101703-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Court of Appeals No. 38382-2-III

STATE OF WASHINGTON, Respondent,

v.

STEVEN ALLEN BUCK, Petitioner.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Steven Buck requests that this court accept review of the decision designated in Part II of this petition.

II. DECISION OF THE COURT OF APPEALS

Petitioner seeks review of the decision of the Court of Appeals filed on January 10, 2023, concluding that an aggregate term of community custody totaling 72 months did not violate RCW 9.94A.589(5) because "community supervision" is not the same thing as "community custody," despite the legislature combining the terms for offenses committed after July 1, 2000. A copy of the Court of Appeals' published opinion is attached hereto as Appendix A.

III. ISSUES PRESENTED FOR REVIEW

In 2008, the legislature converted all outstanding postrelease supervision terms to community custody terms and retained "community supervision" as a separate category of supervision only applicable to crimes committed before July 1,

2000, to the extent constitutionally required. Is the Court of Appeals' interpretation of RCW 9.94A.589(5), which limits aggregate consecutive terms of community supervision to 24 months, as inapplicable to Steven Buck's community custody sentence contrary to the legislature's intent to abandon "community supervision" as a separate category of postrelease supervision for all sentences imposed under the Sentencing Reform Act?

IV. STATEMENT OF THE CASE

Steven Buck received a 36-month community custody term following a 2016 conviction for failing to register as a sex offender. CP 167, 172, 173, 238. He was released from custody in April 2020 but stopped reporting to his community custody officer the following month. RP 85-90. Subsequently, he was convicted again for failing to register as a sex offender and escaping from community custody. CP 58-59. Following the State's request, the trial court imposed another 36-month community custody term and ran it consecutively to his current,

unexpired 36-month community custody term, for an aggregate community custody term of 72 months. CP 69, 240. It did not find circumstances justifying an exceptional sentence.

On appeal, Mr. Buck contended that the aggregate community custody sentence violated RCW 9.94A.589(5), which provides that unless the trial court imposes an exceptional sentence, "if two or more sentences that run consecutively include periods of community supervision, the aggregate of the community supervision period shall not exceed twenty-four months." *Appellant's Brief*, at pp. 6-7. The State agreed with Mr. Buck's analysis and conceded that the aggregate 72-month community custody term was not authorized in the absence of an exceptional sentence. *Respondent's Brief*, at pp. 4, 8-9.

In a published opinion, the Court of Appeals rejected the State's concession and concluded that because RCW 9.94A.589(5) referred to "community supervision," not

"community custody," it only applied to pre-2000 crimes imposed under what is now chapter 9.94B RCW. *Opinion*, at p. 4. While recognizing that the legislature removed nearly all language relating to community supervision from chapter 9.94A RCW by 2008, which was part of an objective to "simplify the supervisions of the sentencing reform act and increase the uniformity of its application," the Court of Appeals nevertheless concluded that the legislature intended to permit lengthy aggregate community custody terms for crimes committed after July 1, 2000 while prohibiting aggregate community supervision terms exceeding 24 months for crimes committed before July 1, 2000. *See Opinion*, at p. 4; Laws of 2008, c. 231, § 6.

Mr. Buck now seeks discretionary review of the Court of Appeals' decision that the aggregate community custody term of 72 months was authorized under RCW 9.94A.589(5).

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Review should be granted under RAP 13.4(b)(4) as a matter of substantial public interest. The applicability of RCW 9.94A.589(5) to community custody sentences is a matter of first impression and the Court of Appeals' published opinion conflicts with the interpretations of both Mr. Buck and the State in this case, as well as the interpretations of other authorities including the authors of the Washington Practice series and the Department of Corrections that treat "community supervision" as synonymous with "community custody" when used in the Sentencing Reform Act, Chapter 9.94A RCW. Moreover, the Court of Appeals' interpretation overlooks the legislature's own explicitly adopted statement of intent to promote uniformity in sentencing and to change only the sentences of offenders who committed crimes prior to the adoption of the Offender

Accountability Act[1] by imposing community custody rather than community supervision.

As recognized by the legislature in 2008, the varying types and provisions for offender supervision "has caused great confusion for judges, lawyers, offenders, and the department of corrections, and often results in inaccurate sentences." Laws of 2008, c. 231, § 6. Review is appropriate and should be granted here as a matter of substantial public interest, where the Court of Appeals' decision has increased, rather than diminished, confusion about the limits of community custody terms by reviving a distinction between community custody and community supervision that is no longer applicable.

For crimes committed after July 1, 2000, the legislature abandoned prior distinctions between community custody, community supervision, and community placement. *Opinion*, at p. 4. (*citing* S.B. Rep. on H.B. 2719, 60th Leg., Reg. Sess.

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[1] Laws of 1999, c. 196.

(Wash. 2008)[2] at 2); *see also generally State v. Bigsby*, 189 Wn.2d 210, 217-19, 399 P.3d 540 (2017) (discussing history of applicable revisions). But contrary to the Court of Appeals' reading, the legislature explicitly did *not* intend to apply the "old regime" to new sentences for crimes committed before July 1, 2000. *Opinion*, at p. 4. Instead, the legislature specifically stated that it intended to impose community custody, rather than community supervision or community placement, to offenders who committed their crimes before July 1, 2000, the effective date of the Offender Accountability Act. Laws of 2008, c. 231, § 6; *see also Bigsby*, 189 Wn.2d at 219 (recognizing legislative intent to convert all outstanding postrelease supervision terms into community custody terms).

Consistent with its intent to treat new sentences uniformly by collapsing all prior distinctions under the single term "community custody," the legislature removed the

[2] Attached hereto as Appendix B.

definition of "community supervision" from chapter 9.94A RCW and adopted it instead under RCW 9.94B.020(2). Laws of 2008, c. 231, § 52. Notably, the legislature also provided that the definition applied "for purposes of this chapter," evincing an intent that the definition not apply to use of the term in other chapters such as Chapter 9.94A RCW. RCW 9.94B.020. Chapter 9.94B only applies to crimes committed prior to July 1, 2000. RCW 9.94B.010(1); *Bigsby*, 189 Wn.2d at 219 (holding provision of Chapter 9.94B RCW did not apply to 2014 crime).

Consequently, since at least 2008, sentences imposed under the Sentencing Reform Act, Chapter 9.94A RCW, do not distinguish between community custody and community supervision; instead, the terms are used interchangeably in this chapter. This interpretation is shared by the authors of the Washington Practice series, who recognize "community supervision" as used in the Sentencing Reform Act to refer generally to "probation" and cite provisions relating to the trial

court's authority to impose community custody for various types of sentences in support of the trial court's authority to impose "community supervision." *See* 13 Wash. Prac., Crim. Prac. & Proc. § 4815, n. 7 (3d ed. Oct. 2022 update).

Likewise, other provisions of the Sentencing Reform Act continue to use the term "community supervision" in contexts where it is clear that the legislature intended the term to function as an umbrella term that encompassed community custody. For example, the Interstate Compact for Adult Offender Supervision, codified in RCW 9.94A.745, creates with other compacting states an interstate commission authorized to establish rules and procedures for the interstate movement "of adults placed under community supervision ...." RCW 9.94A.745 art. I, § c. Although nothing in the compact explicitly provides that it applies to community custody as a distinct category from community supervision, the Department of Corrections has adopted procedures for individuals sentenced to sentencing alternatives that provide only for community

custody, not community supervision, to apply for and receive an interstate transfer of supervision. *See* Dept. of Corrections, Policy no. 380.605, "Interstate Transfers,"[3] at p. 4, Section V(B) (referencing special sex offender sentencing alternative sentence under RCW 9.94A.670 and residential drug offender sentencing alternative under RCW 9.94A.664). Thus, conflicting with the Court of Appeals' interpretation that "community custody" and "community supervision" are separate terms with different meanings under the Sentencing Reform Act, under another provision of RCW 9.94A, the Department of Corrections treats "community supervision" and "community custody" as synonymous terms. *See also Wandell v. State*, 175 Wn. App. 447, 311 P.3d 28 (2013), *review denied*, 179 Wn.2d 1009 (2014) ("community supervision" provisions of Interstate Compact for Adult Offender Supervision applied to community custody sentence).

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[3] Attached hereto as Appendix C.

Similarly, the Court of Appeals' interpretation also calls into question the availability of substituting community service for total confinement for non-violent offenders with sentences of one year or less. Under that provision, the program must be completed within the period of "community supervision," which is no longer imposed, or another period ordered by the court. *See* RCW 9.94A.680(2). Under the Court of Appeals' interpretation, unless the sentencing court specifically imposes a time period for completion, the alternative to total confinement may not be imposed for sentences imposing community custody and not community supervision.

As recognized by this Court in *Bigsby*, after 2008, the legislature intended to eliminate confusion by converting all postsentence release terms to be community custody terms and the separate definition of "community supervision" was rendered "obsolete." 189 Wn.2d at 219-20. The Court of Appeals' opinion in this case revives a distinction that has not been recognized in law or practice since 2008. This reversion

nullifies the legislature's efforts to create uniformity in supervision under the Sentencing Reform Act and revives the confusion of prior decades caused by treating community custody and community supervision as separate forms of supervision. It is of substantial public interest for this confusion to be addressed and rectified by this Court under RAP 13.4(b)(4).

VI. CONCLUSION

For the foregoing reasons, the petition for review should be granted under RAP 13.4(b)(4) and this Court should enter a ruling that Mr. Buck's aggregate 72-month community custody term is not allowed under RCW 9.94A.589(5) when the trial court did not impose an exceptional sentence.

This document contains 1705 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 6th day of February, 2023.

TWO ARROWS, PLLC

ANDREA BURKHART, WSBA #38519
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, the Undersigned, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Petition for Review upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

Stevens County Prosecuting Attorney
215 S. Oak Street
Colville, WA 99114

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

Signed this 9th day of February, 2023 in Kennewick, Washington.

Andrea Burkhart

Published Opinion in *State v. Buck*, no. 38382-2-III (filed January 10, 2023)

APPENDIX A

FILED
JANUARY 10, 2023
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. STEVEN ALLEN BUCK, Appellant.	)	No. 38382-2-III PUBLISHED OPINION

STAAB, J. — As part of Steven Buck's sentence for escaping community custody and failing to register as a sex offender, the court imposed 36 months of community custody to run consecutively to any other outstanding term of community custody. Buck also had an outstanding term of community custody from a 2016 offense for failing to register as a sex offender. On appeal, Buck argues that the aggregate amount of community custody is outside the sentencing guidelines provided in RCW 9.94A.589(5) which only allows for a maximum of 24 months of consecutive community supervision for a non-exceptional sentence. Despite the State's concession, we hold that the limitations in RCW 9.94A.589(5) relate to community supervision rather than community custody and do not apply to Buck's sentence. Consequently, we affirm his sentence.

BACKGROUND

In 2016, Buck was convicted of failing to register as a sex offender. Following his conviction, he received a 43-month sentence and 36 months of community custody. Buck was released from prison in April 2020 and was still on community custody from his 2016 conviction. Although Buck provided a registered address, the assigned deputy visited this address on three separate occasions in one month and could not locate anyone on the premises. The matter was eventually turned over to the prosecutor's office, and Buck was charged with escape from community custody and failure to register as a sex offender.

A jury found Buck guilty of count 1: escape from community custody, and count 2: failure to register as a sex offender (3rd or subsequent offense). At sentencing, the court imposed a prison sentence of 12 months on count 1, and 57 months on count 2. The court also imposed a sentence of 36 months of community custody on count 2. The court ordered the new community custody sentence to run consecutively to the community custody sentence from 2016 "or any current term of community custody," resulting in an aggregate amount of 72 months of community custody. Buck appeals.

ANALYSIS

Under Washington law, a trial court's sentencing authority "is limited to that expressly found in the statutes." *State v. Phelps*, 113 Wn. App. 347, 354, 57 P.3d 624 (2002). In addition, "[i]f the statutory provisions are not followed, the action of the court

is void." *Id.* at 354-55. Statutory interpretation is a question of law and is reviewed de novo. *State v. Evans*, 177 Wn.2d 186, 191, 298 P.3d 724 (2013). When statutes conflict, "courts generally give preference to the more specific and more recently enacted statute." *Gorman v. Garlock, Inc.*, 155 Wn.2d 198, 210, 118 P.3d 311 (2005) (quoting *Tunstall v. Bergeson*, 141 Wn.2d 201, 211, 5 P.3d 691 (2000)).

The first sentence of RCW 9.94A.589(5) states, "[i]n the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community restitution, community supervision, or any other requirement or conditions of any of the sentences." The second sentence of the statute addresses restrictions on sentencing regarding community supervision. It reads "if two or more sentences that run consecutively include periods of *community supervision*, the aggregate of the community supervision period shall not exceed twenty-four months." RCW 9.94A.589(5) (emphasis added).

Buck argues that 72 months of aggregate community custody violates this statutory provision, and the State concedes. We disagree. Community custody is not the same as community supervision. Therefore, the sentencing restriction in RCW 9.94A.589(5) does not apply here. *Rusan's, Inc. v. State*, 78 Wn.2d 601, 606, 478 P.2d 724 (1970) (courts are not bound to accept a party's stipulation or concession to questions of statutory interpretation).

Prior to 2000, a felony offender could be sentenced to several forms of supervision, such as community placement, community custody, and post-release community supervision. S.B. REP. ON H.B. 2719, at 1, 60th Leg., Reg. Sess. (Wash. 2008). Community supervision means "a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524." LAWS OF 2000, ch. 28, § 2. In contrast, community custody means "that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.120 or RCW 9.94A.383, served in the community subject to controls placed on the offender's movement and activities by the department." *Id.*

In 1999, the legislature passed the Offender Accountability Act, RCW 72.09.589, .590, .904 , which changed all "community supervision" to "community custody" for those offenders who committed offenses after July 1, 2000. S.B. REP. ON H.B. 2719, at 2. However, the old regime needed to stay in place for offenders who committed acts prior to 2000. *Id.* These provisions relating to the older forms of community supervision have been generally moved to ch. 9.94B RCW, while the provisions in ch. 9.94A RCW now relate to community custody. A reading of the *Laws of* 2008 demonstrates the removal of most language relating to community supervision, community placement, and postrelease supervision from RCW 9.94A. *See generally* LAWS OF 2008, ch. 231.

Buck was convicted of failing to register as a sex offender in 2016. He received a 43-month sentence and 36 months of community custody. In 2020, he was released from prison and was still on community custody from the prior conviction when he was sentenced on the new convictions in 2021. The trial court imposed another 36-month community custody term to run consecutively with his 2016 conviction term of community custody.

Buck was sentenced to community custody, not community supervision. Accordingly, RCW 9.94A.589(5), relating to a limitation on *community supervision* for aggregate sentences, does not apply. Therefore, the court properly sentenced Buck to 36 months of community custody as required in RCW 9.94A.701(1)(a) for sex offenses. In addition, section 2 under the statute allows for community custody to run consecutively rather than concurrently if expressly ordered by the sentencing court, as occurred here. *See* RCW 9.94A.589(2)(a).

Even if we were to find that RCW 9.94A.589(5) and RCW 9.94A.701(1) conflict, statutory construction dictates the same outcome. The 24-month restriction for "community supervision" in RCW 9.94A.589(5) was inserted into the statute in 1988.[1] RCW 9.94A.701(1)(a), relating to the imposition of 3 years of "community custody," was

[1] LAWS OF 1988, ch. 143, § 24.

inserted into the statute in 2009.[2] The more recent statute indicates that the legislature intended a sentence of 36 months of community custody. *Gorman*, 155 Wn.2d at 210.

Because Buck's 36-month sentence of community custody does not violate RCW 9.94A.589(5), it was authorized.

Affirmed.

Staab, J.

WE CONCUR:

Fearing, J.

Lawrence-Berrey, A.C.J.

[2] LAWS OF 2009, ch. 375, § 5.

Senate Bill Report on H.B. 2719, 60th Leg., Reg. Sess. (Wash. 2008)

APPENDIX B

SENATE BILL REPORT
HB 2719

As Reported By Senate Committee On:
Judiciary, February 29, 2008

Title: An act relating to ensuring that offenders receive accurate sentences.

Brief Description: Ensuring that offenders receive accurate sentences.

Sponsors: Representatives Priest, Hurst, Loomis and VanDeWege.

Brief History: Passed House: 2/12/08, 96-1.
Committee Activity: Judiciary: 2/29/08 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.
Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, McDermott, Roach and Weinstein.

Staff: Robert Kay (786-7405)

Background: Under the Sentencing Reform Act (SRA), the prosecutor has the burden of proving an offender's criminal history to the court by a preponderance of the evidence. An offender's criminal history is used for a variety of purposes, including calculating the offender's standard sentence range, and determining whether the offender is a persistent offender under the three strikes and two strikes laws.

Because of the importance of an offender's criminal history for purposes of sentencing, there are many cases determining how and when an offender may appeal the calculation of his or her criminal history. For example, in *State v. Ford*, 137 Wn.2d 472 (1999), the Washington Supreme Court ruled that a defendant's failure to object to offenses included in his or her criminal history at sentencing did not waive the defendant's ability to raise the issue on appeal. The Washington Supreme Court indicated that the defendant is not obliged to disprove the state's position until the state has met its primary burden of proof.

In *State v. Lopez*, 147 Wn.2d 515 (2002), the Washington Supreme Court ruled that the prosecution may not, in a resentencing hearing, introduce evidence to prove the existence of prior convictions when the defendant objected to the existence of the prior convictions at trial, and the issue was argued at sentencing. Similarly, in *In re the Personal Restraint of Cadwallader*, 155 Wn.2d 867 (2005), the Washington Supreme Court ruled that the prosecution may not, on collateral review, introduce evidence to prove the existence of prior convictions that were not alleged at the original sentencing. The court also ruled that the

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This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

defendant's acknowledgment of his or her criminal history at sentencing did not waive the defendant's ability to raise the issue on appeal.

Summary of Bill (Recommended Amendments): In a sentencing hearing, a criminal history summary relating to the defendant from the prosecuting authority or from a state, federal, or foreign governmental agency is prima facie evidence of the existence and validity of the convictions listed. Prior convictions that were not included in the criminal history of the defendant or not considered in the offender score calculation at the first sentencing hearing must be included upon any resentencing to ensure imposition of an accurate sentence. The defendant will be deemed to have acknowledged the defendant's criminal history in the absence of any objection to the criminal history at the sentencing hearing. On remand for resentencing following an appeal of, or collateral attack on, the judgment, the parties must have the opportunity to present, and the court may consider, all relevant criminal evidence regarding criminal history, including criminal history not previously presented. Existing supervision provisions of the Sentencing Reform Act are technically reorganized and simplified with no substantive change to the SRA.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Amendments): A technical and organizational change to the supervision provisions of the Sentencing Reform Act (SRA) simplifies these provisions. Post-incarceration supervision is defined as "community custody," eliminating all other terms. The conditions of community custody are consolidated in one section of the SRA. The current SRA applies to all offenders sentenced after the effective date of the reorganized sections created by the amendment. Obsolete provisions, including definitions of community supervision, community placement, and post-release supervision, are moved to a separate chapter. The process of sentencing pre-OAA offenders to whom the obsolete forms of supervision, community placement and community supervision, apply is changed. The effective date for the reorganizing provisions is provided to allow the Code Reviser to recommend to the 2009 Legislature any further necessary amendment.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Existing law requires a defendant to object to the state's version of the defendant's criminal history in order to force the state to produce admissible evidence of the defendant's prior convictions, such as copies of the judgment and sentence. Criminal history summaries are utilized routinely at sentencing to establish a defendant's criminal history and offender score. The production of a summary of the defendant's criminal history should be considered sufficient evidence of the defendant's prior convictions to require the defendant to make an objection if there is an error, in order to put the state to its burden to produce admissible evidence in the form of a judgment and sentence to prove the existence of the prior convictions, and to preserve the defendant's right to appeal the sentencing on the grounds of incorrect offender score. The State should be allowed, at any resentencing, to prove prior convictions that were not included in the defendant's offender

score at the original sentencing. It may be true, however, that section 2 of the bill puts an unfair burden on the defendant at sentencing to prove the defendant's criminal history, and thus it would be reasonable to delete section 2 by amendment to the bill.

The technical changes made to reorganize and simplify the SRA were drafted by a subcommittee of the Sentencing Guidelines Commission. The supervision provisions of the SRA have become confusing due to incremental changes by the Legislature to the statutory scheme over the years. Few people in the field of criminal justice understand the supervision provisions of the SRA. Substantive changes to the supervision provisions of the SRA will be taken up by the next session of the Legislature. No substantive changes to the SRA are made here. This bill only makes technical, organizational changes to the SRA to make easier future substantive amendments to the supervision provisions.

CON: Accuracy in sentencing is not achieved by relaxing the standards of proof. Even if section 2 of the bill is deleted by amendment, the standards of proof the State must meet are relaxed by this bill. The bill contains substantial constitutional infirmities and creates numerous practical problems. To meet the requirements of due process at sentencing the state must stand ready to prove, with admissible evidence, the prior convictions of the defendant. Bare assertions by the State contained in a criminal history summary, assertions that the State is not prepared to prove, do not rise to the level of due process. It is not true that current law requires any objection by the defendant before the State has the burden of producing proof beyond a summary of the defendant's convictions. Current law also allows the defendant to appeal a sentencing on grounds of an incorrect offender score even if the defendant made no objection at the sentencing hearing, and only requires an objection by the defendant at sentencing for the defendant to preserve a certain appellate remedy. This bill would allow the bare assertions of criminal history to suffice as proof of the defendant's prior convictions, something the Washington supreme court has rejected as a violation of due process. Thus, this bill is going to run afoul of the court's holdings that due process requires more.

Persons Testifying: PRO: Tom McBride, Washington Association of Prosecuting Attorneys; Seth Fine, Snohomish County Prosecuting Attorney.

CON: Gregory Link, Washington Association of Criminal Defense Lawyers & Washington Defender Association.

Department of Corrections Policy no. 680.605, "Interstate Compact"

APPENDIX C

STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS	APPLICABILITY **PRISON/REENTRY/FIELD** FACILITY/SPANISH MANUAL		
	REVISION DATE 7/1/22	PAGE NUMBER 1 of 11	NUMBER **DOC 380.605**
POLICY	TITLE **INTERSTATE COMPACT**		

REVIEW/REVISION HISTORY:

Effective: 12/20/01
Revised: 5/7/04
Revised: 9/29/04
Revised: 5/9/06
Revised: 5/9/07
Revised: 6/14/07 AB 07-018
Revised: 1/1/08 AB 07-038
Revised: 7/18/08
Revised: 10/6/08 AB 08-027
Revised: 3/27/09 AB 09-010
Revised: 8/1/10
Revised: 10/1/11
Revised: 11/21/11
Revised: 3/24/14
Revised: 4/13/15
Revised: 1/1/19
Revised: 12/20/21
Revised: 7/1/22

SUMMARY OF REVISION/REVIEW:

Removed transfer request fees in alignment with statutory changes

APPROVED:

Signature on file

CHERYL STRANGE, Secretary
Department of Corrections

6/23/22
Date Signed

REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 9A.44.130; RCW 9.94A.745; RCW 72.74; DOC 310.100 Intake; DOC 310.610 DNA Samples; DOC 350.750 Warrants, Detainers, and Holds; DOC 380.200 Community Supervision of Offenders; DOC 380.650 Travel for Individuals Supervised in the Community; DOC 390.600 Imposed Conditions; DOC 420.390 Arrest and Search; DOC 460.130 Response to Violations and New Criminal Activity; DOC 580.655 Drug Sentencing Alternative; Interstate Commission for Adult Offender Supervision (ICAOS) Rules

POLICY:

I. An individual who is eligible for transfer under the Interstate Compact cannot relocate to another state except as provided by the Interstate Commission for Adult Offender Supervision (ICAOS).

II. The Department will supervise all felony and qualifying misdemeanor individuals transferred to Washington State under ICAOS.

DIRECTIVE:

I. General Requirements

A. Employees must have Interstate Compact Offender Tracking System (ICOTS) access to take any action on an Interstate Compact case. Instructions for obtaining ICOTS access are available under Resources on the Interstate Compact SharePoint site.

1. Employees will report any ICOTS issues to the Interstate Compact Unit.

B. Per ICAOS Rule 2.101, all written, electronic, and oral communication regarding a From Out-of-State (FOS) individual will be made only through the Interstate Compact Unit and/or ICOTS unless approved by the Deputy Compact Administrator/designee.

C. The ICAOS website, www.interstatecompact.org, provides information about the compact. The Interstate Compact SharePoint site provides helpful information on the ICAOS rules, Washington processes, and using ICOTS.

II. Assigning From Out-of-State Cases

A. The Interstate Compact Unit employees will process:

1. Reporting instructions within 2 business days,
2. Interstate violation reports within 3 business days, and

3. Transfer requests and progress reports within 5 business days.

B. Reporting instruction assignments will be made within one business day of receipt from the Interstate Compact Unit. Transfer investigation assignments will be made within 3 business days of receipt from the Interstate Compact Unit.

1. Reporting instructions and transfer investigations for the same individual should be assigned to the same case manager.

2. Each FOS individual must be assigned to the same case manager in the electronic file and ICOTS upon approval of the transfer request.

C. The case manager or Assignment Coordinator will follow the Request for Reporting Instructions (FOP - From Out-of-State Pending) Checklist maintained on the Department's website for individuals with approved reporting instructions or an approved transfer request.

1. DOC 20-314 From Out-of-State (FOS) Face Sheet will be submitted only when an individual reports to the Field Office for the first time.

III. Travel Permits

A. Individuals relocating to another state will only be issued travel permits with the permission of the receiving state per ICAOS rules.

B. Travel for individuals in Washington State under approved reporting instructions or a transfer request will be completed per DOC 380.650 Travel for Individuals Supervised in the Community.

IV. Reporting Instructions

A. Individuals relocating to another state under the Interstate Compact require reporting instructions per ICAOS rules.

B. When sex offense reporting instructions have been assigned, the case manager will conduct a residence visit within 3 business days of the assignment by the Interstate Compact Unit.

1. A recommendation to deny the reporting instructions must be approved by a Community Corrections Supervisor (CCS), and justification for the denial placed in the electronic file before the denial is submitted to the Interstate Compact Unit.

V. Outgoing Transfer Requests

A. Employees will refer to ICAOS Rule 3.101 to determine an individual's eligibility for transfer to another state.

B. Case managers will use DOC 02-301 Outgoing Transfer Checklist to complete the transfer request.

1. When an individual has been sentenced under a Special Sex Offender Sentencing Alternative or residential drug sentencing alternative is requesting to transfer out of state, the court must sign and return DOC 09-286 Court Special - Interstate Compact Transfer Request and DOC 09-292 Report for Court Approval to Apply for Interstate Transfer before the case manager submits the transfer request.

2. When individuals under Indeterminate Sentencing Review Board (Board) jurisdiction request to transfer out of state, the Board must approve the request before the individual is allowed to leave Washington State.

3. For an individual sentenced under a drug sentencing alternative, the case manager will review the individual's compliance per DOC 580.655 Drug Sentencing Alternative before submitting the request.

C. Prison case managers will submit a transfer request through ICOTS at least 120 days prior to the individual's Earned Release Date (ERD) when:

1. The individual has Department supervision from the Prison cause and/or any tolling causes,
2. The individual requests to release to another state, and
3. The plan has been verified by the case manager and appears to be legitimate.

D. Once the transfer request has been approved, and the notice of arrival has been submitted indicating the individual has reported to the receiving state, the ICOTS case will be transferred to the Interstate Compact Unit unless the individual is pending retake (i.e., sending state is taking the individual back).

1. For Prison releases, the Interstate Compact Unit will create or retrieve the individual's Field file. For all other individuals, the Field file will be transferred to the Interstate Compact Unit.

2. Prior to transferring the case, the case manager will conduct a review per the Interstate Compact Electronic/Field File Transfer Checklist maintained on the Department's website.

E. If a transfer request has been submitted in ICOTS, and the individual is later found not eligible for supervision, the case manager will notify the individual and the Interstate Compact Unit and withdraw the case in ICOTS.

VI. Incoming Transfer Requests

A. Case managers will use the Transfer Investigation Checklist maintained on the Department's website when conducting Interstate Placement Investigations (IPIs) for incoming transfer requests from other states.

1. IPIs must be completed within 30 days of receipt from the Interstate Compact Unit.

2. The case manager will complete and document in the electronic file a residence visit with the individual and/or collateral within 10 days of the IPI assignment. If the individual or a collateral is available, the visit will satisfy the residence verification visit required by DOC 380.200 Community Supervision of Offenders.

B. Before submitting the Reply to Transfer Request through ICOTS, the case manager will document actions taken and justification for the decision in the electronic file. Per ICAOS Rule 4.103:

1. All conditions that Washington State will impose must be noted in the "Supervision Conditions Imposed by the Receiving State" section of the Reply to Transfer Request.

2. Any conditions that Washington State cannot comply with or monitor due to Department policies and practices must be noted in the "Conditions State Cannot Comply With" section of the Reply to Transfer Request.

C. Denials must be approved by the CCS and the reason(s) must be documented in the electronic file before being submitted to the Interstate Compact Unit.

VII. Victim Sensitive Cases

A. Outgoing cases should be marked victim sensitive in ICOTS only if:

1. Victim Sensitive is marked "Yes" in the electronic file,

2. The case manager has received information that the victim has requested to be notified of changes in the individual's interstate status and has verified that the Victim Services Program has the victim's contact information, or

3. The electronic file indicates there are victim-related community safety concerns. The case manager will review all information under Safety Concerns and contact the Victim Services Program, or the Board Victim Liaison for Board individuals, to verify they have the victim's contact information.

B. In cases identified as victim sensitive by the sending state, the case manager will complete victim notification per ICAOS Rule 3.108.

VIII. Notice of Departure and Arrival

A. Upon an individual's arrival in/departure from Washington State, the case manager will submit a notice of departure/arrival as appropriate in ICOTS per ICAOS Rule 4.105.

IX. Supervision in Washington

A. A case manager will only assume supervision for the FOS case once the individual reports to the Field Office in response to approved reporting instructions or an approved transfer request.

1. Individuals being supervised on granted reporting instructions should be directed to report at least once per week to the case manager assigned to the investigation until the transfer request has been approved. For individuals already on supervision in Washington State, the case manager will continue the current supervision contact expectations.

a. Upon initial contact with the individual, the case manager will review with and have the individual sign the following documents:

1) DOC 07-023 Registration Notification, if applicable
2) DOC 07-024 Conditions, Requirements, and Instructions
3) DOC 09-274 Notification of Department Violation Process
4) DOC 14-035 Acknowledgment of Drug/Alcohol Testing - Field, if testing is required

2. After the transfer has been approved, the assigned case manager will complete intake per DOC 310.100 Intake.

B. FOS individuals will be charged the same supervision intake fees as Washington State individuals per ICAOS Rule 4.107.

C. The case manager will ensure a DNA sample is taken per DOC 310.610 DNA Samples when requested by the sending state. The sample will be mailed to the sending state for testing.

D. FOS cases will be supervised the same as similar Washington State cases.

E. The case manager may impose appropriate conditions per DOC 390.600 Imposed Conditions. The case manager will complete a progress report to notify the sending state of any conditions imposed by the case manager that were not identified in the Reply to Transfer Request.

F. The case manager may issue a Secretary's Warrant through Violator Management per DOC 350.750 Warrants, Detainers, and Holds when the individual poses an immediate risk to public safety and the sending state has not issued a warrant.

X. Violations

A. Response to violation behavior will be determined by whether or not a retake will be requested of the sending state. Retakes will only be requested by the case manager for:

1. A new felony or violent misdemeanor conviction(s),

2. Absconding, as defined in DOC 350.750 Warrants, Detainers, and Holds,

   a. Before submitting an interstate violation report for absconding, the case manager must first:

      1) Conduct a field contact at the last known residence,
      2) Contact the last known place of employment, if applicable, and
      3) Contact known family members and other collateral contacts.

3. Violation behaviors that pose a risk to officer or public safety, or

4. Violation behavior which demonstrates the individual is not amenable to supervision (i.e., an act or pattern of non-compliance with conditions of supervision that could not be successfully addressed through the use of documented corrective action or graduated responses and would result in a request for revocation of supervision in the receiving state).

B. If a retake is not being requested, the case manager will report the violation behavior to the sending state via a progress report and attach all supporting documentation. The case manager will address the violation per DOC 460.130 Response to Violations and New Criminal Activity.

C. If the case manager is requesting the individual be retaken by the sending state, the case manager will arrest the individual per DOC 420.390 Arrest and Search and submit an interstate violation report through ICOTS within 2 business days of arrest. The case manager will attach all supporting documentation.

1. The case manager will staff the violation report with the CCS and document in the electronic file.

2. The case manager will serve the individual DOC 02-399 Interstate Compact Notice of Probable Cause Hearing, Rights, and Waiver and necessary discovery materials no later than 24 hours before the scheduled Probable Cause (PC) hearing.

   a. For the purposes of establishing jurisdiction, the case manager will include in the discovery materials the signed Interstate Application, and either the approved:

      1) Transfer Request, or
      2) Request for Reporting Instructions if the Transfer Request has not been completed.

   b. If the individual refuses to sign the waiver section of the form, the case manager will proceed with a PC hearing per ICAOS Rule 5.108.

      1) The case manager will present the alleged violation(s) at the hearing using the printed interstate violation report from ICOTS. DOC 09-228 Report of Alleged Violation will not be acted at a PC hearing.

      2) The Hearing Officer will specify on the record whether Probable Cause is found and document the finding on DOC 09-233 Hearing and Decision Summary Report. The Hearing Officer will not impose or recommend any sanction.

         a) If probable cause is found, the Hearing Officer will provide the jail a copy of the form, notify them the individual is subject to a retake, and instruct them to hold the individual on the Department's detainer.

b) If probable cause is not found, the individual will be released from jail, and the case manager will resume supervision.

3) The case manager will forward any hearing results to the sending state through an Interstate Violation Report Addendum in ICOTS within 2 business days.

c. If the individual signs the waiver section of the form, thereby admitting guilt to one or more violations, the case manager will:

1) Cancel the PC hearing.

2) Provide the jail a copy of the form, notify them the individual is subject to a retake, and instruct them to hold the individual on the Department's detainer.

3) Submit a copy of the form to the sending state in an Interstate Violation Report Addendum through ICOTS within 2 business days.

3. Upon receiving the sending state's response to the Interstate Violation Report:

a. If the sending state declines to retake the individual, the case manager will address the violation per DOC 460.130 Response to Violations and New Criminal Activity and resume supervision. The case manager will forward any hearing results to the sending state in an Interstate Violation Report Addendum through ICOTS within 2 business days.

b. If the sending state agrees to retake the individual by warrant, the case manager will notify the jail and instruct them to hold the individual on the Department's detainer until the sending state's fully extraditable warrant has been entered into the National Crime Information Center (NCIC) system.

c. Once the Interstate Compact Unit notifies the case manager that the sending state's warrant has been entered into NCIC, the case manager will notify the jail to locate the sending state's warrant so the sending state can begin the extradition process. The case manager will document the notification in the electronic file.

d. If the sending state agrees to retake the individual by Return Reporting Instructions, the case manager will submit a Request for Return Reporting Instructions through ICOTS. Once the Sending State has approved the Request for Return Reporting Instructions, the individual will be provided or notified of the Reporting Instructions, and the Department's detainer will be cancelled.

XI. Absconding

A. In the event an individual absconds from supervision, the case will remain open in the electronic file, and the Secretary's Warrant will remain in place until the sending state's fully extraditable warrant is entered into the NCIC system.

1. Once the Interstate Compact Unit submits the Interstate Violation Report and Case Closure Notice, Interstate Compact Unit employees will run weekly NCIC checks until the sending state has entered its warrant.

2. Once the warrant has been entered into NCIC, the Interstate Compact Unit will update the electronic file and notify the case manager, who will cancel the Secretary's Warrant and close the case in the electronic file.

B. Once the Interstate Compact Unit is notified that an individual has been apprehended in Washington State on a sending state's absconder warrant, an Interstate Compact Unit employee will notify the CCS of the last supervising unit. The electronic file will be reopened, and the case manager will request a PC hearing to address the absconding violation.

C. The case manager will forward the absconder's PC hearing results to the sending state in an ICOTS Compact Action Request and email the results to the Interstate Compact Unit within 2 business days.

DEFINITIONS:

Words/terms appearing in this policy may be defined in the glossary section of the Policy Manual.

ATTACHMENTS:

None

DOC FORMS:

DOC 02-301 Outgoing Transfer Checklist
DOC 02-399 Interstate Compact Notice of Probable Cause Hearing, Rights, and Waiver

DOC 07-023 Registration Notification
DOC 07-024 Conditions, Requirements, and Instructions
DOC 09-228 Report of Alleged Violation
DOC 09-233 Hearing and Decision Summary Report
DOC 09-274 Notification of Department Violation Process
DOC 09-286 Court Special - Interstate Compact Transfer Request
DOC 09-292 Report for Court Approval to Apply for Interstate Transfer
DOC 14-035 Acknowledgment of Drug/Alcohol Testing - Field
DOC 20-314 From Out-of-State (FOS) Face Sheet

BURKHART & BURKHART, PLLC

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Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	38382-2
Appellate Court Case Title:	State of Washington v. Steven Allen Buck
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