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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
7 IN AND FOR THE COUNTY OF THURSTON

8 JEROME TA'AFULISIA, JAMES  
9 TA'AFULISIA, DIANTE PELLUM,  
10 RONALD ACKERSON, and MICHAEL  
11 ROGERS, on behalf of themselves and all  
12 others similarly situated,  
13 Petitioners,

14 v.

15 WASHINGTON STATE DEPARTMENT OF  
16 CHILDREN, YOUTH, AND FAMILIES; and  
17 ROSS HUNTER, in his official capacity as  
18 Secretary of the Department of Children,  
19 Youth, and Families,

20 Respondents.

CLASS ACTION

No. \_\_\_\_\_

PETITION FOR JUDICIAL REVIEW;  
DECLARATORY JUDGMENT AND  
INJUNCTIVE RELIEF

21  
22  
23  
**I. INTRODUCTION**

1. This case is about whether youth petitioners in DCYF custody who were sentenced in adult criminal court under RCW 13.04.030(1)(e)(i) and (v) are entitled to due process prior to transfer to Department of Corrections adult prisons.

2. Youth committed to DCYF facilities are members of one of two groups – youth who were sentenced in adult criminal court and protected by RCW 72.01.410, and juveniles adjudicated in juvenile court.

1           3.       RCW 13.40.280 and RCW 72.01.410(1)(a) make clear that no member of either  
2 group may be transferred to DOC adult prisons until they are twenty-five years old unless DCYF  
3 follows RCW 13.40.280.

4           4.       Those described in paragraph 2 have the right to remain in DCYF facilities until  
5 they are twenty-five years old unless DCYF lawfully transfers them.

6           5.       DCYF is violating the law as to the youth petitioners in this case who are  
7 members of the first group—youth who were sentenced in adult criminal court under RCW  
8 13.04.030(1)(e)(i) and (v).

9           6.       Three of the five youth petitioners in this case have already been transferred by  
10 DCYF to DOC custody without due process and in violation of RCW 72.01.410 (known as the  
11 JR to 25 law).

12          7.       Two of the youth petitioners are still in DCYF facilities. They, and others  
13 similarly situated, remain at risk of unlawful transfer to adult prisons.

14          8.       RCW 13.40.280 and WAC 110-745 enumerate the due process protections for  
15 juveniles and youth petitioners including the right to appointed counsel, advance notice of the  
16 proposed transfer and a hearing to contest it. These laws also require DOC to consent to the  
17 transfer of juveniles and youth from DCYF to DOC custody.

18          9.       Despite these laws and due process rights, DCYF continues the unlawful practice  
19 of transferring youth sentenced in adult court to DOC in violation of RCW 72.01.410, RCW  
20 13.40.280, and DCYF's own rules. The number of illegally transferred youth is unknown to  
21 Petitioner at this time.

22          10.       These unlawful transfers have been made despite the plain language of RCW  
23 71.02.410(1)(a), which says that:

1 While in the custody of the department of children, youth, and families,  
2 the person [auto decline youth] must have the same treatment, housing options,  
3 transfer, and access to program resources as any other person committed to that  
4 juvenile correctional facility or institution pursuant to chapter 13.40 RCW. Except  
5 as provided under (d) of this subsection, treatment, placement, and program  
6 decisions shall be at the sole discretion of the department of children, youth, and  
7 families. The person shall not be transferred to the custody of the department of  
8 corrections without the approval of the department of children, youth, and  
9 families until the person reaches the age of twenty-five.

10 11. The youth petitioners have a statutory and constitutional right to due process prior  
11 to transfer to adult prisons so long as they are under the age of twenty-five.

## 12 **II. FACTUAL ALLEGATIONS AND AGENCY ACTIONS**

### 13 **A. Jerome and James Ta'afulisia**

14 12. On August 6, 2020, youth petitioners Jerome and James Ta'afulisia, who are  
15 brothers, were sentenced as adults in King County Superior Court. Jerome Ta;afulisia was 16  
16 years old and James Ta'afulisia was 17 years old at the time of the crimes with which they were  
17 charged.

18 13. Both brothers were thereafter committed to the Green Hill School Juvenile  
19 Rehabilitation facility administered by DCYF.

20 14. On November 10, 2020, three months after sentencing, without notice or the  
21 opportunity to be heard, DCYF transferred the brothers from Green Hill School to the  
22 Washington Corrections Center, an adult prison administered by DOC without due process and  
23 in violation of RCW 72.01.410.

15 15. At the time the brothers were transferred to DOC, James, who lives with  
16 developmental disabilities, was 22 years old, and Jerome was 21 years old.

17 16. DCYF did not give either brother any written explanation about why they were  
18 being transferred.

1 17. Both brothers remain in DOC adult prisons.

2 **B. Diante Pllum**

3 18. On March 1, 2019, youth Petitioner Diante Pllum was sentenced as an adult in  
4 King County Superior Court. He was 14 years old at the time of the crimes with which he was  
5 charged.

6 19. Mr. Pllum was thereafter committed to the Green Hill School Juvenile  
7 Rehabilitation facility administered by DCYF.

8 20. On January 30, 2020, without adequate notice or the opportunity to be heard,  
9 DCYF transferred Mr. Pllum from Green Hill School to the Washington Corrections Center, an  
10 adult prison administered by the Department of Corrections, without due process and in violation  
11 of RCW 72.01.410.

12 21. DCYF did not give Mr. Pllum any written explanation about why he was being  
13 transferred.

14 22. At the time of his transfer to DOC, Mr. Pllum was 18 years old.

15 23. Mr. Pllum remains in a DOC adult prison.

16 **C. Ronald Ackerson**

17 24 On May 25, 2018, youth petitioner Ronald Ackerson was sentenced as an adult in  
18 Pierce County Superior Court. He was 16 years old at the time of the crimes with which he was  
19 charged.

20 25. Mr. Ackerson was thereafter committed to the Green Hill School Juvenile  
21 Rehabilitation facility administered by DCYF.

22 26. Mr. Ackerson remains at Green Hill School.

23 **D. Michael Rogers**

1           27.     On August 19, 2019, youth petitioner Michael Rogers was sentenced as an adult  
2 in King County Superior Court. He was 16 years old at the time of the crimes with which he was  
3 charged.

4           28.     Mr. Rogers was thereafter committed to the Green Hill School Juvenile  
5 Rehabilitation facility administered by DCYF.

6           29.     Mr. Rogers remains at Green Hill School.

7 **E.     Statutory Framework**

8           30.     Washington law grants the youth petitioners a constitutionally protected property  
9 and liberty interest in being placed in DCYF facilities.

10          31.     RCW 72.01.410 (known as the JR to 25 law) grants youth petitioners the statutory  
11 right to confinement with peers in DCYF facilities and the right to rehabilitation including  
12 “...that type of care, instruction, and treatment most likely to accomplish their rehabilitation and  
13 restoration to normal citizenship.” RCW 72.05.010 (1) and (2) (emphasis added).

14          32.     The Legislature made the following legislative findings when it enacted RCW  
15 72.01.410:

16                 The legislature recognizes state and national efforts to reform policies that  
17 incarcerate youth and young adults in the adult criminal justice system. The  
18 legislature acknowledges that transferring youth and young adults to the adult  
19 criminal justice system is not effective in reducing future criminal behavior.  
Youth and young adults incarcerated in the adult criminal justice system are more  
likely to recidivate than their counterparts housed in juvenile facilities.

20                 The legislature intends to enhance community safety by emphasizing  
21 rehabilitation of juveniles convicted even of the most serious violent offenses  
22 under the adult criminal justice system. Juveniles adjudicated as adults should be  
23 served and housed within the facilities of the juvenile rehabilitation administration  
up until age twenty-five, but released earlier if their sentence ends prior to that. In  
doing so, the legislature takes advantage of recent changes made by congress  
during the reauthorization of the juvenile justice and delinquency prevention act  
by the juvenile justice reform act of 2018 that allow youth and young adults who

1 at the time of their offense are younger than the maximum age of confinement in  
2 a juvenile correctional facility, to be placed in a juvenile correctional facility by  
3 operation of state law. The emphasis on rehabilitation up to age twenty-five  
4 reflects similar programming in other states, which has significantly reduced  
5 recidivism of juveniles confined in adult correctional facilities."

6 33. RCW 72.01.410 creates protectable liberty interests, namely the right to  
7 confinement with peers and the right to rehabilitation, treatment, education, and other DCYF  
8 services.

9 34. RCW 72.01.410 (1)(a) provides:

10 Whenever any person is convicted as an adult in the courts of this state of  
11 a felony offense committed under the age of eighteen, and is committed for a term  
12 of confinement, that person shall be initially placed in a facility operated by the  
13 department of children, youth, and families. The department of corrections shall  
14 determine the person's earned release date.

15 (a) While in the custody of the department of children, youth, and families,  
16 the person must have the same treatment, housing options, transfer, and access to  
17 program resources as any other person committed to that juvenile correctional  
18 facility or institution pursuant to chapter 13.40 RCW. Except as provided under  
19 (d) of this subsection, treatment, placement, and program decisions shall be at the  
20 sole discretion of the department of children, youth, and families. The person  
21 shall not be transferred to the custody of the department of corrections without the  
22 approval of the department of children, youth, and families until the person  
23 reaches the age of twenty-five.

35. RCW 13.40.280 sets out the terms under which DCYF may transfer a juvenile  
who is subject to juvenile jurisdiction and adjudicated in juvenile court to DOC custody. The  
statute includes the right to a hearing and the right to counsel.

36. DCYF may not lawfully transfer a youth sentenced in adult court to DOC custody  
unless the youth poses a "serious and continuing threat to the safety of others at the institution"  
where they live. RCW 13.40.280(2).

37. Because DCYF has unlawfully transferred youth to DOC without a hearing, there  
is no record as to why DCYF decided transfer was warranted.

1           38.     Transferred youth who have lengthy sentences may petition the Indeterminate  
2 Sentence Review Board for an early release pursuant to RCW 9.94A.730 (known as the Miller-  
3 fix statute).

4           39.     RCW 9.94A.730(3) requires:

5           No later than one hundred eighty days from receipt of the petition for early  
6 release, the department shall conduct, and the offender shall participate in, an  
7 examination of the person, incorporating methodologies that are recognized by  
8 experts in the prediction of dangerousness, and including a prediction of the  
9 probability that the person will engage in future criminal behavior if released on  
10 conditions to be set by the board. The board may consider a person's failure to  
11 participate in an evaluation under this subsection in determining whether to  
12 release the person. The board shall order the person released under such  
13 affirmative and other conditions as the board determines appropriate, unless the  
14 board determines by a preponderance of the evidence that, despite such  
15 conditions, it is more likely than not that the person will commit new criminal law  
16 violations if released. The board shall give public safety considerations the  
17 highest priority when making all discretionary decisions regarding the ability for  
18 release and conditions of release.

19           40.     DCYF's failure to create any records related to these unlawful transfers is likely  
20 to negatively impact those requesting early release because the ISRB will know only that DCYF  
21 made a determination to transfer the youth to DOC, presumably on the basis the youth was  
22 dangerous.

23           41.     This absence of records will likely hamper any youth who requests early release.  
The youth will not be able to refute or explain anything related to their transfer because DCYF  
does not tell the young person why they were being transferred, nor does it create a record  
memorializing its reasons. The absence of a hearing or supporting records to explain the reasons  
for transfer leaves the ISRB with little choice but to presumptively label the requester as  
dangerous.

1           42.     DCYF has adopted rules to implement RCW 13.40.280, which are found at  
2 Washington Administrative Code 110-745.

3           43.     WAC 110-745-0020 requires DCYF to provide advance notice of the proposed  
4 transfer from DCYF to DOC, the reasons the transfer is being considered, and a copy of the rules  
5 pertaining to the review board hearing, as well as access to and adequate opportunity to examine  
6 any files or records of the department pertaining to the proposed transfer by the juvenile or their  
7 attorney.

8           44.     None of these rights are afforded to youth petitioners before DCYF transfers them  
9 to DOC custody.

10          45.     Despite the plain language of RCW 72.01.410, which says that these youth are  
11 entitled to the “same treatment, housing options, *transfer*, and access to program resources as  
12 any other person committed to that juvenile correctional facility or institution pursuant to  
13 chapter 13.40 RCW,” DCYF has never followed the procedures in RCW 13.40.280 and WAC  
14 110-745 prior to the transfer of these youth from DCYF to DOC. (Emphasis added).

15          46.     None of the transferred youth petitioners were afforded the rights enumerated  
16 under RCW 13.40.280, as required by RCW 72.01.410, prior to their transfer to DOC.

17          47.     DCYF asserts that none of the youth petitioners under age twenty-five are entitled  
18 to rights enumerated under RCW 13.40.280 prior to their transfer to DOC.

19          48.     DCYF asserts that it is within its sole discretion whether to transfer the youth  
20 petitioners to DOC custody.

21          49.     Ronald Ackerson, Michael Rogers, and other similarly situated youth who were  
22 sentenced in adult criminal court who are presently in DCYF custody, or who will enter DCYF  
23



1 custody in the future, are at risk of suffering the same harms the Ta'afulisia brothers and Diante  
2 Pellum suffered because of DCYF's statutory and constitutional violations.

3 **F. Constitutional framework**

4 50. Youth petitioners have a liberty interest in remaining in the custody of DCYF, due  
5 to the rehabilitative nature of the facilities, being housed with their peers, access to  
6 education/special education, occupational, healthcare/behavioral mental health services, and  
7 culturally appropriate programming.

8 51. Youth petitioners have a constitutional right to due process prior to transfer to  
9 DOC adult prisons. Otherwise, if no due process protections are provided, then the agencies'  
10 actions will infringe upon the liberty interest of those youth in remaining at DCYF.

11 52. The legislatively prescribed process set forth in RCW 13.40.280 and its  
12 implementing rules provide rights that satisfy the constitutional right to due process.

13 53. Even if RCW 13.40.280 and its implementing rules had never been adopted or are  
14 interpreted to be inapplicable to the youth petitioners, these youth would still have a  
15 constitutional right to due process before DCYF transferred them to DOC adult prisons.

16 **III. PARTIES**

17 54. Youth petitioner Jerome Ta'afulisia is a person in prison at Clallam Bay  
18 Corrections Center in Clallam Bay, Washington.

19 55. Youth petitioner James Ta'afulisia is a person in prison at Clallam Bay  
20 Corrections Center in Clallam Bay, Washington.

21 56. Youth petitioner Diante Pellum is a person in prison at the Washington State  
22 Penitentiary in Walla Walla, Washington.

23 57. Youth petitioner Ronald Ackerson is a person in custody at DCYF's Green Hill

1 School in Chehalis, Washington.

2 58. Youth petitioner Michael Rogers is a person in custody at DCYF's Green Hill

3 School in Chehalis, Washington.

4 59. For purposes of this Petition the mailing address of all Petitioners and the Class  
5 shall be:

6 Laurel Jones  
7 Columbia Legal Services  
8 101 Yesler Way, #300  
9 Seattle, WA 98104

10 60. Respondent DCYF is the state agency that operates the state's juvenile  
11 rehabilitation facilities. Its mailing address is:

12 1110 Jefferson Street Southeast  
13 Olympia, Washington 98501

14 61. Respondent Ross Hunter is the Secretary of DCYF.

15 62. Respondents Hunter and DCYF are responsible for administering juvenile  
16 rehabilitation facilities and implementing legislative directives.

17 63. The Respondents are all state actors and are responsible for implementing and  
18 enforcing the policies and practices described herein. Each of the acts described herein was done  
19 under color of law and constitute state action for all purposes.

#### 20 IV. JURISDICTION

21 64. The events giving rise to this cause of action occurred at facilities located in  
22 Washington State.

23 65. As to DCYF and Secretary Hunter, this case arises under the Administrative  
Procedure Act, RCW 34.05 *et seq.*

1 66. Thurston County Superior Court has jurisdiction to hear this matter pursuant to  
2 RCW 34.05.514.

3 **V. CLASS ACTION ALLEGATIONS**

4  
5 67. Youth petitioners seek to pursue this matter as a class action under CR 23(a) and  
6 CR 23(b)(2).

7 68. They ask the Court to define the class as all youth sentenced in adult criminal  
8 court under the age of twenty-five for crimes committed when they were minors who:

- 9
- Have already been transferred to DOC custody, or
  - Are presently in DCYF custody; or
  - Will be committed to DCYF custody in the future.
- 10  
11

12 69. Each of the prerequisites to a class action enumerated in CR 23(a) is satisfied by  
13 the proposed class.

14 70. The class is so numerous that joinder of all members is impracticable. There are  
15 currently more than fifty youth in DCYF custody who were sentenced in adult criminal court.  
16 There are more than twenty youth formerly in DCYF custody still under twenty-five years of age  
17 who have been transferred to DOC custody in violation of RCW 72.01.410(1)(1)(a) and the state  
18 constitution after the effective date of RCW 72.01.410(1)(a).

19 71. There are questions of law or fact that are common to the class, including  
20 whether:

21 (a) RCW 72.01.410 requires DCYF to provide the rights enumerated under  
22 RCW 13.40.280 to class members prior to transfer to DOC custody, and  
23

1 (b) Article 1, §3 of the Washington Constitution requires DCYF to provide  
2 due process to class members prior to transfer to DOC custody.

3 72. The claims of the named youth petitioners are typical of the class which they seek  
4 to represent.

5 73. The named youth petitioners will fairly and adequately protect the interests of the  
6 class. Petitioners are represented by counsel, Columbia Legal Services, and co-counsel, Daniel  
7 Norman and Nicole K. McGrath. Columbia Legal Services is experienced in representing  
8 persons and classes of people in disputes of this nature and will vigorously prosecute this action.  
9 Youth petitioners are not aware of any conflict of interest among class members.

10 74. Respondents have acted or refused to act on grounds generally applicable to the  
11 proposed class, thereby making appropriate final declaratory and injunctive relief with respect to  
12 the class as a whole.

13 **VI. REASONS RELIEF SHOULD BE GRANTED AND CLAIMS FOR RELIEF**

14 **a) Violation of Art. 1, §3 of the Washington Constitution**

15 Youth petitioners who have been transferred to DOC custody or who are at risk of  
16 transfer to DOC custody and others similarly situated have a liberty interest in custody with  
17 peers and the right to rehabilitation. DCYF has violated, continues to violate, or threatens to  
18 violate this liberty interest without due process of law in violation of Art. 1, §3 of the  
19 Washington Constitution.

20 **b) Violation of RCW 72.01.410(1)(a)**

21 DCYF's transfer of the youth petitioners to DOC custody, along with its ongoing  
22 claimed authority to transfer these youth, including youth petitioners Ronald Ackerson and  
23

1 Michael Rogers, to DOC custody, without affording them the same rights as those set out in  
2 RCW 13.40.280 for juvenile court-adjudicated youth, violates RCW 72.01.410(1)(a).

3 **c) Violation of RCW 34.05.570(4)**

4 DCYF's transfer or claimed authority to transfer youth petitioners and others similarly  
5 situated to DOC custody without due process or compliance with RCW 13.40.280 is arbitrary or  
6 capricious, unconstitutional, and outside its statutory authority.

7 **VII. RELIEF REQUESTED**

8 WHEREFORE, the youth petitioners request that the Court:

- 9 1. Certify this as a class action and approve the class proposed by the youth  
10 petitioners pursuant to CR 23(a) and (b)(2).
- 11 2. Designate youth petitioners as class representatives pursuant to CR 23(a)(4).
- 12 3. Appoint Columbia Legal Services, Nicole K. McGrath, and Daniel Norman as  
13 class counsel pursuant to CR 23(a)(4).
- 14 4. Declare that DCYF and Secretary Hunter had a duty to provide the rights  
15 enumerated under RCW 13.40.280 to the youth petitioners already transferred to DOC custody  
16 prior to their transfer to DOC custody, and that DCYF violated youth petitioners' and class  
17 members' constitutional and statutory rights by failing to provide those rights.
- 18 5. Declare that the youth petitioners originally in DCYF custody, who are now in  
19 DOC custody, were wrongfully transferred by DCYF to DOC.
- 20 6. Enter a permanent injunction requiring DCYF to immediately stop transferring  
21 youth subject to exclusive original jurisdiction and sentenced in adult criminal court (those  
22 protected by the JR to 25 law) to DOC custody without following the rights enumerated under  
23 RCW 13.40.280.

1           7.       Order that DCYF obtain the return of any class member in DOC's custody to  
2 DCYF custody pursuant to RCW 13.40.280(6).

3           8.       Declare the Respondents' violations of youth petitioners' statutory and  
4 constitutional rights were not substantially justified.

5           9.       Award the youth petitioners expenses of suit and reasonable attorneys' fees  
6 pursuant to RCW 4.84.350.

7           10.      Grant any further relief as just and appropriate.

8  
9           DATED this 28th day of October, 2022.

10  
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