Course Materials

STATEWIDE RE-SENTENCING CASE TRAINING

THE SEATTLE CLEMENCY PROJECT

WSACC

Washington State Office of Public Defense

WDA WASHINGTON DEFENDER ASSOCIATION

Department of Corrections WASHINGTON STATE

ASSOCIATION OF PROSECUTING ATTORNEYS • WASHINGTON •

Agenda

12:15-12:20 Attendees arrive

12:20-12:30 Introduction and Overview by Jennifer Smith, Seattle Clemency Project

12:30-12:40 Presentation by County Clerks

12:40-12:50 Presentation by Department of Corrections

12:50-1:00 Presentation by Defenders

1:00-1:10 Presentation by Prosecutors

1:20-1:30 Q&A

Presenters

Barbara Miner
Superior Court Clerk, King County

Baine Wilson
Deputy County Clerk, Clark County

Shoshana Kehoe-Ehlers
Managing Attorney
Office of Public Defense

Ali Holman
Legal Director
Washington Defender Association

Dianne Ashlock
Statewide Records Director
Department of Corrections

Carrie Stanley
Reentry Systems Administrator
Department of Corrections

Carla Lee
Deputy Chief of Staff
King County Prosecutor's Office

THE SEATTLE CLEMENCY PROJECT

Statewide Re-Sentencing Training Introduction and Overview

Background: Studies have shown that Washington state's prison population was relatively stable for decades, but there was a sharp rise, beginning in the 1980s and then the population exploded in the early 1990s, due in large part to the dramatic increase in sentencing penalties and reduced avenues for review for early release.

To name a few of the changes: Washington parole was abolished in 1984, it enacted the three strikes law in 1993, began sentencing juveniles to life and long sentences in adult prisons, and enacted several sentencing enhancements that resulted in life or long sentences. See, Katherine Beckett and Heather Evans, ACLU of Wash., About Time: How Long and Life Sentences Fuel Mass Incarceration in Washington State (2020).

Through legislative changes and new caselaw, within the last year, there has been a seismic shift in the landscape of post-conviction relief in Washington, providing relief through re-sentencing back at the trial court level. Many of the people who are entitled to re-sentencing are the same people whose life and long sentences drove the rise in the prison population in our state in the early 1990s. Well over 1,000 individuals with life or long sentences, many of whom were juveniles or emerging adults at the time of sentencing or sentenced to life under the Persistent Offender Act, and who have already served decades in prison, are affected by legislative and court rule changes:

- The legislature passed SB 6164 for people who are serving sentences that no longer serve the interests of justice by enacting a law that gives prosecutors the power to move for re-sentencing in those cases;
- SB 5164 requires re-sentencing for individuals who were sentenced to life in prison under the Persistent Offender Act where the third or prior strike was based on a second-degree robbery conviction;

- Court rulings in *Domingo-Cornelio* & *Ali; Monschke* & *Bartholomew; and Haag* concern individuals who were sentenced to adult prison when they were juveniles and emerging adults*;*

The *Blake* decision, which deemed Washington's drug possession statute unconstitutional, affects over 126,000 individuals.

How Does this Impact the Superior Court System?

The large volume of resentencing cases presents new issues for Judges, Prosecutors, Defenders and County Clerks to manage through the court criminal case process.

For example, in an ordinary criminal case, charges are filed by the prosecutor, an individual is summoned to court and appointed a defender if they cannot afford one, and the defense is given discovery by the State. In contrast, people who are eligible for re-sentencing are still serving time in prison and are not summoned to court for relief. When the State and Defense make it back to court for re-sentencing, to fill in the picture of what has emerged in the many years since the original sentencing, rather than relying on a new discovery packet, lawyers on both are primarily gathering information from a variety of sources. This new dynamic presents a need to ensure those who are eligible for re-sentencing have access to court and counsel and requires that prosecutors and defenders use new ways to gather and share information for re-sentencing cases.

Further, the Department of Corrections, who is typically not involved in criminal case sentencing processes, is an important player in re-sentencing cases. Defenders, who need to communicate with their clients in prison, will need to work with DOC to gain access to private phone calls, to arrange visits, and ensure clients' attendance (in-person or virtually) at court hearings. Similarly, County Clerks will also have more communications with DOC in re-sentencing cases than in a typical criminal sentencing due to sentence recalculations and orders for immediate release.

Finally, at re-sentencing hearings, Judges, Prosecutors and Defenders will be considering information that is different than what they normally see in a criminal case. For example, they may hear from people who were 16-year-old teenagers at their original sentencing and are now returning for re-sentencing as 40-year-old men or women. They will hear from victims who never expected to be back in court to address this matter again and are being asked whether they would like to weigh in. These cases will require special attention.

An Opportunity To Build New Processes Together

Over the past several months, a group of stakeholders got together to discuss challenges we were seeing in re-sentencing cases because, quite simply, the criminal case process is designed for cases to come in through the front end and not the back end. County Clerks, Department of Corrections, Defenders and Prosecutors all saw problems in re-sentencing cases that were

rooted in a lack of understanding of other stakeholders' roles and processes, and we all saw the need for new communication systems between stakeholders in re-sentencing cases.

This training is the first step toward building greater understanding between all the stakeholders in re-sentencing cases to reduce inefficiency and confusion among all the parties. We believe that by hearing from each stakeholder about their role and new processes that have been developed in re-sentencing cases, all players in the system will be more effective in their roles.

In This Training Manual

In this training manual, you will find materials that were prepared by County Clerks, Defenders, Prosecutors and the Department of Corrections about their roles, their processes, recommended best practices, and contact information.

Looking Ahead

We will be sending out a very short survey to ask participants whether this training was useful and to determine whether there is interest in similar trainings in the future. Your feedback is appreciated!

Training Materials from County Clerks

WASHINGTON STATE ASSOCIATION OF COUNTY CLERKS

Kimberly A. Allen, President
Grant County Clerk
P.O. Box 37
Ephrata, WA 98823
509-754-2011 ext. 2818
kallen@grantcountywa.gov

NON-BLAKE RESENTENCING GUIDELINES

NON-BLAKE RESENTENCINGS INCLUDE THOSE MANDATED BY 5164 AND RECENT SUPREME COURT RULINGS. FINGERPRINTS ARE REQUIRED IF AN AMENDED J&S IS ENTERED.

1. WHEN DEFENDANTS ARE TRANSPORTED TO THE COURTHOUSE FOR HEARNG

- ☐ HEARING HAPPENS PER NORMAL PROCEDURES
- ☐ THE ORIGINAL AMENEDED J&S WILL BE FILED NORMALLY
- ☐ ONCE FILED, THE CLERK SHALL SEND A COPY OF THE J&S TO THE DEPARTMENT OF CORRECTIONS (DOC) docamendedorders@doc1.wa.gov AND YOUR LOCAL SHERIFF'S OFFICE RECORDS
- ☐ DEFENDANT WILL BE TRANSPORTED BACK TO DOC EVEN IF RESENTENCING RESULTS IN DEFENDANT BEING RELEASED FROM CUSTODY

2. WHEN HEARINGS ARE DONE REMOTELY, DEFENDANT AT DOC FACILITY

- ☐ A STAND-ALONE FINGERPRINT AND SIGNATURE PLEADING DOCUMENT IS TO BE PROVIDED TO DOC BY THE PERSON SCHEDULING THE HEARING (PA OR DEFENSE ATTORNEY). MODEL DOCUMENT ATTACHED.
- ☐ FINGERPRINTING MUST HAPPEN DURING THE SENTENCING HEARING, FACILITATED BY DOC AND BE WITNESSED BY THE CLERK VIA ZOOM (OR OTHER VIDEO SYSTEM) DURING THE HEARING
- ☐ THE ORIGINAL AMENDED J&S WHICH IS IN THE COURTROOM WITH THE JUDGE'S SIGNATURE WILL BE FILED NORMALLY
- ☐ ONCE FILED, THE CLERK SHALL SEND A COPY OF THE J&S TO DOC. THE DEFENDANT CANNOT BE RELEASED FROM DOC CUSTODY UNTIL COPY FROM THE CLERK IS RECEIVED BY DOC (docamendedorders@doc1.wa.gov)
- ☐ DOC WILL MAIL THE SEPARATE STAND-ALONE DOCUMENT (APPENDIX TO AMENDED J&S FOR FINGERPRINTS OF DEFENDANT) DIRECTLY TO THE CLERK FOR FILING. THIS FORM SHOULD NOT BE SENT OR ACCEPTED VIA E-MAIL
- ☐ ONCE APPENDIX IS RECEIVED BY THE CLERK, FILE IT AS A SEPARATE STAND-ALONE DOCUMENT, USE CODE 'AT' AND ADD COMMENT 'FINGERPRINT FOR JS'

WHAT HAPPENS IF FINGERPRINTS AND SIGNATURES ARE MISSED DURING THE HEARING: The Clerk needs to reach out to the legal liaison office (llo) (see e-mail addresses below) at the prison and set up a Zoom or other video hearing time so the Clerk can witness the fingerprints being taken and gather the signatures. This is not ideal and creates the possibility of one defendant at the resentencing and a different defendant at the fingerprinting event. Avoid this from happening by communicating before the resentencing event with whomever asked for the resentencing (defense or prosecutor) to ensure the doc contact is aware of the need to fingerprint during the hearing with zoom capabilities for the clerk to be able to witness.

DOC Legal Liaison Contacts:

E-Mail to:	Facility
docahcclo@doc.wa.gov	Airway Heights Corrections Center
doccccclo@doc.wa.gov	Cedar Creek Corrections Center
doccbcclo@doc.wa.gov	Clallam Bay Corrections Center
doccrcclo@doc.wa.gov	Coyote Ridge Corrections Center
doclcclo@doc.wa.gov	Larch Corrections Center
docmcccwllo@doc.wa.gov	Mission Creek Corrections Center
docmcclo@doc.wa.gov	Monroe Corrections Center
dococcllo@doc.wa.gov	Olympic Corrections Center
docsccclo@doc.wa.gov	Stafford Creek Corrections Center
docwcclo@doc.wa.gov	Washington Corrections Center (Shelton)
docwccwllo@doc.wa.gov	Washington Corrections Center for Women
docwspllo@doc.wa.gov	Washington State Penitentiary

BLAKE-RELATED RESENTENCING

SAME PROCESS AS NOTED ABOVE **EXCEPT** FINGERPRINTS ARE NOT REQUIRED FOR THESE CASES

For more information or questions:
Baine Wilson, Chief Deputy Clerk, Clark County Clerk's Office, Baine.Wilson@clark.wa.gov
Barb Miner, King County Clerk, Barbara.miner@kingcounty.gov

9/27/2021

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF _____

State of Washington v.	**No.** **Appendix to Amended Judgement and Sentence for Fingerprints of Defendant**

RIGHT HAND FINGERPRINTS OF: _____

I acknowledge that I was present at the sentencing hearing today in the above case and the above are my fingerprints.

Defendant's signature:_____

Defendant's Name: _____

Dated: _____

Witnessed by: _____ (DOC Representative- present at the time of fingerprint impressions)

Training Materials from Department of Corrections

Resentencing

AT DEPARTMENT OF CORRECTIONS

400-GU002

Department of Corrections
WASHINGTON STATE

Reentry Services

for Individuals Impacted by Resentencing

Department of Corrections
WASHINGTON STATE

Reentry Services

What has DOC implemented?

- Multidisciplinary Release Strike Team
- Resources for Individuals Impacted by the Blake Decision
  - Individuals impacted by resentencing other than the Blake decision do not currently have these resources allocated

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WASHINGTON STATE

Reentry Services

Releasing Individuals directly from a DOC facility

Releasing individuals directly from DOC allows for DOC to provide more resources such as:

- Release medications and continuity of care planning
- Needed medical equipment
- Connection to community-based partners

When an individual is transported to a local county for court and is released, DOC generally is not able to assist with releasing planning

The use of virtual hearings can benefit the individual to ensure guidance, support and resources are provided for release planning

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Reentry Services

Advanced Notice

Advanced notification of resentencing allows for DOC to complete processes required by RCW, such as:

- Victim Notification
- End of Sentence Review/Civil Commitment
- Proper Law Enforcement Notification

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Reentry Services

Advanced Notice (continued)

With advanced notice of resentencing, we are able to work with the incarcerated individual on reentry planning and allows time to:

- Engage with community partners
- Apply for benefits and identification
- Complete Release Needs Survey

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Virtual Hearings

Department of Corrections
WASHINGTON STATE

Virtual Hearings

- Upon the onset of State v Blake, the Department of Corrections (DOC) began allowing Courts and incarcerated individuals the opportunity to conduct legal hearings virtually or telephonically. The virtual platform is now available for all resentencing hearings.
- DOC will facilitate hearings as indicated in DOC Policy 590.500 Legal Access for Incarcerated Individuals. In addition, we are currently working with DCYF on possibly expanding the list.

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Virtual Hearings

- In order to schedule a hearing, the Court (prosecutor, Clerk, legal assistant, etc.) or the defense attorney (for Blake matters only) shall fill out form DOC 02-027 Virtual Hearing Request and email it to the facility Legal Liaison. The liaison will then confirm with the requestor.
- It is very important that the form is filled out in its entirety.
- It is also important that the request is sent at least 7 days in advance of the hearing to allow for staff to schedule the hearing.

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Virtual Hearings

- If the hearing will end with an immediate release of the incarcerated individual, please ensure that information is noted on the request form, as there are many steps involved in actually releasing an individual from custody.
- In addition to the above resources, DOC also assists in attorneys scheduling phone calls with the incarcerated individuals. The process consists of the attorney either calling or emailing the Legal Liaison indicating that they would like the incarcerated individual to call them on a certain date and time. The liaison then sends a kiosk message relaying the information.

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Virtual Hearings

- DOC will also assist in facilitating psychiatric and mental health evaluations when requested by an outside entity. The process again begins with an email to the Legal Liaison from the requestor. The legal liaison then passes the information on to the facility Health Care Manager who will arrange for the evaluation with facility mental health staff present.

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Virtual Hearings

Resources

- DOC Policy 590.500

  https://www.doc.wa.gov/information/policies/glossary.aspx?policy=590.500

- Virtual Hearing Request Form

  https://www.doc.wa.gov/docs/forms/02-027.pdf

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Records

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Records

Information to Prep for Resentence

- Access to DOC Records
  - See DOC Resentencing Contacts and Resource Document (see packet information)

- Information regarding DOC Information
  - Such as:
    - Information about other sentences that are also being served
    - Information about tolling/pending supervision on other sentences
    - Information about detainers

  - Email DOC Resentencing Email Box
    - docresentencing@doc1.wa.gov

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Court Orders-What to Avoid

Court Orders-What to Avoid

- Orders to vacate the sentence while confined at DOC.
  - Sentence is what authorizes DOC to confine.

- Orders that credit excess confinement time for application to the community custody term.
  - State v. Jones (see packet information)

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Records

Immediate Releases

- DOC will determine if the individual is an immediate release based on the amended confinement term.
  - DOC will consider the following for sentence and time calculations:
    - Pre-sentence credits and credits for jail good time
    - Time served at DOC prior to the resentence (already calculates)
    - Loss of DOC Earned/Good Time
  - DOC will calculate an adjusted Earned Release Date (ERD) and an adjusted Maximum Expiration Date (Max Ex)

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Immediate Releases-Cont.

Immediate Releases (continued)

- For individuals sentenced to a term of community custody:
  - An approved release plan is required prior to release when prior to Max Ex.
- Please use the attached formula to determine Max Ex (see packet information).

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Records

DOC Releases

- If DOC determines prior to 3:00 PM the individual is an immediate release, the individual will be released that day.
- If DOC determines after 3:00 PM that the individual is an immediate release, the individual will be released on the next business day.

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Data Summary

Department of Corrections
WASHINGTON STATE

Data Summary

TOTAL ORDERS RECEIVED 10,997 IMPACTING 7,505 INDIVIDUALS

Total and Partial Confinement	
Impacted Individuals	1371
Immediate Releases	459
Total Orders Received	2465
Vacate	1371
Resentences	884
Other Orders	210

Community Supervision	
Impacted Individuals	6134
Total Orders Received	8532
Vacate	7944
Resentences	77
Other Orders	511

Virtual Hearings (Since 3/12/2021)	
Blake Hearings	Other Hearings
1074	1617

Housing Vouchers
Blake
101

*All data are estimates as of 9/30/2021

Department of Corrections
WASHINGTON STATE

Carrie Stanley
carrie.stanley@doc1.wa.gov
(360) 480-3921

Dianne Ashlock
dianne.ashlock@doc1.wa.gov
(360) 507-6040

www.doc.wa.gov

Department of Corrections
WASHINGTON STATE

Department of Corrections
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STATEWIDE RE-SENTENCING CASE TRAINING

OCTOBER 13, 2021

HANDOUT MATERIALS

400-GU003 (R. 10/2021)

Attorney Communication with Individuals Incarcerated at DOC

This document provides a summary of the various rules and procedures established by the Washington State Department of Corrections that impact attorney communication with individuals incarcerated in DOC prisons. For additional information, please see our Resentencing webpage at:

https://www.doc.wa.gov/corrections/justice/external-hearings.htm

Telephonic Communication

Scheduling Calls:

The Washington State Department of Corrections understands the challenges we are all facing as criminal justice partners with the Supreme Court State v. Blake decision and SB 5476, as well as the many different impacts from other resentencing requirements.

DOC has updated current policy to offer attorneys the ability to relay messages through the Legal Liaison Office (LLO) through the email boxes noted in this document. When submitting a written request, please include the date, time and number for the LLO to relay via institution kiosk to the incarcerated individual. Please note that DOC will not relay other messages, *only information for when the incarcerated individual is to call their counsel*. These are not special callouts, and the calls are limited to 20 minutes before they disconnect requiring the individual to call in again if the meeting runs longer. Please review the section on ensuring confidential attorney-client non-recorded calls in the "To Be Confidential" section below.

The additional ways for attorneys to schedule phone meetings is by sending written notice. Because of time requirements for processing written communication, attorneys should send notice to the incarcerated individual more than one week prior to the scheduled phone call.

To schedule a phone call with an incarcerated individual, **DOC recommends the following two options:**

1. Contact with the incarcerated individual via JPay email. This communication will not be confidential. It will take up to seven business days before the incarcerated individual will see this message. See Email Communication for more details.

2. Send information about the day and time for a phone call by U.S. Postal mail. Mail will be delivered to an incarcerated individual within two business days after being delivered to the facility. See Postal Mail for more details.

To Be Confidential: In general, calls made by incarcerated individuals are not confidential. However, calls made to the phone numbers of registered attorneys will not be intercepted, recorded or monitored.

For a phone number to be recognized as a confidential legal number an attorney must register their phone number with the Chief Investigative Operations. Contact Ruben Rivera at 360-725-8869 or RRivera@doc1.wa.gov The registered phone number must match the attorney's phone number in the WSBA Legal Directory. Attorneys do not need to register their number for each incarcerated client. One-time registration is sufficient for all callers from DOC prisons. All calls made to that attorney's number, whether from a private legal booth or day room phone, will not be recorded.

If the incarcerated individual calls the attorney at a different number, the call will be recorded. If an attorney's phone number changes, they must register the new number with DOC, and it must match the attorney's profile in the WSBA Legal Directory.

To Stay Confidential: Even calls to registered attorneys will be intercepted, dropped, recorded or monitored if:

- There is a three-way call; or
- The call is transferred (even within the attorney's own office); or
- The incarcerated individual is put on hold; or
- The attorney uses "call waiting."

Duration: All calls are limited to **20 minutes**, even legal calls. After 20 minutes the call will automatically disconnect.

Payment for Calls: Calls placed by incarcerated individuals to recognized WSBA numbers are free of charge. Payment for the cost of other calls is covered by any of the following:

1. The incarcerated individual uses their own funds to place the call.
2. The attorney or law office has a ConnectNetwork account associated with their number, and will be billed for calls from clients.
3. The attorney or law office provides funds to an incarcerated individual's phone account – see more details below.

Prepaid Calls to You: Attorneys may deposit funds into an incarcerated individual's phone account to cover the calling cost. The attorney may specifically designate their phone number for use of these funds. Calls are $0.11 per minute plus taxes, and other transaction fees apply when depositing funds. See rates here.

Interpreted Calls: The DOC does not provide interpreters for telephonic communication between limited English proficient incarcerated individuals and attorneys. Note that use

of telephonic interpreters will result in the call not being confidential if three-way calling is used (see above).

Incarcerated individuals who have been screened and confirmed as Deaf have access to video relay services (VRS). They can place telephone calls to their attorneys through a video interpreter.

For More Details: DOC Policy 590.200 Telephone Use by Incarcerated Individuals
https://doc.wa.gov/corrections/incarceration/visiting/phone.htm#phone-call

Email Communication

Not Confidential: Incarcerated individuals have access to email through the JPay system. JPay emails sent to and from attorneys are **never confidential** and are **not treated as legal mail**.

How it Works: Attorneys create their own JPay account. https://www.jpay.com/ Once registered they can access the list of email accounts for any incarcerated individual. Purchase a packet of stamps (e.g. six stamps for $2.00). Use one stamp to send an email. Attorneys may also send a reply stamp for the incarcerated individual to reply. Pictures may also be sent as attachments, and each separate picture costs one stamp. Other formats such as PDF or Word cannot be sent as attachments. Attorneys can access their online JPay account to view response messages.

Delivery Timeline: JPay emails are not immediately available to incarcerated individuals. The message will be distributed **within seven business days**. (Postal mail may likely reach incarcerated individuals faster than JPay email messages.) JPay messages might be transmitted more quickly if they do not contain any words that are flagged for security reasons.

Messages from incarcerated individuals to attorneys will also take up to seven days to transmit.

For More Details: https://doc.wa.gov/corrections/incarceration/jpay.htm#email

Postal Mail

To Be Confidential: General mail sent to incarcerated individuals is opened and reviewed. Legal Mail is confidential. However, **not all mail sent from law offices qualify as Legal Mail**. Mail qualifies as Legal Mail if it meets the following requirements:

- The front of the envelope is clearly marked *Legal Mail* –or- *Attorney/Client* –or- *Confidential*.
- The return address on the front of the envelope must be clearly labeled with the attorney's name and title.
- If the envelope does not comply with these requirements, it will be processed as general mail and will be opened by mailroom staff, regardless of the contents.

- Legal Mail may only contain paper documents that are legal in nature and comply with DOC Policy 590.500. CDs and DVDs may not be sent as Legal Mail.
- Legal Mail can only be in paper format. No email messages sent through JPay qualify as Legal Mail.

Delivery Timeline: All postal mail is delivered to incarcerated individuals within two business days after delivery to the facility.

Response Mail: **Incarcerated individuals must pay to send out Legal Mail**. However, attorneys may enclose a pre-addressed and pre-paid for return responses. The envelope may be either metered or stamped.

For More Details: DOC Policy 450.100 Mail for Individuals in Prison

In-Person Visits

Attorneys may also schedule in-person professional visits with incarcerated individuals. Attorneys need not be an incarcerated individual's approved visitor list.

Requesting a Visit: Contact the facility legal liaison to schedule an attorney visit. Requests must be made at least two weeks in advance, and the following information must be provided:

- Full name;
- Date of birth;
- Last 4 digits of Social Security number;
- Purpose of visit;
- Incarcerated individual's name and DOC number;
- Desired duration of visit; and
- Other information requested by the Superintendent or Community Corrections Supervisor.
- WSBA credentials

When Visiting: Provide current, valid credentials. Visiting attorneys cannot provide incarcerated individuals with documents during legal visits without prior approval from the Superintendent.

Interpreters: DOC does not provide interpreters for attorney/client visits. Attorneys must arrange for their own interpreters. Interpreters must receive security clearance from the facility prior to visit.

For More Details: DOC Policy 590.500 Legal Access for Incarcerated Individuals

DOC Policy 150.150 Visits and Tours of Department Facilities and Offices

https://doc.wa.gov/corrections/incarceration/visiting/prison-visits.htm

DOC Headquarters Legal Access Contacts .....

Lisa Flynn	(509) 540-0757	ljflynn@doc1.wa.gov
Tracy Schneider	(360) 890-0574	tlschneider@doc1.wa.gov

Legal Liaison Offices by Facility

Facility	Email
Airway Heights Correction Center	docahccllo@doc.wa.gov
Cedar Creek Correction Center	doccccllo@doc.wa.gov
Clallam Bay Corrections Center	doccbccllo@doc.wa.gov
Coyote Ridge Corrections Center	doccrccllo@doc.wa.gov
Larch Corrections Center	doclccllo@doc.wa.gov
Mission Creek Corrections Center for Women	docmcccwllo@doc.wa.gov
Monroe Correctional Complex	docmccllo@doc.wa.gov
Olympic Corrections Center	dococcllo@doc.wa.gov
Stafford Creek Corrections Center	docsccllo@doc.wa.gov
Washington Corrections Center	docwccllo@doc.wa.gov
Washington Corrections Center for Women	docwccwllo@doc.wa.gov
Washington State Penitentiary	docwspllo@doc.wa.gov

Department of Corrections

Maximum Expiration Date Calculation

Example

1. Start with the total sentence length (convert to days)	36 months = 1095 days
2. Subtract the number of days of jail credits served on sentence charge(s)	1095 days - 60 days
3. Equals the number of days to reach the maximum expiration date	= 1035 days
4. Add the total number of days to be served in DOC to your DOC arrival date	01/01/2009 (DOC arrival date) + 1035 days = 11/02/2011

Post Sentence Court Orders .....DOCamendedorders@doc1.wa.gov
Questions .....DOCResentencing@doc1.wa.gov

Department of Corrections Resentencing

Information & Resources

400-GU004 (R. 10/2021)

The role of the Washington State Department of Corrections (DOC) is to carry out sentences imposed by courts. The Department does not have the authority to amend or correct judgments and sentences and must wait for the court to issue an order vacating conviction, amending judgment, dismissal or directing release. The Department has evaluated and adjusted our processes to carry out the actions taken by the courts expeditiously.

Reentry

To assist releasing individuals with the guidance, support, and resources to transition into the community, the department has a dedicated multidisciplinary release team of Case Managers, Reentry staff and Healthcare professionals working to identify community resources. This team is engaged with federal and state agencies, as well as community partners.

The email below can be used for notifications of potential resentencing releases.

Release planning email..... DOCresentenceplanning@doc1.wa.gov

Agency Records

DOC Records staff will only act on court filed documents that include a court clerk stamp that indicates the document was "Filed Superior Court."

If the determination that the sentence has been satisfied is completed before 3:00PM, the individual will release on that same day. If the determination occurs after 3:00PM, the individual will release the next business day.

NOTE: It is important that DOC know when it is anticipated an immediate release will occur.

Please send post sentence court orders to DOCamendedorders@doc1.wa.gov. Documents must be sent as a .pdf file, individually for each court order.

For additional information, please see our Resentencing webpage at:
https://www.doc.wa.gov/corrections/justice/sentencing/resentencing.htm

Post Sentence Court Orders .....DOCamendedorders@doc1.wa.gov
Questions .....DOCResentencing@doc1.wa.gov

Attorney Requests for DOC Records

When DOC Public Records Unit receives an attorney request, staff will work to expedite the response. Such requests will not be assigned in the general cue of public records requests as they had been previously. A new requestor type for attorneys has been added to keep those requests moving along faster.

The link below will take you to DOC's online request portal. This is the method of submission that should be used and where DOC's Public Records staff can upload all responsive records directly to the requestor. Using this method, the requestor can have the records as soon as they are available.

DOC Records Request Portal:
https://washingtondoc.govqa.us/WEBAPP/_rs/(S(imx1m0x3x3x04zcqg2co5ycc))/login.aspx

Attorney/Client Messaging

Attorneys may submit an email to the Legal Liaison Office where the incarcerated individual is housed to relay messages regarding the date, time, and number for their clients to contact them regarding legal matters. The staff will use the institution kiosk to provide the information to the incarcerated individual so that they may use the regular phones to contact their attorney. Please note that no other information will be relayed outside of appointment specifics. It may take 1-2 days for the message to be received, so please plan accordingly. For non-urgent issues, the United States Postal Service is more appropriate and will be processed as legal mail.

Phone calls to attorneys remain unrecorded and confidential if the attorney has registered their number through the DOC Special Investigative Services Office. To register, please provide your phone number to Ruben Rivera @ rrivera@doc1.wa.gov or (360) 725-8869. Once the phone number and attorney information is verified with the applicable bar association, calls will remain unrecorded.

Psychiatric/Forensic Evaluation Requests

Psychiatric/forensic evaluation requests that are requested by court officials and performed by an outside evaluator (not DOC) can be performed either virtually or in-person as a professional visit request. Those coming to the facility for an in-person meeting must be licensed/certified to meet professional visit requirements.

You may submit a request to the Legal Liaison Office email box where the incarcerated individual is currently assigned, where you will then be connected to a Health Services Manager to schedule the telehealth appointment. We do not accept phone calls for these requests.

Hearings – Virtual and In-Person Appearances

In-Person Appearance: The department continues to process requests for in-person appearances. As a courtesy, please provide 10-14 days advance notice to allow time to assess our transportation schedules.

Virtual Appearance: The department has worked to identify a virtual hearing process for incarcerated individuals to be present for court-mandated arraignments, trials, and hearings.

For additional information regarding scheduling, interpreter needs, breakout rooms, notary, and fingerprinting, please see our Resentencing webpage at:

https://www.doc.wa.gov/corrections/justice/external-hearings.htm

Virtual Hearings Contacts .....

Facility	Email
Airway Heights Correction Center	docahccllo@doc.wa.gov
Cedar Creek Correction Center	doccccclllo@doc.wa.gov
Clallam Bay Corrections Center	doccbccllo@doc.wa.gov
Coyote Ridge Corrections Center	doccrccllo@doc.wa.gov
Larch Corrections Center	doclccllo@doc.wa.gov
Mission Creek Corrections Center for Women	docmcccwllo@doc.wa.gov
Monroe Correctional Complex	docmccllo@doc.wa.gov
Olympic Corrections Center	dococcllo@doc.wa.gov
Stafford Creek Corrections Center	docsccclllo@doc.wa.gov
Washington Corrections Center	docwccllo@doc.wa.gov
Washington Corrections Center for Women	docwccwllo@doc.wa.gov
Washington State Penitentiary	docwspllo@doc.wa.gov

Virtual Hearings Questions/Concerns

Lisa Flynn	(509) 540-0757	ljflynn@doc1.wa.gov
Tracy Schneider	(360) 890-0574	tlschneider@doc1.wa.gov

Resentencing

Data Summary | 9.30.2021

State v. Blake

Court Jurisdiction

Background: The Department of Corrections has received 10997 orders impacting 7505 individuals to date for State v. Blake. Orders received from courts fall into two broad categories: orders for individuals in total or partial confinement and orders for individuals in the community. In many cases an individual will receive orders on multiple cause numbers resulting in the number of orders received being greater than the number of individuals impacted.

Total and Partial Confinement	
Count of Individuals	1371
Individuals Granted Immediate Release	459
Orders Received	2465
Vacate	1371
Release	3
Resentence	884
Stay	9
Dismiss	22
Other Orders	176
Suspension	0

Community Supervision	
Count of Individuals	6134
Orders Received	8532
Vacate	7944
Release	9
Resentence	77
Stay	29
Dismiss	102
Other Orders	111
Suspension	260

Court Order Types:

- **Order to Vacate**: Conviction no longer exists and is no longer considered as part of the individual's criminal history. DOC maintains the record; however, does not report the record to the Washington State Patrol.
- **Order to Dismiss**: Dismisses the obligation to the cause with or without prejudice with no impact to the conviction. The conviction remains as part of the individual's criminal history.
- **Motion to Release:** Requires that the individual be released with no impact to the conviction or sentence.
- **Order to Stay:** Postpones the obligation to the cause until further court action is taken.
- **Order for Discharge:** Individual completed all conditions of the sentence and is no longer obligated to the sentence. The discharge restores the right to vote; however, the conviction remains as part of the individual's criminal history and can be used the counting of the offender score.

**All data are estimates collected for informational purposes only*

Resentencing

Data Summary | 9.30.2021

All Resentence Types

Virtual Hearings

Virtual Hearings (Totals since 3/12/2021)		
	Blake Hearings	Other Hearings
Totals	1074	1617

Releases

Release Resource Data (3/1/21-Present)				
Release Type	Released Homeless	Released w/ Housing Voucher	Released w/ Other Resources	Total Releases
State v. Blake	41	97	190	595
SB 5164	4	-	-	44
SB 6164	-	-	-	1
Domingo Cornelio & Ali	-	-	-	-
Monschke & Bartholomew	-	-	-	1

**All data are estimates collected for informational purposes only*

Seattle Clemency Project
Worksheet for Attorneys to submit to DOC

To: DOC Resentence Planning

Date: _____

Name of Prosecuting Attorney phone number email address

Name of Defense Attorney phone number email address

_____ _____ _____

Individual's Name DOC number Assigned DOC Facility

Sentence being reconsidered:

_____ _____ _____

County Cause number Offense conviction(s)

Victim Notified of Resentence?

☐Yes Date of contact

☐No

Comments:_____

Date and Time of Resentencing Hearing

☐In Person Hearing

☐Virtual Hearing (use form 02-027 Virtual/Telephone Hearing Request)

Anticipated Court Action:

☐Confinement term satisfied.

☐Confinement term reduced.

If reduced estimated confinement length. _____ months

☐Other action

_____

Will the individual have supervision following release?

☐Yes Length of supervision _____

☐No

Is the individual releasing without stable housing or without community support?

Are additional Reentry Services Needed for Transition and Release to the Community?

☐**Yes**

☐**No**

Release Plan:

_____ _____ _____

Sponsor Home phone Cell phone

_____ _____

Street Address City

List full name, date of birth and relationship to the releasing individual for others residing at the residence:

_____ _____ _____

Name Date of birth Relationship

_____

List type of transitional support provided by sponsor (e.g. housing, financial, transportation, employment)

Note: DOC Form 11-012 will be completed by Classification Counselor prior to submission of release address.

State v. Jones

Supreme Court of Washington

October 19, 2010, Argued; June 30, 2011, Filed

No. 83451-2

Reporter
172 Wn.2d 236 *; 257 P.3d 616 **; 2011 Wash. LEXIS 464 ***

THE ***STATE*** OF WASHINGTON, *Respondent*, v. CLIFF ALAN ***JONES***, *Petitioner*.

Prior History: Appeal from Kitsap County Superior Court. 00-1-01046-8. Honorable M. Karlynn Haberly.

State v. Jones, 151 Wn. App. 186, 210 P.3d 1068, 2009 Wash. App. LEXIS 1650 (2009)

Core Terms

custody, sentence, offender, confinement, incarcerated, tolled, trial court, time spent, completion, term of confinement, spent, tolling statute, prison, sex, statutory scheme, public policy, supervision, contravene, credited

Case Summary

Procedural Posture
Defendant appealed a decision of the Washington Court of Appeals, Division Two, that affirmed the trial court's denial of ***credit*** toward his sentence of community custody for time he spent incarcerated in excess of his amended sentence of incarceration, arguing that the lower courts' decisions were erroneous under the Sentencing Reform Act of 1981 (SRA), Wash. Rev. Code ch. 9.94A.

Overview

Defendant was convicted of first-degree child molestation, and the trial court sentenced him to an exceptional sentence of 130 months of incarceration and 36 months of community custody. Because the trial court erred in calculating defendant's offender score, his sentence was vacated, and resentencing was ordered. Defendant was resentenced to 51 months of incarceration and 36 months of community custody; by that time, however, defendant had already served 81 months of incarceration. The trial court ordered defendant released but did not ***credit*** the excess 30 months of incarceration toward defendant's 36 months of community custody. On review, the court held a period of community custody was mandatory for sex offenders and that former *Wash. Rev. Code § 9.94A.120(10)(a)* did not authorize the trial court to ***credit*** postsentence confinement toward a mandatory sentence of community custody. Further, under former *Wash. Rev. Code § 9.94A.170(3)*, any period of community custody was to be tolled during any period of time in confinement for any reason. Thus, defendant's incarceration in excess of his sentence could not satisfy the sentence of community custody.

Outcome
The decision of the court of appeals was affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > Conclusions of Law

Governments > Legislation > Interpretation

HN1[] **De Novo Review, Conclusions of Law**

Interpretation of a statute is a question of law that is reviewed de novo. When interpreting a statute, the court's objective is to determine the legislature's intent. If the meaning of a statute is plain on its face, courts give effect to that plain meaning. To determine the plain meaning of a statute, courts look to the text, as well as the context of the statute in which that provision is found, related provisions, and the statutory scheme as a

whole. An undefined term is given its plain and ordinary meaning unless a contrary legislative intent is indicated. If after this inquiry the statute is susceptible to more than one reasonable interpretation, it is ambiguous, and courts may resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent.

Criminal Law & Procedure > Sentencing > Sentencing Alternatives > Community Confinement

Criminal Law & Procedure > Postconviction Proceedings > Sex Offenders > General Overview

HN2 **Sentencing Alternatives, Community Confinement**

See former *Wash. Rev. Code § 9.94A.120(10)(a)*.

Criminal Law & Procedure > Sentencing > Credits

HN3 **Sentencing, Credits**

See former *Wash. Rev. Code § 9.94A.120(17)*.

Criminal Law & Procedure > Sentencing > Credits

HN4 **Sentencing, Credits**

Former *Wash. Rev. Code § 9.94A.120(17)* provides for a grant of ***credit*** for confinement time served, but it does not explicitly provide whether it is limited toward a sentence of confinement or whether that ***credit*** can also be applied to a sentence of community custody.

Governments > Legislation > Interpretation

HN5 **Legislation, Interpretation**

Statutes must be read together to achieve a harmonious total statutory scheme maintaining the integrity of the respective statutes.

Criminal Law & Procedure > Sentencing > Sentencing Alternatives > Community Confinement

HN6 **Sentencing Alternatives, Community Confinement**

Former *Wash. Rev. Code § 9.94A.030(4)* defines "community custody" as that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to *Wash. Rev. Code § 9.94A.120 (5)*, *(6)*, *(7)*, *(8)*, *(10)*, or *(11)* or *Wash. Rev. Code § 9.94A.383*, served in the community subject to controls placed on the offender's movement and activities by the Washington Department of Corrections.

Criminal Law & Procedure > Sentencing > Sentencing Alternatives > Community Confinement

HN7 **Sentencing Alternatives, Community Confinement**

See former *Wash. Rev. Code § 9.94A.170(3)*.

Criminal Law & Procedure > Sentencing > General Overview

HN8 **Criminal Law & Procedure, Sentencing**

The Sentencing Reform Act of 1981 (SRA), Wash. Rev. Code ch. 9.94A, defines "confinement" as total or partial confinement as defined under the Act. Former *Wash. Rev. Code § 9.94A.030(9)*. "Total confinement" is defined as confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for 24 hours a day or pursuant to *Wash. Rev. Code §§ 72.64.050* and *72.64.060*. Former *Wash. Rev. Code § 9.94A.030(38)*.

Criminal Law & Procedure > Sentencing > Sentencing Alternatives > Community Service

Criminal Law & Procedure > Sentencing > Sentencing Alternatives > Home Detention

HN9 **Sentencing Alternatives, Community Service**

"Partial confinement" is defined as confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government or, if home detention or work crew has been ordered by the court, in an approved residence for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention. Former *Wash. Rev. Code § 9.94A.030(28)*.

Criminal Law &
Procedure > Sentencing > Sentencing
Alternatives > Community Confinement

HN10[] **Sentencing Alternatives, Community Confinement**

Incarceration, even if in excess of the offender's sentence, cannot satisfy a sentence of community custody. Requiring offenders to serve a sentence of community custody in the community serves several purposes of the Sentencing Reform Act of 1981 (SRA), Wash. Rev. Code ch. 9.94A, including protecting the public, offering the offender an opportunity to improve him or herself and reducing the risk of reoffending by offenders in the community. Former *Wash. Rev. Code § 9.94A.010(4)*, *(5)*, and *(7)* (1999). Requiring a sex offender to serve a sentence of community custody in the community through the application of the tolling statute helps the offender to improve himself or herself by providing both the time and resources necessary to assist with reintegration into society, while protecting the public by maintaining some control over the offender through the community custody requirements imposed by the Washington Department of Corrections.

Headnotes/Summary

Summary

WASHINGTON OFFICIAL REPORTS SUMMARY

Nature of Action: A sex offender who was resentenced for his crime to 51 months of incarceration and 36 months of community custody after he had served 81 months in incarceration for the conviction sought relief from judgment on claims that the total sentence exceeded the statutory maximum penalty for the crime and that he should be ***credited*** for time spent incarcerated in excess of 51 months toward his 36-month term of community custody.

Superior Court: The Superior Court for Kitsap County, No. 00-1-01046-8, M. Karlynn Haberly, J., denied the motion on November 2, 2007.

Court of Appeals: The court *affirmed* the denial order at *151 Wn. App. 186 (2009)*, holding that, under statutory provisions, the defendant was not entitled to have time spent in incarceration ***credited*** against his term of community custody and that the defendant was not placed in double jeopardy by being denied the ***credit***.

Supreme Court: Holding that the trial court correctly denied the defendant ***credit*** against his term of community custody for excess time spent incarcerated, the court *affirms* the decision of the Court of Appeals.

Headnotes

WASHINGTON OFFICIAL REPORTS HEADNOTES

WA[1][] [1]

Criminal Law > Punishment > Sentence > Reform Act > Construction > Question of Law or Fact > Review.

The interpretation of the Sentencing Reform Act of 1981 (ch. 9.94A RCW) is a question of law that is reviewed de novo.

WA[2][] [2]

Statutes > Construction > Legislative Intent > Statutory Language > Plain Meaning > Context.

A court's objective when interpreting a statute is to determine the legislature's intent. If the meaning of a statute is plain on its face, the court will give effect to that plain meaning. To determine the plain meaning of a statutory provision, a court looks to the text of the provision as well as to the context of the statute in which the provision is found, to related provisions, and to the statutory scheme as a whole. A statutory term that is not statutorily defined is given its plain and ordinary meaning unless a contrary legislative intent is indicated. If after this inquiry the statute is susceptible to more than one reasonable interpretation, the statute is ambiguous and the court may resort to statutory

construction, legislative history, and relevant case law for assistance in discerning legislative intent.

WA[3] [3]

Sexual Offenses > Punishment > Sentence > Community Custody > ***Credit*** for Presentence or Postsentence Confinement > Statute Requiring Term of Community Custody > Effect.

Nothing in former RCW 9.94A.120(10)(a), which requires certain sex offenders to be sentenced to a term of community custody, entitles a sex offender to ***credit*** against community custody for presentence or postsentence confinement.

WA[4] [4]

Statutes > Construction > Acts Relating to Same Subject > Harmonious Construction.

Statutes relating to the same subject must be read together to achieve a harmonious statutory scheme while maintaining the integrity of the individual provisions.

WA[5] [5]

Criminal Law > Punishment > Sentence > Conditions > Community Placement > Community Custody > Term > Tolling > "Confinement for Any Reason" > Excess Confinement Due to Sentencing Error.

For purposes of former RCW 9.94A.170(3) (1999), which tolls an offender's period of community custody if the offender is in confinement for any reason, an offender's excess confinement due to a sentencing error that is later corrected with an amended sentence constitutes "confinement for any reason."

WA[6] [6]

Criminal Law > Punishment > Sentence > Conditions > Community Placement > Community Custody > ***Credit*** for Confinement Beyond Term of Confinement > Denial > Statutory Provisions.

Under former *RCW 9.94A.030(4)* (1999) and former RCW 9.94A.170(3) (1999), a convicted offender sentenced to a term of confinement and to a term of community custody who is not actually released from confinement until some time after completing the term of confinement may not be granted ***credit*** against the term of community custody for the excess period of confinement. Under the statutory scheme, an offender's incarceration, even if in excess of the offender's sentence, cannot satisfy a sentence of community custody, and the offender's term of community custody is tolled until the offender is actually released into the community. (*In re Personal Restraint of Knippling, 144 Wn. App. 639 (2008)*, is disavowed insofar as it is inconsistent.)

WA[7] [7]

Sexual Offenses > Punishment > Sentence > Community Custody > Public Policy.

Laws of 1996, ch. 275, § 1 expresses a substantial public policy goal of improving the ***supervision*** of convicted sex offenders in the community upon release from incarceration.

WA[8] [8]

Sexual Offenses > Punishment > Sentence > Community Custody > ***Credit*** for Presentence or Postsentence Confinement > Erroneous Confinement in Excess of Sentence > Statutory Scheme.

Under former *RCW 9.94A.030(4)* (1999) and former RCW 9.94A.170(3) (1999), a convicted sex offender sentenced to a term of confinement and to a term of community custody under former RCW 9.94A.120(10)(a) who serves an excess period of confinement due to a sentencing error that is later corrected with an amended sentence may not be granted ***credit*** against the term of community custody for the excess period of confinement. Under the statutory scheme, an offender's incarceration, even if in excess of the offender's sentence, cannot satisfy a sentence of community custody, and the offender's term of community custody is tolled until the offender is actually released into the community. (*In re Personal Restraint of Knippling, 144 Wn. App. 639 (2008)*, is disavowed insofar as it is inconsistent.)

FAIRHURST, J., delivered the opinion of the court, in which MADSEN, C.J., and C. JOHNSON, CHAMBERS,

OWENS, and J.M. JOHNSON, JJ., concurred. STEPHENS, J., filed a dissenting opinion, in which ALEXANDER, J., and SANDERS, J. PRO TEM., concurred. WIGGINS, J., did not participate in the disposition of this case.

Counsel: *Roger A. Hunko*; and *Dana M. Lind* (of *Nielsen, Broman & Koch PLLC*), for petitioner.

Russell D. Hauge, *Prosecuting Attorney*, and *Jeremy A. Morris* and *Kevin D. Hull*, *Deputies*, for respondent.

Judges: **[***1]** AUTHOR: Justice Mary E. Fairhurst. WE CONCUR: Chief Justice Barbara A. Madsen, Justice Charles W. Johnson, Justice Tom Chambers, Justice Susan Owens, Justice James M. Johnson. AUTHOR: Justice Debra L. Stephens. WE CONCUR: Justice Gerry L. Alexander, Richard B. Sanders, Justice Pro Tem.

Opinion by: Mary E. Fairhurst

Opinion

EN BANC
[*238] **[**617]**

¶1 FAIRHURST, J. — Under the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, Cliff Alan Jones challenges the trial court's denial of ***credit*** toward his sentence of community custody for time he spent incarcerated in excess of his amended sentence of incarceration. In affirming the trial court's decision, Division Two of the Court of Appeals expressly declined to follow Division Three's holding **[*239]** in *In re Personal Restraint of Knippling, 144 Wn. App. 639, 183 P.3d 365 (2008)* (Community custody begins at completion of the sentence of confinement; therefore, the offender is entitled to ***credit*** toward a sentence of community custody for time spent incarcerated in excess of the sentence of incarceration.). We affirm the decision of Division Two, deny Jones ***credit*** toward his sentence of community custody, and disavow Division Three's holding in *Knippling*.

I. FACTS

¶2 Jones pleaded guilty **[***2]** to first degree child molestation committed between November 1998 and November 1999. The trial court sentenced him to an exceptional sentence of 130 months of incarceration and 36 months of community custody. The Court of Appeals affirmed this sentence. The Court of Appeals also dismissed Jones' personal restraint petition challenging his exceptional sentence. Jones subsequently filed another personal restraint petition, this time arguing that the trial court erred when it calculated his offender score by considering his prior "washed-out" juvenile offenses when the law at the time he committed his offenses precluded the trial court from considering them. The State conceded the error, and on January 9, 2007, the Court of Appeals granted Jones' petition and remanded for resentencing.

¶3 The trial court amended Jones' original judgment and sentence to reflect an offender score of zero, and Jones was resentenced to 51 months of incarceration and 36 months of community custody. By that time, Jones had already served 81 months of incarceration. The trial court ***credited*** Jones with time served toward his 51 month sentence of incarceration and ordered his release. However, **[**618]** the trial court did **[***3]** not ***credit*** the excess 30 months of incarceration time toward his 36 months of community custody.

¶4 Jones filed a motion for relief from judgment, arguing that his actual incarceration of 81 months, when added to his **[*240]** sentence of community custody, exceeded the statutory maximum penalty for the offense. In a second memorandum of authorities, Jones raised the additional argument that he should receive ***credit*** for time spent incarcerated in excess of his sentence (30 months) toward his 36 month sentence of community custody. The State argued that Jones' sentence did not exceed the statutory maximum because under *RCW 9A.44.083* and former *RCW 9A.20.021* (1982), the statutory maximum sentence for Jones' offense, a class A felony, was life in prison. The State also argued that the trial court did not have authority to ***credit*** his sentence of community custody for excess time spent incarcerated.

¶5 On November 2, 2007, the trial court issued findings of fact and conclusions of law denying Jones' motion for relief from judgment. The trial court held that Jones' judgment and sentence did not exceed the statutory maximum of life in prison for the offense. Additionally, the trial court held that it had no **[***4]** statutory authority to ***credit*** Jones' sentence of community custody for time served in excess of 51 months because, under the plain language of former *RCW 9.94A.170(3)* (1999), [1] "[a]ny period of community

[1] The record cites the recodified statutory provision in effect at

custody, community placement, or community ***supervision*** shall be tolled during any period of time the offender is in confinement *for any reason*." Clerk's Papers at 45 (emphasis added). Jones timely appealed the court's decision to deny him ***credit*** toward his sentence of community custody for excess time spent incarcerated.

¶6 The Court of Appeals affirmed the trial court's denial of ***credit*** toward community custody. *State v. Jones, 151 Wn. App. 186, 188, 210 P.3d 1068 (2009)*. Noting that the State conceded that Jones was incarcerated beyond his standard range sentence **[***5]** of 51 months, the Court of Appeals identified **[*241]** the central issue as "whether Jones's community custody term began at the completion of his 51-month incarceration term or whether it was tolled until he was actually released into the community." *Id. at 190*. After analyzing the plain and unambiguous language of former *RCW 9.94A.120(10)(a)* (1999) (SRA provision governing when community custody begins), former *RCW 9.94A.170(3)* (SRA provision governing the tolling of community custody), and former *RCW 9.94A.030(4)* (1999) (SRA provision defining community custody), the court affirmed the trial court's decision denying ***credit*** toward a sentence of community custody for excess time spent incarcerated. *Jones, 151 Wn. App. at 194*. As the court explained:

> Allowing Jones to begin his community custody term before his release into the community would contravene both the plain language of former *RCW 9.94A.030(4)*, which defines "community custody" as "that portion of an inmate's sentence of confinement … *served in the community*," and the "substantial public policy goal" of "improving the ***supervision*** of convicted sex offenders in the community upon release from incarceration." (Emphasis added); *see* **[***6]** LAWS OF 1996, ch. 275, § 1.

Id. at 193 (alteration in original). Lastly, the Court of Appeals held, "[T]he sentencing court did not violate Jones's right to be free from double jeopardy." *Id. at 195*. [2]

the time of the trial court's decision, former *RCW 9.94A.625(3)* (2001). Former *RCW 9.94A.625(3)* was recodified in 2008 as *RCW 9.94A.171* without substantive change material to this case. This opinion will hereinafter refer to former *RCW 9.94A.120(17)* (1999), and all other applicable SRA provisions in effect at the time Jones committed his offense. *See RCW 9.94A.345*.

[619]**

¶7 As part of Division Two's holding on the issue of statutory authority to grant ***credit*** toward a sentence of community custody for excess time spent incarcerated, Division Two respectfully disagreed with Division Three. *Id. at 191-95*. In *Knippling*, Division Three held that excess time spent incarcerated because of a resentencing must be **[*242]** ***credited*** against an offender's **[***7]** sentence of community custody. *144 Wn. App. at 643*.

¶8 Jones timely appealed his sentence to this court. We granted review to resolve the issue of whether Jones' 30 months of excess incarceration must be ***credited*** against his 36 month sentence of community custody, and to resolve the conflict between Division Two and Division Three. *State v. Jones, 167 Wn.2d 1017, 224 P.3d 773 (2010)*.

II. ANALYSIS

WA[1,2][↑] [1, 2] ¶9 We affirm the Court of Appeals and hold that the trial court did not err when it declined to ***credit*** Jones' sentence of community custody for excess time he spent incarcerated. This case requires the statutory interpretation of multiple SRA provisions. ***HN1***[↑] Interpretation of the SRA is a question of law that we review de novo. *State v. Keller, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001)*. When interpreting a statute, "the court's objective is to determine the legislature's intent." *State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005)*. If the meaning of a statute is plain on its face, we "'give effect to that plain meaning.'" *Id.* (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002))*. To determine the plain meaning of a statute, we look to the text, as well as "the context **[***8]** of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Id.* An undefined term is "given its plain and ordinary meaning unless a contrary legislative intent is

[2] Jones argued to the Court of Appeals that failing to ***credit*** excess time spent incarcerated toward a sentence of community custody violated double jeopardy. The Court of Appeals held that denying ***credit*** toward community custody did not violate double jeopardy. Subsequently, the issue of double jeopardy was never expressly discussed in the petition for review, nor was any of the applicable authority ever cited. Jones failed to submit a supplemental brief to this court, and the State's supplemental brief does not address the double jeopardy issue. This issue appears to have been abandoned, and we decline to address it at this time.

indicated." Ravenscroft v. Wash. Water Power Co., 136 Wn.2d 911, 920-21, 969 P.2d 75 (1998). If after this inquiry the statute is susceptible to more than one reasonable interpretation, it is ambiguous and we "may resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent." Christensen v. Ellsworth, 162 Wn.2d 365, 373, 173 P.3d 228 (2007).

WA[3][↑] [3] ¶10 Two statutes are implicated, former RCW 9.94A.120(10)(a) and former RCW 9.94A.120(17). Former RCW 9.94A.120(10)(a) **[*243]** is the statute under which the trial court sentenced Jones to 36 months of community custody. Former RCW 9.94A.120(10)(a) provides:

> HN2[↑] When a court sentences a person to the custody of the department of corrections for an offense categorized as a sex offense committed on or after June 6, 1996, and before July 1, 2000, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned release awarded **[***9]** pursuant to RCW 9.94A.150(1) and (2), whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.150(1) and (2).

Nothing in this provision authorizes the court to ***credit*** presentence or postsentence confinement toward the mandatory sentence of community custody.

¶11 Jones argues that a different statute, former RCW 9.94A.120(17), requires the trial court to ***credit*** a sentence of community custody for excess time spent incarcerated. Former RCW 9.94A.120(17) states, HN3[↑] "The sentencing court shall give the offender ***credit*** for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced." HN4[↑] That statute provides for a grant of ***credit*** for confinement time served, but it does not explicitly provide whether it is limited toward a sentence of confinement or whether that ***credit*** can also be applied to a sentence of community custody. Having found no express statutory authority ***crediting*** a sentence of community **[**620]** custody for excess time spent incarcerated, **[***10]** we analyze the statutory scheme of which the above provisions are a part.

WA[4-8][↑] [4-8] ¶12 HN5[↑] Statutes must be read together to achieve a harmonious total statutory scheme maintaining the integrity of the respective statutes. State v. O'Neill, 103 Wn.2d 853, 862, 700 P.2d 711 (1985). Allowing excess time spent incarcerated to satisfy a sentence of community custody **[*244]** would contravene the definition of "'[c]ommunity custody'" in former *RCW 9.94A.030(4)* and the plain and unambiguous language of the community custody tolling provisions of former RCW 9.94A.170(3). HN6[↑] Former *RCW 9.94A.030(4)* defines "'[c]ommunity custody'" as

> that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.120 (5), (6), (7), (8), (10), or (11), or RCW 9.94A.383, served *in the community* subject to controls placed on the offender's movement and activities by the department of corrections.

(Emphasis added.) Having been incarcerated during the excess time served on his sentence of incarceration, Jones necessarily was not *in the community* and thus cannot be deemed to have served his sentence of community custody. Accordingly, excess time Jones spent incarcerated does not meet the definition **[***11]** of "community custody," and granting ***credit*** toward his sentence of community custody would contravene the plain and unambiguous language of the statute defining "community custody."

¶13 Former RCW 9.94A.170(3), the community custody tolling statute, provides in pertinent part:

> HN7[↑] Any period of community custody shall be tolled during any period of time the offender is in confinement *for any reason*. However, if an offender is detained pursuant to [former] RCW 9.94A.207 [(1999)] [3] or [former] 9.94A.195 [(1984)] [4] and is later found not to have violated a condition

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[3] Former RCW 9.94A.207(1) **[***12]** governs the secretary's authority to issue a warrant for the arrest and confinement of any ?offender who violates a condition of community placement or community custody." This exception to the community custody tolling statute is not implicated in this case because Jones was not confined for a violation of the conditions of his community custody.

[4] Former RCW 9.94A.195 authorizes a community corrections officer to conduct a warrantless search or arrest of any offender if the officer reasonably believes the offender has

> or requirement of community custody, time spent in confinement due to such detention shall not toll the period of community custody.

[*245] (Emphasis added.) Jones argues that under former RCW 9.94A.170(3), his sentence of community custody was not tolled during the period of time that he was in confinement because former RCW 9.94A.170(3) applies only to an offender who has subsequently been incarcerated for a crime different from the one for which the sentence of community custody was originally imposed. Former RCW 9.94A.170(3) tolls a period of community custody when the offender is "in confinement for any reason."

¶14 ***HN8***[↑] The SRA defines "'[c]onfinement'" as "total or partial confinement as defined in this section." Former *RCW 9.94A.030(9)*. "'Total confinement'" is defined as "confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060." Former *RCW 9.94A.030(38)*. [5] Being incarcerated for 24 hours a day **[***13]** under the authority of the State, Jones was in total confinement **[**621]** and thus was in confinement for the purposes of former RCW 9.94A.170(3).

¶15 The reason he was confined for an excess of 30 months was because his initial sentence was later amended. This falls within "any reason." *Id.* Former RCW 9.94A.170(3) is broadly written and subject to the two exceptions not applicable here, and tolls a sentence of community custody when the offender is in confinement "for any reason." Therefore, Jones' confinement in excess of his sentence tolled the running of his sentence of community custody, and to grant ***credit*** toward that community **[*246]** custody would contravene the plain **[***14]** and unambiguous meaning of former RCW 9.94A.170(3). [6]

¶16 Division Two correctly noted that the public policy of this State supports the conclusion that ***HN10***[↑] incarceration, even if in excess of the offender's sentence, cannot satisfy a sentence of community custody. *Jones, 151 Wn. App. at 193*. Requiring offenders to serve a sentence of community custody in the community serves several purposes of the SRA, including, **[***15]** "[p]rotect[ing] the public," "[o]ffer[ing] the offender an opportunity to improve him or herself," and "[r]educ[ing] the risk of reoffending by offenders in the community." Former RCW 9.94A.010(4), (5), (7) (1999). Requiring a sex offender to serve a sentence of community custody in the community through the application of the tolling statute helps the offender to improve him- or herself by providing both the time and resources necessary to assist with reintegration into society, while protecting the public by maintaining some control over the offender through the community custody requirements imposed by the Department of Corrections. *Id.* The legislature has recognized that community custody plays a vital role in a sex offender's reintegration into the community.

> The legislature finds that improving the ***supervision*** of convicted sex offenders in the community upon release from incarceration is a substantial public policy goal, in that effective ***supervision*** accomplishes many purposes including protecting the community, supporting crime victims, assisting offenders to change, and providing important information to decision makers.

LAWS OF 1996, ch. 275, § 1.

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violated a condition of their sentence. This exception to the community custody tolling statute is not implicated in this case because Jones was not confined because of a violation of the conditions of his community custody.

[5] ***HN9***[↑] "'Partial confinement'" is defined as

> confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention as defined in this section.

Former ***RCW 9.94A.030(28)***.

[6] Jones cites to *State v. Cameron, 71 Wn. App. 653, 861 P.2d 1069 (1993)*, for the proposition that former RCW 9.94A.170(3) applies only under circumstances where the offender is incarcerated for a *different crime* during the time he is scheduled to serve a preexisting community custody sentence. In *Cameron*, the Court of Appeals held that an offender's community custody sentence was tolled when the offender, having subsequently been sentenced for a *different crime*, remained incarcerated at the conclusion of his original sentence of incarceration. *71 Wn. App. at 657*. The Court of Appeals' application of former RCW 9.94A.170(3), while correct under the circumstances present in *Cameron*, did not limit the application of former RCW 9.94A.170(3) to *only* those circumstances, nor could it have.

[*247]

¶17 Any limitation on the plain **[***16]** language of the tolling provision allowing Jones ***credit*** for excess time spent incarcerated, and in essence beginning his sentence of community custody while incarcerated, would contravene the "substantial public policy goal" of "improving the ***supervision*** of convicted sex offenders in the community upon release from incarceration." *Id.* Requiring Jones to serve all of his sentence of community custody is consistent with the legislatively established public policy of this State. [7]

[622]**

¶18 Our holding, although affirming the decision of Division Two, contradicts *Knippling*, an earlier case decided by Division Three. Like this case, *Knippling* involved an offender, Jordan Knippling, who after having been incarcerated for 41 months on two counts of second degree assault and one count of first degree animal cruelty, had his sentence reduced at a resentencing hearing to 17 months. *144 Wn. App. at 641*. Knippling argued that he should have been given ***credit*** against his sentence of community custody **[***18]** for the 24 months of his incarceration in excess of his new sentence. *Id.* Division Three, in a split decision, held **[*248]** that "under [former *RCW 9.94A.120(10)(a)*], [8] community custody begins at the completion of the term of confinement, and Mr. Knippling completed his term of confinement 24 months before he was actually released." *Id.* Therefore, Division Three held that his 24 months of excess incarceration should be ***credited*** against his sentence of community custody. *Id. at 643*.

¶19 The *Knippling* majority sought consistency in the statutory scheme by limiting the application of former *RCW 9.94A.170(3)*:

> Our interpretation of [former *RCW 9.94A.120(10)(a)*] is consistent with [former **[***19]** *RCW 9.94A.170(3)*]. The latter statute deals with tolling of the term of community custody *after* the term of community custody has started. It provides that the community custody term does not run during time in confinement for new crimes or for community custody violations. In contrast, [former *RCW 9.94A.120(10)(a)*] addresses the point in time at which the term of community custody begins. And, the statute is clear that the term of community custody begins when the offender completes his confinement time.

Knippling, 144 Wn. App. at 642-43. However, Division Three's interpretation ignores the plain language of former *RCW 9.94A.170(3)*. Former *RCW 9.94A.170(3)* contains no language limiting its application to confinement for "new crimes." The provision states that any period of community custody shall toll during any period of time the offender is in confinement "for any reason." *Id*. While former *RCW 9.94A.120(10)(a)* set Jones' sentence of community custody to begin after the completion of the incarceration term (51 months) of his new sentence, his continued confinement for the next 30 months tolled the running of community **[*249]** custody under former *RCW 9.94A.170(3)*. Therefore, the trial court **[***20]** correctly refused to grant Jones ***credit*** toward his sentence of community custody for the excess time he spent incarcerated. This interpretation is consistent with the statutory definition of "community

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[7] We acknowledge that our decision results in Jones' receiving no ***credit*** for 30 months of incarceration served under a void sentence; however, we decline to exercise our equitable powers to grant Jones ***credit*** toward his sentence of community custody for that time. In *State v. Donaghe, 172 Wn.2d 253, 256 P.3d 1171 (2011)*, a case originally consolidated with this case but deconsolidated after oral argument, petitioner argued that this court *should* exercise such equitable powers, citing *In re Personal Restraint of Roach, 150 Wn.2d 29, 74 P.3d 134 (2003)*. In *Roach*, the Department of Corrections erroneously released an inmate 18 months early. *Id. at 31*. This court adopted the equitable doctrine granting the offender **[***17]** day-for-day ***credit*** toward his sentence for time spent at *liberty* provided that he did not contribute to his erroneous release and, while at liberty, he did not abscond any remaining legal obligations and had no criminal convictions. *Id. at 37*. This court justified its adoption of this equitable doctrine, in part, because there was not a contrary statute on point. *Id. at 36-37*. In this case, both former *RCW 9.94A.030(4)* and former *RCW 9.94A.170(3)* would be contradicted by granting Jones ***credit*** toward his community custody. Therefore, we decline to extend the holding in *Roach* and do not exercise our equitable powers to contravene the statutory scheme and public policy of this State.

[8] *Knippling* refers to former *RCW 9.94A.715(1)* (2008), which the legislature did not enact until 2000. LAWS OF 2000, ch. 28, § 25. Thus, the statute would not govern Jones' case. However, the pertinent language regarding when community custody begins is almost identical to former *RCW 9.94A.120(10)(a)*. For the sake of consistency this opinion will continue to refer to the statutes in effect at the time of Jones' offense, as the applicable SRA provisions are without substantial change material to this case or *Knippling*.

custody" requiring it to be served in the community, and brings former RCW 9.94A.120(10)(a) and former RCW 9.94A.170(3) into harmony. To the extent it holds differently, *Knippling* is disavowed.

III. CONCLUSION

¶20 We affirm the Court of Appeals. We disavow *Knippling* and hold that the trial court correctly denied Jones ***credit*** toward his sentence of community custody for excess time spent incarcerated.

MADSEN, C.J., and C. JOHNSON, CHAMBERS, OWENS, and J.M. JOHNSON, JJ., concur.

Dissent by: Debra L. Stephens

Dissent

¶21 STEPHENS, J. (dissenting) — This is now the second time I have faced the issue before the court, the first being in *In re Personal Restraint of Knippling, 144 Wn. App. 639, 183 P.3d 365 (2008)*. Having had the benefit of a second look, I am still convinced that an offender who remains in prison beyond the lawful period of confinement because of a sentencing error must receive ***credit*** toward a term of community **[***21]** custody. Because the majority **[**623]** would deny Cliff Alan Jones ***credit*** toward his term of community custody for the 30 months he was wrongly confined, I respectfully dissent.

¶22 As an initial matter, it is important to distinguish the question of when Jones's term of community custody began from the question of whether it was tolled. The governing statute makes clear Jones's community custody term began when he completed his 51-month term of incarceration. Former RCW 9.94A.120(10)(a) (1999) states **[*250]** that "community custody shall begin … upon *completion* of the term of confinement." (Emphasis added.) The statute specifies "completion" of confinement as opposed to "release" from confinement. "The ordinary meaning of 'completion' is different from the ordinary meaning of 'release' because an offender can complete a term of confinement without being released." *Knippling, 144 Wn. App. at 642 n.3*. Thus, even though Jones spent an additional 30 months in prison, his term of community custody began when he completed his 51-month term of confinement. [9]

¶23 The majority reasons that Jones cannot be deemed to have served a period of community custody because he was not "in the community." Former *RCW 9.94A.030(4)* (1999). Contrary to the majority's view, an offender may receive ***credit*** toward a term of community custody even if the offender is not "in the community." For example, "if an offender is detained pursuant to [former] RCW 9.94A.207 [(1999)] or [former] 9.94A.195 [(1984)] and is later found not to have violated a condition or requirement of community custody, time spent in confinement due to such detention shall not toll the period of community custody." Former RCW 9.94A.170(3) (1999). In other words, the time an offender spends "in confinement" on suspicion of violating a condition of release counts toward the offender's term of community custody. The offender is not "in the community," but the statute nonetheless considers the offender to have served community custody. [10]
[*251]

¶24 Moreover, the majority's view that Jones must be "in the community" before he can serve community custody conflicts with its conclusion that Jones's term of community custody was tolled during the excess period of his confinement. A term of community custody must begin before it can be tolled. By taking the position that Jones's term of community custody was tolled, the majority necessarily accepts the premise that his term of community custody began while he was confined. This is true regardless of whether he was "in the community."

¶25 Because Jones's community custody began upon completion of his 51-month term of confinement, the only relevant question is whether the term of community custody was tolled. It was not. Jones spent the extra 30 months in prison because of a mistake in calculating his

[9] The majority seems to acknowledge this point. *See* majority at 248 (noting, "former RCW 9.94A.120(10)(a) set Jones' sentence of community custody to begin **[***22]** after the completion of the incarceration term (51 months) of his new sentence"). On the other hand, it rejects allowing Jones ***credit*** for his excess incarceration as "in essence beginning his sentence of community custody while incarcerated." Majority at 247.

[10] For **[***23]** the same reason, the majority's reliance on public policy can go only so far. Despite the compelling rationale underlying community custody and reintegration of sex offenders into the community, the legislature allows offenders in some situations to serve their terms of community custody during periods when they are in confinement. Former RCW 9.94A.170(3).

offender score. [11] The tolling statute **[***24]** does not speak to this situation; it contemplates tolling a term of community custody because of a community custody violation, a new crime, or the like. The phrase "confinement for any reason" must be read in the context of the anticipated situations, i.e., when there is an actual reason for the continued confinement. *See* former *RCW 9.94A.170(3)* (tolling proper where offender confined for proven violation of condition of community custody); *Knippling, 144 Wn. App. at 642* (tolling proper where offender confined for new crime); **[**624]** *State v. Cameron, 71 Wn. App. 653, 657, 861 P.2d 1069 (1993)* (tolling proper where offender confined on concurrent sentence for different crime). While not exclusive, these examples illustrate the general class of reasons covered by the tolling statute. Excess confinement because of a mistake is markedly different and does not fall within the statute's reach.

¶26 We are thus **[***25]** left with one statute that plainly defines when Jones's community custody term began—**[*252]** upon completion of his 51-month term of confinement—and a tolling statute that does not provide for tolling based upon a sentencing mistake. We should not expand the tolling statute beyond its intended reach. Nor does it matter that Jones was not "in the community" due to the sentencing mistake, as the statutory scheme allows offenders to serve community custody while they are confined. Jones should receive ***credit*** toward his term of community custody for the 30 months he spent in prison in excess of his lawful sentence.

¶27 For these reasons, I respectfully dissent.

ALEXANDER, J., and SANDERS, J. PRO TEM., concur with STEPHENS, J.

References

Annotated Revised Code of Washington by LexisNexis

End of Document

[11] The majority says that "[t]he reason [Jones] was confined for an excess of 30 months was because his initial sentence was later amended." Majority at 245. In my view, it is more accurate to attribute the cause of the excess confinement to the sentencing mistake, not the later-amended sentence.

Training Materials from Defenders

Overview

Washington Defender Association (WDA) will be offering several trainings and case support resources in re-sentencing cases for defenders statewide in the coming months. This guide is intended to provide some initial high-level recommendations for re-sentencing cases for clients who are in the custody of the Department of Corrections.

Initial steps

1. Reach out to your client and identify how you will communicate. See DOC guide in this training packet for the various ways you can communicate with your client in prison.
2. Identify if your client is a noncitizen. Washington Defenders Association's Immigration Project or an immigration attorney should be contacted.
3. Ask your client if he/she would prefer to stay in DOC custody while you are preparing the case for re-sentencing. Many individuals will find in extremely disruptive to their lives if they are transferred from DOC to the county for a long period of time to await re-sentencing. If your client would prefer to stay in DOC custody and you can establish a regular communication plan with your client, he/she should be able to remain in DOC while you prepare the case.
4. If your client is in DOC custody, establish a recurring date to have a short check-in meeting, such as every other Friday. Even if you do not have an update, a check-in to let your client know there is no update and ask how they are doing is important to build trust and to reassure your client that you are focused on their case.
5. Ask your client to begin thinking about a reentry plan. In the coming months, defenders will be able to reach out to Washington Defenders Association to get access to resources for building reentry plans, but generally, ask your client to think through: 1) housing; 2) work; 3) support network; 4) community resources. You will work with your client to build a more detailed reentry plan over the course of your representation, but it is useful to have your client thinking about these basic issues from the very beginning of the case.

Case support

Please stay tuned for an announcement about how Washington Defenders Association will be able to provide re-sentencing and reentry case support in the coming weeks. WDA is also available for technically assistance even if you are not a member. Please email Ali Hohman at ali@defensenet.org.

Checklist for re-sentencing hearing

- Collaborate with the prosecutor on the following issues:
    - Outstanding warrants or tolling community custody that can be addressed before the hearing.

    - Review outstanding legal financial obligations and work to reduce interest or principal for some LFOs, e.g. cost of defender services for a client who is indigent and has been incarcerated for many years.
    - Determine if an exceptional sentence downward is appropriate to reduce term of community custody.
- Virtual Hearing Preparation
    - Ask prosecutor if they have filled out the virtual hearing form.
    - Review virtual hearing information in DOC training materials packet.
- Communication with Department of Corrections
    - Contact to the Legal Liaison Officer at the DOC institutional to arrange a virtual hearing. Submitted the form to Legal Liaison Officer, including whether if fingerprinting is necessary. By checking the box. Submit DOC worksheet for attorneys to DOC as soon as a sentencing hearing is scheduled (the more notice DOC has, the better). The worksheet is in the DOC training materials packet along with the email address where the form should be submitted.

Training Materials from Prosecutors

RESENTENCING UPDATE

An Overview of an Evolving Practice

PRESENTED BY:

- Carla C. Lee, Deputy Chief of Staff/Chair Sentence Review Unit

  King County Prosecuting Attorney's

  Office
- Aaron Bartlett, Senior Deputy Prosecuting Attorney/Appellate Unit

  Clark County Prosecuting Attorney's

  Office

RCW 9.94A.647/SB 5164

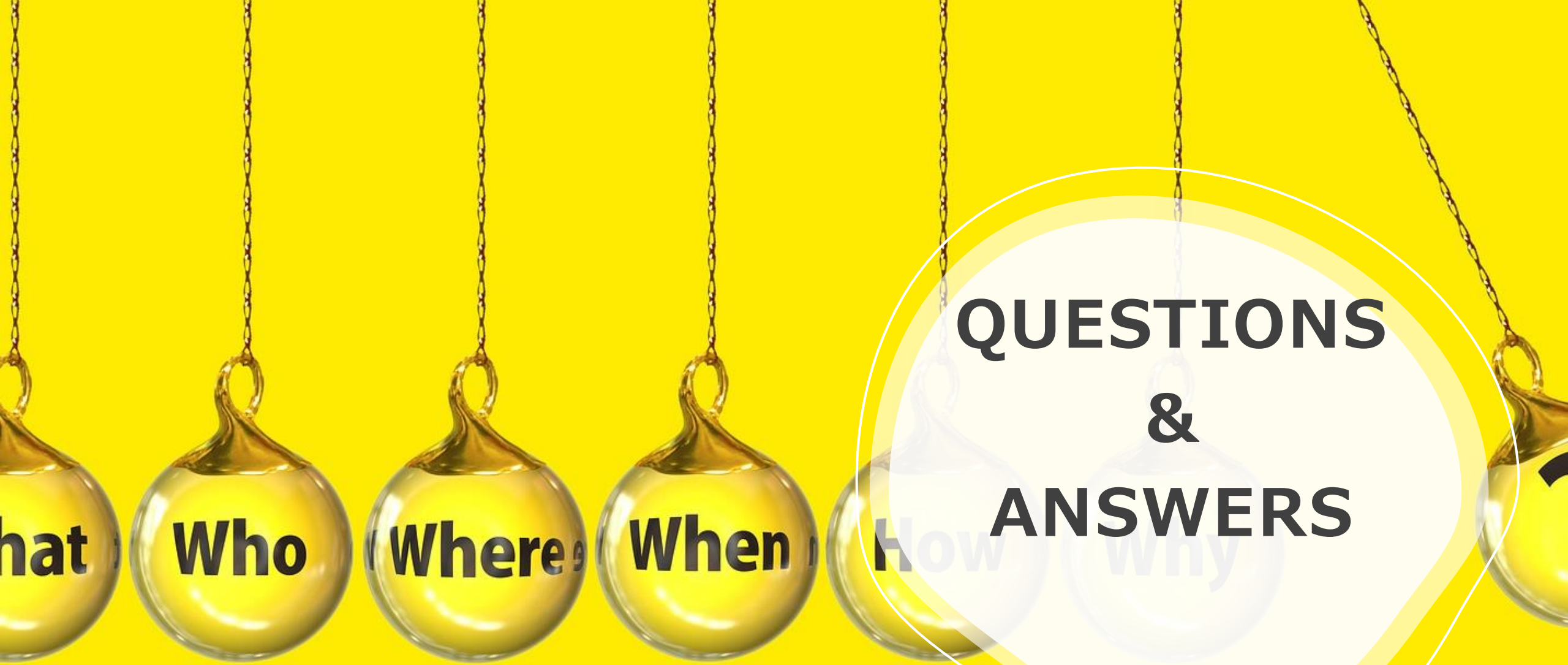
INITIAL STEPS

IDENTIFY & REVIEW

NOTIFICATIONS & COLLABORATION

PREPRARING FOR HEARING

OTHER CONSIDERATIONS



QUESTIONS & ANSWERS

DANIEL T. SATTERBERG
PROSECUTING ATTORNEY

THANK YOU

Statewide Resentencing Training 10/13
10 Min. Presentation – Prosecution
Outline

1. Initial Steps RCW 9.94A.647/SB 5164 and RCW 36.27.130/SB 6164
2. Identify & Review
    1. Review DOC data and internal data to identify RCW 9.94A.647 cases
    2. Review all sentencing documents and item relevant to the sentencing
    3. Identify victims on the 3rd strike
    4. Identify judicial department, DPA, and PDA
    5. Compile spreadsheet for review
3. Notification & Collaboration
    1. Notify victims of change in law and that responsible party entitled to resentence
    2. Meet with defense counsel
        a. Recommend reentry partners (release plan)
        b. Assess strategies, potential challenges
    3. Send defense our sentence recommendation form
    4. Draft the (joint) motion to resentence and send to defense to add to & approve.
    5. Once the motion is filed, request a hearing
        c. STATUS CONFERENCE: asking client to waive appearance, goal of s/c is to inform Court of virtual proceeding & set a date for resentencing
        d. RESENTENCING: see below
4. Preparing for Hearing
    1. Notify victims again of hearing date
    2. Request DOC Virtual Appearance following DOC Virtual Guidelines
        a. Fill out Virtual Appearance Request Form including the meeting link, ID, and passcode for the hearing
        b. Email form to the Legal Liaison Officer of that facility. Also include in the email any additional documents that DOC will need to have printed and prepared for the hearing
            i. Fingerprint Appendix
            ii. Notice of Rights on Appeal
            iii. Firearm and Voting Rights Notice

Resentencing Hearing

1. Sentencing Packet

a. Joint Motion or Petition if discretionary via RCW 36.27.130/6164
b. Amended J&S
c. Proposed Order
d. Order of Release (if the result is immediate release)
e. Rights on Appeal
f. Firearm & Voting Rights Notice

2. Fingerprinting
    g. Public Information Officer will be in the room with the incarcerated person prepared to administer slap prints
    h. Slap prints will happen on camera & will be observed by the Court
    i. The Public Information Officer will hold the prints up to the camera so the Court's clerk can attest to them
    j. The Public Information Officer or notary will sign or notarize the fingerprint sheet
    k. The will mail hardcopy to clerk's office and sometimes they email digital copies to court cc'd the parties

5. Other Considerations
    1. Community Custody: We will ask for an exceptional sentence down to no community custody when
        a. 5164: If the time served exceeds either the recommended sentence or the high-end standard range/if they've served excess time because of their persistent offender status
        b. Demonstrated record of rehabilitation and strong reentry plan. If the reentry plan is solid and the person has a large network of support
    2. LFO/Restitution
        c. If the principle has been paid restitution, asking the Court to reduce or waive the remaining interest
    3. Does the individual have any outstanding warrants, detainers, or tolling community custody?
    4. Reentry Plan
        1. Housing
        2. Employment/job skills training/educational program
        3. Treatment (AA, NA, BH/MH, or other)
        4. Health Support Network

6. Key Points

- Victim Notification
  - 2 notifications – initial notification & once hearing is set
- Virtual Hearing Procedure
  - DOC Request Form
  - Fingerprint Process
- Sentencing Documents/“Packet”
  - Motion (Joint – King) or Petition
  - Presentence Report
  - Appendix D where there is an exceptional sentence request
  - Amended J&S
  - Fingerprint Appendix
  - Proposed Order
  - Order of release (if resulting in immediate release)
  - Firearm & Voting Rights Notice
  - Rights on Appeal
  - Checklist with one-page summary of key case notes

KING COUNTY PROSECUTING ATTORNEY'S OFFICE

SENTENCE MODIFICATION GUIDELINES

PRESENTED BY THE

CARLA C. LEE

DEPUTY CHIEF OF STAFF

CHAIR SENTENCE REVIEW UNIT

FOR

DANIEL T. SATTERBERG

Contributing Authors:

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James Daniels, Vice Chair, General Crimes Unit

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SECTION 1

Historical Perspective:

Under article 3 of the Washington State Constitution, a prosecutor has inherent authority to determine whether to file charges or to forego filing charges. Similar to the wide prosecutorial discretion to determine who to prosecute, for what crimes, and to make a sentencing recommendation, a prosecutor should also have the explicit authority to use their discretion to promote justice. Like in filing charges based on the facts, evidence to support the facts, and existing societal circumstances, a prosecutor should also have the ability to use their discretion to petition a court to modify a sentence resulting in a reduction of a sentence and in some cases, where it advances public safety and the interest of justice, the release of an incarcerated individual for time served.

Until recently, prosecutors have not used their discretion to modify a sentence after a case had been resolved through the court process and the person sentenced accordingly. In fact, many sentence modifications are done after an appeal where a substantive or procedural change, legal error, or some other legal policy results in a sentence modification. Today, many prosecutors around the country recognize that justice is not static, and the criminal justice system must evolve as societal circumstances change and our systems of government continue to modernize. Therefore, some prosecutors use their discretion to undo sentences that appear by current guidelines to be inconsistent with the interest of justice.

In King County, the elected prosecutors such as Christopher Bayley, Norm Maleng, and Daniel Satterberg, the current elected prosecutor in King County, have been committed to criminal justice reform efforts. During the Bayley administration, criminal justice reform meant restoring integrity and legitimacy of the prosecutorial function. For the Maleng administration, it was holding people accountable proportionate to the harm caused, developing prosecutorial guidelines, and sentence guidelines to advance public safety.

During the Satterberg administration, criminal justice reform includes harmonizing past practices with modern approaches to justice, redress harms to communities most impacted by "tough on crime" policies, and consistently developing innovative responses to criminal conduct. Most notably, under Satterberg's leadership, criminal justice reform has included drug reform, "three strikes" reform focusing on robbery in the second-degree offense, domestic violence, gun violence prevention, recognizing that youth who commit crimes are different from adults, and equally important that the voices of victims/survivors are instrumental in responding to harm. It is critical that the voices of survivors of crime are included without coercion or fear of retaliation at key decision points.

Like other governmental agencies, a prosecuting attorney's office must be allowed to use their discretion to advance the purpose and intent of the law. More importantly, a prosecutor must advance the purposes of justice. Justice is not static and must not be held hostage to technical legalisms.

Over the last two thousand years, societies have attempted to define justice. The evolution of justice has evolved from classical justice to medieval justice to now the modern era of justice. It is the goal of the King County Prosecuting Attorney's Office to engage in the collective dialogue intentionally and deliberatively on principles of justice and to ensure that the evolution of justice continues to define the role and function of a prosecutor as advocates for the law and as ministers of justice.

Duty of the Prosecutor:

The role and duty of the prosecutor is not only to file charges in a criminal case, but to do justice. This duty is deeply embedded in American law and may require individualized justice as an approach. Individualized justice is firmly rooted in American law. It is utterly foreign to the American legal system to disallow discretionary acts of leniency or to foreclose an opportunity for a system to correct its errors. See *McCleskey v. Kemp*, 481 U.S. 279, 311-12, 107 S.Ct. 1756, 95 L.Ed.2d 262 (1987.

The King County Prosecuting Attorney's Office seeks to do justice by considering a sentence modification in old cases where there have been significant changes in law and policy, practice, and public opinion, or all the above.

In addition to the public safety duty to file charges where a crime has been committed, the prosecutor also has the duty to seek and to do justice. Entrenched in American law is the role of the prosecutor as not only being one that files criminal charges or a case processor. The American prosecutor is a minister of justice and a problem-solver that seeks to advance the principles of justice. The American Bar Association states in its professional rules that a prosecutor "should seek to reform and improve the administration of criminal justice and when inadequacies or injustices in substantive or procedural law come to the attention of the prosecutor, the prosecutor should stimulate and supports efforts for remedial action." This prosecutorial duty is articulated in Washington law as well. *See* RCW 36.27.020(11).

Concerning Prosecutorial Discretion:

In recent history, during the 2020 Washington State Legislative Session, Senator Manka Dhingra sponsored Senate Bill 6164 concerning the explicit authority for prosecutors to use their discretion to petition a court to modify a sentence in the interest of justice. If a court finds that the interest of justice is served by a sentence modification, such a finding could result in a reduction in a sentence or the early release of an individual incarcerated due to a felony conviction. On March 12, 2020, the Washington State Legislature signed the bill into law and Governor Jay I. Inslee signed the bill on March 27, 2020. The law became effective on June 11, 2020. See RCW 36.27.130.

During the 2021 Washington State Legislative Session, Senator Jeannie Darneille sponsored Senate Bill 5164 concerning resentencing hearings for those deemed persistent offenders based on a current or past robbery in the 2nd degree conviction. On April 20, 2021, the Washington State Legislature signed the bill into law and Governor Jay Inslee signed the bill on April 26, 2021. The law became effective on July 25, 2021. Unlike the Senate Bill 6164 which is

discretionary, Senate Bill 5164 is mandatory for those that meet the requirements outlined in the statute. See RCW 9.94A.647.

SECTION 2

Purpose:

The purpose of sentence modification guidelines is to ensure that the interest of justice is a continuous guiding principle, to ensure that the criminal justice system is accountable to the public by using prosecutorial discretion to prosecute, to recommend a sentence, and to recommend a sentence modification where it serves public safety and advances the legitimacy of the justice system.

Consistent with the Sentence Reform Act (SRA) purposes outlined in the Revised Code of Washington (RCW) 9.94A.010 and the duties of a Prosecuting Attorney outlined in RCW 36.27.020, the purpose of sentence modification is to:

- Ensure that prosecutors exercise their discretion in a manner consistent with the interest of justice;
- Ensure that the sentence in question is consistent with current practices and ideals of justice;
- Ensure that the victim and survivors are instrumental voices in any sentence modification process;
- Promote the respect for the law and the legitimacy of the criminal justice system;
- Promote consistency in punishments and sentences imposed on individuals who committed similar offenses;
- Promote a reentry readiness process;
- Promote public safety and community wellness;
- Minimize the risk of reoffending and further harm to the community;

Victim Notification and Input:

The law, King County policies, and our practices are designed to include victim and survivor involvement and input whenever possible. It goes without saying, but is important to reiterate, that victim and survivor input is critical to advancing justice and it is in the interest of justice that the victim/survivor voice is included in any sentence review or sentence modification process. Because the decisions of the King County Prosecuting Attorney's Office or decisions made by any prosecutor's office impacts victims and survivors, consistent with the laws of Washington State defined in RCW 7.69.030, these sentence modification guidelines require the consideration of the victim and voice of survivors.

The Unit will notify victims and survivors in the event a person is entitled to a resentence or where the office determines that the resentencing a person is in the interest of justice. Where possible, the victim and survivors shall be notified at least 90 days prior to any scheduled sentence modification hearing. Mandatory resentences in which the King County Prosecuting

Attorney's Office is not given sufficient notice, victims may not be notified within the 90 days prescribed above.

Child victims and survivors require special notice and shall be notified of any decision that will result in a review, reduction, or release.

Victims, survivors, and witnesses are instrumental to a fair and just criminal justice system. Their voices give meaning and legitimacy to the criminal justice system. In support of these critical voices, it is important that victims, survivors, or witnesses are not coerced or made to feel pressured to support or oppose a resentence, request for review, and/or a petition for a sentence modification.

SECTION 3

Request for Review:

To make a request for the Sentence Review Unit to review a case, an individual or their counsel shall complete submit a cover letter and submit it to the Sentence Review Unit at: paosentencereviewinquiry@kingcounty.gov or:

King County Prosecuting Attorney's Office
King County Courthouse
Sentence Review Unit
516 3rd Avenue, W400
Seattle, WA 98104

Upon receipt of the request cover letter, the Unit will perform a preliminary review of the case to determine if it meets all the necessary requirements outlined in these guidelines. If after a preliminary review, the Unit determines that the case meets all the requirements, the Unit will engage in a more in-depth individualized assessment to determine if it would be in the interest of justice to file a joint sentence modification petition with King County Superior Court.

If after the preliminary review the Unit determines that further review is not in the interest of justice as defined in these guidelines, the Unit will send a decline to review notice to the pro se requestor or their counsel of record if represented. For more information, see Decision to Decline Review section below.

Decision to Review:

The following non-exclusive factors will be considered by the Unit:

- Whether there has been a change in law that mandates a review and/or resentence;
- Whether the review of the case advances the purposes of these guidelines as identified in Section 2;
- Whether the sentence in question is based on a King County conviction;
- Whether the case falls within the priority category of cases identified in this section;

- Whether there are multiple mitigating factors that suggest review is necessary and is consistent with current principles of justice;
- Whether the conviction and sentence are based upon an antiquated statute;
- Whether review of the case is consistent with the legislative intent identified under the prosecutor duty section of the Revised Code of Washington (see RCW Chapter 36.27).

Priority and Non-priority Cases:

Similar to any governmental agency, a prosecuting attorney's office does not have unlimited resources and priorities provide guidance in the use of the limited resources. Setting some guidelines, developing criteria, and identifying priority cases will help to realistically apply limited resources to those cases most suitable for a review and/or sentence modification.

The following priorities serve to express current priorities. However, as principles of justice evolve, the use of prosecutorial discretion to reform or improve the administration of the criminal justice system may result in identifying other priorities.

Although the option to use prosecutorial discretion to file a sentence modification in the interest of justice is an inherent in the duty of a prosecutor, the law as written in Senate Bill 6164 does not specify the criteria or priorities. This allows each prosecuting attorney's office to set their own review and sentence modification guidelines.

If a Senate Bill 6164 sentence modification request is made, a sentence modification may be applied to a felony conviction based upon violating a Washington law and sentenced by a Washington Court. If there is a decision to file a sentence modification, the sentence modification petition must request a sentence reduction and a Court may not increase the original sentence.

In King County, the general policy is the Unit is open to reviewing any case involving a King County conviction but will prioritize the category of cases identified below. The priority categories have been identified as cases of interest and for these categories of cases, the PAO has initiated a review process to determine if filing a sentence modification petition is consistent with the interest of justice. While a category or categories of cases are identified as priority, each may have unique circumstances and must receive an individualized assessment before a sentence modification petition is filed.

The current priority case categories include:

- "Three Strikes" cases that meet the requirements outlined in RCW 9.94A.647/Senate Bill 5164;
- "Three Strikes" LWOP cases where the last strike is a King County conviction resulting in a life sentence and where the first or second strike conviction was before 1993;
- Non-homicide cases with sentences of 15 years or more where there are no serious injuries;
- Non-homicide cases with sentences of 20 years or more where there are injuries were deemed minor;

- Non-homicide cases involving a requestor who was under the age of 25 at the time the crime was committed;
- Cases involving victims of human trafficking;

Other priority cases may include:

- Cases involving domestic violence abuse with a justified Battered Women Syndrome claim or other abuse identified as a mitigating factor;
- Cases where the individual is over 70 years of age;
- Cases where immigration consequences are triggered;
- Cases where the individual is terminally ill or has a diagnosed mental illness resulting in limited cognitive ability.

Non-priority Cases:

- Cases involving convictions/sentences under RCW 10.95.020/030 aggravated murder;
- Cases involving sex crimes;
- Cases involving the promotion of sex trafficking;
- Cases involving domestic violence;
- Cases involving extensive violent criminal history;
- Cases involving multiple deceased victims;
- Cases where the sentence is not a direct consequence of a King County conviction.

The priority and non-priority categories identified in this section are consistent with the ongoing local and national criminal justice reform efforts. These priorities are subject to change and are not intended to create a right or benefit, substantive or procedural. They are not intended to be enforceable at law by a party in litigation within the county or the state.

to Decline to Review:

A decline notice will be provided directly to unrepresented requestors at their Department of Corrections residence/facility. If the requestor has legal counsel, the decline notice will be provided to the requestor's counsel. Upon request, the decline notice may be shared with other interested parties such as the investigative law enforcement agency and/or the victims or surviving victim family members.

SECTION 4

Decision to File Sentence Modification Petition:

In addition to the factors considered in determining whether to review a case, in assessing whether a sentence modification petition should be filed, the Sentence Review Unit shall review the sentence modification consideration packet including the factors identified in this section.

Only after an individualized assessment of the entire sentence modification consideration packet including applicable factors, will the Unit make a decision whether to file or to decline to file a petition.

Where there has been a change in law whether by the legislature and/or case law mandating a resentence, such as Senate Bill 5164, the Sentence Review Unit will review all sentencing documents including documents relevant to sentencing and file the motion for resentencing. If a resentence is mandated due to recent case law, the Sentence Review Unit will collaborate with other parts of the office to coordinate a resentence.

Sentence Modification Consideration Packet:

The Sentence Modification Petition Packet should include the following documents in order to proceed with the individualized assessment:

Request Documents (submitted)

- Cover Letter (submitted)

Post-Conviction Documents

- Department of Corrections Analysis or other Credible Documents Showing:
    - Work history
    - Vocational Achievements
    - Educational Achievements
    - Other Programmatic Achievements
    - Infraction History
    - Psychological Evaluation/Risk Assessment (WA-1)
    - Therapeutic Treatment Services (Substance Abuse, etc)
    - Security Group Threat Status/History
    - Intense Management Unit Status/History
    - Relevant Medical Documents if basis for request
    - Release Plan demonstration reentry readiness (COVID-19 addendum outline how the release plan is consistent with public health and safety provisions.
- Letter from Requestor expressing in their own words:
    - Basis for request
    - How they have rehabilitated or made a transformation
    - What programs, achievements, services, they believe resulted in the transformation
    - Family relations or support network
    - Any other information they would like to share
- Valid Certifications support vocational, educational, or programmatic achievements
- Transcripts showing college level courses and programs
- Letters of Support

The sentence modification consideration packet along with the post-conviction factors identified in this section below, shall make up the sentence modification consideration packet and shall not exceed 50 pages total.

Post-Conviction Factors:

In accordance with the legislative intent of RCW 36.27.130 and the purposes of review identified in section 2, post-conviction factors will also be strongly weighed in making the determination to file or decline to file a sentence modification petition.

Below are the general, specific, mitigating, and aggravating factors that are considered during the sentence modification process. The lists are not exhaustive but are illustrative and intended to provide guidance.

General Factors

- Whether modern day practices tend to suggest that the original sentencing no longer serves the interest of justice;
- Whether the requestor has taken full responsibility for the harm caused;
- Whether the petition poses a public safety or community wellness threat;
- Whether the requestor has provided demonstrable evidence of reentry readiness.

Specific Factors

- The statement(s) from all identified victims;
- The requestor's infraction history during the term of incarceration on the current offense;
- The requestor's rehabilitative efforts including work history;
- Any credible analysis on compliance, education, work history, vocational achievements, Security Group Threat status, and Intense Management Unit status, other relevant information;
- The Washington State Department of Corrections administered psychological evaluation and/or risks assessment;
- The requestor's family and community circumstances including any evidence of abuse at the time of the offense, or history of victimization;
- The social history including whether the requestor was involved in the child welfare system as a child, educational level, special needs, or other diminished capacity.

Mitigating Factors

- The requestor meets the requirements outlined in a recent law change and/or case law change suggesting that a sentence review and/or resentence is required;
- The requestor was 25 years old or younger at the time of their offense;
- The requestor was "youthful" and had an older accomplice;
- The requestor is 70 years of age or older;
- The requestor has deteriorating health due to a medical condition that cannot be properly treated due to incarceration;
- The requestor was diagnosed with a terminal illness and is likely to die in prison before the completion of their sentence;

- The requestor's offender score is due to multiple drug offenses or include multipliers resulting in a high-end standard range sentence;
- The requestor had a criminal score of 0 and they were charged with a non-homicide offense;
- Firearm enhancements make up a significant portion of the sentence;
- The requestor was in a domestic violence relationship and believes they suffered from Battered Woman Syndrome;
- The requestor was convicted with Assault in the First Degree, but the victim(s) sustained no injuries;
- The requestor has taken substantial steps towards initiating their own rehabilitation;
- The requestor faces immigration consequences as a result of their offense;
- The requestor went to trial and received a disproportionately longer sentence than their accomplice who plead guilty;
- The requestor has no infraction history;
- The requestor has not received a violent infraction while incarcerated in DOC in the last 5 years;
- The requestor was charged with a crime under the theory of accomplice liability or felony murder and the theories are no longer applied in the same manner;
- The victim(s) did not sustain any physical injuries because of the requestor's criminal conduct;
- The victim(s) does not object to the review or potential sentence modification.

<u>Aggravating factors</u>

- The requestor has unauthorized or unwanted contact with the victim either directly or indirectly through third party contact at any time during incarceration;
- The requestor has convictions for aggravated murder under RCW 10.95.020/030;
- The requestor has other criminal conviction(s) for a serious violent offense pursuant to RCW 9.94A.030;
- The requestor has other criminal conviction(s) for a most serious offense pursuant RCW 9.94A.030;
- The requestor committed a current sex offense or current offense was committed with sexual motivation;
- The requestor has a history of sex offenses including the promotion of sex trafficking;
- The requestor has infraction history for extortion or sexual assault;
- The requestor has a history of domestic violence offenses resulting in felony convictions;
- The requestor's conduct during the commission of the current offense manifested deliberate cruelty to the victim;
- The requestor knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance;
- The requestor knew or should have known that the victim of the current offense was pregnant;

- The current offense involved a high degree of sophistication or planning or occurred over a lengthy period;
- The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, and the offender knew that the victim was a law enforcement officer;
- The requestor used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense;
- The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years;
- The requestor committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group;
- The requestor committed the offense against a victim who was acting as a good Samaritan;
- The requestor committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system;
- The requestor commits new offenses while incarcerated for the current offense;
- The requestor commits an offense identified as a Prisoner Rape Elimination Act PREA violation.

These factors are not exhaustive, and some cases may present areas of equity, fairness, and justice that warrant consideration.

Decision to Decline to File Sentence Petition:

An explanation with reasons for declining to file a sentence modification petition will be set forth in the decline to file a petition notice. The decline to file a petition notice will be provided directly to unrepresented requestors. If the requestor has legal counsel, the decline notice will be provided to the requestor's counsel. Upon request, the decline notice may be shared with other interested parties such as the investigative law enforcement agency and/or the victims or surviving family members.

These guidelines are not intended to create a right or benefit, substantive or procedural. They are not intended to be enforceable at law by a party in litigation within the county or the state.