding insurance companies) for the case I want to seal;
 - iv. For juvenile Class A felonies:
 - a. It has been more than five years since the date of my last sentencing (disposition) and the date I was released from confinement, whichever is later; and
 - b. The Class A felony I am trying to seal is not Rape 1, Rape 2, or Indecent Liberties with Forcible Compulsion;
 - v. For other juvenile charges: It has been more than two years since the date of my last sentencing (disposition) and the date I was released from confinement, whichever is later; and
 - vi. If the charge is classified as a sex offense: In addition to meeting all of the requirements above, I no longer have to register as a sex offender under RCW 9A.44.130 or RCW 9A.44.143.
3. Third, if the answer to all relevant questions is *yes*, then the individual may proceed to complete the required forms to file a sealing request and notify necessary parties. Requests to seal must be filed in the county where the case took place. For each case an individual wants sealed, the following forms are required:
 - Motion and Declaration to Seal Records of Juvenile Offender Pursuant to RCW 13.50.260(3) and (4)
 - Notice of Respondent's Motion to Seal Records of Juvenile Offender
 - Order on Motion to Seal Records of Juvenile Offender Pursuant to RCW 13.50.260(3) and (4)

- Certificate of Service
4. Fourth, an individual must schedule a hearing.
 5. Fifth, all motions must be filed, and all motions and notices must be delivered to the following agencies:
 - The juvenile court prosecutor in the county where the case was heard
 - The juvenile court administrator in the county where the case was heard
 - Law enforcement agencies that have records of the case, such as Washington State Patrol and local police departments
 - The Juvenile Rehabilitation Administration, if the individual was incarcerated in one of its facilities pursuant to the case in question
 6. Sixth, the individual must attend the hearing before a Juvenile Court judge or commissioner.
 7. If the Court approves the Motion(s) and signs the Order(s), the individual must get a certified copy of the Order(s). Certified copies must be mailed to all the agencies listed in step #5.

Only after the completion of all of the above-listed steps can juvenile records be sealed.

D. The YEAR Act

Under Washington's traditional requirements for juvenile record sealing, individuals seeking record sealing were required to pay all fines and fees at 12% interest.⁵² However, the Youth Equality and Reintegration Act (YEAR Act, SB 5564), passed in 2015, provides for administrative sealing hearings that now make it much easier to have one's juvenile records sealed by removing most fees and not collecting interest. These hearings should be scheduled by the court at the disposition of eligible cases. At the administrative hearings, the court should seal the records unless someone objects or the court finds that there is a compelling reason not to seal the record. If there is an objection, the court should schedule a full judicial hearing. Sex offenses are excluded from the YEAR Act, however they may still be sealed under the abovementioned procedures for normal record sealing.

The justification for the YEAR Act is that it allows people with juvenile convictions to overcome significant financial hurdles that prevent them from getting their records sealed. Victims are still paid restitution thereby maintaining victim protection.

⁵² <http://columbialegal.org/Gov-Inslee-Signs-YEAR-Act>

E. Sexually Aggressive Youth

Sexually aggressive youth are defined by RCW 74.13.075(1) as those who:

- (a) Have been abused and have committed a sexually aggressive act or other violent act that is sexual in nature; and
 - i. Are in the care and custody of a state or federally recognized Tribe; or
 - ii. Are the subject of a proceeding under chapter 13.34 RCW or a child welfare proceeding held before a Tribal court located within the state; or
- (b) Cannot be detained under the juvenile justice system due to being under age twelve and incompetent to stand trial for acts that could be prosecuted as sex offenses as defined by RCW 9.94A.030 if the juvenile was over twelve years of age, or competent to stand trial if under twelve years of age.

Special funding is allocated to provide services and treatment to sexually aggressive youth, regardless of whether the child is the subject of a proceeding. When considering how funds shall be allocated, DSHS should consider factors such as the juvenile's age, the type and extent of abuse suffered by the juvenile, and the ability of the juvenile's parents to pay for treatment.⁵³

When the child is in the care of a Tribe or the subject of a proceeding in a Tribal court, DSHS may only provide funds for services and treatment of the youth if (a) the Tribe uses the same or equivalent definitions and standards for determining which youth are sexually aggressive; and (b) the department seeks to recover any federal funds available for the treatment of youth.⁵⁴

F. Special Sex Offender Disposition Alternative (SSODA)

The Special Sex Offender Disposition Alternative (SSODA) is a two-year probation program focused on rehabilitating youth who have committed sex offenses.⁵⁵ Rather than serving time in a juvenile correctional institution, eligible youth may receive a suspended sentence and participate in a SSODA instead. The court should determine whether the juvenile is able to be rehabilitated in the community, as well as whether they pose a serious risk to the community. Factors to include when making this determination include assessment results, the individual's motivation to comply with SSODA requirements, and family support and ability to supervise.

A juvenile pleads not guilty at arraignment when being granted a SSODA probation. A SSODA probation carries the requirement of extensive supervision of the juvenile, as well as many other restrictions and requirements. These may include but are not limited to:

⁵³ RCW 74.13.075(3) <http://apps.leg.wa.gov/RCW/default.aspx?cite=74.13.075>

⁵⁴ RCW 74.13.075(4)

⁵⁵ <https://www.co.pierce.wa.us/DocumentCenter/Home/View/233>

- No contact with the victim, witnesses, or co-defendants;
- No unsupervised contact with any youth more than 24 months younger;
- Constant supervision and restriction to home, school, or other determined, supervised locations;
- Travel restricted to local counties;
- Participation in adolescent sex offender treatment; and
- No possession of pornographic material.

G. Relief from Duty to Register as a Sex Offender

RCW 9A.44.143 provides that an offender required to register as a sex offender under RCW 9A.44.130 may be relieved of that duty if (1) the offense was committed when the offender was a juvenile and (2) the offender has not been determined to be a sexually violent predator pursuant to chapter 71.09 RCW. If both of these factors are satisfied, the offender may petition the superior court to be relieved of the duty to register. This relief should only be granted in keeping with the following:

1. For Class A sex offenses or kidnapping offenses committed when the petitioner was 15 years of age or older:
 - a. At least 60 months have passed since the petitioner's adjudication and completion of any term of confinement for the offense, and the petitioner has not been adjudicated or convicted of any additional sex offenses or kidnapping offenses within the 60 months prior to the petition;
 - b. The petitioner has not been adjudicated or convicted of failure to register pursuant to RCW 9A.44.132 in the 60 months prior to the petition; and
 - c. The petitioner shows by a preponderance of the evidence that they are sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.
2. For all other sex offenses or kidnapping offenses:
 - a. At least 24 months have passed since the petitioner's adjudication and completion of any term of confinement for the offense giving rise to the duty to register and the petitioner has not been adjudicated or convicted of any additional sex offenses or kidnapping offenses within the 24 months before the petition;
 - b. The petitioner has not been adjudicated or convicted of failing to register pursuant to RCW 9A.44.132 during the 24 months prior to filing the petition; and

- c. The petitioner shows by a preponderance of the evidence that they are sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.

The Court should consider the following factors in concert, when determining whether the petitioner has been sufficiently rehabilitated to warrant removal from the central registry:

- The nature of the offense, including the number of victims and the length of the offense history;
- Subsequent criminal history;
- The petitioner's compliance with supervision requirements;
- The length of time since the offenses;
- Input from community corrections officers, juvenile parole or probation officers, law enforcement, or treatment providers;
- Participation in sex offender treatment;
- Participation in other treatment and rehabilitative programs;
- The petitioner's stability in employment and housing;
- The petitioner's community and personal support system;
- Risk assessments, examinations, or evaluations prepared by qualified professionals;
- Victim input;
- And any other relevant factors.

An adult prosecuted for an offense committed as a juvenile may, after the juvenile court loses jurisdiction due to the passage of time, petition the superior court pursuant to this section. However, these provisions do not apply to juveniles prosecuted and convicted of sex offenses as adults. They must comply with RCW 9A.44.142 provisions for relief from registration requirements.

VIII. Non-Offender Programs

Washington State JR serves the state's highest risk youth through multiple levels of intervention. Of the services provided, there are programs that do not classify accused juveniles as offenders. These are discussed in this section.

A. Diversion

Juvenile Diversion Programs are community-based corrections programs that apply the principles of Restorative Justice and function as an alternative to court proceedings for juveniles charged with an offense.⁵⁶ Participation in diversion is optional. Youth who are invited by the Prosecuting Attorney's office to participate must enter into Diversion Agreements that are designed to balance the needs of the victim, the community, and the offender. The agreement serves as a contract between the juvenile and the diversion unit which is typically comprised of a Community Accountability Board (CAB). Victims are contacted by the CAB and invited to participate if they wish. This contract sets forth requirements designed to repair the harm done by the youth who offended.

Diversion Agreements may require an individual to attend counseling, participate in community restitution, observe home curfews, refrain from contact with certain victims and witnesses, pay restitution fees, and meet other requirements. The Diversion Agreement cannot require the individual to go to jail, but if the youth does not complete their agreement, the Prosecuting Attorney's office may require a hearing for the offense.

Individuals whose criminal history contains only Diversion Agreements can request at age 18 to have their records destroyed rather than simply sealed.⁵⁷ Should a juvenile participate in a Diversion Agreement for a sex offense, as defined in RCW 9.84A.030, the court must notify the juvenile's school principal.

B. At-Risk Youth Petitions and Child in Need of Services Petitions

For children and youth who have either demonstrated an extreme unwillingness to cooperate at home or a wish to leave home due to unsafe circumstances, Washington law provides multiple legal options.

At-risk Youth petitions may be filed by a parent or guardian of a juvenile who meets one of the following criteria to request assistance from the courts in providing care, treatment, and supervision to such youth:⁵⁸

- the youth has been a runaway for at least 72 hours;
- the youth is beyond parental control such that the child's behavior endangers the health, safety and welfare of the child or another person; or
- the youth has a substance use disorder and there are no pending criminal charges related to substance abuse.

⁵⁶ JU 06.0100, (2016) <https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=23>

⁵⁷ JuCR, 6.4, *Advice About Diversion Process*

⁵⁸ JU 05.0600, (2017) <https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=19>

Child in Need of Services (CHINS) petitions may be filed by parents or guardians or by juveniles themselves. These petitions are used to request that a child be permitted to reside outside their home for a period of time. The child is in need in services in that:

- the child is beyond the control of their parent(s) or guardian(s) such that the child’s behavior endangers the health, safety, or welfare of the child or other person;
- the child has been reported as absent without consent for at least 24 consecutive hours on two or more separate occasions from the parent’s home, a crisis residential center, an out-of-home placement, or a court-ordered placement; and has exhibited a serious substance abuse problem; or has exhibited behaviors that create a risk of serious harm to the health, safety, or welfare of the child or any other person;
- the child is in need of necessary services (including food, shelter, health care, clothing, education, or services designed to maintain or reunite the family); and the child lacks access to, or has declined to utilize these services; and the child’s parents have evidenced continuing but unsuccessful efforts to maintain the family structure or are unable or unwilling to continue efforts to maintain the family structure;
- the child is a “sexually exploited child”; or
- the requirements of RCW 13.32A.140 are met.⁵⁹

The filing of an At-Risk Youth or CHINS petition is followed by fact-finding and a disposition hearing in order to determine whether the juvenile meets the requirements for the respective petitions. The court determines whether it is appropriate for the child to reside elsewhere, and to be provided therapeutic treatment such as counseling, and/or other appropriate measures to meet the child’s needs. In each of these temporary measures, family preservation and reconciliation is an ultimate goal if safe and appropriate. Special services to meet this end may be provided by the State.

X. Conclusion

Understanding how socialization, history, and emotional development impact a youth’s capacity to demonstrate appropriate judgement is critical to serving the needs of those youth who come into contact with the courts. Equally important is balancing the needs of the victim(s) and community. Keeping the unique attributes of youth development in mind as well as how identity impacts the offender’s own experience with oppression will help guide our state to provide the most comprehensive, therapeutic, and effective rehabilitation for juveniles who sexually offend.

⁵⁹ RCW 13.32A.030(5) <http://apps.leg.wa.gov/RCW/default.aspx?cite=13.32A.030>