

April 27, 2019

- **Juvenile Defense Training Academy**
 - **Juvenile Track**
 - **WDA Defender Conference**
 - **Sun Mountain**
 - **Juvenile Training Immersion Program (JTIP)**
- **Trainers**
 - **George Yeannakis- Office of Public Defense**
 - With credit to Maurisa Gates-Metropolitan Public Defender, Portland, OR

Role of Defender in Alternative DISPOSITION ADVOCACY

LESSON 35

Role of Defender

Ethical Obligations

- What are our Ethical and Professional obligations?
- Appointed vs. Retained
- State v. A.N.J. 168 Wn.2d 91 (2010)

Role of the Defender

The Standards

- Washington Rules of Professional Conduct
- [WA State Bar Association - Performance Guidelines for Juvenile Offense Representation](#)
- National Juvenile Defense Standards (NJDC, 2012)

A red speech bubble graphic with a white outline, containing the text 'Role of Defender'.

Role of Defender

Washington Rules of Professional Conduct (RPC)

Competence

Diligence

Confidentiality

Washington Rules of Professional Conduct

- **Rule 1.1** **Competent representation** requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Washington
Performance Guidelines
for Juvenile Offense
Representation

- **Exploration of Disposition without Trial**
- **Obligations of Counsel Concerning Sentencing or Disposition**
 - **4.14 Disposition**

Publication of the
the National
Juvenile Defense
Center



Counsel and Advise

- Possible Dispositions
- Collateral Consequences
 - State v. A.N.J.
- Consequences of Probation Violation
- Eligibility for Expungement
- Right to Appeal

More on Collateral Consequences

- Immigration Consequences
- Padilla v. Kentucky, 559 US 356 (2010)
 - *State v. Sandoval*, (2011)
- Resource: Washington Defender Association
[Immigration Project](#)

What Can the
Court order for
Disposition?

- **Least to Most Restrictive Options list of alternatives**

Motions for Alternative Dispositions Part I

RCW 13.50.150

- Courts have limited authority to order an individualized disposition that best serves the youth under the circumstances
- Statutory Alternatives or Local sanctions or JR

CASES THAT DEFINED THE PARAMETERS

OPTION A
 JUVENILE OFFENDER SENTENCING GRID
 STANDARD RANGE

CURRENT OFFENSE CATEGORY	A++	129 to 260 weeks for all category A++ offenses				
	A+	180 weeks to age 21 for all category A+ offenses				
	A	103-129 weeks for all category A offenses				
	A-	30-40 weeks	52-65 weeks	80-100 weeks	103-129 weeks	103-129 weeks
	B++	15-36 weeks	52-65 weeks	80-100 weeks	103-129 weeks	103-129 weeks
	B+	15-36 weeks	15-36 weeks	52-65 weeks	80-100 weeks	103-129 weeks
	B	LS	LS	15-36 weeks	15-36 weeks	52-65 weeks
	C+	LS	LS	LS	15-36 weeks	15-36 weeks
	C	LS	LS	LS	LS	15-36 weeks
	D+	LS	LS	LS	LS	LS
PRIOR ADJUDICATIONS	D	LS	LS	LS	LS	LS
	E	LS	LS	LS	LS	LS
		0	1	2	3	4 or more

Local Sanctions Probation

RCW 13.40.0357- THE DURATION

- Cannot be on longer than 1 or 2 years

RCW 13.40.0357 - THE REQUIREMENTS

- Can order: detention, perform community service, pay restitution, pay supervision fine/fee (must be ability to pay finding), service to the victim, cannot order parents to do or not do acts . . . & more
- Argue against Generalized and Standard Conditions

Local Sanctions Probation

WHAT COURT CAN & CAN'T DO

- JPC's cannot decide when to impose detention-
- Cannot make youth pay for court order psych
- Can allow JCC's to determine when to take off EM-

ADULT CASES FOR GUIDANCE

Commitment to JR

JR INSTITUTIONS

ECHO GLEN CHILDREN'S CENTER

GREEN HILL SCHOOL

NASELLE YOUTH CAMP

- **Duration of Commitment**
- determinate sentence based on offense committed and criminal history
- **Who can be committed**
- Must be at least 8 and before 18th birthday
- Any Offense

OPTION B
SUSPENDED DISPOSITION ALTERNATIVE

(1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement. The treatment programs provided to the offender must be either research-based best practice programs as identified by the Washington state institute for public policy or the joint legislative audit and review committee, or for chemical dependency treatment programs or services, they must be evidence-based or research-based best practice programs. For the purposes of this subsection:

(a) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population; and

(b) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW **13.40.200** or may revoke the suspended disposition and order the disposition's execution.

(3) An offender is ineligible for the suspended disposition option under this section if the offender:

(a) Is adjudicated of an A+ or A++ offense;

(b) Is fourteen years of age or older and is adjudicated of one or more of the following offenses:

(i) A class A offense, or an attempt, conspiracy, or solicitation to commit a class A offense;

(ii) Manslaughter in the first degree (RCW **9A.32.060**);

(iii) Assault in the second degree (RCW **9A.36.021**), extortion in the first degree (RCW **9A.56.120**), kidnapping in the second degree (RCW **9A.40.030**), drive-by shooting (RCW **9A.36.045**), vehicular homicide (RCW **46.61.520**), hit and run death (RCW **46.52.020**(4)(a)), or manslaughter 2 (RCW **9A.32.070**); or

(iv) Violation of the uniform controlled substances act (RCW **69.50.401**(2) (a) and (b)), when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon;

(c) Is ordered to serve a disposition for a firearm violation under RCW **13.40.193**;

(d) Is adjudicated of a sex offense as defined in RCW **9.94A.030**; or

(e) Has a prior option B disposition.

OPTION C

CHEMICAL DEPENDENCY/MENTAL HEALTH DISPOSITION ALTERNATIVE

If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed a B++ or B+ offense, the court may impose a disposition under RCW **13.40.160**(4) and **13.40.165**.

OR

OPTION D

MANIFEST INJUSTICE

If the court determines that a disposition under option A, B, or C would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW **13.40.160**(2).

RCW 13.40.162

Special sex offender disposition alternative.

(1) A juvenile offender is eligible for the special sex offender disposition alternative when:

(a) The offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030; and

(b) The offender has no history of a prior sex offense.

(2) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

Factors Court May
Not Consider at
Disposition
RCW13.40.150



List of alternative dispositions for a Juvenile Offender matter

1. Pre-filing

Police diversion [RCW 13.40.020](#) [omitted language barring police]

[180 Diversion](#)

[FIRS](#)

2. Diversions – Sort of Pre filing (but record created)

a. Mandatory for first misdemeanor (simple or gross) [RCW13.40.070](#)

b. Discretionary for all other misdemeanor and felonies with the exception of violent, drug & sex offenses. Does allow diversions for assault 2 and Robbery 2.

c. Prostitution and Voyeurism

d. Youth Courts [RCW 3.70](#)

List of alternative dispositions for a Juvenile Offender matter

3. Pre adjudication –no finding of guilt

1. Deferred Disposition [RCW 13.40.127](#)
2. Stipulated order of continuance

4. Pre adjudication –finding of guilt

1. Boutique Courts

Drug, treatment, community, mental health

5. Post Adjudication (To avoid commitment to JR)

1. ~~Deferred Disposition~~ [RCW 13.40.127](#)
2. ~~Suspended Sentence~~ [RCW 13.40.160\(10\)](#)
3. Option B [RCW 13.40.0357](#)
 1. Chemical Dependency Disposition Alternative (CDDA) [RCW 13.40.165](#)
 2. Special Sex offender Disposition Alternative (SSODA) [RCW 13.40.162](#)
 3. Manifest Injustice [RCW 13.40.160](#)

Challenging State's Evidence



- Object to JCC/PO Report
- Cross- Examination of JCC/PO
- Cross-Examination of MH expert
- Cross-Examination of Victim/Restitution

Restitution

“no ability to pay requirement”

ENTITLED WHEN CAUSED

- Physical injury
- Loss or damage to property
- Can be made to pay for counseling/treatment for emotional & psychological harm for V or V's family member (if witnessed act) of Murder, Agg Murder or Sex Crime
- Determined w/in 90 days after judgment, period can be extended for good cause

TIDBITS TO KNOW

- ***Parents can be liable up to \$500 for shoplifting***
- Parents liable up to \$7.500 for tort by child

Talking to Stakeholders

TALKING TO PARENTS

- Try to gage family dynamics . . .
- Explain juvenile process and possible dispositions
- Encourage them to help client comply with pretrial release conditions
- Help develop a disposition plan

TALKING TO JUVENILE COURT COUNSELORS

- Get Information
- Influence Disposition Outcome

Referral to Experts

- **Mental Health Evaluation?**
- **Social Worker?**
- **Other Specialists?**

Defense Letter/Report

- Purpose?
- Form (Letter v. Memorandum)?

Presenting a Defense

Presenting Evidence
and Calling Witnesses

Develop Theory of
Disposition

Present Disposition Plan
to Court

Findings of
Fact/Conclusions of Law