

_____ COUNTY DISTRICT COURT
STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

v.

_____,
Defendant.

OBJECTION TO REQUIREMENT THAT DEFENDANT
PAY FOR PRETRIAL ALCOHOL MONITORING

NO.

_____ COMES NOW _____, by and through the undersigned attorney, _____, and asks that the court not require them to pay the cost of SCRAM or an IID.

1. The defendant's income is approximately _____ a month. See attached financial declaration.
2. SCRAM costs approximately \$400 a month; an IID costs approximately _____ a month.
3. RCW 10.21.055 requires a defendant pay for SCRAM or an IID as a condition of pretrial release.
4. Article 1, section 12 of the Washington Constitution forbids laws that grant a privilege or immunity to only some citizens or groups of citizens.
5. Privileges are "those fundamental rights which belong to the citizens of the state by reason of their state citizenship." *Madison v. State*, 161 Wn.2d 85, 95 (2007). Liberty is a fundamental right under article 1, section 3 of the Washington Constitution.
6. Article I, § 12 applies when a law confers a privilege to a class of citizens. *See Grant County Fire Protection Dist. No.5 v. City of Moses Lake*, 150 Wn.2d 791, 812 (2004).
7. The Washington Supreme Court has already held article 1, section 12 requires an analysis independent of the equal protection clause of the U.S. Constitution. Article 1, section 12 provides greater protection in this context because RCW 10.21.055 confers favoritism on a class of people. *See Madison*, 161 Wn.2d at 94-95.

8. Under article 1, section 12, Intermediate scrutiny applies because the court is evaluating an important right—liberty—of a semi-suspect class—the poor. *State on Behalf of Sigler v. Sigler*, 85 Wn.App. 329 (1997); *State v. Smith*, 117 Wn.2d 263, 277–78 (1991). A law will meet intermediate scrutiny if it is substantially related to a legitimate government purpose. *Sigler*, 85 Wn.App. 329.
9. RCW 10.21.055 does not meet intermediate scrutiny because it is not substantially related to saving State funds or to community safety. If a defendant is unable to pay approximately \$400 a month for SCRAM, the law requires the State to pay approximately \$3,050 to jail the defendant for a month since the requirement that the defendant pay for SCRAM is a condition of pretrial release. Were the court to fund SCRAM or provide a SCRAM device, the defendant would start SCRAM immediately. See *State v. Phelan*, 100 Wn.2d 508 (1983) (superseded on other grounds); *Romer v. Evans*, 517 U.S. 620, 632, 116 S.Ct. 1620 (1996); *Clark v. Jeter*, 108 S.Ct. 1910, 1916, 486 U.S. 456, 464–65 (1988); *Plyler v. Doe*, 102 S.Ct. 2382, 2400, 457 U.S. 202, 227 (1982).
10. RCW 10.21.055 also violates the equal protection clause of the United States Constitution by treating indigent people in the criminal justice system more harshly than others in the criminal justice system. See, e.g., *Bearden v. Georgia*, 461 U.S. 660, 671, 103 S. Ct. 2064, 2072 (1983).
11. Public policy requires that the court fund pretrial alcohol monitoring it imposes as a condition of pretrial release. See Pretrial Reform Task Force, Final Recommendations Report, February 2019, found at <http://www.courts.wa.gov/subsite/mjc/docs/PretrialReformTaskForceReport.pdf> .

DATED this _____ day of _____, 2020.

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Attorney for