

☐ No hearing set.
☐ Hearing set for:
Date:
Time:
Judge/Calendar:

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

JEROME TA'AFULISIA, JAMES
TA'AFULISIA, DIANTE PELLUM,
RONALD ACKERSON, and MICHAEL
ROGERS, on behalf of themselves and all
others similarly situated,

Petitioners/Respondents

v.

WASHINGTON STATE DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES; and
ROSS HUNTER, in his official capacity as
Secretary of the Department of Children,
Youth, and Families; and WASHINGTON
STATE DEPARTMENT OF CORRECTIONS
and CHERYL STRANGE, in her official
capacity as Secretary of the Department of
Corrections,

Respondent/Defendant.

CLASS ACTION

No. 22-2-02974-34

THIRD AMENDED PETITION FOR
JUDICIAL REVIEW; DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF; AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

I. INTRODUCTION

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

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

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

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

12 5. DCYF is violating the law as to the youth petitioners in this case who are
13 members of the first group—youth who were sentenced in adult criminal court under RCW
14 13.04.030(1)(e)(i) and (v).

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

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

20 8. RCW 13.40.280 enumerates that due process protections are afforded juveniles
21 and youth petitioners, including the right to appointed counsel and a hearing to contest the
22 proposed transfer to DOC custody. These laws also require DOC to consent to the transfer of
23 juveniles and youth from DCYF to DOC custody.

1 9. Despite these laws and due process rights, DCYF continues the unlawful practice
2 of transferring youth sentenced in adult court to DOC in violation of RCW 72.01.410 and RCW
3 13.40.280. The exact number of illegally transferred youth is unknown to Petitioner at this time
4 but believed to be at least 43 youth based on discovery responses received from DCYF on
5 January 3, 2023.

6 10. These unlawful transfers have been made despite the plain language of RCW
7 72.01.410(1)(a), which says that:

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

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

15 **II. FACTUAL ALLEGATIONS AND AGENCY ACTIONS**

16 **A. Jerome and James Ta'afulisia**

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

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

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

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

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

9 17. Petitioners James Ta'afulisia and Jerome Ta'afulisia were not served with a final
10 order by DCYF.

11 18. Both brothers remain in DOC adult prisons.

12 **B. Diante Pellum**

13 19. On March 1, 2019, youth petitioner Diante Pellum was sentenced as an adult in
14 King County Superior Court. He was 14 years old at the time of the crimes with which he was
15 charged.

16 20. Mr. Pellum was thereafter committed to the Green Hill School Juvenile
17 Rehabilitation facility administered by DCYF.

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

22 22. DCYF did not give Mr. Pellum any written explanation about why he was being
23 transferred.

1 23. Petitioner Diante Pllum was not served with a final order by DCYF.

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

3 25. Mr. Pllum remains in a DOC adult prison.

4 **C. Ronald Ackerson**

5 26 On May 25, 2018, youth petitioner Ronald Ackerson was sentenced as an adult in
6 Pierce County Superior Court. He was 16 years old at the time of the crimes with which he was
7 charged.

8 27. Mr. Ackerson was thereafter committed to the Green Hill School Juvenile
9 Rehabilitation facility administered by DCYF.

10 28.. Mr. Ackerson remains at Green Hill School.

11 **D. Michael Rogers**

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

15 30. Mr. Rogers was thereafter committed to the Green Hill School Juvenile
16 Rehabilitation facility administered by DCYF.

17 31. Mr. Rogers resides in a DCYF-operated community facility in Olympia.

18 **E. Statutory Framework**

19 32. Washington law grants the youth petitioners a constitutionally protected property
20 and liberty interest in being placed in DCYF facilities.

21 33. RCW 72.01.410 (known as the JR to 25 law) grants youth petitioners the statutory
22 right to confinement with peers in DCYF facilities and the right to rehabilitation including
23

1 "...that type of care, instruction, and treatment most likely to accomplish their rehabilitation and
2 restoration to normal citizenship." RCW 72.05.010 (1) and (2).

3 34. The Legislature made the following legislative findings when it enacted RCW
4 72.01.410:

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

11 The legislature intends to enhance community safety by emphasizing
12 rehabilitation of juveniles convicted even of the most serious violent offenses
13 under the adult criminal justice system. Juveniles adjudicated as adults should be
14 served and housed within the facilities of the juvenile rehabilitation administration
15 up until age twenty-five, but released earlier if their sentence ends prior to that. In
16 doing so, the legislature takes advantage of recent changes made by congress
17 during the reauthorization of the juvenile justice and delinquency prevention act
18 by the juvenile justice reform act of 2018 that allow youth and young adults who
19 at the time of their offense are younger than the maximum age of confinement in
20 a juvenile correctional facility, to be placed in a juvenile correctional facility by
21 operation of state law. The emphasis on rehabilitation up to age twenty-five
22 reflects similar programming in other states, which has significantly reduced
23 recidivism of juveniles confined in adult correctional facilities."

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

36. RCW 72.01.410 (1)(a) provides:

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

(a) While in the custody of the department of children, youth, and families,
the person must have the same treatment, housing options, transfer, and access to
program resources as any other person committed to that juvenile correctional

1 facility or institution pursuant to chapter 13.40 RCW. Except as provided under
2 (d) of this subsection, treatment, placement, and program decisions shall be at the
3 sole discretion of the department of children, youth, and families. The person
4 shall not be transferred to the custody of the department of corrections without the
5 approval of the department of children, youth, and families until the person
6 reaches the age of twenty-five.

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

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

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

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

18 41. RCW 9.94A.730(3) requires:

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

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

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

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

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

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

20 47. DCYF asserts that it is within its sole discretion whether to transfer the youth
21 petitioners to DOC custody.
22
23

1 48. Ronald Ackerson, Michael Rogers, and other similarly situated youth who were
2 sentenced in adult criminal court who are presently in DCYF custody, or who will enter DCYF
3 custody in the future, are at risk of suffering the same harms the Ta'afulisia brothers and Diante
4 Pellum suffered because of DCYF's statutory and constitutional violations.

5 **F. Constitutional framework**

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

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

13 51. The legislatively prescribed process set forth in RCW 13.40.280 make clear the
14 Legislature's intent, with the adoption of RCW 72.01.410(1)(a), to provide rights to adult-
15 sentenced youth that satisfy their constitutional right to due process.

16 52. Even if RCW 13.40.280 had never been adopted or is interpreted to be
17 inapplicable to the youth petitioners, these youth would still have a constitutional right to due
18 process before DCYF transferred them to DOC adult prisons.

19 **G. Petitioners were not required to petition for rule making. Petitioners still in DCYF**
20 **custody have standing under the APA.**

21 53. None of the Petitioners were required to have petitioned for rule making prior to
22 filing this lawsuit.
23

1 54. As to Petitioners and putative class members still in DCYF custody, a petition for
2 rule making would have been futile and patently inadequate.

3 55. As to Petitioners and putative class members already transferred to DOC custody,
4 a petition for rule making would likewise have been futile and patently inadequate.

5 56. An agency can commence rule making, but nothing in RCW 34.05 *et seq.* requires
6 an agency to conclude rule making on any specific timetable. By contrast, Petitioners and the
7 putative class have a finite window (until age 25) to access the educational and therapeutic
8 services available at DCYF necessary to aid their rehabilitation.

9 57. Rule making could not provide Petitioners already transferred to DOC custody
10 any relief from the unlawful transfers.

11 58. Agency rules must be grounded in statutory authority. There is no statute that
12 authorizes DCYF to adopt rules that would afford the relief Petitioners already transferred to
13 DOC custody seek in this Petition.

14 59. The grave irreparable harm caused to Petitioners and the public by DCYF's illegal
15 conduct outweighs the public policy in favor of exhaustion of administrative remedies.

16 60. Petitioners still in DCYF custody are not required to wait for DCYF to behave
17 unlawfully before seeking to vindicate their statutory and constitutional rights. They have
18 standing to bring a lawsuit to prevent the harm they seek to stop before DCYF's unlawful
19 conduct can cause them further harm.

20 61. Petitioners still in DCYF custody are at risk of having their statutory and
21 constitutional rights violated by DCYF if its illegal and unconstitutional conduct is not enjoined
22 and are thus aggrieved by DCYF's illegal conduct.

1 62. Petitioners still in DCYF custody are emotionally harmed by DCYF's illegal and
2 unconstitutional conduct and the manner in which DCYF effects its unlawful conduct.

3 63. Petitioners still in DCYF custody, and the class they seek to represent, are harmed
4 because the manner in which DCYF carries out its illegal and unconstitutional conduct causes
5 reasonably foreseeable harm to them.

6 64. DCYF gave Petitioners Diante Pllum, James Ta'afulisia, and Jerome Ta'afulisia
7 no advance notice they would be transferred to DOC custody. They were not offered
8 explanations for their transfer, an opportunity to explain why they should not be transferred, an
9 opportunity to speak with a staff person or a lawyer, collect their personal belongings, or say
10 goodbye to friends.

11 65. Petitioners Diante Pllum, James Ta'afulisia, and Jerome Ta'afulisia were simply
12 told they were being placed in DOC custody, loaded into a DOC vehicle, and removed from
13 Green Hill School.

14 66. Many youth committed to DCYF's custody have been diagnosed with mental
15 health conditions that warrant therapeutic services offered by DCYF.

16 67. Most youth committed to DCYF's custody have a history of traumatic
17 experiences.

18 68. DCYF's unlawful transfers to DOC custody cause Petitioners and putative class
19 members still in DCYF custody to experience anxiety, fear, and despair, because they have either
20 witnessed or heard about other youth transferred unlawfully to DOC. They understandably fear
21 such unlawful transfers could happen to them.

69. Petitioners and putative class members still in DCYF custody are aggrieved by the always-present threat of transfer to DOC custody in violation of their statutory and constitutional rights, as well as the manner in which such transfers are effected.

70. DCYF's illegal and unconstitutional conduct, in tandem with its processes for transferring youth to DOC custody, inflicts trauma on already-traumatized and vulnerable youth.

71. DCYF's illegal and unconstitutional conduct, which causes harm to Petitioners and the putative class, is directly at odds with DCYF's mission set forth in RCW 13.40.460(7), to provide:

An educational program to establish self-worth and responsibility in juvenile offenders. This educational program shall emphasize instruction in character-building principles such as: Respect for self, others, and authority; victim awareness; accountability; work ethics; good citizenship; and life skills.

72. DCYF's illegal and unconstitutional conduct is directly at odds with legislative intent expressed in uncoded legislative findings in laws 2019, ch. 319, accompanying RCW 72.01.410, in which the legislature emphasized its finding that juvenile rehabilitation for adult-sentenced youth up to age twenty-five reduced juvenile recidivism. *See* ¶34, *supra*. The legislature explicitly found that:

Youth and young adults incarcerated in the adult criminal justice system are more likely to recidivate than their counterparts housed in juvenile facilities.

73. DCYF's illegal and unconstitutional conduct, which aggrieves Petitioners and the putative class, undermines the effectiveness of the services DCYF is required by statute and its own regulations to provide youth in its custody.

74. There are over 100 adult-sentenced youth in DCYF custody at risk of transfer to DOC custody in violation of their statutory and constitutional rights.

1 75. Petitioners in DCYF custody are not required to wait until their arrival at a DOC
2 (adult) prison to try to stop DCYF from violating their statutory and constitutional rights.

3 76. DCYF assumed responsibility for the operation of the state's juvenile
4 rehabilitation facilities from the Department of Social and Health Services on July 1, 2019.

5 77. The 43 transfers of adult-sentenced youth prior to their 25th birthday that have
6 occurred since DCYF assumed responsibility for operation of the state's juvenile rehabilitation
7 facilities were all made in violation of RCW 72.01.410(1)(a) and Art. 1 §3 of the state
8 constitution. None of those youth had access to representation by a lawyer, advance notice of the
9 transfer, or a Review Board Hearing as required by law.

10 78. Petitioning for rule making would have been futile because DCYF has known, or
11 should have known, it was violating RCW 72.01.410(1)(a) since assuming responsibility for
12 juvenile rehabilitation from DSHS.

13 79. Despite this knowledge, DCYF has deliberately chosen not to cease its unlawful
14 conduct.

15 80. Petitioning for rule making would have been patently inadequate to force DCYF
16 to stop its unlawful behavior.

17 81. DCYF's violation of RCW 72.01410(1)(a) and Art. 1 §3 of the state constitution
18 constitute grave irreparable harms not only to adult-sentenced youth harmed by these violations
19 but also to the public who have a right to expect the executive branch to faithfully execute the
20 laws enacted by the legislature.

21 82. DCYF's decision to repeatedly and consistently ignore RCW 72.01.410(1)(a)
22 shows that DCYF was not going to be persuaded to implement the statute unless ordered to do so
23 by a court.

1 83. The Petitioners’ right to relief from DCYF’s intentional, continuing violations of
2 the legislature’s directive outweighs the public policy in favor of exhaustion of administrative
3 remedies.

4 84. A state agency’s intentional violation of a statutory directive and the state
5 constitution’s due process clause constitutes a grave irreparable harm, both to adult-sentenced
6 youth affected by these violations, but also to the public.

7 85. The public has suffered grave irreparable harm due to DCYF’s brazen refusal to
8 faithfully execute the laws passed by the legislative branch.

9 86. The public has suffered grave irreparable harm by DCYF’s intentional violation
10 of RCW 72.01.410(1)(a) because the legislature has found that youth who remain in a juvenile
11 rehabilitation setting are less likely to recidivate than youth confined to adult prisons.

12 87. Moreover, DCYF’s intentional violation of RCW 72.01.410(1)(a) could
13 reasonably be expected to have a disproportionate impact on youth of color. Per DCYF’s
14 recently published *Changes to the Juvenile Rehabilitation Population, SFY18-21* report, RCW
15 72.01.410 has led the white population of DCYF to decrease while the Black and Hispanic
16 populations have increased since 2019. *See*,
17 https://www.dcyf.wa.gov/sites/default/files/pdf/reports/Changes_JR_Population2022.pdf

18 88. In response to this lawsuit, DCYF issued an Interim Directive dated December 2,
19 2022 that purports to offer adult-sentenced youth the rights this lawsuit seeks to vindicate. The
20 Interim Directive was subsequently amended on December 20, 2022. *See* Exhibit A to this
21 Amended Petition, which includes both iterations of the Interim Directive.

22 89. The Interim Directive does not have the force of statute or regulation.
23

1 90. DCYF may alter or revoke the Interim Directive at any time, as evidenced by its
2 modifications made on December 20, 2022.

3 91. The Residential Review Board Hearing Notice is on the letterhead of Green Hill
4 School.

5 92. The Hearing Notice appears to apply only to youth in DCYF custody at Green
6 Hill School. For example, the email given in the Hearing Notice for a youth's lawyer to contact
7 for "questions about this process" is for Charles South.

8 93. Charles South is an employee of Green Hill School.

9 94. There are juvenile-court adjudicated youth and adult-sentenced youth at other
10 DCYF facilities, including Echo Glen and community-based facilities.

11 95. It is not clear whether there are other Hearing Notices that DCYF would provide
12 to youth proposed for transfer to DOC who reside in those other facilities.

13 96. In response to this lawsuit, DCYF also drafted a document entitled "Residential
14 Review Board Hearing Notice", which accompanied the Interim Directive. *See* Exhibit B. The
15 Notice refers to a nonprofit legal service provider, TeamChild, as the "legal resource" following
16 the sentence, "You may request a lawyer to participate with you in the hearing." It is reasonable
17 to believe that this language would lead the reader to think that TeamChild will represent youth
18 proposed for transfer at the hearing.

19 97. DCYF did not discuss the Interim Directive with TeamChild before issuing either
20 iteration.

21 98. TeamChild did not know that it was named in the Interim Directive as a resource
22 for youth DCYF proposed to transfer to DOC custody before the Interim Directive was issued.
23

1 99. TeamChild did not learn the Interim Directive had been issued until late
2 December 2022.

3 100. TeamChild has a contract to provide some representation to youth in DCYF
4 custody but does not have a contract to represent youth DCYF proposes for transfer to DOC
5 custody.

6 101. As of the date of this Amended Complaint/Petition, TeamChild has not agreed to
7 provide representation to adult-sentenced youth with respect to any DCYF proposed transfer of
8 an adult-sentenced youth to DOC custody.

9 102. The telephone number listed for TeamChild on the Residential Review Board
10 Hearing Notice is not a TeamChild number. It is the telephone number of a private party.

11 103. DCYF leadership has acknowledged that the agency must enter into a contract or
12 contracts with lawyers to provide representation to adult-sentenced youth it proposes to transfer
13 to DOC custody.

14 104. Despite DCYF's understanding that it must enter into a contract or contracts with
15 lawyers to provide representation to adult-sentenced youth it proposes to transfer to DOC
16 custody, DCYF does not presently have a contract or contracts for services with any lawyer to
17 provide representation to adult-sentenced youth if DCYF proposes to transfer that adult-
18 sentenced youth to DOC custody.

19 105. DCYF's failure to enter into a contract with any lawyer to represent adult-
20 sentenced youth facing transfer to DOC custody and its basic failure to include the correct
21 telephone number for youth to even speak with a lawyer shows that the Petitioners cannot
22 reasonably rely on whatever "rights" are enumerated in the Interim Directive and Residential
23 Review Board Hearing Notice.

1 106. RCW 13.40.280, WAC 110-745 and DCYF's own policy 5.51
2 (Exhibit C attached hereto) require DCYF to provide lawyers with whom juvenile-court
3 adjudicated youth may consult and who will represent them, advance notice of proposed transfer
4 to DOC custody, and a Review Board Hearing prior to transfer to DOC custody, among other
5 rights.

6 107. DCYF does not presently have a contract with any lawyer to provide
7 representation to juvenile-court adjudicated youth despite the provisions of RCW 13.40.280(2),
8 WAC 110-745, and DCYF Juvenile Rehabilitation Policy 5.51.

9 108. On information and belief, DCYF has not had a contract with any lawyer to
10 provide representation to juvenile-court adjudicated youth since assuming responsibility for
11 administering the state's juvenile rehabilitation program, despite the provisions of RCW
12 13.40.280(2), WAC 110-745, and Policy 5.51. DCYF has transferred juvenile court adjudicated
13 youth to DOC custody in violation of RCW 13.40.280(2), WAC 110-745, and Policy 5.51.

14 109. If, as Petitioners allege, DCYF has no contract to provide lawyers to represent
15 juvenile-court adjudicated youth, petitioning for rules to provide lawyers to represent adult-
16 sentenced youth would have been futile and patently inadequate. This is because DCYF has
17 already adopted rules as to juvenile-court adjudicated youth that it is intentionally violating.

18 110. If DCYF, as Petitioners allege, has never had a contract to provide juvenile-court
19 adjudicated youth with a lawyer with whom to consult or to represent those youth prior to
20 transfer to DOC custody, that fact is evidence that grave irreparable harm has occurred in the past
21 as to *any* youth transferred to DOC custody – both juvenile-court adjudicated and adult-sentenced
22 – which outweighs the public policy in favor of exhaustion of administrative remedies.

23 111. If DCYF, as Petitioners allege, has never had a contract to provide juvenile-court

1 custody, that fact is evidence that grave irreparable harm may occur at any moment as to *any*
2 youth DCYF selects for transfer to DOC custody, including Petitioners still in DCYF custody,
3 which outweighs the public policy in favor of exhaustion of administrative remedies.

4 112. RCW 13.40.280(2) was adopted by the legislature in 1983. *See* Exhibit D.

5 113. WAC 110-745 was originally adopted by the Department of Social and Health
6 Services (DSHS) as WAC 388-275 in 1984. *See* Exhibit E.

7 114. WAC 110-745 was recodified in 2019 when the newly-created DCYF assumed
8 responsibility from DSHS for providing juvenile rehabilitation services. *See* Exhibit F.

9 115. Legislative intent as to RCW 13.40.280(2) is clear. The legislature intended the
10 statute to act as a check on agency authority to transfer juvenile-court adjudicated youth to DOC
11 custody by specifying the basis under which the agency could transfer a juvenile-court
12 adjudicated youth to DOC custody, as well as requiring advance notice, right to counsel, and
13 other due process protections.

14 116. The legislature intended that DSHS (prior to DCYF's creation) be prevented from
15 transferring juvenile-court adjudicated youth to DOC custody unless the youth "presents a
16 continuing and serious threat to the safety of others in the institution." RCW 13.40.280(2).

17 117. With the adoption of RCW 72.01.410(1)(a), the legislature extended that
18 protection to adult-sentenced youth.

19 118. If the legislature had intended to allow the state agency administering the juvenile
20 rehabilitation program to have unfettered authority to transfer youth to DOC custody it would not
21 have adopted RCW 13.04.280(2) or RCW 72.01.410(1)(a).

119. Any person harmed by a state agency's intentional, ongoing violation of their statutory and constitutional rights which can result in their unlawful transfer to adult prison should be excused from exhausting administrative remedies.

III. PARTIES

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

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

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

123. Youth petitioner Ronald Ackerson is a person in custody at DCYF's Green Hill School in Chehalis, Washington.

124. Youth petitioner Michael Rogers is a person in custody at a DCYF community facility in Olympia, Washington.

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

Laurel Jones
Columbia Legal Services
101 Yesler Way, #300
Seattle, WA 98104

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

1110 Jefferson Street Southeast
Olympia, Washington 98501

127. Respondent Ross Hunter is the Secretary of DCYF.

1 128. Respondents Hunter and DCYF are responsible for administering juvenile
2 rehabilitation facilities and implementing legislative directives.

3 129. The Respondents are all state actors and are responsible for implementing and
4 enforcing the policies and practices described herein. Each of the acts described herein was done
5 under color of law and constitute state action for all purposes.

6 130. Defendant Washington State Department of Corrections operates Washington's
7 state prisons. Its mailing address is:

8 PO BOX 41100, Mail Stop 41100
9 Olympia, WA 98504-1100

10 131. Defendant Cheryl Strange is the Secretary of DOC.

11 132. Defendants DOC and Strange are responsible for administering Washington's adult
12 prisons as well as implementing legislative directives.

13 **IV. JURISDICTION**

14 133. The events giving rise to this cause of action occurred at facilities located in
15 Washington State.

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

18 135. Thurston County Superior Court has jurisdiction to hear this matter as to DOC
19 pursuant to RCW 2.08.010.¹
20

21
22
23 ¹ The APA does not apply to DOC. RCW 34.05.030(1)(c).

1 136. Proper venue for this action is in Thurston County, pursuant to RCW 34.05.514
2 and RCW 4.12.020(2).

3 **V. CLASS ACTION ALLEGATIONS**

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

7 138. 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
10 • Are presently in DCYF custody; or
11 • Will be committed to DCYF custody in the future.

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

14 140. The class is so numerous that joinder of all members is impracticable. There are
15 currently more than 100 youth in DCYF custody who were sentenced in adult criminal court.
16 There are at least 43 youth who have been transferred to DOC custody prior to their 25th
17 birthdays in violation of RCW 72.01.410(1)(1)(a) and the state constitution after the effective
18 date of RCW 72.01.410(1)(a).

19 141. 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

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

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

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

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

VI. REASONS RELIEF SHOULD BE GRANTED AND CLAIMS FOR RELIEF

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

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

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

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

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)(b)**

4 DCYF failed to perform a duty it was required to perform. That required duty is affording
5 youth petitioners their statutory and constitutional pre-transfer due process protections,
6 appointing counsel for the proposed transferee, providing an adequate opportunity for the
7 transferee and their lawyer to examine any DCYF files or records pertaining to the proposed
8 transfer, and a hearing before a review board. DCYF's failure to perform that duty -- and the
9 ongoing risk it will fail to perform that duty in the future -- violated RCW 72.01.410(1)(a) and
10 Art. 1, §3 of the Washington Constitution and poses a continuing threat of similar violations in
11 the future. DCYF's failure to perform this duty was unconstitutional, outside the statutory
12 authority of the agency or the authority conferred by a provision of law, and arbitrary or
13 capricious.

14 **d) Violation of RCW 34.05.570(4)(c)**

15 Youth petitioners are aggrieved by DCYF's actions in transferring them to DOC custody
16 in violation of RCW 72.01.410(1)(a) and their constitutional right to due process. Youth
17 petitioners are also aggrieved by the ongoing risk DCYF will repeat these violations as to class
18 members still in DCYF custody. DCYF's actions were unconstitutional, outside the statutory
19 authority of the agency or the authority conferred by a provision of law, and arbitrary or
20 capricious.

21 **VII. RELIEF REQUESTED**

22 WHEREFORE, the youth petitioners request that the Court:
23

1 1. Certify this as a class action and approve the class proposed by the youth petitioners
2 pursuant to CR 23(a) and (b)(2).

3 2. Designate youth petitioners as class representatives pursuant to CR 23(a)(4).

4 3. Appoint Columbia Legal Services, Nicole K. McGrath, and Daniel Norman as class
5 counsel pursuant to CR 23(a)(4).

6 4. Declare that DCYF and Secretary Hunter had a duty to provide the same rights to the
7 youth petitioners already transferred to DOC custody prior to their transfer to DOC custody that
8 DCYF is required to afford to juvenile-court adjudicated youth prior to their transfer to DOC
9 custody, and that DCYF violated youth petitioners' and class members' constitutional and
10 statutory rights by failing to provide those rights.

11 5. Declare that the youth petitioners originally in DCYF custody, who are now in DOC
12 custody, were wrongfully transferred by DCYF to DOC.

13 6. Declare that further confinement in DOC custody of the youth petitioners transferred
14 to DOC custody is unlawful.

15 7. Enter a permanent injunction requiring DCYF to immediately stop transferring youth
16 subject to exclusive original jurisdiction and sentenced in adult criminal court (those protected
17 by the JR to 25 law) to DOC custody without following the rights enumerated under RCW
18 13.40.280.

19 8. Order that DCYF obtain the return of any class member in DOC's custody to DCYF
20 custody pursuant to RCW 13.40.280(6).

21 9. Order that DOC transfer any class member in its custody to DCYF pursuant to RCW
22 13.40.280(6).

1 10. Declare the Respondents' violations of youth petitioners' statutory and
2 constitutional rights were not substantially justified.

3 11. Award the youth petitioners expenses of suit and reasonable attorneys' fees
4 pursuant to RCW 4.84.350.

5 12. Grant any further relief as just and appropriate.

7 DATED March 8, 2023.

8
9 COLUMBIA LEGAL SERVICES
10 101 Yesler Way, Suite 300
 Seattle, WA 98104
 (206) 464-0838 – phone; (206) 382-3386 (fax)

11 s/ Laurel Jones
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21 s/ Daniel S. Norman
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EXHIBIT A



STATE OF WASHINGTON
DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

1500 Jefferson Street, SE • P.O. Box 40975 • Olympia WA 98504-0975

December 2, 2022

TO: JR Green Hill School Staff
JR Echo Glen Children's Center Staff

FROM: Felice Upton, JR Assistant Secretary *Felice J. Upton*

SUBJECT: Interim Process for Transferring Youth to DOC

EFFECTIVE: Immediately

This directive supplements [JR Policy 5.51 Transferring Residential Youth to DOC](#) by establishing an interim process when a resident is to be transferred to the Department of Corrections (DOC) from a DCYF JR facility.

To the extent this directive conflicts with JR Policy 5.51, this directive governs. Effective immediately, the following process shall be followed by all staff regarding residents in a JR facility who were sentenced in an adult criminal court. If staff determine that such a resident should be transferred to DOC or if the resident self-requests a transfer to DOC, the following process shall be commenced and each step taken by JR staff while completing this process shall be noted in writing and included in the record:

1. An independent review board will be convened comprised of the Assistant Secretary or a designee who will act as chairperson, along with two other JR administrators and a representative from the Legal Office who will be appointed by the chairperson. The review board may be comprised of staff from other JR facilities but must be an impartial and independent body.
2. The review board must set a review hearing to consider and review the matter.
 - a. If an assault against staff has been reported to law enforcement, a review board hearing must be held within ten business days, where the board will determine whether the accused resident represents a continuing and serious threat to the safety of others in the institution.
 - i. Upon conviction for custodial assault, a second hearing will be held within five business days to recommend to the Secretary of DCYF if the resident should be transferred to DOC, based on whether the board has determined the resident represents a continuing and serious threat to the safety of others in the institution.
 - ii. A juvenile has the burden to show why transfer to adult facility should not occur.
 - b. For all other situations, a review board hearing must be convened no longer than five days after it is decided that a resident should be transferred to DOC.
3. A resident being considered for transfer to DOC must be notified in writing at least five days in advance of the review board hearing ([WAC 110-745-020](#)). This written notice must include:
 - a. Reasons transfer is being considered
 - b. The resident's right to counsel for the hearing
 - c. Copy of rules pertaining to the review board hearing

4. Prior to any review board hearing, the resident and/or their attorney has the right to access and examine any files and records pertaining to the proposed transfer of the resident to DOC.
5. Attendance at the review hearing should be limited to the parties directly concerned, including the resident's attorney if applicable. The chairperson may exclude unauthorized individuals, unless the parties agree to their presence. The parties will have the opportunity to present evidence, cross-examine witnesses, and make recommendations to the board.
6. At the end of the hearing, the review board will consider all evidence presented and decide whether continued placement of the resident in a JR facility presents a continuing and serious threat to the safety of others in the facility.
7. Within three days of the hearing, the chairperson of the review board will prepare a written record of the proceedings and a written decision including findings of fact and conclusions; a Record of Official Action will be entered into ACT, which shall also include all steps taken by JR staff during this process, and any other supporting documentation shall be uploaded via the document uploader in ACT. If a designee has acted as chairperson, a copy shall also be submitted to the Assistant Secretary for final review and written approval.
8. If maintaining the resident at a JR facility presents an imminent risk to the facility, staff and youth and/or secure housing is unavailable to address the immediate safety and security risk, the DCYF Secretary may request a temporary immediate transfer with approval from the DOC Secretary. Steps 1-7 will be facilitated by DCYF in collaboration with the facility DOC is temporarily housing the resident in.
9. Finally, DOC must consent to the transfer of the resident.
10. A resident who has been transferred to DOC through the above process may, at the DCYF Secretary's discretion, and with the consent of the DOC Secretary, may be transferred to a DCYF juvenile facility ([RCW 13.40.280](#)).

Questions can be directed to:

Jennifer Redman, Superintendent, Green Hill School: Jennifer.Redman@dcyf.wa.gov

Lori Nesmith, Acting Superintendent, Echo Glen Children's Center: Lori.Nesmith@dcyf.wa.gov



**STATE OF WASHINGTON
DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES**

1500 Jefferson Street, SE • P.O. Box 40975 • Olympia WA 98504-0975

December 20, 2022

TO: JR Green Hill School Staff
JR Echo Glen Children's Center Staff

FROM: Felice Upton, JR Assistant Secretary *Felice J. Upton*

SUBJECT: Interim Process for Transferring Youth to DOC

EFFECTIVE: Immediately

This directive supplements [JR Policy 5.51 Transferring Residential Youth to DOC](#) by establishing an interim process when a resident is to be transferred to the Department of Corrections (DOC) from a DCYF JR facility, and supersedes the December 2, 2022 [directive](#) issued.

To the extent this directive conflicts with JR Policy 5.51, this directive governs. Effective immediately, the following process shall be followed by all staff regarding residents in a JR facility who were sentenced in an adult criminal court. If staff determine that such a resident should be transferred to DOC or if the resident self-requests a transfer to DOC, the following process shall be commenced and each step taken by JR staff while completing this process shall be noted in writing and included in the record:

1. An independent review board will be convened comprised of the Assistant Secretary or a designee who will act as chairperson, along with two other JR administrators and a representative from the Legal Office who will be appointed by the chairperson. The review board may be comprised of staff from other JR facilities but must be an impartial and independent body.
2. The review board must set a review hearing to consider and review the matter.
 - a. If an assault against staff has been reported to law enforcement, a review board hearing must be held within ten business days, where the board will determine whether the accused resident represents a continuing and serious threat to the safety of others in the institution.
 - i. Upon conviction for custodial assault, a second hearing will be held within five business days to recommend to the Secretary of DCYF if the resident should be transferred to DOC, based on whether the board has determined the resident represents a continuing and serious threat to the safety of others in the institution.
 - ii. A juvenile has the burden to show why transfer to adult facility should not occur.
 - b. For all other situations, a review board hearing must be convened no longer than five days after it is decided that a resident should be transferred to DOC.
3. A resident being considered for transfer to DOC must be notified in writing at least five days in advance of the review board hearing ([WAC 110-745-020](#)). This written notice must include:
 - a. Reasons transfer is being considered
 - b. The resident's right to counsel for the hearing
 - c. Copy of rules pertaining to the review board hearing

4. Prior to any review board hearing, the resident and/or their attorney has the right to access and examine any files and records pertaining to the proposed transfer of the resident to DOC.
5. Attendance at the review hearing should be limited to the parties directly concerned, including the resident's attorney if applicable. The chairperson may exclude unauthorized individuals, unless the parties agree to their presence. The parties will have the opportunity to present evidence, cross-examine witnesses, and make recommendations to the board.
6. At the end of the hearing, the review board will consider all evidence presented and decide whether continued placement of the resident in a JR facility presents a continuing and serious threat to the safety of others in the facility.
7. Within three days of the hearing, the chairperson of the review board will prepare a written record of the proceedings and a written decision including findings of fact and conclusions. A Record of Official Action will be entered into ACT, which shall also include all steps taken by JR staff during this process, and any other supporting documentation shall be uploaded via the document uploader in ACT. If a designee has acted as chairperson, a copy shall also be submitted to the Assistant Secretary for final review and written approval.
8. If maintaining the resident at a JR facility presents an imminent risk to the facility, staff and youth, and/or secure housing is unavailable to address the immediate safety and security risk, the DCYF Secretary may request a temporary immediate transfer with approval from the DOC Secretary. Steps 1-7 will be facilitated by DCYF in collaboration with the facility DOC is temporarily housing the resident in.
9. Finally, DOC must consent to the transfer of the resident.
10. Following a request from the DOC Secretary as the custodian, DCYF Secretary may accept transfer of a youth from DOC to a DCYF JR facility.

Questions can be directed to:

Jennifer Redman, Superintendent, Green Hill School: Jennifer.Redman@dcyf.wa.gov

Lori Nesmith, Acting Superintendent, Echo Glen Children's Center: Lori.Nesmith@dcyf.wa.gov

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EXHIBIT B



STATE OF WASHINGTON
DEPARTMENT OF CHILDREN YOUTH AND FAMILIES

Green Hill School
375 SW 11th Street
Chehalis, Washington 98532
Phone (360) 740-3400 Fax (360) 740-3406

Residential Review Board Hearing Notice

Date: (insert date)

To: (insert youth name)
(DOC #)

From: Jennifer Redman
Superintendent
Green Hill School

Date of Hearing: (insert date)

Location of Hearing: Green Hill School, Rainier Room, (Virtual Option is also available)

This notice is to inform you that a Residential Review Board Hearing has been scheduled to review your continued placement at Green Hill School (GHS) in accordance with the Juvenile Rehabilitation (JR) *Interim Process of Transferring a Youth to DOC* dated December 20, 2022.

This hearing will be facilitated by the JR Assistant Secretary or a designee that is not involved with your case.

You may request a lawyer to participate with you in this hearing. Legal resource contact information is Team Child at 1(360)322-2444. You will be provided access to meet with a lawyer by phone or in person prior to the hearing if requested. Please provide the lawyer Charles South's email at Charles.South@dcyf.wa.gov for questions regarding this process. If you wish to not have a lawyer present, please complete the attached form. If you choose to not have a lawyer present, you may have a GHS staff of your choice present for support; however, they are not lawyers and cannot legally represent you. This may be your case manager or another staff who works with you.

This Residential Review Board Hearing (insert reason to include very brief description of incident(s) presenting a safety and security issue(s), include IR#s, infraction information) or (indicate if it is self-requested).

A copy of supporting documentation considered during this hearing will be provided to you and all parties participating in the hearing in advance. Pursuant to confidentiality statutes, some

information may be protected if it compromises the security of the facility or another involved resident

The decision of the Residential Review Board Hearing will be documented in a Record of Official Action and a copy will be provided to you. Decisions will be made within five days of the hearing.

If you have any questions about this process, including the virtual hearing option, please ask your unit staff to contact Charles South immediately.

Cc: Felice Upton, JR Assistant Secretary
Charles South, GHS Administrative Program Manager
Associate Superintendent TBD
Living Unit Manager TBD
Michael Hixson, DOC Classification Counselor, GHS Liaison
Case File

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EXHIBIT C



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
REHABILITATION ADMINISTRATION
14TH & Jefferson ~ PO Box 45720 • Olympia WA • 98504-5720
(360) 902-8499 • (360) 902-8108 FAX

December 20, 2016

TO: JR Policy Holders

FROM:

A handwritten signature in blue ink that reads "John Clayton".

John Clayton, Assistant Secretary
Rehabilitation Administration

SUBJECT For Distribution: Policy 5.51, *Transferring Residential Youth to DOC*

The JR Policy Committee has completed the revision of Policy 5.51, *Transferring Residential Youth to DOC*. Policy 5.51 has been heavily revised to clarify populations who can be transferred to the Department of Corrections, identify the situations in which they can be transferred to DOC, and clearly describe the process for transferring youth, including decision making authority, in alignment with mandates in RCW and WAC. Please add this to your on-site policy manual.

The attached policy summary provides an overview of the policy. There are no changes to practice, only a revised presentation of the legal mandates.

This policy has a scheduled effective date of January 1, 2017. If you have questions regarding the policy, please contact JR's policy staff at jrapolicy@dshs.wa.gov.

JUVENILE REHABILITATION - PROGRAM POLICY

Policy 5.51 – Transferring Residential Youth to DOC

Summary

- Provides guidelines for transferring youth to DOC in the event of an incident

Background:

The policy was updated to clarify populations who can be transferred to the Department of Corrections, identify the situations in which they can be transferred to DOC, and clearly describe the process for transferring youth, including decision making authority, in alignment with mandates in RCW and WAC.

Policy Summary

The policy was reorganized and rewritten to clearly present the legal mandates for this type of transfer. RCW allows for transfer of dual sentence youth (youth who have both a JR commitment and an adult sentence) and youth who only have a JR commitment when there is a continuing and serious threat to safety or there has been an incident of staff assault or a conviction for custodial assault. The policy presents the criteria for transfers for both situations of youth with a JR commitment, and outlines the legally mandated process for transfer. It addresses requirements for Administrative Review Boards, including due process rights for the youth during the Board hearing and provisions from WAC regarding the hearing. New sections have been added that outline returns to JR, notifications of transfer, adjustment of release date, completion of JR parole obligations, and requirements for documentation and tracking of the process.

Changes from Current Practice

- There are no changes to current practice.

Training Required: No

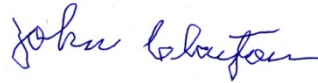
Policy Effective Date: January 1, 2017

*Staff are responsible for reading and understanding the information contained in the full policy.
Review of this summary is not sufficient for full understanding.*

POLICY 5.51 TRANSFERRING RESIDENTIAL YOUTH TO DOC

Policy Committee Chair

Don Mead, Ed. D.
Superintendent, Echo Glen
Juvenile Rehabilitation

Approved

John Clayton, Assistant Secretary
Juvenile Rehabilitation
12/20/2016

Authorizing Sources¹

RCW 9A.36.100
RCW 13.40.210 (4) (c)
RCW 13.40.280
RCW 13.40.285
WAC 110-740-0070 (1)
WAC 110-745

Information Contact

Andrea Ruiz
Policy, Planning & Lean Administrator
Juvenile Rehabilitation

Effective Date *(Technical Edit 5/21/2020)*
1/1/2017

Sunset Review Date
1/1/2021

I. PURPOSE AND SCOPE

This policy establishes expectation regarding the transfers of youth from Juvenile Rehabilitation (JR) to the Department of Corrections (DOC). The policy supplements the Interagency Agreement between DOC and JR.

All staff, contractors, volunteers, and interns working in or for Juvenile Rehabilitation (JR) are responsible for reviewing and complying with JR policies.

II. POLICY

SITUATIONS FOR TRANSFER TO DOC

- 1. Youth who have both a JR commitment and a DOC sentence (dual sentence) may be transferred to DOC to serve the balance of the term of confinement ordered by the juvenile court based on safety, security, resource or programmatic needs.**
 - 1.1. Youth with a dual sentence will be maintained in the least restrictive setting possible.
- 2. Youth who only have a JR commitment may be transferred to DOC in the following situations:**
 - 2.1. If the youth presents a continuing and serious threat to the safety of the others in a JR residential facility.
 - 2.2. If the youth commits staff assault or is adjudicated for custodial assault while in JR.

¹ 5/21/2020 Technical Edit: Removed inaccurate RCW.

Policy **5.51** Transferring Residential Youth to DOC 1/1/2017**TRANSFERRING DUAL SENTENCE YOUTH TO DOC**

- 3. If there is a safety, security, resource or programmatic need which cannot be met by JR, a dual sentence youth may be transferred to DOC.**
 - 3.1. Residential Review Committee hearings are held only if an incident occurs where a dual sentence youth presents a continuing and serious threat to the safety of others in the residential facility.
 - 3.2. Administrative Review Board hearings are not required for transfers of dual sentence youth.
- 4. Transfer requests for dual sentence youth will be made by the Assistant Secretary to the DCYF Secretary, who will communicate the request to the DOC Secretary.**
- 5. Transfers may only occur with the consent of the DOC Secretary.**

TRANSFERRING JR YOUTH – CONTINUING AND SERIOUS THREAT

- 6. JR youth who present a continuing and serious threat to the safety of others may be transferred to DOC through the following process.**
 - 6.1. The Superintendent will convene a Residential Review Committee to conduct an initial review of the youth's case.
 - 6.2. If the Committee determines a transfer is necessary, the Residential Review Committee will recommend the Superintendent transfer the youth to DOC.
 - 6.3. The Superintendent will review the recommendation of the committee and, if the committee's recommendation is supported, will recommend to the Director of Institution Programs the youth be transferred to DOC.
 - 6.4. The Director will review the recommendation, and if the Superintendent's recommendation is supported, will convene an Administrative Review Board to review the case.
 - 6.5. The Administrative Review Board will review the case in accordance with the process outlined below, and issue a written recommendation to the Assistant Secretary.
 - 6.6. If the recommendation of the Review Board is for transfer to DOC, the Assistant Secretary will make the transfer request to the DCYF Secretary, who will communicate the request to the DOC Secretary.

Policy **5.51** **Transferring Residential Youth to DOC 1/1/2017****TRANSFERRING JR YOUTH – STAFF ASSAULT/CUSTODIAL ASSAULT****7. JR youth who commit a staff assault referred to local law enforcement while in JR custody may be transferred to DOC through the following process:**

- 7.1. The Superintendent will convene a Residential Review Committee to conduct an initial review of the youth's case following the staff assault.
- 7.2. If the Committee determines a transfer is necessary, the Residential Review Committee will recommend the Superintendent transfer the youth to DOC.
- 7.3. The Superintendent will review the recommendation of the committee and, if the committee's recommendation is supported, will recommend to the Director of Institution Programs the youth be transferred to DOC.
- 7.4. The Director will review the recommendation, and if the Superintendent's recommendation is supported, will convene an Administrative Review Board to review the case.
 - 7.4.1. The Administrative Review Board must be convened within 10 judicial working days of the referral.
- 7.5. The Administrative Review Board will review the case in accordance with the process outlined below, and issue a written recommendation to the Assistant Secretary.
- 7.6. If the recommendation of the Review Board is for transfer to DOC, the Assistant Secretary will make the transfer request to the DCYF Secretary, who will communicate the request to the DOC Secretary.

8. If a youth receives an adjudication or conviction for custodial assault (per RCW 9A.36.100) while in JR custody, a second review by the Administrative Review Board is required, if the youth has not already been transferred to DOC.

- 8.1. The Superintendent will report to the Director of Institution Programs the youth has been adjudicated or convicted of custodial assault.
- 8.2. The Director will convene a second Administrative Review Board to review the case.
- 8.3. The second Administrative Review Board must be held within five judicial working days of receiving the disposition or sentencing order.
- 8.4. The Administrative Review Board will recommend transfer to DOC if it is determined the youth represents a continuing and serious threat to the safety of others in the facility.
- 8.5. The Administrative Review Board will review the case in accordance with the process outlined below, and issue a written recommendation to the Assistant Secretary.
- 8.6. If the recommendation of the Administrative Review Board is for transfer to DOC, the Assistant Secretary will make the transfer request to the DCYF Secretary, who will communicate the request to the DOC Secretary.

Policy **5.51** Transferring Residential Youth to DOC 1/1/2017**ADMINISTRATIVE REVIEW BOARDS**

- 9. Administrative Review Boards (ARB) will be convened by the Director when a transfer of a JR youth to DOC has been recommended.**
- 10. Youth must be given their due process rights during the transfer review process.**
 - 10.1. Youth must be notified at least five days in advance of any hearing. (WAC 110-745-020)
 - 10.1.1. The notification must include the reason the transfer is being considered and a copy of the rules related to the hearing.
 - 10.2. Youth must have access to legal representation during the hearing.
 - 10.2.1. Youth may only waive rights to legal representation upon the advice of an attorney.
 - 10.3. Youth and their attorney will be allowed access to any JR records relating to the proposed transfer, in accordance with Policy 1.40, *Maintaining JR Juvenile and Operations Records*. (WAC 110-745-020)
- 11. ARBs will be chaired by a JR Director, and will ensure participation of two additional administrators appointed by the Director. (WAC 110-745-030)**
- 12. Attendance at the ARB will be limited to parties directly concerned with the incident. (WAC 110-745-040)**
 - 12.1. The chair of the ARB may exclude additional persons unless the parties agree to their presence.
- 13. Parties have the right to present evidence, cross-examine witnesses, and make recommendations to the hearing panel. (WAC 110-745-040)**
- 14. All relevant material evidence is admissible, which, in the opinion of the chairperson, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. (WAC 110-745-040)**
- 15. The youth has the burden to show cause for why the transfer to DOC should not occur.**
- 16. The ARB must be recorded manually or by mechanical, electronic or other device capable of transcription. (WAC 110-745-060)**
- 17. The ARB, once all evidence is presented, will make a decision regarding whether the youth will be best served by remaining in JR or being transferred to DOC. (WAC 110-745-050)**
- 18. The chair of the ARB will prepare a written decision which includes the reasons for the decision. (WAC 110-745-060)**

DECISION TO RETURN TO JR

- 19. A youth who has been transferred to DOC under this policy may be returned to a JR facility at the discretion of the DCYF Secretary and with the consent of the DOC Secretary. (RCW 13.40.280)**

Policy **5.51** Transferring Residential Youth to DOC 1/1/2017**NOTIFICATION OF TRANSFER**

20. The Superintendent or designee will notify the parents or legal guardians, committing court, and JR regional office of assignment of the youth's transfer to DOC under this policy.

20.1. Notifications must be consistent with Policy 1.40, *Maintaining JR Juvenile and Operations Records*.

ADJUSTMENT OF RELEASE DATE

21. Youth with a JR commitment who are transferred to DOC through this process will have their release date adjusted to the maximum allowed by the juvenile court prior to the physical transfer to DOC.

21.1. The Superintendent may grant an exception if appropriate.

22. Youth transferred to DOC may earn time off their maximum release date, but may not go below the minimum release date.

23. Youth transferred to DOC under this policy must not remain at DOC beyond the maximum term of confinement imposed by the juvenile court. (RCW 13.40.280)

24. JR will notify DOC at least 60 days in advance of the youth's upcoming release date.

JR MANDATORY PAROLE OBLIGATIONS²

25. JR youth transferred to DOC with outstanding JR parole obligations who are under the age of 26 upon release from DOC must serve parole with JR. (Parole Standard 08: Discharging Youth From Parole Aftercare)³

25.1. Youth will not be discharged from JR until they complete their parole obligation or turn 26 years old.

DOCUMENTATION AND TRACKING

26. Residential Review Committee recommendations approved by the Superintendent, and Administrative Review Board decisions will be documented in a ROA in ACT.

27. The Superintendent must designate a staff who will track and monitor the transfer process at the time a Residential Review Committee is convened.

² 10/1/19 Technical Edit: Updated YOP age to 25 per legislative passage of E2SHB 1646.

³ 5/21/2020 Technical Edit: Added the term "mandatory" and reference to Parole Standard.

Policy **5.51** Transferring Residential Youth to DOC 1/1/2017

III. DEFINITIONS

Administrative Review Board: A formal board that conducts a hearing to determine if a recommendation should be made to the Rehabilitation Administration's Assistant Secretary to transfer a JR youth to DOC.

Department of Corrections (DOC) Liaison: JR Central Office staff designated to manage and provide direction and oversight of JR and DOC agreements and protocols.

Dual Sentence Commitment: A circumstance when a youth has both a JR and a DOC sentence.

Residential Review Committee: A committee appointed by a Superintendent or Regional Administrator to conduct an informal review of the incident. An administrator at the level of the Community Programs Administrator, Associate Superintendent or above will chair the Committee.

IV. REFERENCES⁴

Interagency Agreement between Department of Corrections and Department of Children, Youth & Families

Parole Standard 08: Discharging Youth From Parole Aftercare

Parole Discharge Matrix

V. RELATED JR POLICIES

Policy 1.40 - Maintaining JR Juvenile and Operations Records

Policy 5.80 - Reviewing and Reporting Staff Assaults by Youth

VI. FORMS AND DOCUMENTS

Document Title

Available In ACT

Link to Paper form

No Bail Administrative Hold and/or Request for Notification



DCYF Form 20-251

⁴ 5/21/2020 Technical Edit: Added Parole Standard and matrix resource links.

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EXHIBIT D

which shall state the amount of the principle of the prearrangement trust fund or funds, the depository of such fund or funds, and cash on hand which is or may be due to such fund as well as such other information the board may deem appropriate. All information appearing on such written reports shall be revised at least annually ~~((and shall be verified by the president, the secretary or auditor preparing the same, and a certified public accountant in accordance with generally accepted auditing standards))~~. These reports shall be verified by the president, or the vice president, and one other officer of the cemetery authority, the accountant or auditor who prepared the report, and, if required by the board for good cause, a certified public accountant in accordance with generally accepted auditing standards. Verification of these reports by a certified public accountant in accordance with generally accepted auditing standards shall be required on reports from cemetery authorities which manage prearrangement trust funds totaling in excess of five hundred thousand dollars.

Passed the House March 21, 1983.

Passed the Senate April 21, 1983.

Approved by the Governor May 16, 1983.

Filed in Office of Secretary of State May 16, 1983.

CHAPTER 191

[Engrossed Substitute House Bill No. 431]

JUVENILE OFFENDERS—CONSOLIDATED JUVENILE SERVICES— JUVENILE DISPOSITION STANDARDS

AN ACT Relating to juvenile justice; amending section 1, chapter 165, Laws of 1969 ex. sess. and RCW 13.06.010; amending section 2, chapter 165, Laws of 1969 ex. sess. as amended by section 13, chapter 141, Laws of 1979 and RCW 13.06.020; amending section 3, chapter 165, Laws of 1969 ex. sess. as amended by section 14, chapter 141, Laws of 1979 and RCW 13.06.030; amending section 4, chapter 165, Laws of 1969 ex. sess. as amended by section 15, chapter 141, Laws of 1979 and RCW 13.06.040; amending section 5, chapter 165, Laws of 1969 ex. sess. as last amended by section 9, chapter 151, Laws of 1979 and RCW 13.06.050; amending section 57, chapter 291, Laws of 1977 ex. sess. as last amended by section 5, chapter 299, Laws of 1981 and RCW 13.40.030; amending section 57 [56], chapter 291, Laws of 1977 ex. sess. as last amended by section 5 [2], chapter 299, Laws of 1981 and RCW 13.40.020; amending section 70, chapter 291, Laws of 1977 ex. sess. as last amended by section 13, chapter 299, Laws of 1981 and RCW 13.40.160; amending section 73, chapter 291, Laws of 1977 ex. sess. as amended by section 69, chapter 155, Laws of 1979 and RCW 13.40.190; amending section 75, chapter 291, Laws of 1977 ex. sess. as amended by section 71, chapter 155, Laws of 1979 and RCW 13.40.210; amending section 72.05.130, chapter 28, Laws of 1959 as last amended by section 8, chapter 217, Laws of 1979 ex. sess. and RCW 72.05.130; amending section 3, chapter 160, Laws of 1913 as last amended by section 6, chapter 155, Laws of 1979 and RCW 13.04.040; amending section 74, chapter 291, Laws of 1977 ex. sess. as amended by section 70, chapter 155, Laws of 1979 and RCW 13.40.200; amending section 62, chapter 291, Laws of 1977 ex. sess. as last amended by section 8, chapter 299, Laws of 1981 and RCW 13.40.080; amending section 1, chapter 170, Laws of 1975 1st ex. sess. as last amended by section 17, chapter 299, Laws of 1981 and RCW 13.40.300; amending section 61, chapter 291, Laws of 1977 ex. sess. as last amended by section 7, chapter 299, Laws of 1981 and RCW 13.40.070; amending section 9, chapter 155, Laws of 1979 as

amended by section 19, chapter 299, Laws of 1981 and RCW 13.50.050; amending section 10, chapter 155, Laws of 1979 and RCW 13.50.100; adding new sections to chapter 13.40 RCW; repealing section 6, chapter 165, Laws of 1969 ex. sess., section 16, chapter 141, Laws of 1979, section 1, chapter 60, Laws of 1981 and RCW 13.06.060; repealing section 7, chapter 214, Laws of 1959, section 203, chapter 141, Laws of 1979, section 94, chapter 136, Laws of 1981 and RCW 72.13.070; prescribing penalties; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 165, Laws of 1969 ex. sess. and RCW 13.06-.010 are each amended to read as follows:

It is the intention of the legislature in enacting this chapter to increase the protection afforded the citizens of this state, to ~~((permit a more even administration of justice in the juvenile courts, to rehabilitate juvenile offenders, and to reduce the necessity for commitment of juveniles to state juvenile correctional institutions by strengthening and improving the supervision of juveniles placed on probation by the juvenile courts of this state))~~ require community planning, to provide necessary services and supervision for juvenile offenders in the community when appropriate, to reduce reliance on state-operated correctional institutions for offenders whose standard range disposition does not include commitment of the offender to the department, and to encourage the community to efficiently and effectively provide community services to juvenile offenders through consolidation of service delivery systems.

Sec. 2. Section 2, chapter 165, Laws of 1969 ex. sess. as amended by section 13, chapter 141, Laws of 1979 and RCW 13.06.020 are each amended to read as follows:

From any state moneys made available for such purpose, the state of Washington, through the department of social and health services, shall, in accordance with this chapter and applicable departmental rules, share in the cost of ~~((supervising probationers who could otherwise be committed by the juvenile courts to the custody of the secretary of social and health services, and who are granted probation and placed in "special supervision programs"))~~ providing services to juveniles.

Sec. 3. Section 3, chapter 165, Laws of 1969 ex. sess. as amended by section 14, chapter 141, Laws of 1979 and RCW 13.06.030 are each amended to read as follows:

The department of social and health services shall adopt rules prescribing minimum standards for the operation of ~~(("special supervision programs"))~~ consolidated juvenile services programs for juvenile offenders and such other rules as may be necessary for the administration of the provisions of this chapter. ((A "special supervision program" is one embodying a degree of supervision substantially above the usual or the use of new techniques in addition to, or instead of, routine supervision techniques, and which meets the standards prescribed pursuant to this section. Such)) Consolidated juvenile services is a mechanism through which the department of

social and health services supports local county comprehensive program plans in providing services to offender groups. Standards shall be sufficiently flexible to ((foster the development of new and improved supervision practices)) support current programs which have demonstrated effectiveness and efficiency, to foster development of innovative and improved services for juvenile offenders, to permit direct contracting with private vendors, and to encourage community support for and assistance to local programs. The secretary of social and health services shall seek advice from appropriate ((county officials)) juvenile justice system participants in developing standards and procedures for the operation of ((^aspecial supervision programs^a)) consolidated juvenile services programs and the distribution of funds under this chapter.

Sec. 4. Section 4, chapter 165, Laws of 1969 ex. sess. as amended by section 15, chapter 141, Laws of 1979 and RCW 13.06.040 are each amended to read as follows:

Any county or group of counties may make application to the department of social and health services in the manner and form prescribed by the department for financial aid for the cost of ((^aspecial supervision programs^a)) consolidated juvenile services programs. Any such application must include a plan or plans for providing ((special supervision of juveniles on probation and a method for certifying that moneys received are spent only for these ^aspecial supervision programs^a)) consolidated services to juvenile offenders in accordance with standards of the department.

Sec. 5. Section 5, chapter 165, Laws of 1969 ex. sess. as last amended by section 9, chapter 151, Laws of 1979 and RCW 13.06.050 are each amended to read as follows:

No county shall be entitled to receive any state funds provided by this chapter until its application ((is)) and plan are approved, and unless and until the minimum standards prescribed by the department of social and health services are complied with and then only on such terms as are set forth ((hereafter)) in this section.

(1) ((A base commitment rate for each county and for the state as a whole shall be calculated by the department of social and health services. The base commitment rate shall be determined by computing the ratio of the number of juveniles committed to state juvenile correctional institutions plus the number of juveniles who have been convicted of felonies and committed to state correctional institutions after a juvenile court has declined jurisdiction of their cases and remanded them for prosecution in the superior courts, to the county population, such ratio to be expressed in a rate per hundred thousand population, for each of the calendar years 1964 through 1968. The average of these rates for a county for the five year period or the average of the last two years of the period, whichever is higher, shall be the base commitment rate, as certified by the secretary. PROVIDED, That, a

county may elect as its base commitment rate the average of the base commitment rates of all counties in the state over the last two years of the period described above. The county and state population shall be that certified as of April 1st of each year by the office of financial management, such population figures to be provided to the secretary of social and health services not later than June 30th of each year.

(2) An annual commitment rate shall be calculated by the department at the end of each year for each participating county and for the state as a whole, in a like manner as provided in subsection (1). The annual commitment rate shall exclude commitments that fall within the high risk categories as defined by the department.

(3) The amount that may be paid to a county pursuant to this chapter shall be the standard cost of the operation of a special supervision program based upon workload standards established by the department. Payment shall not exceed five thousand dollars per commitment reduction. The "commitment reduction number" is obtained by subtracting (a) the product of the most recent annual commitment rate and population of the county for the same year from (b) the product of the base commitment rate and population of the county for the same year employed in (a).

(4)) The distribution of funds to a county or a group of counties shall be based on criteria including but not limited to the county's per capita income, regional or county at-risk populations, juvenile crime or arrest rates, existing programs, and the effectiveness and efficiency of consolidating local programs towards reducing commitments to state correctional facilities for offenders whose standard range disposition does not include commitment of the offender to the department and reducing reliance on other traditional departmental services.

(2) The secretary will reimburse a county upon presentation and approval of a valid claim pursuant to the provisions of this chapter based on actual performance in ((reducing the annual commitment rate from its base commitment rate. Whenever a claim made by a county pursuant to this chapter, covering a prior year, is found to be in error, an adjustment may be made on a current claim without the necessity of applying the adjustment to the allocation for the prior year.

(5) In the event a participating county earns in a payment period less than one-half of the sum paid in the previous payment period because of extremely unusual circumstances claimed by the county and verified by the secretary of the department of social and health services, the secretary may pay to the county a sum not to exceed actual program expenditures, provided, however, that in subsequent periods the county will be paid only the amount earned: PROVIDED, That the amendatory provisions of subsection (5) of this act may be applied to payment periods prior to May 20, 1971.

(6) If the amount received by a county in reimbursement of its expenditures in a calendar year is less than the maximum amount computed under

~~subsection (3) above, the difference may be paid to the county as reimbursement of program costs during the next two succeeding years upon receipt of valid claims for reimbursement of program expenses.~~

~~(7)) meeting the terms and conditions of the approved plan and contract. Funds received by participating counties under this chapter shall not be used to replace local funds for existing programs ((for delinquent juveniles or to develop county institutional programs.~~

~~(8) Any county averaging less than thirty commitments annually during either the two year or five year period used to determine the base commitment rate as defined in subsection (1) above may:~~

~~(a) apply for subsidies under subsection (1); or~~

~~(b) as an alternative, elect to receive from the state the salary of one full time additional probation officer and related employee benefits; or~~

~~(c) elect to receive from the state the salary and related employee benefits of one full time additional probation officer and in addition, reimbursement for certain supporting services other than capital outlay and equipment whose total will not exceed a maximum limit established by the secretary of the department of social and health services; or~~

~~(d) elect to receive from the state reimbursement for certain supporting services other than capital outlay and equipment whose total cost will not exceed a maximum limit established by the secretary of the department of social and health services.~~

~~(9) In the event a county chooses one of the alternative proposals in subsection (8); it will be eligible for reimbursement only so long as the officer and supporting services are wholly used in the performance of probation services to supervision of persons eligible for state commitment and are paid the salary referred to in this section in accordance with a salary schedule adopted by rule of the department and:~~

~~(a) if its base commitment rate is below the state average, its annual commitment rate does not exceed the base commitment rate for the entire state; or~~

~~(b) if its base commitment rate is above the state average, its annual commitment rate does not in the year exceed by two its own base commitment rate.~~

~~(10) Where any county does not have a juvenile probation officer, but obtains such services by agreement with another county or counties, or, where two or more counties mutually provide probation services by agreement for such counties, then under such circumstances the secretary may make the computations and payments under this chapter as though the counties served with probation services were one geographical unit)).~~

Sec. 6. Section 57, chapter 291, Laws of 1977 ex. sess. as last amended by section 5, chapter 299, Laws of 1981 and RCW 13.40.030 are each amended to read as follows:

(1) (a) The juvenile disposition standards commission shall propose to the legislature no later than November 1st of each even-numbered year disposition standards for all offenses. The standards shall establish, in accordance with the purposes of this chapter, ranges which may include terms of confinement and/or community supervision established on the basis of a youth's age, the instant offense, and the history and seriousness of previous offenses, but in no case may the period of confinement and supervision exceed that to which an adult may be subjected for the same offense(s). Standards proposed for offenders listed in RCW 13.40.020(1) shall include a range of confinement which may not be less than thirty days. No standard range may include a period of confinement which includes both more than thirty, and thirty or less, days. Disposition standards proposed by the commission shall provide that in all cases where a youth is sentenced to a term of confinement in excess of thirty days the department may impose an additional period of parole not to exceed eighteen months. Standards of confinement which may be proposed may relate only to the length of the proposed terms and not to the nature of the security to be imposed. In developing proposed disposition standards between the effective date of this act and June 30, 1985, the commission shall consider the capacity of the state juvenile facilities and the projected impact of the proposed standards on that capacity through June 30, 1985.

(b) The secretary shall submit guidelines pertaining to the nature of the security to be imposed on youth placed in his or her custody based on the age, offense(s), and criminal history of the juvenile offender. Such guidelines shall be submitted to the legislature for its review no later than November 1st of each even-numbered year. At the same time the secretary shall submit a report on security at juvenile facilities during the preceding two-year period. The report shall include the number of escapes from each juvenile facility, the most serious offense for which each escapee had been confined, the number and nature of offenses found to have been committed by juveniles while on escape status, the number of authorized leaves granted, the number of failures to comply with leave requirements, the number and nature of offenses committed while on leave, and the number and nature of offenses committed by juveniles while in the community on minimum security status; to the extent this information is available to the secretary. The department shall include security status definitions in the security guidelines it submits to the legislature pursuant to this section.

(2) If the commission fails to propose disposition standards as provided in this section, the existing standards shall remain in effect and may be adopted by the legislature or referred to the commission for modification as provided in subsection (3) of this section. If the standards are referred for modification, the provisions of subsection (4) shall be applicable.

(3) The legislature may adopt the proposed standards or refer the proposed standards to the commission for modification. If the legislature fails

to adopt or refer the proposed standards to the commission by February 15th of the following year, the proposed standards shall take effect without legislative approval on July 1st of that year.

(4) If the legislature refers the proposed standards to the commission for modification on or before February 15th, the commission shall resubmit the proposed modifications to the legislature no later than March 1st. The legislature may adopt or modify the resubmitted proposed standards. If the legislature fails to adopt or modify the resubmitted proposed standards by April 1st, the resubmitted proposed standards shall take effect without legislative approval on July 1st of that year.

(5) In developing and promulgating the permissible ranges of confinement under this section the commission shall be subject to the following limitations:

(a) Where the maximum term in the range is ninety days or less, the minimum term in the range may be no less than fifty percent of the maximum term in the range;

(b) Where the maximum term in the range is greater than ninety days but not greater than one year, the minimum term in the range may be no less than seventy-five percent of the maximum term in the range; and

(c) Where the maximum term in the range is more than one year, the minimum term in the range may be no less than eighty percent of the maximum term in the range.

Sec. 7. Section 57 [56], chapter 291, Laws of 1977 ex. sess. as last amended by section 5 [2], chapter 299, Laws of 1981 and RCW 13.40.020 are each amended to read as follows:

For the purposes of this chapter:

(1) "Serious offender" means a person fifteen years of age or older who has committed an offense which if committed by an adult would be:

(a) A class A felony, or an attempt to commit a class A felony;

(b) Manslaughter in the first degree or rape in the second degree; or

(c) Assault in the second degree, extortion in the first degree, indecent liberties, kidnaping in the second degree, robbery in the second degree, burglary in the second degree, or statutory rape in the second degree, where such offenses include the infliction of bodily harm upon another or where during the commission of or immediate withdrawal from such an offense the perpetrator is armed with a deadly weapon or firearm as defined in RCW 9A.04.110;

(2) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender as punishment for committing an offense;

(3) "Community supervision" means an order of disposition by the court of an adjudicated youth. A community supervision order for a single offense may be for a period of up to one year and include one or more of the following:

- (a) A fine, not to exceed one hundred dollars;
- (b) Community service not to exceed one hundred fifty hours of service;
- (c) Attendance of information classes;
- (d) Counseling; or
- (e) Such other services to the extent funds are available for such services, conditions, or limitations as the court may require which may not include confinement;

(4) "Confinement" means physical custody by the department of social and health services in a facility operated by or pursuant to a contract with the state, or physical custody in a facility operated by or pursuant to a contract with any county. Confinement of less than thirty-one days imposed as part of a disposition or modification order may be served consecutively or intermittently, in the discretion of the court;

(5) "Court", when used without further qualification, means the juvenile court judge(s) or commissioner(s);

(6) "Criminal history" includes all criminal complaints against the respondent for which, prior to the commission of a current offense:

(a) The allegations were found correct by a court. If a respondent is convicted of two or more charges arising out of the same course of conduct, only the highest charge from among these shall count as an offense for the purposes of this chapter; or

(b) The criminal complaint was diverted by a prosecutor pursuant to the provisions of this chapter on agreement of the respondent and after an advisement to the respondent that the criminal complaint would be considered as part of the respondent's criminal history;

(7) "Department" means the department of social and health services;

(8) "Diversion unit" means any probation counselor who enters into a diversion agreement with an alleged youthful offender or any other person or entity with whom the juvenile court administrator has contracted to arrange and supervise such agreements pursuant to RCW 13.04.040, as now or hereafter amended, or any person or entity specially funded by the legislature to arrange and supervise diversion agreements in accordance with the requirements of this chapter;

(9) "Institution" means a juvenile facility established pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

(10) "Juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years and who has not been previously transferred to adult court;

(11) "Juvenile offender" means any juvenile who has been found by the juvenile court to have committed an offense, including a person eighteen years of age or older over whom jurisdiction has been extended under RCW 13.40.300;

(12) "Manifest injustice" means a disposition that would either impose an excessive penalty on the juvenile or ((a)) would impose a serious, and clear danger to society in light of the purposes of this chapter;

(13) "Middle offender" means a person who has committed an offense and who is neither a minor or first offender nor a serious offender;

(14) "Minor or first offender" means a person sixteen years of age or younger whose current offense(s) and criminal history fall entirely within one of the following categories:

(a) Four misdemeanors;

(b) Two misdemeanors and one gross misdemeanor;

(c) One misdemeanor and two gross misdemeanors;

(d) Three gross misdemeanors;

(e) One class C felony and one misdemeanor or gross misdemeanor;

(f) One class B felony except: Any felony which constitutes an attempt to commit a class A felony; manslaughter in the first degree; rape in the second degree; assault in the second degree; extortion in the first degree; indecent liberties; kidnaping in the second degree; robbery in the second degree; burglary in the second degree; ~~((or))~~ statutory rape in the second degree; vehicular homicide; or arson in the second degree.

For purposes of this definition, current violations shall be counted as misdemeanors;

(15) "Offense" means an act designated a violation or a crime if committed by an adult under the law of this state, under any ordinance of any city or county of this state, under any federal law, or under the law of another state if the act occurred in that state;

(16) "Respondent" means a juvenile who is alleged or proven to have committed an offense;

(17) "Restitution" means financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical treatment for physical injury to persons, and lost wages resulting from physical injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses. Nothing in this chapter shall limit or replace civil remedies or defenses available to the victim or offender;

(18) "Secretary" means the secretary of the department of social and health services;

(19) "Services" mean services which provide alternatives to incarceration for those juveniles who have pleaded or been adjudicated guilty of an offense or have signed a diversion agreement pursuant to this chapter;

(20) "Foster care" means temporary physical care in a foster family home or group care facility as defined in RCW 74.15.020 and licensed by the department, or other legally authorized care;

(21) "Violation" means an act or omission, which if committed by an adult, must be proven beyond a reasonable doubt, and is punishable by sanctions which do not include incarceration.

Sec. 8. Section 70, chapter 291, Laws of 1977 ex. sess. as last amended by section 13, chapter 299, Laws of 1981 and RCW 13.40.160 are each amended to read as follows:

(1) When the respondent is found to be a serious offender, the court shall commit the offender to the department for the standard range of disposition for the offense.

If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(5), as now or hereafter amended, shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230, as now or hereafter amended, by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230 as now or hereafter amended.

(2) Where the respondent is found to be a minor or first offender, the court shall order that the respondent serve a term of community supervision. If the court determines that a disposition of community supervision would effectuate a manifest injustice the court may impose another disposition. A disposition other than a community supervision may be imposed only after the court enters reasons upon which it bases its conclusions that imposition of community supervision would effectuate a manifest injustice. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(5), as now or hereafter amended, shall be used to determine the range. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

Any disposition other than community supervision may be appealed as provided in RCW 13.40.230, as now or hereafter amended, by the state or the respondent. A disposition of community supervision may not be appealed under RCW 13.40.230 as now or hereafter amended.

(3) Where a respondent is found to have committed an offense for which the respondent declined to enter into a diversion agreement, the court shall impose a term of community supervision limited to the conditions allowed in

a diversion agreement as provided in RCW 13.40.080(2) as now or hereafter amended.

(4) If a respondent is found to be a middle offender:

(a) The court shall impose a determinate disposition within the standard range(s) for such offense: **PROVIDED**, That if the standard range includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement; or

(b) The court shall impose a determinate disposition of community supervision and/or up to thirty days confinement in which case, if confinement has been imposed, the court shall state either aggravating or mitigating factors as set forth in RCW 13.40.150 as now or hereafter amended.

(c) Only if the court concludes, and enters reasons for its conclusions, that disposition as provided in subsection (4) (a) or (b) of this section would effectuate a manifest injustice, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(5), as now or hereafter amended, shall be used to determine the range. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

(d) A disposition pursuant to subsection (4)(c) of this section is appealable under RCW 13.40.230, as now or hereafter amended, by the state or the respondent. A disposition pursuant to subsection (4) (a) or (b) of this section is not appealable under RCW 13.40.230 as now or hereafter amended.

(5) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(6) In its dispositional order, the court shall not suspend or defer the imposition or the execution of the disposition.

(7) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

Sec. 9. Section 73, chapter 291, Laws of 1977 ex. sess. as amended by section 69, chapter 155, Laws of 1979 and RCW 13.40.190 are each amended to read as follows:

(1) In its dispositional order, the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent. In addition, restitution may be ordered for loss or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which, pursuant to a plea agreement, are not prosecuted. The payment of restitution shall be in addition to any punishment which is imposed pursuant to the other provisions of this chapter. The court may determine the

amount, terms, and conditions of the restitution. If the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution. The court may not require the respondent to pay full or partial restitution if the respondent reasonably satisfies the court that he or she does not have the means to make full or partial restitution and could not reasonably acquire the means to pay such restitution. In cases where an offender has been committed to the department for a period of confinement exceeding fifteen weeks, restitution may be waived.

(2) A respondent under obligation to pay restitution may petition the court for modification of the restitution order.

NEW SECTION. Sec. 10. There is added to chapter 13.40 RCW a new section to read as follows:

(1) A juvenile sentenced to a term of confinement to be served under the supervision of the department shall not be released from the physical custody of the department prior to the release date established under RCW 13.40.210 except as otherwise provided in this section.

(2) A juvenile serving a term of confinement under the supervision of the department may be released on authorized leave from the physical custody of the department only if consistent with public safety and if:

(a) Sixty percent of the minimum term of confinement has been served; and

(b) The purpose of the leave is to enable the juvenile:

(i) To visit the juvenile's family for the purpose of strengthening or preserving family relationships;

(ii) To make plans for parole or release which require the juvenile's personal appearance in the community and which will facilitate the juvenile's reintegration into the community; or

(iii) To make plans for a residential placement out of the juvenile's home which requires the juvenile's personal appearance in the community.

(3) No authorized leave may exceed seven consecutive days. The total of all pre-minimum term authorized leaves granted to a juvenile prior to final discharge from confinement shall not exceed thirty days.

(4) Prior to authorizing a leave, the secretary shall require a written leave plan, which shall detail the purpose of the leave and how it is to be achieved, the address at which the juvenile shall reside, the identity of the person responsible for supervising the juvenile during the leave, and a statement by such person acknowledging familiarity with the leave plan and agreeing to supervise the juvenile and to notify the secretary immediately if the juvenile violates any terms or conditions of the leave. The leave plan shall include such terms and conditions as the secretary deems appropriate and shall be signed by the juvenile.

(5) Upon authorizing a leave, the secretary shall issue to the juvenile an authorized leave order which shall contain the name of the juvenile, the fact

that the juvenile is on leave from a designated facility, the time period of the leave, and the identity of an appropriate official of the department to contact when necessary. The authorized leave order shall be carried by the juvenile at all times while on leave.

(6) Prior to the commencement of any authorized leave, the secretary shall give notice of the leave to the appropriate law enforcement agency in the jurisdiction in which the juvenile will reside during the leave period. The notice shall include the identity of the juvenile, the time period of the leave, the residence of the juvenile during the leave, and the identity of the person responsible for supervising the juvenile during the leave.

(7) The secretary may authorize a leave, which shall not exceed forty-eight hours plus travel time, to meet an emergency situation such as a death or critical illness of a member of the juvenile's family. The secretary may authorize a leave, which shall not exceed the period of time medically necessary, to obtain medical care not available in a juvenile facility maintained by the department. In cases of emergency or medical leave the secretary may waive all or any portions of subsections (2)(a), (3), (4), (5), and (6) of this section.

(8) If requested by the juvenile's victim or the victim's immediate family prior to confinement, the secretary shall give notice of any leave to the victim or the victim's immediate family.

(9) A juvenile who violates any condition of an authorized leave plan may be taken into custody and returned to the department in the same manner as an adult in identical circumstances.

(10) Notwithstanding the provisions of this section, a juvenile placed in minimum security status may participate in work, educational, community service, or treatment programs in the community up to twelve hours a day if approved by the secretary. Such a release shall not be deemed a leave of absence.

Sec. 11. Section 75, chapter 291, Laws of 1977 ex. sess. as amended by section 71, chapter 155, Laws of 1979 and RCW 13.40.210 are each amended to read as follows:

(1) The secretary shall, except in the case of a juvenile committed by a court to a term of confinement in a state institution outside the appropriate standard range for the offense(s) for which the juvenile was found to be guilty established pursuant to RCW 13.40.030, as now or hereafter amended, set a release or discharge date for each juvenile committed to its custody which shall be within the prescribed range to which a juvenile has been committed. Such dates shall be determined prior to the expiration of sixty percent of a juvenile's minimum term of confinement included within the prescribed range to which the juvenile has been committed. The secretary shall release any juvenile committed to the custody of the department within four calendar days prior to the juvenile's release date or on the release date set under this chapter: PROVIDED, That days spent in the custody of

the department shall be tolled by any period of time during which a juvenile has absented himself or herself from the department's supervision without the prior approval of the secretary or the secretary's designee.

(2) The secretary shall monitor the average daily population of the state's juvenile residential facilities. When the secretary concludes that in-residence population of residential facilities exceeds one hundred five percent of the rated bed capacity specified in statute, or in absence of such specification, as specified by the department in rule, the secretary may, until June 30, 1985, recommend reductions to the governor. On certification by the governor that the recommended reductions are necessary, the secretary may have temporary authority until June 30, 1985, to administratively release a sufficient number of offenders to reduce in-residence population to one hundred percent of rated bed capacity. The secretary shall release those offenders who have served the greatest proportion of their sentence. However, the secretary may deny release in a particular case at the request of an offender, or if the secretary finds that there is no responsible custodian, as determined by the department, to whom to release the offender, or if the release of the offender would pose a clear danger to society. The department shall notify the committing court of the release. In no event shall a serious offender, as defined in RCW 13.40.020(1) be granted release under the provisions of this subsection.

(3) Following the juvenile's release pursuant to subsection (1) of this section, the secretary may require the juvenile to comply with a program of parole to be administered by the department in his or her community which shall last no longer than eighteen months. Such a parole program shall be mandatory for offenders released under subsection (2) of this section. The secretary shall, for the period of parole, facilitate the juvenile's reintegration into his or her community and to further this goal may require the juvenile to: (a) Undergo available medical or psychiatric treatment; (b) report as directed to a parole officer; (c) pursue a course of study or vocational training; (d) remain within prescribed geographical boundaries and notify the department of any change in his or her address; and (e) refrain from committing new offenses. After termination of the parole period, the juvenile shall be discharged from the department's supervision.

((3)) (4) The department may also modify parole for violation thereof. If, after affording a juvenile all of the due process rights to which he or she would be entitled if the juvenile were an adult, the secretary finds that a juvenile has violated a condition of his or her parole, the secretary shall order one of the following which is reasonably likely to effectuate the purpose of the parole and to protect the public: (a) Continued supervision under the same conditions previously imposed; (b) intensified supervision with increased reporting requirements; (c) additional conditions of supervision authorized by this chapter; and (d) imposition of a period of confinement not to exceed thirty days in a facility operated by or pursuant to a contract

with the state of Washington or any city or county for a portion of each day or for a certain number of days each week with the balance of the days or weeks spent under supervision.

~~((4))~~ (5) A parole officer of the department of social and health services shall have the power to arrest a juvenile under his or her supervision on the same grounds as a law enforcement officer would be authorized to arrest such person.

Sec. 12. Section 72.05.130, chapter 28, Laws of 1959 as last amended by section 8, chapter 217, Laws of 1979 ex. sess. and RCW 72.05.130 are each amended to read as follows:

The department shall establish, maintain, operate and administer a comprehensive program for the custody, care, education, treatment, instruction, guidance, control and rehabilitation of all persons who may be committed or admitted to institutions, schools, or other facilities controlled and operated by the department, except for the programs of education provided pursuant to RCW 28A.58.772 through 28A.58.776, as now or hereafter amended, which shall be established, operated and administered by the school district conducting the program, and in order to accomplish these purposes, the powers and duties of the secretary shall include the following:

(1) The assembling, analyzing, tabulating, and reproduction in report form, of statistics and other data with respect to children with behavior problems in the state of Washington, including, but not limited to, the extent, kind, and causes of such behavior problems in the different areas and population centers of the state. Such reports shall not be open to public inspection, but shall be open to the inspection of the governor and to the superior court judges of the state of Washington.

(2) The establishment and supervision of diagnostic facilities and services in connection with the custody, care, and treatment of mentally and physically handicapped, and behavior problem children who may be committed or admitted to any of the institutions, schools, or facilities controlled and operated by the department, or who may be referred for such diagnosis and treatment by any superior court of this state. Such diagnostic services may be established in connection with, or apart from, any other state institution under the supervision and direction of the secretary. Such diagnostic services shall be available to the superior courts of the state for persons referred for such services by them prior to commitment, or admission to, any school, institution, or other facility. Such diagnostic services shall also be available to other departments of the state. When the secretary determines it necessary, the secretary may create waiting lists and set priorities for use of diagnostic services for juvenile offenders on the basis of those most severely in need.

(3) The supervision of all persons committed or admitted to any institution, school, or other facility operated by the department, and the transfer of such persons from any such institution, school, or facility to any other

such school, institution, or facility: **PROVIDED**, That where a person has been committed to a minimum security institution, school, or facility by any of the superior courts of this state, a transfer to a close security institution shall be made only with the consent and approval of such court. This shall not apply to the state school for the deaf or the state school for the blind.

(4) The supervision of parole, discharge, or other release, and the post-institutional placement of all persons committed to Green Hill school and Maple Lane school, or such as may be assigned, paroled, or transferred therefrom to other facilities operated by the department. Green Hill school and Maple Lane school are hereby designated as "close security" institutions to which shall be given the custody of children with the most serious behavior problems.

NEW SECTION. Sec. 13. Section 6, chapter 165, Laws of 1969 ex. sess., section 16, chapter 141, Laws of 1979, section 1, chapter 60, Laws of 1981 and RCW 13.06.060 are each repealed.

Sec. 14. Section 3, chapter 160, Laws of 1913 as last amended by section 6, chapter 155, Laws of 1979 and RCW 13.04.040 are each amended to read as follows:

The administrator shall, in any county or judicial district in the state, appoint or designate one or more persons of good character to serve as probation counselors during the pleasure of the administrator. The probation counselor shall:

(1) Receive and examine referrals to the juvenile court for the purpose of considering the filing of a petition or information pursuant to RCW 13.34.040, 13.34.180, and 13.40.070 as now or hereafter amended, and RCW 13.32A.150;

(2) Make recommendations to the court regarding the need for continued detention or shelter care of a child unless otherwise provided in this title;

(3) Arrange and supervise diversion agreements as provided in RCW 13.40.080, as now or hereafter amended, and ensure that the requirements of such agreements are met except as otherwise provided in this title;

(4) Prepare predisposition studies as required in RCW 13.34.120 and 13.40.130, as now or hereafter amended, and be present at the disposition hearing to respond to questions regarding the predisposition study: **PROVIDED**, That such duties shall be performed by the department of social and health services for cases relating to dependency or to the termination of a parent and child relationship which is filed by the department of social and health services unless otherwise ordered by the court; and

(5) Supervise court orders of disposition to ensure that all requirements of the order are met.

All probation counselors shall possess all the powers conferred upon sheriffs and police officers to serve process and make arrests of juveniles

under their supervision for the violation of any state law or county or city ordinance.

The administrator may, in any county or judicial district in the state, appoint one or more persons who shall have charge of detention rooms or houses of detention.

The probation counselors and persons appointed to have charge of detention facilities shall each receive compensation which shall be fixed by the legislative authority of the county, or in cases of joint counties, judicial districts of more than one county, or joint judicial districts such sums as shall be agreed upon by the legislative authorities of the counties affected, and such persons shall be paid as other county officers are paid.

The administrator is hereby authorized, and to the extent possible is encouraged to, contract with private agencies existing within the community for the provision of services to youthful offenders and youth who have entered into diversion agreements pursuant to RCW 13.40.080, as now or hereafter amended.

The administrator shall establish procedures for the collection of fines assessed under RCW 13.40.080 (2)(d) and (13) and for the payment of the fines into the county general fund.

Sec. 15. Section 74, chapter 291, Laws of 1977 ex. sess. as amended by section 70, chapter 155, Laws of 1979 and RCW 13.40.200 are each amended to read as follows:

(1) When a respondent fails to comply with an order of restitution, community supervision, penalty assessments, or confinement of less than thirty days, the court upon motion of the prosecutor or its own motion, may modify the order after a hearing on the violation.

(2) The hearing shall afford the respondent the same due process of law as would be afforded an adult probationer. The court may issue a summons or a warrant to compel the respondent's appearance. The state shall have the burden of proving by a preponderance of the evidence the fact of the violation. The respondent shall have the burden of showing that the violation was not a ~~((willful))~~ wilful refusal to comply with the terms of the order. If a respondent has failed to pay a fine, penalty assessments, or restitution or to perform community service hours, as required by the court, it shall be the respondent's burden to show that he or she did not have the means and could not reasonably have acquired the means to pay the fine, penalty assessments, or restitution or perform community service.

(3) (a) If the court finds that a respondent has wilfully violated the terms of an order pursuant to subsections (1) and (2) of this section, it may impose a penalty of up to thirty days confinement.

(b) If the violation of the terms of the order under (a) of this subsection is failure to pay fines, penalty assessments, complete community service, or

make restitution, the term of confinement imposed under (a) of this subsection shall be assessed at a rate of one day of confinement for each twenty-five dollars or eight hours owed.

(4) If a respondent has been ordered to pay a fine or monetary penalty and due to a change of circumstance cannot reasonably comply with the order, the court, upon motion of the respondent, may order that the unpaid fine or monetary penalty be converted to community service. The number of hours of community service in lieu of a monetary penalty or fine shall be converted at the rate of the prevailing state minimum wage per hour. The monetary penalties or fines collected shall be deposited in the county general fund. A failure to comply with an order under this subsection shall be deemed a failure to comply with an order of community supervision and may be proceeded against as provided in this section.

Sec. 16. Section 62, chapter 291, Laws of 1977 ex. sess. as last amended by section 8, chapter 299, Laws of 1981 and RCW 13.40.080 are each amended to read as follows:

(1) A diversion agreement shall be a contract between a juvenile accused of an offense and a diversionary unit whereby the juvenile agrees to fulfill certain conditions in lieu of prosecution. Such agreements may be entered into only after the prosecutor, or probation counselor pursuant to this chapter, has determined that probable cause exists to believe that a crime has been committed and that the juvenile committed it.

(2) A diversion agreement shall be limited to:

(a) Community service not to exceed one hundred fifty hours, not to be performed during school hours if the juvenile is attending school;

(b) Restitution limited to the amount of actual loss incurred by the victim, and to an amount the juvenile has the means or potential means to pay; ~~((and))~~

(c) Attendance at up to two hours of counseling and/or up to ten hours of educational or informational sessions at a community agency: PROVIDED, That the state shall not be liable for costs resulting from the diversionary unit exercising the option to permit diversion agreements to mandate attendance at up to two hours of counseling and/or up to ten hours of educational or informational sessions; and

(d) A fine, not to exceed one hundred dollars. In determining the amount of the fine, the diversion unit shall consider only the juvenile's financial resources and whether the juvenile has the means to pay the fine. The diversion unit shall not consider the financial resources of the juvenile's parents, guardian, or custodian in determining the fine to be imposed.

(3) In assessing periods of community service to be performed and restitution to be paid by a juvenile who has entered into a diversion agreement, the court officer to whom this task is assigned shall to the extent possible involve members of the community. Such members of the community shall

meet with the juvenile and advise the court officer as to the terms of the diversion agreement and shall supervise the juvenile in carrying out its terms.

(4) A diversion agreement may not exceed a period of six months for a misdemeanor or gross misdemeanor or one year for a felony and may include a period extending beyond the eighteenth birthday of the divertee. Any restitution assessed during its term may not exceed an amount which the juvenile could be reasonably expected to pay during this period. If additional time is necessary for the juvenile to complete restitution to the victim, the time period limitations of this subsection may be extended by an additional six months.

(5) The juvenile shall retain the right to be referred to the court at any time prior to the signing of the diversion agreement.

(6) Divertees and potential divertees shall be afforded due process in all contacts with a diversionary unit regardless of whether the juveniles are accepted for diversion or whether the diversion program is successfully completed. Such due process shall include, but not be limited to, the following:

(a) A written diversion agreement shall be executed stating all conditions in clearly understandable language;

(b) Violation of the terms of the agreement shall be the only grounds for termination;

(c) No divertee may be terminated from a diversion program without being given a court hearing, which hearing shall be preceded by:

(i) Written notice of alleged violations of the conditions of the diversion program; and

(ii) Disclosure of all evidence to be offered against the divertee;

(d) The hearing shall be conducted by the juvenile court and shall include:

(i) Opportunity to be heard in person and to present evidence;

(ii) The right to confront and cross-examine all adverse witnesses;

(iii) A written statement by the court as to the evidence relied on and the reasons for termination, should that be the decision; and

(iv) Demonstration by evidence that the divertee has substantially violated the terms of his or her diversion agreement.

(e) The prosecutor may file an information on the offense for which the divertee was diverted:

(i) In juvenile court if the divertee is under eighteen years of age; or

(ii) In superior court or the appropriate court of limited jurisdiction if the divertee is eighteen years of age or older.

(7) The diversion unit shall be responsible for advising a divertee of his or her rights as provided in this chapter.

(8) The right to counsel shall inure prior to the initial interview for purposes of advising the juvenile as to whether he or she desires to participate in the diversion process or to appear in the juvenile court. The juvenile may be represented by counsel at any critical stage of the diversion process,

including intake interviews and termination hearings. The juvenile shall be fully advised at the intake of his or her right to an attorney and of the relevant services an attorney can provide. For the purpose of this section, intake interviews mean all interviews regarding the diversion agreement process.

The juvenile shall be advised that a diversion agreement shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(6) as now or hereafter amended. A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the diversionary unit together with the diversion agreement, and a copy of both documents shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language.

(9) When a juvenile enters into a diversion agreement, the juvenile court may receive only the following information for dispositional purposes:

- (a) The fact that a charge or charges were made;
- (b) The fact that a diversion agreement was entered into;
- (c) The juvenile's obligations under such agreement;
- (d) Whether the alleged offender performed his or her obligations under such agreement; and
- (e) The facts of the alleged offense.

(10) A diversionary unit may refuse to enter into a diversion agreement with a juvenile. It shall immediately refer such juvenile to the court for action and shall forward to the court the criminal complaint and a detailed statement of its reasons for refusing to enter into a diversion agreement. The diversionary unit shall also immediately refer the case to the prosecuting attorney for action if such juvenile (~~((fails to make restitution or perform community service as required by))~~) violates the terms of the diversion agreement.

(11) A diversionary unit may, in instances where it determines that the act or omission of an act for which a juvenile has been referred to it involved no victim, or where it determines that the juvenile referred to it has no prior criminal history and is alleged to have committed an illegal act involving no threat of or instance of actual physical harm and involving not more than fifty dollars in property loss or damage and that there is no loss outstanding to the person or firm suffering such damage or loss, counsel and release or release such a juvenile without entering into a diversion agreement: PROVIDED, That any juvenile so handled shall be advised that the act or omission of any act for which he or she had been referred shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(6) as now or hereafter amended. A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the unit, and a copy of the document shall be delivered to

the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language: PROVIDED FURTHER, That a juvenile determined to be eligible by a diversionary unit for such release shall retain the same right to counsel and right to have his or her case referred to the court for formal action as any other juvenile referred to the unit.

(12) A diversion unit may supervise the fulfillment of a diversion agreement entered into before the juvenile's eighteenth birthday and which includes a period extending beyond the divertee's eighteenth birthday.

(13) If a fine required by a diversion agreement cannot reasonably be paid due to a change of circumstance, the diversion agreement may be modified at the request of the divertee and with the concurrence of the diversion unit to convert an unpaid fine into community service. The modification of the diversion agreement shall be in writing and signed by the divertee and the diversion unit. The number of hours of community service in lieu of a monetary penalty shall be converted at the rate of the prevailing state minimum wage per hour.

(14) Fines imposed under this section shall be collected and paid into the county general fund in accordance with procedures established by the juvenile court administrator under RCW 13.04.040 and may be used only for juvenile services. In the expenditure of funds for juvenile services, there shall be a maintenance of effort whereby counties exhaust existing resources before using amounts collected under this section.

(15) The authority to impose and collect fines under this section shall terminate on June 30, 1985.

Sec. 17. Section 1, chapter 170, Laws of 1975 1st ex. sess. as last amended by section 17, chapter 299, Laws of 1981 and RCW 13.40.300 are each amended to read as follows:

(1) In no case may a juvenile offender be committed by the juvenile court to the department of social and health services for placement in a juvenile correctional institution beyond the juvenile offender's twenty-first birthday. A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday:

(a) The juvenile court has committed the juvenile offender to the department of social and health services for a sentence consisting of the standard range of disposition for the offense and the sentence includes a period beyond the juvenile offender's eighteenth birthday; or

(b) The juvenile court has committed the juvenile offender to the department of social and health services for a sentence outside the standard

range of disposition for the offense and the sentence includes a period beyond the juvenile's eighteenth birthday and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile offender for that period; or

(c) Proceedings are pending seeking the adjudication of a juvenile offense or seeking a disposition order or the enforcement of such an order and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday.

(2) If the juvenile court previously has extended jurisdiction beyond the juvenile offender's eighteenth birthday and that period of extension has not expired, the court may further extend jurisdiction by written order setting forth its reasons.

(3) In no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday.

~~((3))~~ (4) Notwithstanding any extension of jurisdiction over a person pursuant to this section, the juvenile court has no jurisdiction over any offenses alleged to have been committed by a person eighteen years of age or older.

Sec. 18. Section 61, chapter 291, Laws of 1977 ex. sess. as last amended by section 7, chapter 299, Laws of 1981 and RCW 13.40.070 are each amended to read as follows:

(1) Complaints referred to the juvenile court alleging the commission of an offense shall be referred directly to the prosecutor. The prosecutor, upon receipt of a complaint, shall screen the complaint to determine whether:

(a) The alleged facts bring the case within the jurisdiction of the court; and

(b) On a basis of available evidence there is probable cause to believe that the juvenile did commit the offense.

(2) If the identical alleged acts constitute an offense under both the law of this state and an ordinance of any city or county of this state, state law shall govern the prosecutor's screening and charging decision for both filed and diverted cases.

(3) If the requirements of subsections (1) (a) and (b) of this section are met, the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections ~~((4))~~ (5) ~~((and))~~, (6), and (7) of this section. If the prosecutor neither files nor diverts the case, he shall maintain a record, for one year, of such decision and the reasons therefor. In lieu of filing an information or diverting an offense a prosecutor may file a motion to modify community supervision where such offense constitutes a violation of community supervision.

~~((3))~~ (4) An information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and conform to chapter 10.37 RCW.

~~((4))~~ (5) Where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

(a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, assault in the third degree, rape in the third degree, or any other offense listed in RCW 13.40.020(1) (b) or (c); or

(b) An alleged offender is accused of a felony and has a criminal history of at least one class A or class B felony, or two class C felonies, or at least two gross misdemeanors, or at least two misdemeanors and one additional misdemeanor or gross misdemeanor, or at least one class C felony and one misdemeanor or gross misdemeanor; or

(c) An alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion.

~~((5))~~ (6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense(s) in combination with the alleged offender's criminal history do not exceed three offenses or violations and do not include any felonies: PROVIDED, That if the alleged offender is charged with a related offense that must or may be filed under subsections ~~((4))~~ (5) and ~~((6))~~ (7) of this section, a case under this subsection may also be filed.

~~((6))~~ (7) Where a case is legally sufficient and falls into neither subsection ~~((4))~~ (5) nor ~~((5))~~ (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.

~~((7))~~ (8) Whenever a juvenile is placed in custody or, where not placed in custody, referred to a diversionary interview, the parent or legal guardian of the juvenile shall be notified as soon as possible concerning the allegation made against the juvenile and the current status of the juvenile.

~~((8))~~ (9) The responsibilities of the prosecutor under subsections (1) through ~~((7))~~ (8) of this section may be performed by a juvenile court probation counselor for any complaint referred to the court alleging the commission of an offense which would not be a felony if committed by an adult, if the prosecutor has given sufficient written notice to the juvenile court that the prosecutor will not review such complaints.

Sec. 19. Section 9, chapter 155, Laws of 1979 as amended by section 19, chapter 299, Laws of 1981 and RCW 13.50.050 are each amended to read as follows:

(1) This section governs records relating to the commission of juvenile offenses, including records relating to diversions.

(2) The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to subsection (11) of this section.

(3) All records other than the official juvenile court file are confidential and may be released only as provided in this section and RCW 13.50.010.

(4) Except as otherwise provided in this section and RCW 13.50.010, records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility for supervising the juvenile.

(5) Information not in an official juvenile court file concerning a juvenile or a juvenile's family may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.

(6) Notwithstanding any other provision of this chapter, the release, to the juvenile or his or her attorney, of law enforcement and prosecuting attorneys' records pertaining to investigation, diversion, and prosecution of juvenile offenses shall be governed by the rules of discovery and other rules of law applicable in adult criminal investigations and prosecutions.

(7) The juvenile court and the prosecutor may set up and maintain a central record-keeping system which may receive information on all alleged juvenile offenders against whom a complaint has been filed pursuant to RCW 13.40.070 whether or not their cases are currently pending before the court. The central record-keeping system may be computerized. If a complaint has been referred to a diversion unit, the diversion unit shall promptly report to the juvenile court or the prosecuting attorney when the juvenile has agreed to diversion. An offense shall not be reported as criminal history in any central record-keeping system without notification by the diversion unit of the date on which the offender agreed to diversion.

(8) Upon request of the victim of a crime or the victim's immediate family, the identity of an alleged or proven juvenile offender alleged or found to have committed a crime against the victim and the identity of the alleged or proven juvenile offender's parent, guardian, or custodian and the circumstance of the alleged or proven crime shall be released to the victim of the crime or the victim's immediate family.

(9) Subject to the rules of discovery applicable in adult criminal prosecutions, the juvenile offense records of an adult criminal defendant or witness in an adult criminal proceeding may be released to prosecution and defense counsel after a charge has actually been filed. The juvenile offense records of any adult convicted of a crime and placed under the supervision of the adult corrections system may be released to the adult corrections system.

(10) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and order the sealing of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

(11) The court shall grant the motion to seal records made pursuant to subsection (10) of this section if it finds that:

(a) Two years have elapsed from the later of: (i) Final discharge of the person from the supervision of any agency charged with supervising juvenile offenders; or (ii) from the entry of a court order relating to the commission of a juvenile offense or a criminal offense;

(b) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense; and

(c) No proceeding is pending seeking the formation of a diversion agreement with that person.

(12) The person making a motion pursuant to subsection (10) of this section shall give reasonable notice of the motion to the prosecution and to any person or agency whose files are sought to be sealed.

(13) If the court grants the motion to seal made pursuant to subsection (10) of this section, it shall order sealed the official juvenile court file, the social file, and other records relating to the case as are named in the order. Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

(14) Inspection of the files and records included in the order to seal may thereafter be permitted only by order of the court upon motion made by the person who is the subject of the information or complaint, except as otherwise provided in RCW 13.50.010(8).

(15) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order.

(16) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person who is the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and order the destruction of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

(17) The court may grant the motion to destroy records made pursuant to subsection (16) of this section if it finds:

- (a) The person making the motion is at least twenty-three years of age;
- (b) The person has not subsequently been convicted of a felony;
- (c) No proceeding is pending against that person seeking the conviction of a criminal offense; and
- (d) The person has never been found guilty of a serious offense.

(18) A person eighteen years of age or older whose criminal history consists of only one referral for diversion may request that the court order the records in that case destroyed. The request shall be granted if the court finds that two years have elapsed since completion of the diversion agreement.

(19) If the court grants the motion to destroy records made pursuant to subsection (16) or (18) of this section, it shall order the official juvenile court file, the social file, and any other records named in the order to be destroyed.

(20) The person making the motion pursuant to subsection (16) or (18) of this section shall give reasonable notice of the motion to the prosecuting attorney and to any agency whose records are sought to be destroyed.

(21) Any juvenile to whom the provisions of this section may apply shall be given written notice of his or her rights under this section at the time of his or her disposition hearing or during the diversion process.

(22) Nothing in this section may be construed to prevent a crime victim or a member of the victim's family from divulging the identity of the alleged or proven juvenile offender or his or her family when necessary in a civil proceeding.

(23) Any juvenile justice or care agency may, subject to the limitations in subparagraphs (a) and (b) of this subsection, develop procedures for the routine destruction of records relating to juvenile offenses and diversions.

(a) Records may be routinely destroyed only when the person the subject of the information or complaint has attained twenty-three years of age or older, or is eighteen years of age or older and his or her criminal history consists entirely of one diversion agreement and two years have passed since completion of the agreement.

(b) The court may not routinely destroy the official juvenile court file or recordings or transcripts of any proceedings.

Sec. 20. Section 10, chapter 155, Laws of 1979 and RCW 13.50.100 are each amended to read as follows:

- (1) This section governs records not covered by RCW 13.50.050.
- (2) Records covered by this section shall be confidential and shall be released only pursuant to this section and RCW 13.50.010.
- (3) Records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility of supervising the juvenile. Records covered under this

section and maintained by the juvenile courts which relate to the official actions of the agency may be entered in the state-wide juvenile court information system.

(4) A juvenile, his or her parents, the juvenile's attorney and the juvenile's parent's attorney, shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile except:

(a) If it is determined by the agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents the agency may withhold the information subject to other order of the court: PROVIDED, That if the court determines that limited release of the information is appropriate, the court may specify terms and conditions for the release of the information; or

(b) If the information or record has been obtained by a juvenile justice or care agency in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, and the juvenile has a legal right to receive those services without the consent of any person or agency, then the information or record may not be disclosed to the juvenile's parents without the informed consent of the juvenile.

(5) A juvenile or his or her parent denied access to any records following an agency determination under subsection (4) of this section may file a motion in juvenile court requesting access to the records. The court shall grant the motion unless it finds access may not be permitted according to the standards found in subsections (4) (a) and (b) of this section.

(6) The person making a motion under subsection (5) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(7) Subject to the rules of discovery in civil cases, any party to a proceeding seeking a declaration of dependency or a termination of the parent-child relationship and any party's counsel and the guardian ad litem of any party, shall have access to the records of any natural or adoptive child of the parent, subject to the limitations in subsection (4) of this section.

(8) Information concerning a juvenile or a juvenile's family contained in records covered by this section may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.

NEW SECTION. Sec. 21. Section 7, chapter 214, Laws of 1959, section 203, chapter 141, Laws of 1979, section 94, chapter 136, Laws of 1981 and RCW 72.13.070 are each repealed.

NEW SECTION. Sec. 22. There is added to chapter 13.40 RCW a new section to read as follows:

(1) Notwithstanding the provisions of RCW 13.04.115, the secretary, with the consent of the secretary of the department of corrections, has the

authority to transfer a juvenile presently or hereafter committed to the department of social and health services to the department of corrections for appropriate institutional placement in accordance with this section.

(2) The secretary of the department of social and health services may, with the consent of the secretary of the department of corrections, transfer a juvenile offender to the department of corrections if it is established at a hearing before a review board that continued placement of the juvenile offender in an institution for juvenile offenders presents a continuing and serious threat to the safety of others in the institution. The department of social and health services shall establish rules for the conduct of the hearing, including provision of counsel for the juvenile offender.

(3) A juvenile offender transferred to an institution operated by the department of corrections shall not remain in such an institution beyond the maximum term of confinement imposed by the juvenile court.

(4) A juvenile offender who has been transferred to the department of corrections under this section may, in the discretion of the secretary of the department of social and health services and with the consent of the secretary of the department of corrections, be transferred from an institution operated by the department of corrections to a facility for juvenile offenders deemed appropriate by the secretary.

NEW SECTION. Sec. 23. There is added to chapter 13.40 RCW a new section to read as follows:

A juvenile offender ordered to serve a term of confinement with the department of social and health services who is subsequently sentenced to the department of corrections may, with the consent of the department of corrections, be transferred by the secretary of social and health services to the department of corrections to serve the balance of the term of confinement ordered by the juvenile court. The juvenile and adult sentences shall be served consecutively. In no case shall the secretary credit time served as a result of an adult conviction against the term of confinement ordered by the juvenile court.

NEW SECTION. Sec. 24. Section 1 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 23, 1983.

Passed the Senate April 16, 1983.

Approved by the Governor May 16, 1983.

Filed in Office of Secretary of State May 16, 1983.

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EXHIBIT E

MAY 16, 1984

OLYMPIA, WASHINGTON

ISSUE 84-10



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(Subject/Agency index at back of issue)
This issue contains documents officially
filed not later than May 2, 1984

AMENDATORY SECTION (Amending Order 102, filed 2/20/74)

WAC 44-06-060 PUBLIC RECORDS OFFICER. The public records officer for the attorney general's office shall be the administrative assistant to the attorney general for all records maintained in the Central Office, Temple of Justice, Olympia, Washington. For those records maintained at other locations, the assistant attorney general in charge of the legal division having custody of the records or any staff member designated by the assistant attorney general shall be the public records officer.

AMENDATORY SECTION (Amending Order 102, filed 2/20/74)

WAC 44-06-120 REVIEW OF DENIALS OF PUBLIC RECORDS REQUESTS. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the attorney general or his designated deputy attorney general. The attorney general or his designee shall immediately consider the matter and either affirm or reverse such denial within ~~((five))~~ two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the attorney general or the designated deputy attorney general has returned the petition with a decision or until the close of the ~~((fifth))~~ second business day following denial of inspection, whichever occurs first.

AMENDATORY SECTION (Amending Order 102, filed 2/20/74)

WAC 44-06-140 ADOPTION OF FORM. The attorney general's office hereby adopts use by all persons requesting inspection and/or copies of records of the form set out below, entitled "request for public records."

Return to:

Public Records Officer
Office of the Attorney General
(Name and address of specific Legal Division. If not known, return to Office of Attorney General, Temple of Justice, Olympia, Washington 98504)

OFFICE OF THE ATTORNEY GENERAL
~~((SLADE GORTON ATTORNEY GENERAL))~~
REQUEST FOR PUBLIC RECORDS

Date Time

Name

Address

Phone number where you can be reached during day —

Description of Records (see index):

.....
.....
.....

~~((I certify that the information obtained through this request for public records will not be used for commercial purposes.))~~

.....
Signature

Number of copies

Number of pages

Per page charge \$.....

Total charge \$.....

WSR 84-10-032
ADOPTED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Institutions)

[Order 2097—Filed April 30, 1984]

I, David A. Hogan, director of the Division of Administration and Personnel, do promulgate and adopt at Olympia, Washington, the annexed rules relating to transfer of juvenile offender to the Department of Corrections, new chapter 275-33 WAC.

This action is taken pursuant to Notice No. WSR 84-06-025 filed with the code reviser on February 29, 1984. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 13.40.280 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED April 18, 1984.

By David A. Hogan, Director
Division of Administration and Personnel

Chapter 275-33 WAC
TRANSFER OF JUVENILE OFFENDER TO THE
DEPARTMENT OF CORRECTIONS

NEW SECTION

WAC 275-33-010 PURPOSE. The purpose of this chapter is to establish standards and procedures for the conduct of review boards for juvenile offenders being considered for transfer to the department of corrections (DOC) from the department of social and health services in accordance with RCW 13.40.280.

NEW SECTION

WAC 275-33-020 NOTIFICATION TO JUVENILE. A juvenile being considered for transfer to DOC shall be notified in writing at least five days in advance of the review board hearing convened to consider the matter. Notification to the juvenile offender will include the reasons the transfer is being considered and a copy of the rules pertaining to the review board hearing. Prior to any review board hearing, the juvenile being considered for transfer to DOC, or the juvenile's attorney, shall have the right of access to, and adequate opportunity to examine any files or records of the department pertaining to the proposed transfer of the juvenile to the department of corrections.

NEW SECTION

WAC 275-33-030 COMPOSITION OF BOARD. The review board will be composed of the director of DJR or designee and two other juvenile rehabilitation administrators appointed by the chairman.

NEW SECTION

WAC 275-33-040 ATTENDANCE AT HEARING. Attendance at a review board shall be limited to parties directly concerned. The chairperson may exclude unauthorized persons unless the parties agree to their presence. Parties shall have the right to present evidence, cross-examine witnesses and make recommendations to the board. All relevant and material evidence is admissible which, in the opinion of the chairperson, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness.

NEW SECTION

WAC 275-33-050 CONSIDERATION OF EVIDENCE. At the conclusion of the hearing, the review board will consider all evidence presented and make a decision whether continued placement of the juvenile offender in an institution for juvenile offenders presents a continuing and serious threat to the safety of others in the institution.

NEW SECTION

WAC 275-33-060 RECORD OF DECISION. The chair of the review board will prepare a written record of the decision and reasons therefore. The review board shall be recorded manually, or by mechanical, electronic, or other device capable of transcription.

WSR 84-10-033
PROPOSED RULES
DEPARTMENT OF SERVICES
FOR THE BLIND
[Filed May 1, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Services for the Blind intends to adopt, amend, or repeal rules concerning prevention of blindness program, new chapter 67-45 WAC, and prevention of blindness, repealing chapter 67-40 WAC;

that the agency will at 12 noon, Wednesday, June 27, 1984, 3411 South Alaska Street, Seattle, WA 98118, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is chapter 194, Laws of 1983.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before June 27, 1984.

Dated: May 1, 1984

By: Paul Dziedzic
Director

STATEMENT OF PURPOSE

Title: Describes the qualifications and requirements relating to the benefits and privileges provided by the prevention of blindness program.

Description of Purpose: To clarify the rules regarding the prevention of blindness program. Adoption of these rules will advise the public of eligibility requirements for the program.

Statutory Authority: RCW 74.18.250.

Summary of Rules: Describes the department's prevention of blindness program and its functions.

Reasons Supporting Proposed Action: Current WAC's do not address existing situations in the prevention of blindness program.

Agency Personnel Responsible for Drafting, Implementation and Enforcement: Paul Dziedzic, Director.

Person or Organization Proposing Rule: Department of Services for the Blind, 921 Lakeridge Drive, Olympia, WA; a state governmental agency.

Agency Comments or Recommendations Regarding Statutory Language, Implementation, Enforcement or Fiscal Matters: This program will operate on limited funds, eligibility for this biennium are limited, see WAC 67-45-045.

Small Business Economic Impact: None.

Chapter 67-45 WAC
PREVENTION OF BLINDNESS PROGRAM

NEW SECTION

WAC 67-45-010 PURPOSE AND DEFINITION. (1) The authority for the prevention of blindness program is established in RCW 74.18.250.

(2) The purpose of this program is to provide, to the extent that appropriations are made available, specialized medical eye care to prevent blindness or restore or improve sight to persons who may benefit from such services and who are eligible as defined in WAC 67-45-040.

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EXHIBIT F

WSR 00-16-078**DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

[Filed July 28, 2000, 3:39 p.m.]

In the effort to migrate all of DSHS rules into one WAC title, I am requesting that you renumber the rules as follows:

Old WAC Number	New WAC Number
275-33-020	388-745-0020
275-33-030	388-745-0030
275-33-040	388-745-0040
275-33-050	388-745-0050
275-33-060	388-745-0060

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

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WSR 19-14-079
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed July 1, 2019, 9:00 a.m.]

Effective July 1, 2019, juvenile rehabilitation is moving from the department of social and health services (DSHS) to the department of children, youth, and families (DCYF), see HB 1661.

This change transfers the authority for rules related to juvenile rehabilitation from DSHS and to DCYF. DCYF requests that the code reviser recodify the following chapters and sections of WAC from Title 388 WAC to Title 110 WAC:

Decodification WAC#	Recodification WAC#
JUVENILE REHABILITATION ADMINISTRATION (JRA)— PRACTICES AND PROCEDURES	
388-700-0005	110-700-0005
BACKGROUND CHECKS	
388-700-0010	110-700-0010
388-700-0015	110-700-0015
388-700-0020	110-700-0020
388-700-0025	110-700-0025
SEXUAL MISCONDUCT BY JRA EMPLOYEES	
388-700-0030	110-700-0030
388-700-0035	110-700-0035
SEXUAL MISCONDUCT BY JRA CONTRACTORS	
388-700-0040	110-700-0040
388-700-0045	110-700-0045
SEXUAL MISCONDUCT BY JRA EMPLOYEES OR CONTRACTORS	
388-700-0050	110-700-0050
CONSOLIDATED JUVENILE SERVICES PROGRAMS	
388-710-0005	110-710-0005
388-710-0010	110-710-0010
388-710-0015	110-710-0015
388-710-0020	110-710-0020
388-710-0025	110-710-0025
388-710-0030	110-710-0030
388-710-0035	110-710-0035
388-710-0040	110-710-0040
COLLECTION OF COSTS OF SUPPORT, TREATMENT, AND CONFINEMENT OF JUVENILES UNDER RCW 13.40.220	
388-720-0010	110-720-0010
388-720-0020	110-720-0020
388-720-0030	110-720-0030
388-720-0040	110-720-0040
388-720-0050	110-720-0050
PLACEMENT OF JUVENILE OFFENDERS COMMITTED TO THE JUVENILE REHABILITATION ADMINISTRATION (JRA)	
388-730-0010	110-730-0010
388-730-0015	110-730-0015
388-730-0020	110-730-0020
388-730-0030	110-730-0030
388-730-0040	110-730-0040
388-730-0050	110-730-0050

388-730-0060	110-730-0060
388-730-0065	110-730-0065
388-730-0070	110-730-0070
388-730-0080	110-730-0080
388-730-0090	110-730-0090
JUVENILE PAROLE REVOCATION	
388-740-0010	110-740-0010
388-740-0030	110-740-0030
388-740-0040	110-740-0040
388-740-0060	110-740-0060
388-740-0070	110-740-0070
TRANSFER OF JUVENILE OFFENDER TO THE DEPARTMENT OF CORRECTIONS	
388-745-020	110-745-0020
388-745-030	110-745-0030
388-745-040	110-745-0040
388-745-050	110-745-0050
388-745-060	110-745-0060
IMPACT ACCOUNT—CRIMINAL JUSTICE COST REIMBURSEMENT	
388-750-010	110-750-0010
388-750-020	110-750-0020
388-750-030	110-750-0030
388-750-040	110-750-0040
388-750-050	110-750-0050
388-750-060	110-750-0060
388-750-070	110-750-0070
388-750-080	110-750-0080
388-750-090	110-750-0090
388-750-100	110-750-0100
388-750-110	110-750-0110

Please contact Brenda Villarreal at 360-902-7956 if you have any questions, concerns, or need anything further.

July 1, 2019
Brenda Villarreal
Rules Coordinator