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**SUPREME COURT OF THE  
STATE OF WASHINGTON**

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SHYANNE COLVIN, SHANELL DUNCAN, TERRY KILL, LEONDIS  
BERRY, and THEODORE ROOSEVELT RHONE,

*Petitioners,*

v.

JAY INSLEE, Governor of the State of Washington, and

STEVEN SINCLAIR, Secretary of the Washington State Department of  
Corrections,

*Respondents.*

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BRIEF OF AMICUS CURIAE  
WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS

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## I. INTRODUCTION

As a result of the Coronavirus pandemic, Washingtonians are struggling with illness and death, as well as mass unemployment, looming recession, housing shortages, hunger, an increase in domestic violence, and a scarcity of medical care, first responders, and public services. Into this state of emergency, Petitioner inmates demand Governor Jay Inslee release thousands of prisoners with violent offenses and serious medical illnesses, including the most notorious capital and serial killers.

They argue that the release of dangerous offenders into a crippled system is necessary to avert a crisis, i.e. the spread of the virus from the community into prison facilities. This is not merely the replacement of one crisis with another. Petitioners demand this Court effect certain tragedy in order to avoid the well-managed risk of infection in the prison system.

Prison inmates have been largely sheltered from the pandemic and its ripple effect. While the infection raged on for months in Washington, thanks to the Department of Corrections' up-to-date protocols, ready medical services, tests, and distribution of hygiene supplies, there was no incidence in the prison population until the recent cases in a single facility.

In prison, Petitioners have food and housing and a lower incidence of infection. If released, they are likely to join the growing number of unemployed and homeless, without access to medical care. The



communities are struggling to survive the crisis at hand. They are not capable of managing the needs and threat of thousands of released criminals.

The Court lacks the authority to usurp the Governor's clemency power at any time and most certainly during a state of emergency. The petition for writ must be denied.

## **II. I. IDENTITY OF AMICUS CURIAE**

The Washington Association of Prosecuting Attorneys ("WAPA") represents the elected prosecuting attorneys of Washington State, who are responsible for the prosecution of felony cases and for the defense of any civil suits against their respective counties including against county jails.

## **III. ISSUES TO BE ADDRESSED BY AMICUS CURIAE**

- A. Whether the Court has authority to order the Governor to exercise his exclusive power to commute sentences "as he may choose to do," especially where the Governor has declared a state of emergency.
- B. Whether Petitioners held on final and unchallenged judgments have a right to release without regard for the effect a wide-scale release of violent offenders will have on the community in the midst of a pandemic.

## **IV. STATEMENT OF THE CASE**

The Petitioners demand that 2/3 of the prison population be released into the community, a number which includes serial killers and capital murderers. Petition for Writ of Mandamus at 57-67; Respondent's Court

Record at 20-21, 23 (Appendix C at 3-4; Appendix D at 1); Response to Petitioner's Emergency Motion at 2.

The community is in the midst of a COVID-19 pandemic, struggling with housing and medical resource shortages, strained police services, and increases in domestic and sexual violence. Respondent's Court Record at 8-9 (Appendix A at 4-5); App. at 47, 51. Unemployment is at record levels. Jeffrey Bartash, Jobless claims soar 6.6 million in early April as coronavirus devastates U.S. labor market, MARKETWATCH (Apr. 9, 2020)<sup>1</sup>; Jeffrey Bartash, How many people have lost jobs in your state from the coronavirus? Here's the toll, MARKETWATCH (Apr. 9, 2020).<sup>2</sup> Crime continues despite the stay-at-home order, and certain types of crimes have even increased. Pablo Gaviria, Police report jump in domestic violence cases amid coronavirus crisis, Komo News (Apr. 2, 2020)<sup>3</sup>; Burglaries of Seattle businesses increasing during stay at home order, police say, Kiro7 News (Apr. 3, 2020).<sup>4</sup> And the number of available first responders has diminished due to infection and quarantine-status. Michelle Esteban,

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<sup>1</sup> <https://www.marketwatch.com/story/jobless-claims-soar-66-million-in-early-april-as-coronavirus-layoffs-swell-above-15-million-2020-04-09>

<sup>2</sup> <https://www.marketwatch.com/story/how-many-people-have-lost-jobs-in-your-state-from-the-coronavirus-heres-the-toll-2020-04-09?mod=jeffrey-bartash>

<sup>3</sup> <https://komonews.com/news/coronavirus/police-report-jump-in-domestic-violence-report-amid-coronavirus-crisis>

<sup>4</sup> <https://www.kiro7.com/news/local/burglaries-seattle-businesses-increasing-during-stay-at-home-order-police-say/HKXHBFDLDJHW7AD5U5VPYSBRYA/>

Coronavirus taking toll on Seattle area’s first responders, KomoNews (Mar. 30, 2020).<sup>5</sup>

A release of thousands will inevitably result in increased homelessness and recidivism. Respondent’s Court Record at 8-9 (Appendix A at 4-5); App. at 47-48, 51; Michael Leveson & Alan Yuhas, Florida Inmate Released Amid Pandemic Killed Someone the Next Day, Officials Say, NY TIMES (Apr. 16, 2020)<sup>6</sup> (“Sadly, there are people who are going to take advantage of this emergency and the sacrifices that so many are making to confront this pandemic”). There are not enough shelters for the homeless which are weathering two outbreaks: COVID-19 and Hepatitis A. App. at 47-48; Sydney Brownstone & Scott Greenstone, King County faces 2 outbreaks at once, as hepatitis A spreads amid coronavirus pandemic, THE SEATTLE TIMES (Apr. 8, 2020).<sup>7</sup>

County jails have made significant reductions of their populations in response to the pandemic. App. 33-45. They will not be able to maintain a safe environment if prison releases result in a surge of violent crimes and new arrests. App. A at 48.

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<sup>5</sup> <https://komonews.com/news/coronavirus/coronavirus-taking-toll-on-seattle-areas-first-responders>

<sup>6</sup> <https://www.nytimes.com/2020/04/15/us/florida-inmate-coronavirus-murder.html>

<sup>7</sup> <https://www.seattletimes.com/seattle-news/homeless/king-county-faces-2-outbreaks-at-once-as-hepatitis-a-spreads-amid-coronavirus-pandemic/>

Meanwhile, prisons managed by the Washington Department of Corrections (DOC) have been largely protected from infection. In the months after the first COVID-19 patient presented at an urgent care clinic in Snohomish County, the virus spread across the world but did not infiltrate the Monroe facility in Snohomish County. 2019 Novel Coronavirus Outbreak (COVID-19), Wn. St. Dep't of Health;<sup>8</sup> Michelle L. Holshue et al., First Case of 2019 Novel Coronavirus in the United States, NEW ENG. J. MED. (Mar. 5, 2020); Henrik Petersson et al., Tracking the coronavirus' global spread, CNN (Apr. 11, 2020);<sup>9</sup> Harmeet Kaur & Mia Alberti, A boy from a remote Amazonian tribe has died, raising concerns about Covid-19's impact on indigenous people, CNN (Apr. 10, 2020) (hospitalized April 3).<sup>10</sup> The first positive test within a DOC prison occurred on April 5<sup>th</sup>. Decl. of Rob Herzog at ¶3. There continues to be no incidence of the virus in 11 out of 12 facilities. Respondent's Court Record at 23 (Appendix D at 1). And the incidence of the virus inside DOC facilities (.039%) is significantly less than the incidence in Washington as a whole (.14%). Respondent's Report at 2.

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<sup>8</sup> <https://www.doh.wa.gov/Emergencies/Coronavirus>

<sup>9</sup> <https://www.cnn.com/interactive/2020/health/coronavirus-maps-and-cases/>

<sup>10</sup> <https://www.cnn.com/2020/04/10/world/yanomami-amazon-coronavirus-brazil-trnd/index.html>

## V. ARGUMENT

- A. A large release of felons into the community is problematic in normal times, but would be disastrous in a pandemic, particularly for vulnerable groups.**
- 1. A large prison release will mean a large rise in recidivist crime.**

In normal times, within three years of their release, 21% of violent offenders and 37.5% of those classified as high violent offenders recidivate. DOC Research Unit (June 2013).<sup>11</sup> The named petitioners are prime examples. Petitioner Rhone was sentenced to life without parole after committing four strike<sup>12</sup> offenses: assault in the second degree in 1988 and first degree robberies in 1981, 1993, and 2003. App. at 2, 6. Petitioner Duncan is serving a sentence for unlawful possession of a firearm in the first degree, and two counts of assault in the third degree after shooting at strangers who had given him a ride, but apparently not quickly enough for his liking. App. at 18, 31-32. In a span of 21 years, 40-year-old Duncan has been convicted of 43 crimes. App. at 18-20.

This recidivist experience was particularly apparent many years ago to the counties with work-release centers. Joseph Turner, Pierce County: Dumping ground, THE NEWS TRIBUNE (Oct. 20, 2006) (“many of them re-

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<sup>11</sup> <https://www.doc.wa.gov/docs/publications/200-CH001.pdf>

<sup>12</sup> N.B. “Persistent offenders” like Rhone are not eligible for extraordinary medical placement or release of any kind. RCW 9.94A.015.

offend before they get out” of work release).<sup>13</sup> The Legislature passed a law requiring supervised offenders to return to their counties of origin with several exceptions. Laws of 2007, ch. 483. Notwithstanding this effort, disparities continue, and a sudden release of prisoners will affect some counties to a disproportionate degree. OMNI Inmate Admissions (Aug. 12, 2019) (showing prison admissions and releases by county);<sup>14</sup> Pierce County shouldn’t be destination No. 1 for sex predators, THE NEWS TRIBUNE (Jan. 28, 2015).<sup>15</sup> Those counties “do not have the capacity to police an influx of newly released offenders” and are concerned that a resulting “surge in the jail population” would compromise the safety of inmates and employees alike. App. at 48.

Released persons are at significantly higher risk of recidivism if they are released now, in the midst of a pandemic. They will not have the reentry services they require for success. Respondent’s Court Record, App. A. There are no jobs to be found, which means they are unlikely to have housing. *Id.* at 8 (A4) (“Transitional housing options have yet to meet the need of our current population.”). There are not enough shelters if they become homeless, and they will then be further at risk of contracting

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<sup>13</sup> <https://www.thenewstribune.com/news/special-reports/article25857493.html>

<sup>14</sup> <https://www.doc.wa.gov/docs/publications/reports/200-RE001.pdf>

<sup>15</sup> <https://www.thenewstribune.com/opinion/editorials/article26249602.html>

Hepatitis. App. at 47-48; Sydney Brownstone & Scott Greenstone, King County faces 2 outbreaks at once, as hepatitis A spreads amid coronavirus pandemic, THE SEATTLE TIMES (Apr. 8, 2020).<sup>16</sup>

Normally, DOC reentry services would help to align these individuals with mental health treatment as well as housing, substance abuse treatment, and other medical services. Respondent's Court Record at 7 (Appendix A at 3). During the pandemic, these services will not be available. Respondent's Court Record at 8-10 (Appendix A at 4-6).

**2. Petitioners' demand poses an unacceptable risk to victim safety and violates victims' constitutional right to be heard when release is being considered.**

When a *large* number of inmates are released at once, studies show victims increase. Paul G. Cassell & Richard Fowles, Does Bail Reform Increase Crime? An Empirical Assessment of the Public Safety Implications of Bail Reform in Cook County, Illinois S.J. Quinney College of Law research paper No. 349 (Feb.19, 2020).<sup>17</sup> During a pandemic with a stay-at-home proclamation, the risk to domestic and sexual violence victims is significantly worse. App. at 51.

Domestic violence advocates warn that at-risk partners and children can be cut off from support networks and isolated in abusive homes. With courts operating remotely, survivors need help securing protection orders.

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<sup>16</sup> <https://www.seattletimes.com/seattle-news/homeless/king-county-faces-2-outbreaks-at-once-as-hepatitis-a-spreads-amid-coronavirus-pandemic/>

<sup>17</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3541091](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3541091)

Gabriel Campanario, Coronavirus will overwhelm our civil legal-aid system, THE SEATTLE TIMES (Apr. 14, 2020).<sup>18</sup> Not only are typical first responders spread thin, but so are the attorney volunteers who would assist victims with anti-harassment orders, securing unemployment benefits, and “staying housed.” *Id.* It is reasonable to conclude that a release of thousands into a world of shuttered courts, public services, and businesses, and exhausted and infected first responders poses an exponentially greater danger to victims.

Victims have constitutional rights to notice and to be heard at any proceeding where the defendant’s release is considered. App. at 52 (citing WASH. CONST. art. I, §35). Petitioners’ April 13th motion for release pending final determination sent agencies scrambling to locate the victims of the five-named Petitioners. Given the short time permitted and pandemic conditions, agencies have been largely unsuccessful. *See* Washington Constitution, Article I, Section 35 Victim Statements Regarding Release. Accelerated review which violates the victims’ rights will also compromise the quality of the Court’s decision. The Court must consider the victims’ safety. It cannot do that if it does not hear from them.

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<sup>18</sup><http://www.courts.wa.gov/content/publicupload/eclips/2020%2004%2015%20Coronavirus%20will%20overwhelm%20our%20civil%20legal%20aid%20system.pdf>



**3. A large-scale prison release threatens the safety of county jails and the administration of trial courts.**

County prosecutors understand the risk of the virus to both jail inmates and correctional officers and have supported, directed, and facilitated efforts to reduce the jail population. App. at 33-45. Jury trials have been suspended and hearings take place by telephone or video wherever possible. Washington State Supreme Court Order, No. 25700-B-615. Prosecutors have taken the lead in designing policies addressing arrests, bail, furloughs, releases, continuances of out-of-custody hearings and commencement of sentences, postponement in chargings, and accelerated negotiations to obtain release. *See e.g.* App. at 40-43. However, every case continues to be addressed on its own merit, with an eye to the seriousness and violent nature of the alleged offense and the safety of the community. App. at 35-43.

While both jails and DOC use quarantine and isolation measures, jail arrestees circulate in and out of custody and have regular hearings in crowded courtrooms. Anna Flagg & Joseph Neff, Why Jails Are So Important in the Fight Against Coronavirus, THE MARSHALL PROJECT (Mar. 31, 2020)<sup>19</sup> (Across the country every week, more than 200,000 people are booked into jails and another 200,000 are released). Jail populations have

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<sup>19</sup> <https://www.themarshallproject.org/2020/03/31/why-jails-are-so-important-in-the-fight-against-coronavirus>

gone down thanks to accommodations by prosecutors who charge new offenses and superior court judges who impose bail on pretrial detainees, balancing the risks of illness and crime.

In addition, jail inmates are for the most part not convicted of any crime. Pretrial detainees have a presumption of innocence and a presumption for release. Those serving jail sentences are less serious offenders, such that a furlough during a pandemic is a manageable risk.

Thus far, the counties have been successfully managing the virus in jails. App. at 33-39, 44-45. And they have done so without the percentage reduction demanded by the Petitioners. *Id.* But the counties' best efforts will be undone if thousands of felons return to the community. Recidivism will fill the jails and clog the partially shuttered courts.

**4. A significant portion of persons the Petitioners seek to release have been convicted of violent offenses, such that their release en masse poses an unmanageable threat to community safety.**

Some believe that the prisons are full of drug users, and, due to crushingly long sentences, the elderly. John Pfaff, Five myths about prisons, WASH. POST (May 17, 2019).<sup>20</sup> The DOC's analysis of the Petitioners' demand lays bare these myths. Of the 18,000+ persons currently residing in DOC custody, only 3763 are 50 years or older.

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<sup>20</sup> [https://www.washingtonpost.com/outlook/five-myths/five-myths-about-prisons/2019/05/16/953304ea-7759-11e9-b3f5-5673edf2d127\\_story.html](https://www.washingtonpost.com/outlook/five-myths/five-myths-about-prisons/2019/05/16/953304ea-7759-11e9-b3f5-5673edf2d127_story.html)

Respondent's Court Record at 20 (Appendix D at 3). 7893 of 18,000 are within 18 months of their release date. *Id.*

A large number are convicted of serious, violent crimes. Out of a selection of 11,715, (a) 5272 have a "most serious" or strike offense, such as rape or murder; (b) 1709 are under ISRB jurisdiction indicating a serious sex or pre-SRA offense; (c) 470 are serving life without the possibility of parole; (d) and 610 have serious mental illness. *Id.* at 20-21 (D-34).

Petitioners would release the most recently former death row inmates Dayva Cross, Byron Scherf, Allen Gregory, Jonathan Gentry, Robert Yates, and Clark Elmore. Respondent's Court Record at 21 (D4). The few names do not represent a handful of "unique circumstances." Petitioner's Brief at 25-26, n.95 (making an exception for Gary Ridgway). They are representatives of a much larger class, the tip of the iceberg. But their list necessarily contains many more (lesser known) capital murderers whose death sentences have been commuted to life over the years. *State v. Bartholomew*, 98 Wn.2d 173, 654 P.2d 1170 (1982), *cert. granted, judgment vacated*, 463 U.S. 1203, 103 S. Ct. 3530, 77 L. Ed. 2d 1383 (1983) (statute unconstitutional insofar as it permitted the jury to consider uncharged offenses); *State v. Frampton*, 95 Wn.2d 469, 627 P.2d 922 (1981) (statute unconstitutional where defendant could avoid the penalty by pleading guilty). There are 470 persistent offenders or capital murderers

whom Petitioners demand be released, together with 5272 convicted of most serious or strike offenses. Respondent's Court Record at 21 (Appendix C at 4).

Four justices would have held the county liable when a non-violent offender had a psychotic episode and went on a killing spree in 2008, murdering six people. *Binschus v. State*, 186 Wn.2d 573, 380 P.3d 468 (2016). If Isaac Zamora, Dayva Cross, and the 610 mentally ill offenders are released in 2020, for the reason that there is a risk of infection in prison (albeit at an incidence far lower than outside of prison), it will not be possible to supervise them in the community. Respondent's Court Record at 21 (Appendix C at 4). The threat to community safety by such an arbitrary release is not justified in law or by reason.

**B. The Court lacks authority to order the Governor to commute criminal sentences in order to release inmates, particularly during a declared state of emergency.**

The Petitioners demand a commutation of sentences. PSD 60-61. However, there is no constitutional or inherent right to the commutation of a sentence. *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458, 101 S. Ct. 2460, 69 L. Ed. 2d 158 (1981). Under the constitution and laws, the Governor has exclusive authority and full discretion to commute sentences. WASH. CONST. art. 3, § 9; RCW 10.01.180. The Governor's authority in

this regard only increases during a declared state of emergency. RCW 9.94A.870; RCW 38.52.020.

**1. There is no lawful cause for a court to alter a final sentence based on a change of circumstances that would not have been material to the original sentence.**

The Petitioners are in DOC custody, because they are being punished for crimes. This Court “has consistently held” that the Legislature, not the courts, fix the legal punishments for criminal offenses. *State v. Ammons*, 105 Wn.2d 175, 180, 713 P.2d 719 (1986). The power of the Legislature in that respect is plenary, and an encroachment by the courts violates the separation of powers doctrine. *Zylstra v. Piva*, 85 Wn.2d 743, 750, 539 P.2d 823 (1975); *State v. Mulcare*, 189 Wash. 625, 628, 66 P.2d 360 (1937); *State v. Le Pitre*, 54 Wash. 166, 169, 103 P. 27 (1909). The Court lacks authority to alter inmates’ final sentences.

The Petitioners ask the Court to commute or alter their sentences based on age and health conditions. PSD at 59-60. DOC inmates’ standard sentencing ranges were shaped by two factors only: their offender scores and the seriousness level of their offenses. RCW 9.94A.510. This scheme protects against severe sentencing disparities “too often [ ] correlated with constitutionally suspect variable such as race.” *Blakely v. Washington*, 542 U.S. 296, 315, 124 S.Ct. 2531, 2544, 159 L.Ed.2d 403 (2004) (O’Connor, J., dissenting). Offender’s social conditions such as poverty, joblessness

rates, alcoholism, health conditions, etc. had no relevance. They are not proper reasons for a court to alter a final sentence.

**2. Governor Inslee has exclusive authority to commute sentences “as he may think proper.”**

The Constitution gives exclusive authority for the commutation of sentences to the Governor.

**PARDONING POWER.** The pardoning power shall be vested in the governor under such regulations and restrictions as may be prescribed by law.

WASH. CONST. art. 3, § 9. *See also* WASH. CONST. art. 3, § 11 and RCW 43.06.020 (governor required to report commutations to the Legislature); RCW 10.01.120 (governor may “grant respites or reprieves from time to time as he or she may think proper”); *Emery v. Littlejohn*, 83 Wash. 334, 345, 145 P. 423, 426 (1915) (the power to pardon is generally held to include the power to mitigate or commute sentences, the theory being that the greater power includes the lesser).

Commutation authority cannot be exercised by any other person or branch of government. *State v. Bartholomew*, 104 Wn.2d 844, 710 P.2d 196 (1985) (holding the prosecutor lacked authority to commute a death sentence to life without parole and remanding for a jury determination of the penalty); *State v. Superior Court for King Cty.*, 79 Wash. 570, 140 P. 555 (1914) (holding the superior court lacked authority to commute an unexpired sentence). The Legislature may regulate the Governor’s

constitutional authority to pardon and commute sentences, but may not abrogate it. *State v. Aguirre*, 73 Wn. App. 682, 689, 871 P.2d 616, 619 (1994) (citing *State ex rel. Rogers v. Jenkins*, 20 Wash. 78, 54 P. 765 (1898)).

The exclusivity of the Governor’s commutation authority is all the more necessary in times of emergency. RCW 38.52.020(1)(b) (declaring it “necessary” to confer emergency powers upon governor and executive heads of the political subdivisions).

If the governor finds that an emergency exists in that the population of a state residential correctional facility exceeds its reasonable, maximum capacity, then the governor may

....

Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor’s commutation or pardon power should be exercised to meet the present emergency.

RCW 9.94A.870. The Coronavirus is a moving target and the intelligence on best practices changes day to day. In the last few months, the DOC has updated policies so frequently that it is “not possible to describe every single step taken in this unprecedented effort.” Respondent’s Report at 1 (providing a 153-page summary of the main steps). The executive branch is best able to address emergencies.

An emergency response to the pandemic must consider all communities and the ripple effects of any action. “It is important that the

decisions we make are done with recognition that we are part of a global health crisis and limit the impacts to other critical community systems who are engaged in the larger public health response.” Chad Sokol, DOC evaluates “release options” after employees test positive for COVID-19 at prisons, including Airway Heights, THE SPOKESMAN-REVIEW (Apr. 8, 2020) (quoting DOC spokeswoman Janelle Guthrie).<sup>21</sup>

If and when the Governor decides to release individual prisoners early, he will do so with the knowledge of the details of individual offenders’ crimes, sentences, incarceration conditions, and risk levels. The Governor’s cabinet also manages children and family services, the health care authority, the department of health, employment security, financial institutions, labor and industry, revenue, transportation, retirement, etc. – giving the Governor a unique ability to understand the effect of a mass exodus of felons into the community in the midst of a pandemic.

Even the Legislature lacks the ability to abrogate the Governor’s emergency powers. In Kansas, the legislature attempted to revoke the governor’s emergency executive order limiting mass gatherings during the pandemic, insofar as the order included religious and funeral services. *Kelly v. Legislative Coordinating Council*, No. 122,765, slip op. at 22 (Kan. Apr.

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<sup>21</sup><http://www.courts.wa.gov/content/publicupload/eclips/2020%2004%2009%20DOC%20evaluates%20release%20options%20after%20employees%20test%20positive%20for%20COVID19%20at%20prisons%20including%20Airway%20Heights.pdf>



12, 2020).<sup>22</sup> The Kansas Supreme Court held the legislature lacked this authority. *Id.* Public officials’ duty to adhere to the law “doesn’t evaporate in a crisis – in fact, a crisis may heighten the duty.” *Id.*, slip op. at 22 (Stegall, J., concurring). The concurrence further noted the judicial branch, too, lacked the ability to countermand the governor in an emergency – “judges are ill-suited to make rules on the fly.” *Id.* at 21.

The courts’ authority to release convicted persons from the terms of their judgment and sentence is limited to direct appeals (WASH. CONST. art. 1, §22) and habeas corpus petitions (RCW 7.36.130), also called personal restraint petitions (PRPs). Because the petition for writ is neither, the Court lacks authority to release the named petitioners.

### **3. The Petition would be improper and untimely as Personal Restraint Petitions.**

It is understandable that the Petitioners did not file PRPs. First, a *personal* restraint petition is filed by an individual and could not provide the class relief requested here. Second, every habeas/PRP must satisfy the time limitation of RCW 10.73.090 and RCW 10.73.100. RCW 7.36.130(1). From the minimal record provided, only one of the five named Petitioners, Colvin, might meet that requirement. App. at 1, 18; PSD at 300, 312. She,

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<sup>22</sup><https://www.kscourts.org/KSCourts/media/KsCourts/High%20Interest%20Cases/Kelly%20v%20LCC/122765Opinion.pdf>

however, does not have a medical condition which puts her at particular risk of harm or death from COVID-19. Brief of Respondent at 49.

RCW 7.36.130(1) limits a collateral attack to constitutional questions. There is no constitutional or inherent right to the commutation of a sentence. *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458, 101 S. Ct. 2460, 69 L. Ed. 2d 158 (1981).

A decision whether to commute a long-term sentence generally depends not simply on objective factfinding, but also on purely subjective evaluations and on predictions of future behavior by those entrusted with the decision. A commutation decision therefore shares some of the characteristics of a decision whether to grant parole.

*Dumschat*, 452 U.S. at 464. Therefore, insofar as the writ demands commutation, it does not raise a constitutional question.

Drawing upon the federal system, the Washington Supreme Court has extended its authority to address nonconstitutional errors in a PRP, but only when the claimed error constitutes a fundamental defect which inherently results in a complete miscarriage of justice. *In re Cook*, 114 Wn.2d 802, 811, 792 P.2d 506 (1990). Again, the Petitioners do not challenge the orders which incarcerate them or other prisoners. They are not asserting any error or fundamental defects in the judgments. A demand for commutation is not the proper subject of a PRP.

The Petitioners were correct not to raise their claims as a personal restraint petition in the first instance. But they are incorrect to believe that there is a right to commutation or that the Court has authority to order it.

## VI. CONCLUSION

The Petitioners request the Court deny the Petition for Writ of Mandamus.

RESPECTFULLY SUBMITTED this 16th day of April, 2020.

s/ Teresa Chen  
WSB# 31762  
Deputy Prosecuting Attorney  
Pierce County Prosecutor's Office  
930 Tacoma Ave., Rm 946  
Tacoma, WA 98402  
Telephone: (253) 798-7400  
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[teresa.chen@piercecountywa.gov](mailto:teresa.chen@piercecountywa.gov)

Certificate of Service:

The undersigned certifies that on this day she delivered by E-file to the attorney of record for the appellant / petitioner and appellant / petitioner c/o his/her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on the date below.

4-16-20                      s/Therese Kahn  
Date                              Signature

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FILED  
DEPT. 19  
IN OPEN COURT

NOV 18 2005

Pierce County Clerk  
By \_\_\_\_\_  
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 03-1-02581-1

vs.

JUDGMENT AND SENTENCE (JS)

THEODORE ROOSEVELT RHONE

Defendant.

Prison

Jail One Year or Less

First-Time Offender

SSOSA

DOSA

Breaking The Cycle (BTC)

SID: 16536308

DOB: 1/19/1958

NOV 21 2005

I. HEARING

- 1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on 05/05/05 by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER (J2)	69.50.401(a)(1)(i) 9.41.010 9.94A.310/9.94A.510 9.94A.370/9.94A.530	FASE	05/30/03	031500923
II	ROBBERY IN THE FIRST DEGREE (AAA1)	9A.56.190 9A.56.200(1)(a)(i) 9.41.010 9.94A.310/9.94A.510 9.94A.370/9.94A.530	FASE	5/30/03	031500923
III	UNLAWFUL POSSESSION OF A	9.41.010(12) 9.41.040(1)(a)		5/30/03	031500923

Office of Prosecuting Attorney  
946 County-City Building  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400

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COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
	FIREARM IN THE FIRST DEGREE (GGG66)				
IV	BAIL JUMPING (EE7D)	9A.76.170(1) 9a.76.170(3)(c)		07/17/03	031500923

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

as charged in the SECOND AMENDED (JURY VERDICT) Information

- A special verdict/finding for use of firearm was returned on Count(s) I AND II RCW 9.94A.602, .510.  
 The court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.  
 Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):  
 Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

## 2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	FELON IN POSS OF WEAPON		Portland, OR	05/05/81	A	NV
2	ROBRY 1		Portland, OR	05/05/81	A	V
3	ESCAPE 2	07/02/86	Portland, OR	06/26/86	A	NV
4	PERJURY	05/10/89	Eugene, OR	11/17/87	A	NV
5	UPCS	05/10/89	Eugene, OR	11/17/87	A	NV
6	ASLT 2	05/23/89	Portland, OR	09/28/88	A	V
7	HIT & RUN	05/23/89	Portland, OR	09/28/88	A	NV
8	FORGERY 1		Salem, OR	06/07/89	A	NV
9	RBRY 1	06/30/93	Clark Co.	01/26/93	A	V

- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

## 2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	12	2	60-120 MOS	36 MOS	96-156 MOS	LIFE
II	15	9	129-171 MOS	60 MOS	189-231 MOS	LIFE
III	12	7	87-116 MOS		87-116 MOS	10 YRS
IV	12	5	72-96 MOS		72-96 MOS	10 YRS

- 2.4  **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence  above  below the standard range for Count(s) \_\_\_\_\_. Findings of fact and

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conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 LEGAL FINANCIAL OBLIGATIONS. The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

[ ] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows:

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [ ] The court DISMISSES Counts \_\_\_\_\_ [ ] The defendant is found NOT GUILTY of Counts \_\_\_\_\_

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN	\$ _____	Restitution to: _____
	\$ _____	Restitution to: _____
		(Name and Address--address may be withheld and provided confidentially to Clerk's Office).
PCV	\$ 500.00	Crime Victim assessment
DNA	\$ 100.00	DNA Database Fee
PUB	<del>\$ 100.00</del> <del>\$ 100.00</del> \$ 1000.00	Court-Appointed Attorney Fees and Defense Costs
FRC	\$ 110.00	Criminal Filing Fee
FCM	\$ _____	Fine
CLF	\$ _____	Crime Lab Fee [ ] deferred due to indigency
CDF/DFA-DFZ	\$ _____	Drug Investigation Fund for _____ (agency)
JFR	\$ _____	Jury Fee

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

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\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_  
\$ 1710.00 TOTAL

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ \_\_\_\_\_ per month commencing. \_\_\_\_\_ RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 **RESTITUTION**

- [ ] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:
  - [ ] shall be set by the prosecutor.
  - [ ] is scheduled for \_\_\_\_\_
  - [ ] defendant waives any right to be present at any restitution hearing (defendant's initials): \_\_\_\_\_
- [ ] RESTITUTION. Order Attached

*[Signature]* [X] Restitution ordered above shall be paid jointly and severally with:

	NAME of other defendant	CAUSE NUMBER	(Victim name)	(Amount-\$)
RJN	Cortez Sebastian Brown			
	Phyllis M Burg			

4.3 **COSTS OF INCARCERATION**

[ ] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 **COLLECTION COSTS**

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 **INTEREST**

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

4.6 **COSTS ON APPEAL**

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.

4.7 [ ] **HIV TESTING**

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

4.8 [X] **DNA TESTING**



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The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 NO CONTACT

The defendant shall not have contact with Isaac Miller, 8/23/80 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for Life years (not to exceed the maximum statutory sentence).

[ ] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 OTHER:


4.11 BOND IS HEREBY EXONERATED

4.12 CONFINEMENT OVER ONE YEAR: PERSISTENT OFFENDER. The defendant was found to be a Persistent Offender.

[X] The court finds Count 1 + 2 is a most serious offense and that the defendant has been convicted on at least two separate occasions of most serious offense felonies, at least one of which occurred before the commission of the other most serious offense for which the defendant was previously convicted.

[ ] The court finds Count \_\_\_\_\_ is a crime listed in RCW 9.94A.030(31)(b)(i) (e.g., rape in the first degree, rape of a child in the first degree (when the offender was sixteen years of age or older when the offender committed the offense), child molestation in the first degree, rape in the second degree, rape of a child in the second degree (when the offender was eighteen years of age or older when the offender committed the offense) or indecent liberties by forcible compulsion; or any of the following offenses with a finding of sexual motivation: murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or an attempt to commit any crime listed in RCW 9.94A.030(31)(b)(i)), and that the defendant has been convicted on at least one separate occasion, whether in this state or elsewhere, of a crime listed in RCW 9.94A.030(31)(b)(i) or any Federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in RCW 9.94A.030(31)(b)(i).

Those prior convictions are included in the offender score as listed in Section 2.2 of this Judgment and Sentence. RCW 9.94A.030, RCW 9.94A.

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

Life without the possibility of early release on Count 1 + 2  
116 months on Count III  
96 months on Count IV  
months on Count \_\_\_\_\_

Actual number of months of total confinement ordered is: Life without the possibility of early release.

(b) CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here.

[ ] The sentence herein shall run consecutively to the felony sentence in cause number(s) \_\_\_\_\_

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here: \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

4.13 OTHER: \_\_\_\_\_

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4.12 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

<u>Life w/out</u> <u>parole</u> months on Count	<u>I</u>	<u>Life w/out</u> <u>parole</u> months on Count	<u>II</u>
<u>116</u> months on Count	<u>III</u>	<u>96</u> months on Count	<u>IV</u>
_____ months on Count	_____	_____ months on Count	_____

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

<u>36</u> months on Count No	<u>I</u>	<u>60</u> months on Count No	<u>II</u>
_____ months on Count No	_____	_____ months on Count No	_____
_____ months on Count No	_____	_____ months on Count No	_____

Sentence enhancements in Counts \_ shall run  
 concurrent  consecutive to each other.  
 Sentence enhancements in Counts \_ shall be served  
 flat time  subject to earned good time credit

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

_____ months on Count No	<u>I</u>	_____ months on Count No	<u>II</u>
_____ months on Count No	<u>III</u>	_____ months on Count No	<u>IV</u>
<u>30</u> months on Count No	_____	_____ months on Count No	<u>30</u>

Sentence enhancements in Counts \_ shall run  
 concurrent  consecutive to each other.  
 Sentence enhancements in Counts \_ shall be served  
 flat time  subject to earned good time credit

Actual number of months of total confinement ordered is: Life w/out possibility of  
parole + 36 mos. flat-time +  
 (Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above). 60 mos. flat-time

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

The sentence herein shall run consecutively to all felony sentences in other cause numbers prior to the commission of the crime(s) being sentenced.

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Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

379 days

4.13  COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count \_\_\_\_\_ for \_\_\_\_\_ months,

Count \_\_\_\_\_ for \_\_\_\_\_ months,

Count \_\_\_\_\_ for \_\_\_\_\_ months,

COMMUNITY CUSTODY is ordered as follows:

Count I for a range from: 9 to 12 Months,

Count II for a range from: 18 to 36 Months,

Count III for a range from: \_\_\_\_\_ to \_\_\_\_\_ Months,

Count IV For a range from: \_\_\_\_\_ To \_\_\_\_\_ Months.

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall not consume any alcohol.

Defendant shall have no contact with: \_\_\_\_\_

Defendant shall remain  within  outside of a specified geographical boundary, to wit:

The defendant shall participate in the following crime-related treatment or counseling services: \_\_\_\_\_

The defendant shall undergo an evaluation for treatment for  domestic violence  substance abuse

mental health  anger management and fully comply with all recommended treatment.

The defendant shall comply with the following crime-related prohibitions: \_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_  
Other conditions may be imposed by the court or DOC during community custody, or are set forth here: \_\_\_\_\_  
\_\_\_\_\_

4.14 [ ] **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.13.

4.15 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.
- 5.4 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.5 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.6 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. N/A

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5.7 OTHER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: 11/18/05

JUDGE

Print name

*[Signature]*

*[Signature]*

Deputy Prosecuting Attorney

Print name: A. Dish

WSB # 26045

Attorney for Defendant

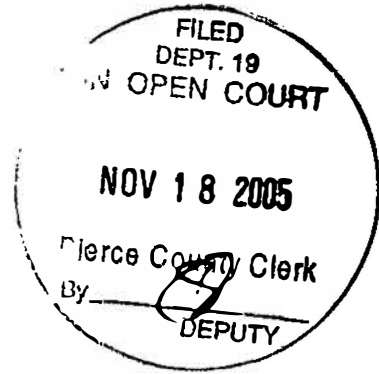
Print name: HARRY S. STREINWITZ

WSB # 24863

*[Signature]*

Defendant

Print name: Theodore Rhone



03-1-02581-1

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**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case: 03-1-02581-1

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk



APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52 committed after July 1, 1988 is also sentenced to one (1) year term of community placement on these conditions:

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC;

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

- (I) The offender shall remain within, or outside of, a specified geographical boundary: per CCD
- (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: Victim Isaac Miller
- (III) The offender shall participate in crime-related treatment or counseling services;
- (IV) The offender shall not consume alcohol;
- (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections, or
- (VI) The offender shall comply with any crime-related prohibitions.
- (VII) Other: Forfeit firearm in evidence

03-1-02581-1

IDENTIFICATION OF DEFENDANT

SID No. 16536308  
(If no SID take fingerprint card for State Patrol)

Date of Birth 1/19/1958

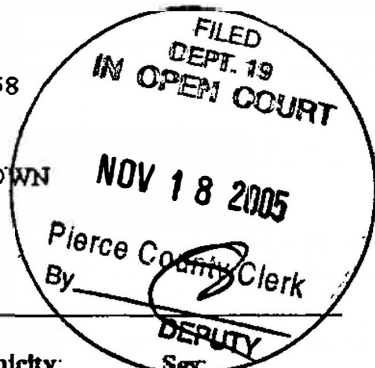
FBI No. 638440P1

Local ID No. UNKNOWN

PCN No. 537830603

Other

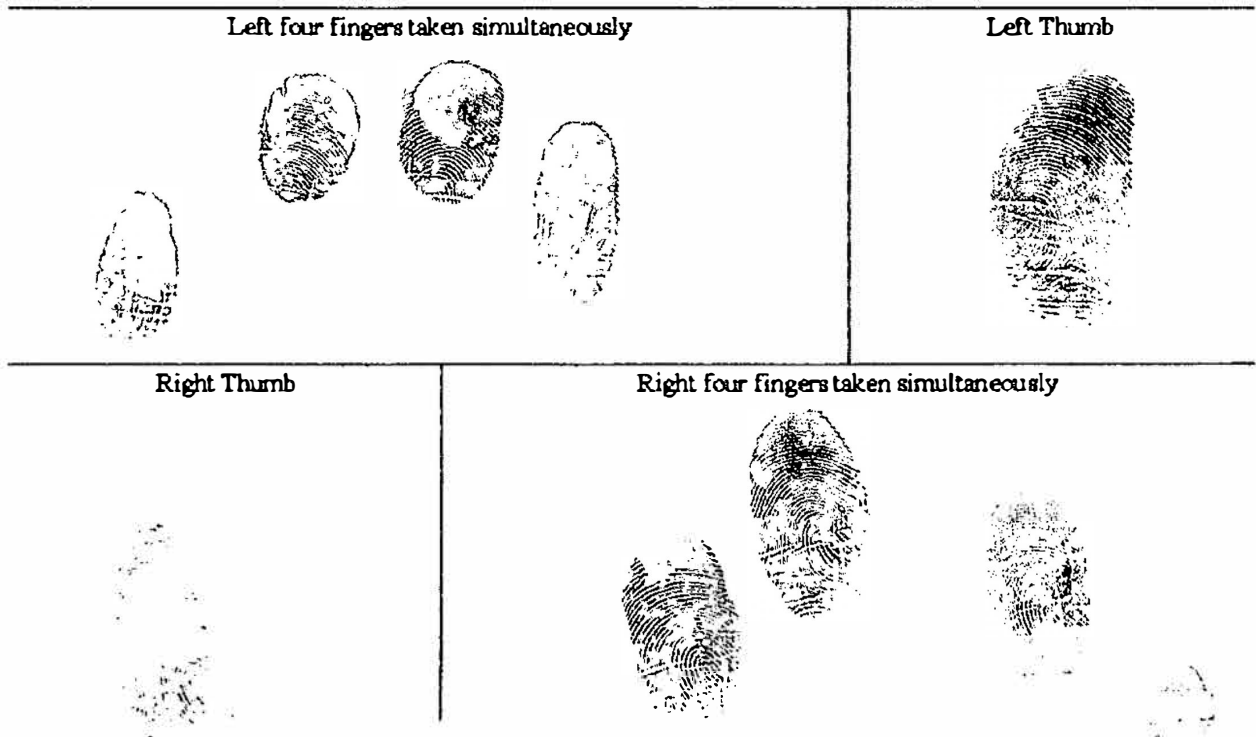
Alias name, SSN, DOB: RIVERS, TERRANCE LEE, 08/22/1958



Race:  Asian/Pacific Islander  Black/African-American  Caucasian  Native American  Other: :

Ethnicity:  Hispanic  Non-Hispanic  Male  Female

FINGERPRINTS



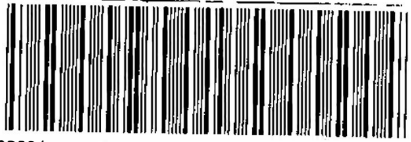
I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, [Signature] Dated: \_\_\_\_\_

DEFENDANT'S SIGNATURE: X 119-170th E. Spanaway wa,

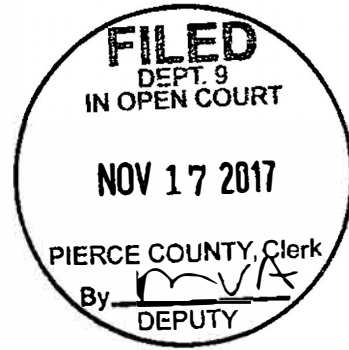
DEFENDANT'S ADDRESS: \_\_\_\_\_

Sandra J. Kuller 11-18-05

0016  
3161  
11/21/2017



03-1-02581-1 50310033 ORV 11-21-17



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 03-1-02581-1

vs.

THEODORE ROOSEVELT RHONE,

MOTION AND ORDER AMENDING  
JUDGMENT AND SENTENCE  
VACATING COUNTS I AND III

Defendant.

**CLERK'S ACTION REQUIRED**

THIS MATTER coming before the Honorable Edmund Murphy, with the state represented by Deputy Prosecutor Patrick Cooper, Theodore Rhone being present and represented by Peter Reich and Joseph Evans. This hearing is a result of the March 30, 2017, mandate of Division II of the Court of Appeals, 46960-0-II, vacating his convictions for counts I (UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER) and III (UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE). The defendant was originally convicted of the crime(s) of UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER (Count I-UPCSWID); ROBBERY IN THE FIRST DEGREE WITH A FIREARM ENHANCEMENT (Count II); UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (Count III-UPOF 1); and BAIL JUMPING (Count IV).

**ORIGINAL**

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The State moves that the court conform the Judgment and Sentence to the mandate issued by the Court of Appeals in State v. Rhone, 46960-0-II, by amending as follows, deleting all reference to Count I-UPCSWID and Count II-UPOF 1:

- 1) In Section 2.1, Current Offenses, Counts I-UPCSWID and III-UPOF 1 are deleted.
- 2) In Section 2.3, Sentencing Data, Counts I-(UPCSWID) and III-(UPOF 1) are deleted. Count II-Robbery in the First Degree should read an offender score of "13" instead of "15." Count IV-Bailjumping should read an offender score of "10" instead of 12.
- 3) In Section 4.12, Confinement over one year: Persistent offender. Count "I" (UPCSWID) is deleted.
- 4) In Section 4.12(a) Confinement. Count "I" (UPCSWID) is deleted from "Life without the possibility of early release on Count..."
- 5) In Section 4.12 Confinement over one year (a) "'Life w/out parole' months on Count I" is deleted. "116 months on Count III" is deleted. "36 months on Count No. I" is deleted.
- 6) In Section 4.12 under "Actual number of months of total confinement ordered is:" delete "+ 36 months flat-time".
- 7) In Section 4.13 Community Custody, delete "Count I for a range from 9 to 12 months."

The State, moves for an order vacating Count I, UPCSWID, and Count III, UPOF 1. The conviction for Count II-Robbery in the First Degree with a firearm enhancement is affirmed.

IT IS HEREBY


ORDERED, ADJUDGED AND DECREED that Count I-UPCSWID and Count III-UPOF 1, on this cause number be vacated to conform to the Court of Appeals decision, State v. Rhone, 46960-0-II. The specific deletions shall be as outlined in this motion. All other terms and

1 conditions of the original Judgment and Sentence shall remain in full force and effect as if set  
2 forth in full herein. The conviction for robbery in the first degree with a firearm enhancement is  
3 affirmed. IT IS FURTHER  
4 ORDERED that the Clerk of the Court shall attach a copy of this order to the judgment filed on  
5 November 18, 2005, so that anyone obtaining a certified copy of the judgment will also obtain a  
6 copy of this order.

8  
9 DONE IN OPEN COURT this 17<sup>th</sup> day of November, 2017.

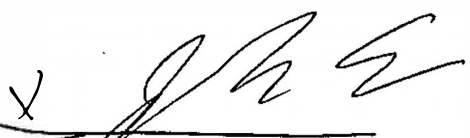
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12 JUDGE EDMUND MURPHY

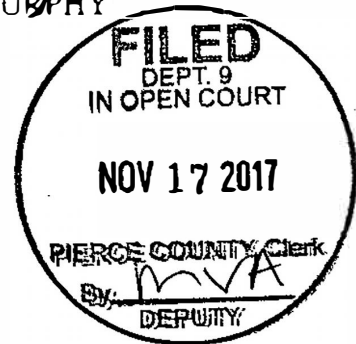
13 Presented by:

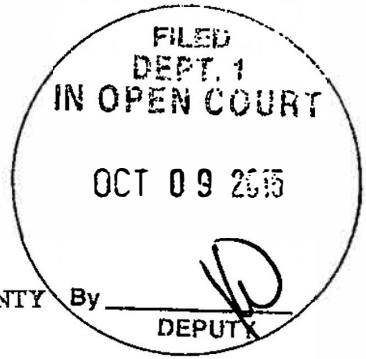
14   
15 PATRICK COOPER  
16 Deputy Prosecuting Attorney  
17 WSB#15190.

18   
19 PETER REICH  
20 Attorney for Defendant  
21 WSB# 37926

22 THEODORE RHONE

23   
24 Evans #37681





SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY By JD DEPUTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 14-1-02745-3

vs.

JUDGMENT AND SENTENCE (JS)

SHANELL KENNETH DUNCAN

Defendant.

- Prison
- RCW 9.94A.712\9.94A.507 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Alternative to Confinement (ATC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
- Juvenile Decline  Mandatory  Discretionary

SID: WA16940394  
DOB: 02/28/80

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 10/9, 2015 by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE GGG66	9A.040(1)(a) 9.41.010	NONE	07/10/14	LAKWOOD PD 141910137
II	ASSAULT IN THE THIRD DEGREE (E36)	9A.36.031(1)(f)	NONE	07/10/14	LAKWOOD PD 141910137
III	ASSAULT IN THE THIRD DEGREE (E36)	9A.36.031(1)(f)	NONE	07/10/14	LAKWOOD PD 141910137

JUDGMENT AND SENTENCE (JS)  
(Felony) (7/2007) Page 1 of 13

15-9-09547-2

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Harm, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the AMENDED Information

Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 **CRIMINAL HISTORY (RCW 9.94A.525):**

	CRIME	DATE OF SENTENCE	SENTENCING COURT	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	TRESPASS	07-07-1993	SUPERIOR CT - PIERCE CTY	06-08-1993	J	MISD
2	MM 3		SUPERIOR CT - PIERCE CTY	06-08-1993	J	MISD
3	TRESPASS	07-07-1993	SUPERIOR CT - PIERCE CTY	06-08-1993	J	MISD
4	MM 3		SUPERIOR CT - PIERCE CTY	06-08-1993	J	MISD
5	ASLT 4	05-10-1994	SUPERIOR CT - PIERCE CTY	04-12-1994	J	MISD
6	VEH PROWL		SUPERIOR CT - PIERCE CTY	03-21-1995	J	MISD
7	THEFT 3	04-25-1995	SUPERIOR CT - PIERCE CTY	03-25-1995	J	MISD
8	VEH PROWL 2	06-04-1996	SUPERIOR CT - PIERCE CTY	05-18-1996	J	MISD
9	THEFT 3	12-06-1996	SUPERIOR CT - PIERCE CTY	11-12-1996	J	MISD
10	WEAPONS APPARENTLY CAPABLE PRODUCING HARM	12-06-1996	SUPERIOR CT - PIERCE CTY	11-24-1996	J	MISD
11	RBRV	07-11-1994	SUPERIOR CT - PIERCE CTY	05-25-1994	J	V
12	ASLT 3	08-05-1994	SUPERIOR CT - PIERCE CTY	06-03-1994	J	NV
13	THEFT 2	10-31-1995	SUPERIOR CT - PIERCE CTY	03-21-1995	J	NV
14	PSP 2	06-04-1996	SUPERIOR CT - PIERCE CTY	05-18-1996	J	NV
15	RES BURG	04-08-1997	SUPERIOR CT - PIERCE CTY	12-06-1996	J	NV
16	BURG 2	03-06-1997	SUPERIOR CT - PIERCE CTY	01-23-1997	J	NV
17	MM 3 (2X)		DISTRICT COURT 1 (TACOMA)	08-10-1999	A	MISD
18	MM 3		DISTRICT COURT 1 (TACOMA)	08-13-1999	A	MISD
19	HARASSMENT		DISTRICT COURT 1 (TACOMA)	08-30-1999	A	MISD

JUDGMENT AND SENTENCE (JS)  
(Felony) (7/2007) Page 2 of 13

20	REC/POSS STLN PROP	01-26-2001	TACOMA MUNICIPAL COURT	03-28-2000	A	MISD
21	THEFT 3	01-26-2001	DISTRICT COURT 1 (TACOMA)	01-12-2001	A	MSID
22	OBSTRUCTING	10-21-2004	TACOMA MUNICIPAL COURT	10-19-2004	A	MISD
23	HARASSMENT		SUPERIOR CT - PIERCE CTY	07-10-2005	A	MISD
24	HARASSMENT		SUPERIOR CT - PIERCE CTY	07-10-2005	A	MISD
25	OBSTRUCTING	10-03-2005	TACOMA MUNICIPAL COURT	09-08-2006	A	MISD
26	DESTRUCTION PROPERTY	01-24-2007	TACOMA MUNICIPAL COURT	01-02-2007	A	MISD
27	OBSTRUCTING	10-05-2007	TACOMA MUNICIPAL COURT	10-04-2007	A	MISD
28	DV - ASSAULT 4	06-23-2009	CENTRAL MUNICIPAL COURT	09-16-2008	A	MISD
29	DV - ASSAULT 4	11-12-2009	ABERDEEN MUNICIPAL CT	11-10-2009	A	MISD
30	CRIM TRESPASS 1	12-14-2009	ABERDEEN MUNICIPAL CT	12-13-2009	A	MISD
31	CRIM TRSP 1	05-12-2010	SUPERIOR CT - PIERCE CTY	01-16-2010	A	MISD
32	THEFT 3	05-12-2010	SUPERIOR CT - PIERCE CTY	01-16-2010	A	MISD
33	OBSTRUCTING	03-03-2014	TACOMA MUNICIPAL COURT	09-22-2010	A	MISD
34	FORGERY	05-04-1999	SUPERIOR CT - PIERCE CTY	04-06-1999	A	NV
35	UPCS		SUPERIOR CT - PIERCE CTY	04-26-1999	A	NV
36	PSP 2	08-23-1999	SUPERIOR CT - PIERCE CTY	05-21-1999	A	NV
37	ATTEMPTED ROBBERY 1	09-27-2002	KING CO. SUPERIOR COURT	10-12-2000	A	V
38	ATMPT UPCS	12-06-2004	SUPERIOR CT - PIERCE CTY	11-03-2004	A	NV
39	BURGLARY 2	11-12-2010	SUPERIOR CT - PIERCE CTY	09-21-2010	A	NV

[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9+	VII	87-116 MONTHS	NONE	87-116 MONTHS	10 YRS
II	9+	III	60 MONTHS	NONE	60 MONTHS	5 YRS
III	9+	III	60 MONTHS	NONE	60 MONTHS	5 YRS

JUDGMENT AND SENTENCE (JS)  
(Felony) (7/2007) Page 3 of 13



2.4  **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence:  
 within  below the standard range for Count(s) \_\_\_\_\_  
 above the standard range for Count(s) \_\_\_\_\_  
 The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence further and is consistent with the interests of justice and the purposes of the sentencing reform act.  
 Aggravating factors were  stipulated by the defendant,  found by the court after the defendant waived jury trial,  found by jury by special interrogatory.  
Findings of fact and conclusions of law are attached in Appendix 2.4.  Jury's special interrogatory is attached. The Prosecuting Attorney  did  did not recommend a similar sentence.

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.  
 The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):  
\_\_\_\_\_  
 The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:  
\_\_\_\_\_

2.6  **FELONY FIREARM OFFENDER REGISTRATION.** The defendant committed a felony firearm offense as defined in RCW 9.41.010.  
 The court considered the following factors:  
 the defendant's criminal history.  
 whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.  
 evidence of the defendant's propensity for violence that would likely endanger persons.  
 other: allegations in this offense  
 The court decided the defendant  should  should not register as a felony firearm offender.

III JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.  
3.2  The court DISMISSES Counts \_\_\_\_\_  The defendant is found NOT GUILTY of Counts \_\_\_\_\_

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTNR/N \$ na Restitution to: \_\_\_\_\_

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Crime Victim assessment

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 4 of 13

1  
 2 DNA \$ 100.00 DNA Database Fee  
 3 PUB \$ 14,000.00 Court-Appointed Attorney Fees and Defense Costs  
 4 FRC \$ 200.00 Criminal Filing Fee  
 5 FCM \$ \_\_\_\_\_ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

6 \$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_  
 7 \$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_  
 8 \$ 800.00 TOTAL

9 [ ] The above total does not include all restitution which may be set by later order of the court. An agreed  
 10 restitution order may be entered. RCW 9.94A.753. A restitution hearing:  
 11 [ ] shall be set by the prosecutor.  
 12 [ ] is scheduled for \_\_\_\_\_

**RESTITUTION.** Order Attached

13 [ ] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll  
 14 Deduction. RCW 9.94A.7602, RCW 9.94A.760(\$).  
 15 [X] All payments shall be made in accordance with the policies of the clerk, commencing immediately,  
 16 unless the court specifically sets forth the rate herein: Not less than \$ per Clerk per month  
 17 commencing per Clerk. RCW 9.94.760. If the court does not set the rate herein, the  
 18 defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to  
 19 set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

[ ] COSTS OF INCARCERATION. In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.1b **ELECTRONIC MONITORING REIMBURSEMENT.** The defendant is ordered to reimburse \_\_\_\_\_ (name of electronic monitoring agency) at \_\_\_\_\_ for the cost of pretrial electronic monitoring in the amount of \$ \_\_\_\_\_.

4.2 [X] **DNA TESTING.** The defendant shall have a blood ~~biological~~ sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[ ] **HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 **NO CONTACT**  
 The defendant shall not have contact with \_\_\_\_\_ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence).

JUDGMENT AND SENTENCE (JS)  
 (Felony) (7/2007) Page 5 of 13



4.5 CONFINEMENT OVER ONE YEAR The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

<u>116</u>	months on Count	<u>I</u>	_____	months on Count	_____
<u>60</u>	months on Count	<u>II</u>	_____	months on Count	_____
<u>60</u>	months on Count	<u>III</u>	_____	months on Count	_____

Actual number of months of total confinement ordered is: 116 months  
(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

[ ] The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.  
CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: Subject to DOC Calculation

4.6 [ ] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

1  
2  **COMMUNITY CUSTODY** (To determine which offenses are eligible for or required for community  
custody see RCW 9.94A.701)

3 The defendant shall be on community custody for:

4 Count(s) \_\_\_\_\_ 36 months for Serious Violent Offenses

5 Count(s) \_\_\_\_\_ 18 months for Violent Offenses

6 Count(s) \_\_\_\_\_ 12 months (for crimes against a person, drug offenses, or offenses  
involving the unlawful possession of a firearm by a  
street gang member or associate)

7 Note: combined term of confinement and community custody for any particular offense cannot exceed the  
statutory maximum. RCW 9.94A.701.

8 (B) While on community placement or community custody, the defendant shall: (1) report to and be  
available for contact with the assigned community corrections officer as directed; (2) work at DOC-  
approved education, employment and/or community restitution (service); (3) notify DOC of any change in  
9 defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully  
issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not  
10 own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform  
affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any  
11 additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit  
to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements  
are subject to the prior approval of DOC while in community placement or community custody.  
12 Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the  
statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may  
13 result in additional confinement.

14 The court orders that during the period of supervision the defendant shall:

15  consume no alcohol.

16  have no contact with: \_\_\_\_\_

remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_

17  not serve in any paid or volunteer capacity where he or she has control or supervision of minors under  
13 years of age

18  participate in the following crime-related treatment or counseling services: \_\_\_\_\_

19  undergo an evaluation for treatment for  domestic violence  substance abuse

20  mental health  anger management and fully comply with all recommended treatment

21  comply with the following crime-related prohibitions: \_\_\_\_\_

22  Other conditions:

23 \_\_\_\_\_  
24 \_\_\_\_\_  
25 \_\_\_\_\_

[ ] For sentences imposed under RCW 9.94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4.7 [ ] WORK ETHIC CAMP. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

V. NOTICES AND SIGNATURES

5.1 COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 RESTITUTION HEARING.

[ ] Defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_

- 1
- 2 5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 3
- 4 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5
- 6 5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.
- 7 N/A
- 8 5.8 [ ] The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
- 9
- 10 5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.
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5.10 OTHER: Comply with NCO, Payment of CEO's  
DATA ORDER

DONE in Open Court and in the presence of the defendant this date: 10/9/15

JUDGE

Print name

JAMES ORLANDO

Deputy Prosecuting Attorney

Print name: Carri Korman

WSB # 32372

Attorney for Defendant

Print name: SUMMI K

WSB # 2042

A. SHANE M. DURCAN

Defendant

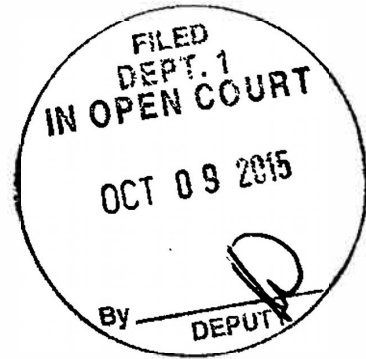
Print name: Shane M. Durcan

**Voting Rights Statement:** I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.060. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: A. SHANE M. DURCAN





**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case: 14-1-02745-3

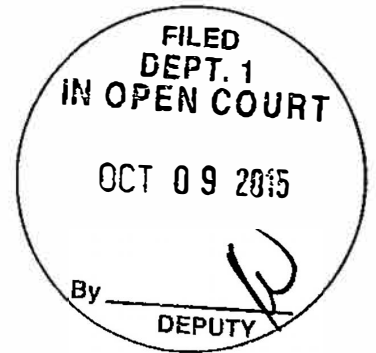
I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date:

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

**IDENTIFICATION OF COURT REPORTER**

Shaun Linse  
Court Reporter



0054  
FILED  
BOOK

00557  
FILED  
BOOK

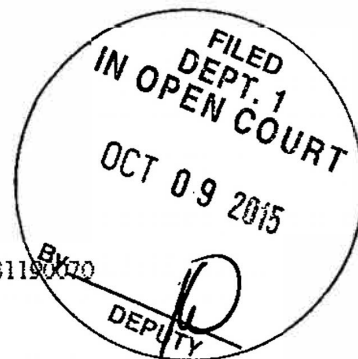
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FILED  
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28

IDENTIFICATION OF DEFENDANT



SID No. WA16940394  
(If no SID take fingerprint card for State Patrol)

Date of Birth 02/28/80

FBI No. 148987JB9

Local ID No. CHRI#931190070

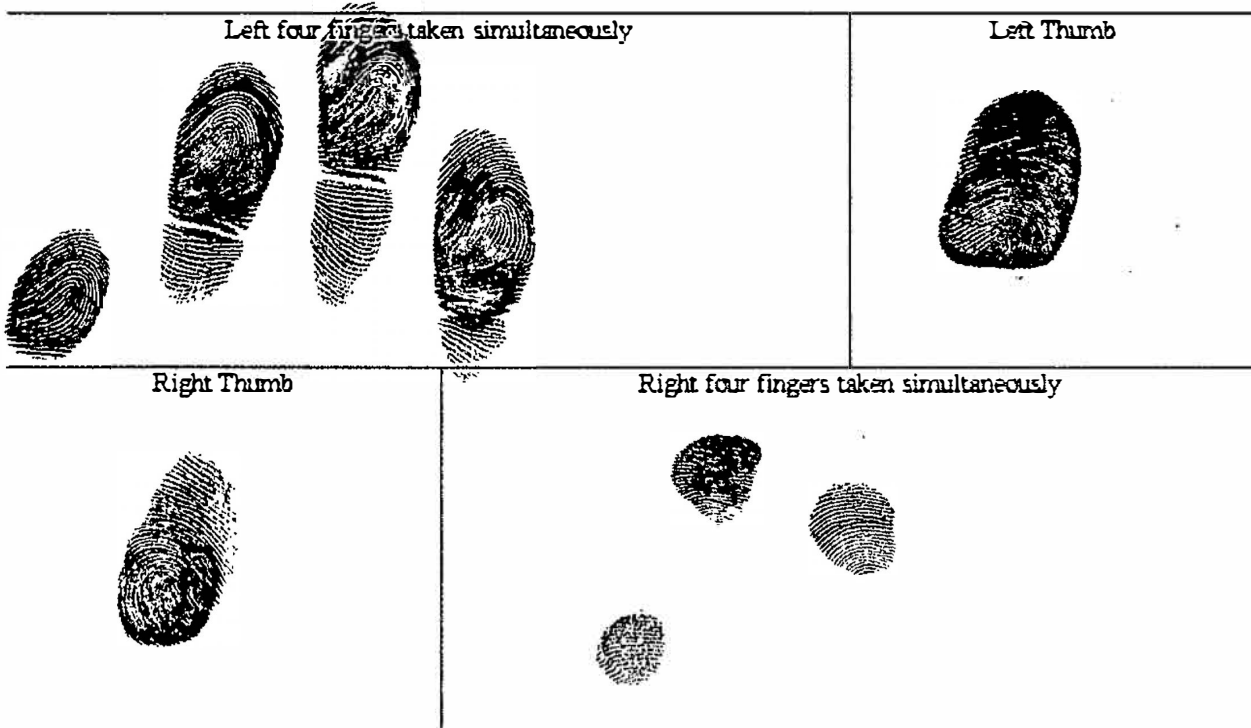
PCN No. 541233181

Other

Alias name, SSN, DOB:

<b>Race:</b>	<input type="checkbox"/> Asian/Pacific Islander	<input checked="" type="checkbox"/> Black/African-American	<input type="checkbox"/> Caucasian	<b>Ethnicity:</b>	<input type="checkbox"/> Hispanic	<b>Sex:</b>	<input checked="" type="checkbox"/> Male
	<input type="checkbox"/> Native American	<input type="checkbox"/> Other :		<input checked="" type="checkbox"/> Non-Hispanic		<input type="checkbox"/> Female	

FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Aur Jacksonburg

Dated: \_\_\_\_\_

DEFENDANT'S SIGNATURE:  
SHANE MORGAN

DEFENDANT'S ADDRESS:

July 14 2014 12:15 PM

KEVIN STOCK  
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 14-1-02745-3

vs.

SHANELL KENNETH DUNCAN,

DECLARATION FOR DETERMINATION OF  
PROBABLE CAUSE

Defendant.

HUGH K. BIRGENHEIER, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the LAKEWOOD POLICE DEPARTMENT, incident number 141910137;

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, on or about the 10th day of July, 2014, the defendant, SHANELL KENNETH DUNCAN, did commit the crimes of Assault in the First Degree (Firearm Sentencing Enhancement); Assault in the First Degree (Firearm Sentencing Enhancement) and Unlawful Possession of a Firearm in the First Degree.

On July 10, 2014 officers of the Lakewood Police Department responded to the 12600 block of Pacific Highway SW regarding a man who had been shot at. The caller indicated that there was a dark colored SUV and a white male were involved.

The arriving officers saw a dark colored SUV. In the area the officers located a white male (Victim Charles Watson). Victim Watson told the Lakewood Police Department that he and a friend had been by the McChord Gate when a male started shooting at the vehicle that they were in. The male the victim was with was known as Sarge. Other Lakewood Police Department units looked for Sarge. Victim Watson was not injured. The Lakewood Police Department found multiple bullet holes in the vehicle the victims had been in.

The Lakewood Police Department then saw another male (Victim Santiago Sison). Victim Sison was sweating. Initially Victim Sison was not truthful about what had occurred. Victim Sison told the Lakewood Police Department:

1. Victim Sison has been at Masa in Tacoma overnight. Eventually Victim Sison went to a store where he met Victim Watson and another man (now known to be the defendant). The defendant offered them \$5 to drive him (the other male) to Lakewood.
2. Victim Sison drove the defendant to a location of Hosmer Street where they picked up a female (Witness Davis). They then drove to McChord Gate. Victim Sison described the house. *Based on Victim Sison's description the Lakewood Police Department found several spent shell casings.*
3. Victim Sison then was asked to drive a female to Wal-Mart to buy methamphetamine. They went to the location but the deal did not happen. They then went back to the house.
4. When they returned the defendant angry and demanded money from Victim Sison for the time the white female was gone. The defendant then went into the house and returned with a handgun.

DECLARATION FOR DETERMINATION  
OF PROBABLE CAUSE -1

Office of the Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, WA 98402-2171  
Main Office (253) 798-7400



1.	<p>Mark Joseph Stern, <u>Washington Supreme Court Orders Judges to Keep People Out of Jail: A prosecutor who worked on the far-reaching order explains why the courts must act now</u>, Slate (Mar. 23, 2020)  <a href="https://slate.com/news-and-politics/2020/03/washington-supreme-court-coronavirus-adam-cornell-jail.html">https://slate.com/news-and-politics/2020/03/washington-supreme-court-coronavirus-adam-cornell-jail.html</a></p>	<p>“Adam Cornell, the Snohomish County prosecuting attorney, ... developed these policies for his own county early on after coronavirus cases skyrocketed in Washington. He then worked with [defense bar chair Amy] Muth to propose statewide rules to the high court, which promptly adopted their recommendations. ... Cornell has helped reduce the Snohomish County jail population by 35 percent.”      “There’s not a target number... I’m balancing public safety with a need to protect everyone in the community.”      “I can tell you the thing that I am most focused on the safety of <i>everyone</i> in our community. ... we’re not talking about opening the jail to every person who is charged or convicted of a crime. ... We’re not dismissing their cases. We’re just agreeing to remove them from custody because that is the safest thing to do.”</p>
2.	<p>Caleb Hutton, <u>Jail population drops as justice is postponed by COVID-19</u>, Everett Herald (Mar. 22, 2020)  <a href="http://www.courts.wa.gov/content/publicupload/eclips/2020%2003%203%20Jail%20population%20drops%20as%20justice%20is%20postponed%20by%20COVID%2019.pdf">http://www.courts.wa.gov/content/publicupload/eclips/2020%2003%203%20Jail%20population%20drops%20as%20justice%20is%20postponed%20by%20COVID%2019.pdf</a></p>	<p>“The inmate population in Snohomish County’s jail has dipped ... a result of fewer people being accepted by the jail on nonviolent and misdemeanor charges; new emergency policy changes at the prosecutor’s office and in the courts at large.”      “Prosecutor’s Office has adopted a temporary policy of agreeing to release inmates held on nonviolent and nonsexual offenses” taking into consideration detainee’s health conditions and the seriousness of the crime.</p>
3.	<p>Jerzy Shedlock, <u>Clark County Jail released nearly 200 inmates due to COVID-19</u>, The Columbian (Mar. 25, 2020)  <a href="http://www.courts.wa.gov/content/publicupload/eclips/2020%2003%206%20Clark%20County%20Jail%20releases%20nearly%20200%20inmates%20due%20to%20COVID%2019.pdf">http://www.courts.wa.gov/content/publicupload/eclips/2020%2003%206%20Clark%20County%20Jail%20releases%20nearly%20200%20inmates%20due%20to%20COVID%2019.pdf</a></p>	<p>“The jail population went from 601 on March 17 to 417 three days later.... Officials said they are working to reduce the jail population while balancing public safety concerns.”      “The criteria — established by [Prosecutor] Golik, Clark County Sheriff Chuck Atkins, and the presiding</p>

		<p>District and Superior Court judges — includes nonviolent cases such as drug and property crimes. No cases involving sex offenses are reviewed, and generally, no domestic violence cases meet the criteria.”</p> <p>“Prosecutors ... look at the facts of an inmate’s current case, as well as the person’s criminal history, to determine if they pose a risk were they to be released.”</p> <p>“Inmates serving a sentence of less than a year at the jail are being furloughed ... if they meet the criteria for release.”</p> <p>“County jails statewide are reacting similarly to the pandemic.”</p> <p>“[King County] correctional facilities stopped accepting intakes for people who were arrested for violating their conditions of release.”</p> <p>“Clark County Superior Court Judge David Gregerson, who was presiding, granted many of the prosecutors’ requests for release, some of them against his better judgment, he said, because of the public health crisis.”</p>
<p>4.</p>	<p>Jessie Stenland, <u>Some county inmates to be released; cases delayed in response to coronavirus emergency</u>, Whidbey New-Times (Mar. 17, 2020)  <a href="https://www.whidbeynewstimes.com/news/some-county-inmates-to-be-released-cases-delayed-in-response-to-coronavirus-emergency/">https://www.whidbeynewstimes.com/news/some-county-inmates-to-be-released-cases-delayed-in-response-to-coronavirus-emergency/</a></p>	<p>“Monday, Island County Prosecutor Greg Banks explained in a memo the ‘extraordinary measures’ his office is taking to respond to the outbreak.”</p> <p>“[P]rosecutors are reviewing the jail roster and criminal cases [for] inmates who pose the least risk to public safety and can be released. Banks said the inmates will include those accused of committing property, drug, and other non-violent crimes.</p> <p>“In addition, some nonviolent inmates who are serving sentences will be released, but they will have to return someday to complete the term.</p> <p>“Prosecutors will hold off on charging any new felonies that aren’t sex crimes or violence crimes, Banks said. ... Prosecutors will not seek bail on</p>

		defendants arrested on felonies other than violence and sex crimes.”
5.	<p>Anna Boiko-Weyrauch, <u>Vulnerable jail inmates are in solitary for ‘social distancing and infection prevention’ in King County</u>, KUOW (Mar. 31. 2020)  <a href="https://kuow.org/stories/king-county-inmates">https://kuow.org/stories/king-county-inmates</a></p>	<p>“March 31, 1,370 inmates were in custody in King County, according to the county, down from 1,940 people incarcerated March 1.  “The county aims to bring the adult incarcerated population to 1,200 people so cells only house one inmate each.”  “The jails are also limiting the inmates they’ll accept. People will no longer be booked on misdemeanor charges unless they represent a risk to public safety, and have charges such as a misdemeanor assault, DUI, or sex crimes. People will still be booked for felonies.”</p>
6.	<p>Dan Satterberg, <u>Our King County justice system is taking innovative steps in response to coronavirus</u>, The Seattle Times (Apr. 2, 2020)  <a href="https://www.seattletimes.com/opinion/our-king-county-justice-system-is-taking-innovative-steps-in-response-to-coronavirus/">https://www.seattletimes.com/opinion/our-king-county-justice-system-is-taking-innovative-steps-in-response-to-coronavirus/</a></p>	<p>“We are assessing each individual in jail to determine who can be released pretrial without endangering public safety. Our careful review has reduced the average daily population by more than 200 people in the past several weeks, contributing to an overall reduction of more than 500 people from the jail population. This has resulted in increased protections for corrections officers and inmates, allowing more space for social distancing.  “Some people awaiting trial in jail suffer from behavioral-health challenges and are homeless, and ensuring they have necessary supports as an alternative to jail is especially challenging right now, as many support systems are harder than usual to access. But an adaptation of the LEAD (Law Enforcement Assisted Diversion) program, called CO-LEAD, tapping into newly available hotel capacity due to the impact of COVID-19, along with a temporary intensive case management team, will create a support structure for 200 to 500 vulnerable individuals over the next three months.</p>

		<p>People released to CO-LEAD will be given a court date to return and face their charges several months off, and with the support of a case manager, many can await the resumption of the court process in temporary housing with a support team, not the jail.”</p>
7.	<p>Andrew Binion, <u>Kitsap County Jail taking steps to reduce chance of COVID-19 infections</u>, Kitsap Sun (Mar. 18, 2020)  <a href="https://www.kitsapsun.com/story/news/2020/03/18/kitsap-county-jail-taking-steps-reduce-chance-covid-19-infections/2869893001/">https://www.kitsapsun.com/story/news/2020/03/18/kitsap-county-jail-taking-steps-reduce-chance-covid-19-infections/2869893001/</a></p>	<p>“Prosecutor Chad Enright said Wednesday that earlier in the week authorities released about 20 inmates from the Kitsap County Jail facing non-violent charges with bail less than \$5,000. When requesting bail on people facing new charges, prosecutors are also considering only the threat suspects pose to the community rather than also the possibility of them not showing up for future court dates.”          “There is a limited amount of jail space,” Enright said. “We need to reserve it for the most dangerous offenders.”          “Enright said prosecutors are going case-by-case on which defendants should be released and who should be held on bail.”</p>
8.	<p>Andrew Binion, <u>Kitsap County Jail officer diagnosed with COVID-19, second case connected to county campus</u>, Kitsap Sun (Mar. 19, 2020)  <a href="http://www.courts.wa.gov/content/publicupload/eclips/2020%2003%2020%20Kitsap%20County%20Jail%20officer%20diagnosed%20with%20COVID%2019.pdf">http://www.courts.wa.gov/content/publicupload/eclips/2020%2003%2020%20Kitsap%20County%20Jail%20officer%20diagnosed%20with%20COVID%2019.pdf</a></p>	<p>“Prior to the diagnosis, jail officials and the county prosecutor lowered the jail population by lodging only those accused of more serious crimes and by asking judges to set bail only on defendants believed to pose a danger to the community. The jail has room for about 400 to 420 inmates. On Wednesday the population was 272.          “The jail has also established medical isolation units for 20 inmates who show symptoms, Deputy Scott Wilson said.”</p>
9.	<p>Jackson Gardner, <u>Lewis County Drops Jail Population in Response to Coronavirus Pandemic</u>, The Daily Chronicle (Mar. 30, 2020)  <a href="http://www.chronline.com/community/lewis-county-drops-jail-population-in-response-to-coronavirus-pandemic/article_ad7c79d2-72d0-11ea-a9a7-7708fcaefdec.html">http://www.chronline.com/community/lewis-county-drops-jail-population-in-response-to-coronavirus-pandemic/article_ad7c79d2-72d0-11ea-a9a7-7708fcaefdec.html</a></p>	<p>“The rapid decline of inmates is due to efforts from the Lewis County Jail, the Lewis County Prosecutor’s Office and the Lewis County courts to keep population numbers low to limit the spread of the coronavirus, though as of last Tuesday, there were no confirmed</p>



		<p>cases of COVID-19 in the jail, corrections Chief Chris Sweet said.”</p> <p>“Since March 2, when the jail’s total system population sat at 215 inmates, the population has dropped to 121.”</p> <p>“Lewis County Prosecuting Attorney Jonathan Meyer said his office is doing their part by looking at cases that have been flagged by the jail as a person in a vulnerable population and sees if there is anything that can be done to alter their sentencing or conditions.”</p>
10.	<p>Kera Wanielista, <u>Justice Center taking precautions to prevent COVID-19</u>, Skagit Valley Herald (Apr. 1, 2020)</p> <p><a href="http://www.courts.wa.gov/content/publicupload/eclips/2020%2004%2002%20Justice%20Center%20taking%20precautions%20to%20prevent%20COVID%2019.pdf">http://www.courts.wa.gov/content/publicupload/eclips/2020%2004%2002%20Justice%20Center%20taking%20precautions%20to%20prevent%20COVID%2019.pdf</a></p>	<p>“On Tuesday, 152 inmates were being held” in a 400-bed 100,000 square foot facility.</p> <p>“[J]ail staff are reducing the number of those held who are not charged with [mandatory detention] offenses ... are also working with the Skagit County Prosecuting Attorney’s Office and Skagit County Superior Court to get cases resolved faster, and are postponing jail sentences.”</p>
11.	<p>Chad Sokol, <u>Spokane County jail population plunges during pandemic</u>, Spokesman Review (Mar. 27, 2020)</p> <p><a href="http://www.courts.wa.gov/content/publicupload/eclips/2020%2003%2030%20Spokane%20County%20jail%20population%20plunges%20during%20pandemic.pdf">http://www.courts.wa.gov/content/publicupload/eclips/2020%2003%2030%20Spokane%20County%20jail%20population%20plunges%20during%20pandemic.pdf</a></p>	<p>620 detained, down from a high of 1200.</p> <p>“The sharp decrease is the result of court orders requiring many defendants to be released from custody. Spokane County Detention Services made an urgent request to the local courts two weeks ago, while also barring friends and relatives from visiting inmates in person and implementing other restrictions to prevent the virus from spreading.</p> <p>“Inmates prioritized for release include those with serious underlying health issues, those held for low-level misdemeanors and those held for bonds of a few thousand dollars or less. Some who were serving sentences were essentially furloughed and will be expected to return to jail once concerns about coronavirus transmission subside. Judges and court administrators have stressed that those</p>

		being released present little risk to the community.”
12.	<p>Sara Gentzler, Thurston inmates voice COVID-19 fears, efforts underway to thin crowded population, The Olympian (Mar. 29, 2020) <a href="http://www.courts.wa.gov/content/publicupload/eclips/2020%2003%2030%20Thurston%20inmates%20voice%20COVID%2019%20fears%200efforts%20underway%20to%20thin%20crowded%20population.pdf">http://www.courts.wa.gov/content/publicupload/eclips/2020%2003%2030%20Thurston%20inmates%20voice%20COVID%2019%20fears%200efforts%20underway%20to%20thin%20crowded%20population.pdf</a></p>	<p>“Thurston County Prosecuting Attorney Jon Tunheim ... is working to get lower-priority cases into diversion programs or delayed for now.”</p> <p>“New directives also have placed a priority on getting low-risk inmates already in the system out of custody.”</p> <p>“Prosecutor Tunheim warned against painting inmates in broad strokes based on the jail’s low- and medium-custody designations, however, saying that determination is based on safety within the jail setting, not considering risk to public safety.</p> <p>“Thoma said he’d seen about a 20% decrease in the jail population over the past month — from 354 inmates in the system to 285.”</p>
13.	<p>Donald W. Meyers, <u>Prosecutors asking police to book fewer people into jail during COVID outbreak</u>, Yakima Herald-Republic (Mar. 31, 2020). <a href="https://www.yakimaherald.com/special_projects/coronavirus/prosecutors-asking-police-to-book-fewer-people-into-jail-during-covid-outbreak/article_1feaa6c-a31b-524e-8bf9-7f215be05782.html">https://www.yakimaherald.com/special_projects/coronavirus/prosecutors-asking-police-to-book-fewer-people-into-jail-during-covid-outbreak/article_1feaa6c-a31b-524e-8bf9-7f215be05782.html</a></p>	<p>“In an email sent to police officials throughout the Yakima Valley on Tuesday, [Prosecutor] Brusic recommended that only violent offenders or those who pose clear threats to public safety be sent to jail because of concerns about the COVID-19 pandemic.”</p> <p>“Brusic said the goal is to take the strain off Yakima County’s detention system. As of Tuesday, there were 706 inmates in the county jail, down from 920 earlier this month.”</p> <p>“... booking into jail should be reserved for those who are suspected of a violent or serious crime, present a clear threat to public safety or are suspected of a domestic violence offense.”</p> <p>“ ... nonviolent offenders likely will be released on bail or through the pretrial release program. ... He’s also instructed his prosecutors to find cases where a plea agreement can move someone out of the jail, either to prison or released on time served.”</p>

14.	<p>Alexis Krell, <u>Changes to Pierce County jail and courts in COVID-19 pandemic ‘evolving day by day,’</u>The News Tribune (Mar. 18, 2020) <a href="https://www.thenewstribune.com/news/coronavirus/article241246181.html">https://www.thenewstribune.com/news/coronavirus/article241246181.html</a></p>	<p>“... fewer people being booked into jail are some of the early ways the coronavirus pandemic is affecting Pierce County’s justice system.”</p> <p>“All out-of-custody matters are continued until April 24, as are in-custody matters with the exception of scheduling of first appearances, arraignments, pleas and sentencings. In those matters courts will have discretion, but pretrial release motions and pleas and sentencings of people that are anticipated to be released within 30 days of the hearing will take priority.”</p> <p>“... the jail has restricted bookings to those that are mandatory. Felony suspects are still being booked.</p> <p>“We need to keep the population manageable. ... There were 941 people in the jail Monday, he said, compared to 1,049 at the same time last year. Its operational capacity is 1,166.”</p>
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**COVID-19 - Lessons Learned So Far**

For the past several weeks, the Seattle/King County area has been under siege by a pandemic that is sweeping the State and nation. In response, we have taken steps to help address the issues. The goal is to identify some “best practices” that may assist another prosecutor’s offices. These are presented in no particular order and some may not be applicable to other jurisdictions.

**Emptying the Courthouse**

- We immediately stopped filing out-of-custody cases to prevent new defendants from showing up to court. We are monitoring the appropriate time to begin filing those cases with an extended continuance of the arraignment date.
- We developed orders to quickly continue any pending out-of-custody matters for 5 weeks. These orders were done with cooperation of the public defenders and the court. We then asked defense to notify their clients of the new dates. The court accepted “agreed” orders even when the signatures of the lawyers were only provided by verbal or email consent. No defendant signatures were required.
- We posted signs on courthouse doors in multiple languages advising defendants that matters were continued and to call the public defenders with questions. We updated websites with the same information.
- We changed the physical layout of the courtrooms to encourage more social distancing – only bringing incarcerated defendants into the entryway of the courtroom and moving counsel away from the bench and each other.
- We worked with the court to consolidate and limit calendars so only a few essential lawyers and staff needed to appear each day.
- We transitioned employees (staff and lawyers) to work from home. Many needed to take work equipment home to conduct their work. We loaned laptops to those who didn’t have them and worked with IT to ensure people knew how to log on remotely. For those employees where working at home has been difficult to fill their hours due to their positions (reception, etc.), there are online approved classes that are available and other tasks beyond their typical loads.
- We closed the front desk and posted phone numbers that we forward to reception employees working from home. A mail drop-off slot has been utilized to accept mail.
- We worked with the court and defense to allow for telephonic and video court appearances when possible. In many instances, the court is completing forms, or accepting online submittal of court forms and orders.

### **Administration during Pandemic**

- We developed practice notes for each of the calendars and consolidated those notes in one central shared folder so attorneys and staff would know the latest practices, orders and FAQ for each hearing type in our post COVID-19 system.
- We created an online sign-up system so prosecutors can sign up to cover certain calendars.
- We wrote one daily email summarizing the latest information for the Criminal Division. We were able to address updates, quell rumors, and provide some support for staff and lawyers working from home and feeling disconnected.

### **Reducing the Jail Population**

- In order to maintain the jail as a safe place for jail officers and violent inmates, we needed to assist in reducing the daily population to allow for proper social distancing. We worked with the jail to identify each inmate by name, crime type, case number etc. We distributed that list to each criminal division unit chair to see if any inmates might be a candidate for a less-restrictive alternative. Some were eligible for Electronic Home Monitoring and others for pre-trial release programs or release with conditions. We also looked to see if any were serving sentences that could be shortened by the sentencing judge. Some other inmates received a Temporary Release to return to jail in June, 2020. In all, we were able to help reduce the daily population to safer levels. By doing this, we were in a better position to argue against release of our most dangerous offenders.
- The court set up additional bond hearings and allowed the lawyers to appear telephonically to quickly address the surge of release motions.
- The LEAD Program run by The Public Defender Association has partnered with local motels to find additional bed space for 200 individuals who might otherwise be incarcerated. The goal is to reduce/maintain jail population by diverting potential inmates into these beds with access to a 16 person outreach team that can help provide support to keep people out of custody. We will assist in identifying candidates for the program and monitor participation.
- The County Executive restricted booking in the jail on most misdemeanor charges (with the exception of misdemeanor assaults, violations of no contact or protection orders, DUIs, sex crimes or other charges which present a serious public safety concern.)

### **Victim Services**

- Our Domestic Violence Advocates have been able to transition to telephonic advocacy for their clients.
- Our Protection Order practice has shifted to partnering with a vendor that has created an online fillable form (like Turbo-Tax) to allow petitioners to complete and file electronically. Our office is still able to assist petitioners with online advocacy.

#### Questions:

Dan Clark, Chief Criminal Deputy  
[Daniel.Clark@kingcounty.gov](mailto:Daniel.Clark@kingcounty.gov)  
(206) 477-1174

## **BOOKING RESTRICTIONS WHATCOM COUNTY JAIL**

In an effort to reduce the potential for the introduction and/or spread of COVID-19 in the Whatcom County Sheriff's Corrections facilities; the Sheriff's Office, Prosecutor and Judicial Officers have reached agreement that, effective 03/19/2020, the following booking restrictions are being instituted for the duration of the COVID-19 Crisis.:

Agencies confirming warrants should only confirm those warrants that meet the criteria outlined below;

### **Misdemeanor Offenses:**

The jail will not be booking offenders arrested on either Probable Cause or warrants for Misdemeanor offenses. For those offenders who are cited and released, the County Judicial Officers have requested that Law Enforcement personnel mark the portion of the citation that states that they served the notice to the violator.

### **Gross Misdemeanor Offenses:**

It is strongly suggested that Law Enforcement Offices use the option to Cite and Release offenders rather than bring them to the jail unless they represent a serious threat to the public safety.

Offenders who are arrested for Gross Misdemeanor offenses, either on Probable Cause or Warrants, will be booked and released with the following exceptions:

Individuals arrested on the following charges will be held until they see a Judge:

- Any Domestic Violence Offense
- Harassment
- Stalking
- Violation of no contact or protection orders

Individuals who are arrested on DUI will be booked and held until sober.

### **Felony Offenses:**

It is strongly suggested that whenever possible Law Enforcement Officers take a report on the incident and refer it to the Prosecutor's office for review and filing, unless the incident represents a serious threat to public safety.

Offenders arrested on Felony offenses, both Probable Cause and Warrants, will be booked and released with the following exceptions:

- Crimes Against Persons
- Any Sex Offense
- Any Domestic Violence Offense
- Residential Burglary
- Unlawful Possession of a Firearm
- Felony DUI
- Escape

Offenders booked on the above charges will be held until they see a Judge.

**DOC:**

The jail will not be booking offenders on DOC violations.

If a Law Enforcement Officer has arrested an individual and believes the individual is dangerous to the community, the Corrections Shift Sergeant has the ability to make an exception to these restrictions.

We appreciate the understanding and support as we work to achieve a balance between community safety and the health of individuals housed in the Downtown Jail and Work Center.

**From:** [Jim Schacht](#)  
**To:** [PAT Criminal Attorneys](#)  
**Subject:** FW: PC JAILS RESPONSE TO STEMMING THE SPREAD OF COVID-19  
**Date:** Thursday, April 9, 2020 4:10:31 PM  
**Attachments:** [image002.png](#)

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**From:** Patti Jackson-Kidder <patti.jackson-kidder@piercecountywa.gov>  
**Sent:** Thursday, April 9, 2020 1:00 AM  
**To:** Michael Kawamura <michael.kawamura@piercecountywa.gov>; Chris Gaddis <chris.gaddis@piercecountywa.gov>; Jim Schacht <jim.schacht@piercecountywa.gov>; Misty Robison <misty.robison@piercecountywa.gov>; Michael Malone <michael.malone@piercecountywa.gov>; Michelle Petrich <mpetrich@cityoftacoma.org>; Dea Finigan <dea.finigan@piercecountywa.gov>  
**Subject:** PC JAILS RESPONSE TO STEMMING THE SPREAD OF COVID-19



Pierce County

Sheriff of Pierce County

930 Tacoma Avenue South  
Tacoma, Washington 98402

Good COVID-FREE Thursday,

I hope this email finds you and yours well! I've been fielding many questions with regards to our jails role in stemming the spread of the COVID-19 virus and hope this will be helpful to you and your staff. The men and women of my bureau have done an outstanding maintaining a calm and united front – which has been very helpful in keeping each other, the individuals incarcerated to our charge, and ultimately the communities we serve safe and healthy.

While we are blindly battling an unknown like the rest of our world, I am very confident that we are taking every measure available to us to stem the spread of the virus through our “city” while following guidelines from the TPCHD.


We have been blessed by ZERO confirmed cases of COVID-19 in our Pierce County Jail (Inmates or Staff). We do not have any inmates complaining of, or presenting with, symptoms of COVID-19 as described by the TPCHD and the CDC. To that end:

- We are following best practices for Correctional settings in limiting traffic in/out of our facility through use of strict booking restrictions
  - EVERY person coming into our facility is temp checked and screened BEFORE gaining access
- As seen across the nation, we have seen a drastic reduction in population (currently a little more than 1/3 of recent ADP)



- We have started a protocol to mask ALL incoming bookings with disposable surgical masks while awaiting delivery of washable masks that will be issued to inmates in our population (unless personal safety dictates otherwise)
  - As supplies becomes available, inmates will begin wearing masks when outside their assigned housing (court appearances, etc.) PLEASE DO NOT BE ALARMED AS INDIVIDUALS BEGIN PRESENTING TO COURT IN MASKS
- We are less than 5 days away from receiving donation of washable masks for our staff members – until then, staff members have been issued a disposable mask in the event they are in close contact with suspected COVID-19 positive individuals
- We maintain very strict cleaning schedules throughout both of our facilities
- Our inmates are provided with education regarding practicing clean and healthy habits – this is an on-going practice which provided a great foundation to fight the pandemic when it hit Pierce County
- Our medical teams are conducting DAILY screening / temp checks for all individuals in our charge

While we do not have all the answers to fight this very destructive virus, we are confident we are travelling in the right direction. Please reach out to me with additional questions. Please take care of you and yours! Pj

*Chief Patti Jackson* | Pierce County Sheriff's Dept – Corrections Bureau   
[patti.jackson-kidder@piercesheriff.com](mailto:patti.jackson-kidder@piercesheriff.com) | (253) 798-2299  
**Integrity \* Respect \* Responsibility \* Courage \* Compassion**

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

SHYANNE COLVIN, et al.,

Petitioners,

v.

JAY INSLEE, et al.,

Defendant.

NO. 98317-8

DECLARATION OF BRUCE  
DAMMEIER

I, BRUCE DAMMEIER, make the following declaration:

1. I am over eighteen years of age, am competent to testify, and have knowledge of the facts contained in this declaration.

2. I have been the elected Pierce County Executive since 2017. As the County Executive, I am responsible for appointing all executive branch department heads and supervising the administration of all executive branch departments. While the Pierce County Sheriff is independently elected, the Sheriff's Department, including the Pierce County jail and Pierce County Corrections, are executive branch agencies under the Pierce County Charter and Code. In addition, I am administratively responsible for all County projects and expenses, preparing the annual and semi-annual County budgets, and signing all County contracts.

3. As of Sunday, April 13, 2020, there are 931 confirmed cases of COVID-19 in Pierce County. Twenty individuals in the County have died as a result of COVID-19 infections.

4. In recognition of this public health emergency, Pierce County issued a Proclamation of Emergency on March 6, 2020.

5. During this pandemic, Pierce County's housing and medical resources have been greatly strained. We are bracing for the release of individuals from the state correctional facilities as they seek to reduce the numbers in the prisons and will be struggling to meet their needs. The County is not in a position to accept the release of additional individuals from state correctional institutions into the County.

6. One of my primary concerns with the release of offenders into the community is the lack of shelter. The County's homeless shelters are filled to capacity and we currently have an unmet need for additional shelter beds.

7. Within Pierce County's homeless shelters, five individuals have tested positive for COVID-19. We are striving to maintain social distancing within the shelters to prevent further infection. As a result, the County cannot crowd the existing shelters with additional individuals without increasing the risk of infection.

8. The County has leased a motel to help with housing needs during the medical emergency. However, this facility is being used to house only persons who have been directed into isolation or quarantine by a medical authority. Therefore, it is not available to provide a housing source for newly released offenders.

9. I am already concerned that the non-violent offenders the Governor has agreed to release from the state correctional facilities will cause an increase in our homeless population in Pierce County. We have particularly high concerns about the medical and physical safety of

individuals experiencing homelessness. Releasing additional inmates, including violent offenders, would put an additional medical and physical risk on some of the County's most vulnerable individuals.

10. It is highly likely that released offenders will be unable to obtain employment to fund the renting or purchasing of private housing. As a result of the medical emergency, most businesses within the County have had to temporarily close. This has resulted in a rapid rise in the County's unemployment rate.

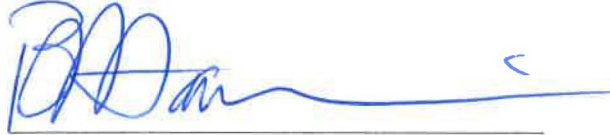
11. In addition to creating unprecedented stress on the County's housing and medical resources, the medical emergency has impacted the availability of the County's first responders. The health of our first responders is of vital importance to the protection of the community. When officers become ill, it endangers the safety and security of the County's residents. As a result, the Pierce County Sheriff's Office has had to modify its procedures and operations to minimize the exposure of patrol and corrections deputies to COVID-19. The County's first responders do not have the capacity to police an influx of newly released felony offenders.

12. When offenders are released into Pierce County, individuals that reoffend will require arrest and housing within the Pierce County jail. To date, the Pierce County jail has not experienced any confirmed cases of COVID-19. I am concerned that a surge in the jail population would decrease the jail's ability to maintain a safe environment for persons housed in the jail, as well as the County employees working at the jail.

13. In sum, during this medical emergency, the County is not in a position to provide housing, medical care, or correctional supervision to an influx of felony offenders released

from the state corrections facilities. Releasing additional offenders will have a negative impact on the County's already strained ability to protect its citizens and first responders.

Dated April 13, 2020.



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BRUCE DAMMEIER  
PIERCE COUNTY EXECUTIVE

**SUPREME COURT OF THE STATE OF WASHINGTON**

SHYANNE COLVIN, et al.,  Petitioners,  v.  JAY INSLEE, et al.,  Respondents.	DECLARATION OF RICHARD TORRANCE
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I, Richard Torrance., declare as follows:

1. I serve as the Managing Director of the Office of Crime Victims Advocacy (“OCVA”) at the Washington State Department of Commerce (“Commerce”), an executive agency in Washington State. I have served as Managing Director for 6 years.

2. Established in 1990, OCVA serves as a voice within state government for the needs of crime victims in Washington State. OCVA serves this purpose by advocating on behalf of crime victims and by assisting crime victims to obtain needed services and resources. In addition, OCVA administers grant funds for community programs that work with crime victims, assists communities in planning and implementing services for crime victims, and advises local and state government agencies of practices, policies, and priorities that impact crime victims.

3. OCVA supports advocacy services for all victims and survivors of crime, including persons that are incarcerated, and likewise supports protecting the health and safety of all persons who are incarcerated from COVID-19. While early release of persons that are incarcerated may increase their protection from risks associated with COVID-19, OCVA

urges the court to consider the safety and well-being of crime victims and their families, as well as the challenges to victim and survivor services that will be exacerbated by the COVID-19 public health crisis.

4. The public health crisis created by COVID-19 increases the risk of trauma for victims and survivors, and will likely increase the demand for victim services along with other vital, public services. Several studies have indicated that the COVID-19 outbreak has resulted in an increase in certain types of crime and violence, which in turn will be further exacerbated by the early release of incarcerated persons. Early release into the community impacts victims' safety as encounters between victims and offenders become more likely.<sup>1</sup> In addition, the enactment of social distancing and movement restriction policies aimed to stop the spread of COVID-19 may result in an increase of violence in homes, as these policies isolate crime victims, which in turn increases risk of domestic and sexual violence.<sup>2</sup>

5. Likewise, a sudden release of inmates will adversely affect OCVA's work supporting victim service providers. In many cases, victim service providers already face challenges in safely providing in-person services. A sudden release of incarcerated persons will further increase a demand for assistance and likely will strain service providers' ability to assist victim access services like court systems, housing, and other public service assistance.

6. The COVID-19 public health crisis similarly affects reentry services such as drug treatment, mental health services, housing, medical care, and employment services to safely reintegrate persons that are

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<sup>1</sup> Braun K. (2019) Victim Participation Post Trial: Appeals and Early Release. In: Victim Participation Rights. Palgrave Studies in Victims and Victimology. Palgrave Macmillan, Cham

<sup>2</sup> <https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html>

incarcerated into the community. The impacts of increased demand and decreased capacity for services will hinder efforts to support survivors and crime victims when persons that are incarcerated are released early.

7. Lastly, adequate notification is vital to victim and survivor safety. When persons that are incarcerated for serious, violent crimes are considered for early release, victim input is crucial. Pursuant to the Victims' Rights Amendment (Article I, Section 35 of the Washington State Constitution), victims have a constitutional right to make a statement at any proceeding where the defendant's release is considered. A sudden release of incarcerated persons is antithetical to the idea that crime victims should be heard and their safety issues addressed when considering early release from incarceration.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED this 13th day of April 2020, at Tumwater, Washington.



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RICHARD TORRANCE  
Managing Director  
Community Services and Housing Division and  
Office of Crime Victims Advocacy  
Washington State Department of Commerce



# PIERCE COUNTY PROSECUTING ATTORNEY

April 16, 2020 - 3:07 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 98317-8  
**Appellate Court Case Title:** Shyanne Colvin et al. v. Jay Inslee et al.

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## Comments:

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**Filing on Behalf of:** Teresa Jeanne Chen - Email: teresa.chen@piercecountywa.gov (Alternate Email: PCpatcecf@piercecountywa.gov)

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