



23 March 2020

The Honorable Stanley Rumbaugh, Judge  
Pierce County Superior Court  
930 Tacoma Ave South  
Room 334 County-City Bldg.  
Tacoma, WA 98402

Blake Kremer & Dena Alo-Colbeck, Attorneys for Plaintiffs  
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Re: **Letter of Amicus Curiae, Washington Defender Association**  
Pierce County Superior Court No. 20-2-05585-4, Motion for Injunctive Relief and Declaratory Judgment- Ryan Michael Ray Nagel, et al, Plaintiffs, v. Washington Department of Corrections, Stephen Sinclair, Secretary, Department of Corrections, in his official capacity, and Robert Herzog, Assistant Secretary of the Prisons Division, Department of Corrections, in his official capacity

To The Honorable Stanley Rumbaugh and legal parties:

The Washington Defender Association submits this letter as a friend of the court, *amicus curiae*, to focus the court's attention on structural barriers preventing incarcerated individuals and their former criminal defense attorneys from seeking legal relief that will adequately and timely protect their health. *Amicus curiae* is the Washington Defender Association, a statewide organization whose membership is comprised of public defender agencies, indigent defenders and those who are committed to seeing improvements in indigent defense. WDA is a not-for-profit corporation with 501(c)(3) tax-exempt status. The association's objectives and purposes are defined in its bylaws as follows:

- A. To protect and insure by rule of law those individual rights guaranteed by the Washington and Federal Constitutions, including the right to counsel, and to resist all efforts made to curtail such rights;
- B. To promote, assist, and encourage public defense systems to ensure that all accused persons receive effective assistance of counsel;

- C. To improve the administration of justice and to stimulate efforts to remedy inadequacies or injustice in substantive or procedural law;
- D. To promote, update, publicize, and further the professional standards for attorneys in the provision of services in public defense systems and to encourage their use and implementation by government, public defenders, and public defender associations;
- E. To improve the professional status of attorneys and to encourage cooperation between lawyers engaged in the furtherance of our objectives through publications, education, and mutual assistance; and
- F. To engage in all activities on a local, state and national level that will advance the purposes for which this association is formed in order to promote justice and the common good of the citizens of the United States.

WDA representatives frequently testify before the Washington House and Senate on proposed legislation affecting indigent clients and their families. Washington Courts of Appeal and Washington Supreme Court have granted WDA leave to file amicus briefs on many prior occasions. Representatives and members of the WDA frequently testify before both houses of the Washington State Legislature on proposed legislation affecting indigent defense issues. WDA represents 30 public defender agencies and has over 1,600 members comprising attorneys, investigators, social workers and paralegals throughout Washington State representing indigent adults and children in criminal proceedings where their liberty interests are at stake, and through which they may become incarcerated at Washington State Department of Corrections (DOC). WDA attorneys have significant expertise on the issues presented in the instant case based on the technical assistance we provide criminal defense attorneys in superior court proceedings across the State.

This court's decision in this case has potentially far-reaching implications to all those incarcerated in Washington State DOC's twelve prison facilities.<sup>1</sup> For the accused who are indigent and have not yet been convicted or sentenced, defense attorneys can seek amendments to the court's orders on bail. For the accused who are indigent and who have not yet started to serve their SRA sentence, defense attorneys can request stays of imposition of their sentences. In contrast, defense attorneys *cannot* present motions for release for those who are already serving sentences in DOC through motions to amend the Judgment & Sentence. State v. Shove, 113 Wn.2d 83, 86, 776 P.2d 132 133 (1989).

Incarcerated individuals seeking release otherwise would be filing *pro se* writs of *habeas corpus*,<sup>2</sup> a separate civil action. They might also be able to file Criminal Rule (CrR) 7.8 motions in the county of

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<sup>1</sup> Prisons Map for WA DOC, online at: <https://www.doc.wa.gov/corrections/incarceration/prisons/map.htm>.

<sup>2</sup> Chapter RCW 7.36 governs the state procedure for writs of *habeas corpus* and would require filing these civil actions separately in Thurston County Superior Court from any of the twelve DOC prison facilities statewide because DOC Headquarters are in Tumwater, Thurston County, Washington.

conviction or personal restraint petitions in the three separate Washington Courts of Appeal.<sup>3</sup> Indigent individuals incarcerated at DOC, would not have access to for the means to waive the filing fee and proceed *in forma pauperis* for either civil action Proceeding *in forma pauperis* often requires signatures be obtained in person on the same day of the filing the civil action, a procedure wholly inaccessible to incarcerated plaintiffs. Prisoners are not entitled to counsel when initially filing a CrR 7.8 motion, a Personal Restraint Petition, or a writ seeking release from custody. Finally, the process of review would not be expeditious enough to provide health protection quickly enough to keep people living and working at DOC prisons safe.

WDA is concerned about the health and safety of people incarcerated at DOC because current conditions inside prisons will expose individuals residing and working there to unnecessary infections and illness. Fatalities at DOC will result from the current pandemic. In a situation like this one, the Washington courts are ill equipped to process individual personal restraint petitions and/or writs of *habeas corpus* **and** incarcerated individuals are unable to access the courts in a way that protects their health. If the State does not take adequate measures to prevent the introduction of COVID-19 into prisons or at least to prevent the spread of the highly infectious virus that causes COVID-19 through contaminated surfaces, they are endangering lives.

For the reasons above, *amicus* urge this court to grant the plaintiffs' requested relief.

Sincerely,

A handwritten signature in cursive script that reads "Christie Hedman". The signature is contained within a rectangular box that has a thin border on the top and left sides, and a thin line on the bottom.

Christie Hedman  
Executive Director  
Washington Defender Association

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<sup>3</sup> See Burton, Walter, et al. "Principles and Leading Cases on Procedures in Personal Restraint Petitions," (2018), online at: [https://www.opd.wa.gov/documents/00659-2018\\_Article.pdf](https://www.opd.wa.gov/documents/00659-2018_Article.pdf) (found 3/23/2020).