NO. 91799-0

SUPREME COURT OF THE STATE OF WASHINGTON

JANET HUSTED as Personal Representative of the ESTATE OF KURT HUSTED; WILBERT R. PINA, an individual; and JOEL FLORES, guardian ad litem for minor EMMETT PINA,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

STATE OF WASHINGTON'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Calvin Finley absconded from the Department of Corrections' (DOC) supervision the day after he was released from jail. DOC immediately issued a warrant for his arrest, but Finley managed to avoid apprehension until he was arrested a few days after committing armed robbery at a Walmart in Lakewood, Washington. Appellants, the victims of Finley's crime, sued the State seeking to hold DOC liable for Finley's actions.[1]

Both the trial court and the Court of Appeals rejected Appellants' claims finding that DOC had no duty to control Finley at the time he committed his crime. Specifically, the Court of Appeals concluded that, "where an offender absconds from supervision and a warrant is issued for his or her arrest, the requisite continuing relationship no longer exists and the duties associated with the take charge relationship are terminated unless and until the person is apprehended." *Husted v. State,* Wn. App., 348 P.3d 776, 781 (2015).

Appellants, however, argue review should be granted because the Court of Appeal's decision conflicts with this Court's decision in *Taggart v. State*, 118 Wn.2d 195, 822 P.2d 243 (1992), as well as other appellate

[1] Appellants are Janet Husted as Personal Representative of the Estate of Kurt Husted, Wilbert Pina and Joel Flores, Guardian ad litem for Emmett Pina. The State will refer to them collectively as Appellants in this Answer. No disrespect is intended.

decisions. There is no conflict. The Court of Appeals correctly applied this Court's analysis in *Taggart* that there must be a "definite, established and continuing relationship between the defendant and the third party" for a duty to arise. Because Finley had absconded from DOC's supervision, the continuing relationship that afforded DOC control over Finley's conduct was suspended until a time the relationship could be re-established. This conclusion was reached because when an offender absconds from supervision DOC no longer has the ability to impose, monitor or enforce conditions of supervision which would allow DOC the ability to monitor the offender's behavior or seek sanctions from a sanctioning authority.

Because Appellants' Petition fails to satisfy the criteria for review set forth in RAP 13.4(b), review should be denied.

II. IDENTITY OF RESPONDENT

The Respondent is the State of Washington Department of Corrections.

III. COURT OF APPEALS DECISION

Division One of the Court of Appeals affirmed the superior court's grant of summary judgment to DOC in a published decision. *See* Appendix (App.) 1 to Petition for Review (Pet. Review).

IV. ISSUES PRESENTED

If review is granted, the issue in this case would be:

Whether DOC has a duty to control an offender that has absconded upon release from jail and a warrant has been issued for the offender's arrest.

V. STATEMENT OF THE CASE

A. Supervision History Of Calvin Finley Prior To His Release From Jail On February 14, 2009

Having been found guilty of violating a domestic violence court order, Calvin Finley was sentenced to 15 months confinement and 9 to 18 months of community custody. CP at 131-41. He was released from jail on March 1, 2007, and reported to DOC for supervision as required on March 2, 2007. CP at 128-29. In October 2007, Finley violated the terms of his supervision and agreed to sanctions, which increased his reporting requirements. CP at 122-23.

Finley remained compliant with his supervision until July 2008 when he consumed marijuana. CP at 117. He was arrested on July 11, 2008, and transported to the Pierce County Jail. On July 24, 2008, he was sentenced to confinement for time served plus one business day and directed to report to DOC within one day of his release. CP at 108-46.

Finley failed to report as required after his release on July 25, 2008, and DOC received information he had assaulted the mother of his

former girlfriend.[2] A warrant for his arrest was issued and he was eventually arrested on September 14, 2008. CP at 113. On September 26, 2008, Finley was found guilty of failing to report, failing to complete his domestic violence counseling, obstruction, driving with a suspended license, and possessing marijuana. CP at 112. As a result, he agreed to a negotiated sanction of 35 days confinement. CP at 112, 151.

While he was in incarcerated, DOC filed another violation report, which charged Finley with 11 separate violations and requested 240 days confinement. CP at 154-58.[3] Finley was found guilty of 7 violations and sanctioned to 200 days confinement. CP at 177-79. He was again ordered to report to DOC within one business day of his release from jail. CP at 177-79.

B. Finley's Failure to Report Upon His Release From Jail, And DOC's Issuance Of A Warrant For His Arrest

Finley was released on Saturday, February 14, 2009. CP at 110. The following Monday was President's Day and when Finley failed to report as required on Tuesday, February 17, 2008, a Secretary's Warrant for his arrest was requested that day as per DOC Policy 350.750. CP at 192-99.

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[2] The victim was Diamond Oliver, who was the subject of the no contact order which resulted in his original conviction, on July 25, 2008. CP at 114.

[3] The request for 240 days was extraordinary as Department policy at the time was that the presumptive sanction at a third or subsequent violation hearing was 60 days regardless of the number of violations alleged. CP at 160-75.

On February 18, 2009, an office assistant with the Department of Corrections Southwest Region Community Response Unit (CRU) received a list of recently issued DOC Secretary's Warrants, which included Finley's name. CP at 208. Every day the CRU receives a list of Secretary's Warrants issued the previous day for individuals under DOC's supervision. The warrants are assigned out on a priority basis based on a set of guidelines which includes the offender's classification and community concerns, among other things. CP at 208. In 2009, DOC issued 17,330 Secretary's Warrants statewide. In 2009, 1,649 Secretary's Warrants were issued in the Southwest Region alone. CP at 200-01.[4]

Finley's warrant was assigned to CRU Officers Evan Brady and Anthony Nisco that same day. CP at 208. Officer Brady's role is to search for offenders who are on warrant status with DOC. CP at 204. He is one of eleven CRU Officers assigned to the Southwest Region. CP at 208. Officer Brady is deputized by the Pierce County Sheriff, is a Special Deputy with the U.S. Marshall's Service, and is a Special Federal Officer with the FBI. CP at 204.

C. Officer Brady's Search For Finley

Officer Brady began his search for Finley by checking a number of

[4] DOC's Southwest Region runs from Pierce County south to Vancouver and includes Pierce, Kitsap, Thurston, Lewis, Cowlitz, Clark, Grays Harbor, Pacific and Mason Counties. CP at 207-08.

law enforcement databases. CP at 204. He learned Finley was homeless, but was able to develop contact information with his former girlfriend, Diamond Oliver. CP at 204. Officer Brady contacted Ms. Oliver on February 18, 2009, and learned Finley had been in contact with her to retrieve some of his personal property. CP at 204. Officer Brady enlisted Ms. Oliver in an effort to set Finley up by having her meet him at a local Target store. CP at 204-05. Officer Brady was en route to the store when Ms. Oliver called him and said Finley was not going to show. CP at 205.

Ms. Oliver provided a description of a house located on Portland Avenue in Tacoma where she believed Finley might be staying. Officer Brady, and the other members of the South Sound Gang Task Force, staked out the house that same day, but never observed Finley at the residence despite being there for several hours. CP at 205.

On February 24, 2009, Finley called DOC. The community corrections officer handling the call told him to come to the office or go to the jail. CP at 233. Finley then hung up the phone.

With no further leads, Officer Brady turned his attention to other matters but did not abandon his efforts to locate Finley. On occasion he drove by the house on Portland Avenue and Finley's mother's home, but he never saw Finley at either location. CP at 205. Some months later, he received a call from Ms. Oliver indicating Finley might be hanging out in

the area of 56th and Orchard. Officer Brady drove around the area in an attempt to locate Finley, but was ultimately unsuccessful. CP at 205.

Four months after Finley had originally absconded, on June 2, 2009, Finley shot Ms. Pina and Mr. Husted during an armored car robbery at the Lakewood Walmart, giving rise to this lawsuit.

D. Procedural History

DOC moved for summary judgment on Appellants' claims. CP at 79-212. After hearing argument from counsel on the motions, the trial court granted summary judgment to DOC. CP at 1475-79. The Court of Appeals affirmed. App. 1.

V. REASONS WHY REVIEW SHOULD BE DENIED

A. Appellants' Have Not Met The Standards Required For Granting A Petition For Review Under RAP 13.4(b)

This case does not merit review under RAP 13.4(b). The Court of Appeals affirmed the superior court by applying the principles of *Taggart* and other cases to find that DOC does not have a duty when an offender absconds from supervision and a warrant for his arrest has been immediately issued. Appellants' argument that the decision conflicts with *Taggart* and other appellate opinions interpreting *Taggart* is simply incorrect. Pet. Review at 2.

B. The Court Of Appeals Decision Is Consistent With *Taggart*

Appellants' contend that the Court of Appeals' decision conflicts with *Taggart* because it allegedly held that DOC's duty to supervise Finley "vanished" when he missed his supervision appointment. Pet. Review at 7. They also contend that *Taggart* requires that DOC has an ongoing, unlimited in time and space, take-charge duty to supervise offenders regardless of the circumstances. *See, e.g.,* Pet. Review at 6-11. Both contentions are based on a flawed understanding of the courts' decisions.

Washington recognizes the general rule that there is no duty to control the conduct of a third party so long as there is not a special relationship that gives rise to a duty to control the person's conduct. *Taggart*, 118 Wn.2d at 218-19. This Court in *Taggart* held that the relationship between a parole officer and a parolee gives rise to such a duty upon a showing of a "definite, established, and continuing relationship between the defendant and the third party." *Id.* at 219. In the case below, the Court of Appeals recognized that, as per this Court's decision in *Taggart*, DOC has a duty to control offenders under DOC's supervision. *See Husted*, 348 P.3d at 779.

The Court of Appeals also recognized that this exercise of authority depends on the continuing nature of the relationship between

DOC and the offender. *Id.* at 780 (citing *Taggart*, 118 Wn.2d at 219). If the relationship is severed, DOC no longer has the ability to exercise control over the offender. *Id.* Thus, the Court of Appeals correctly held that, when an offender absconds and a warrant has been issued, DOC's duty to control is suspended until the relationship is re-established. *Id.* This is also reflected in RCW 9.94A.171(2) (see Appendix A) the tolling statute, which recognizes there is no supervision when the offender absconds, and that the period of supervision and the duty resumes once the relationship with the offender is re-established.[5]

The Court of Appeals' ruling was rational and straightforward. DOC's duty is not premised merely on its authority to monitor offenders but its ability to do so as well. The community corrections officer's duty is to adequately monitor and report violations of the offender's conditions of supervision. *See Bishop v. Miche*, 137 Wn.2d 518, 526, 973 P.2d 465 (1999). In RCW 9.94.720, the Legislature codified the actions that community corrections officers can take in the course of supervising offenders, including monitoring the offender, and even incarceration. The underlying premise of both *Bishop* and RCW 9.94.720 (see Appendix B) is that offenders' conduct can be controlled by the specter of being incarcerated or punished by a court or other sanctioning authority, if the

[5] Formerly, RCW 9.94A.625. No substantive changes were made to the statute when it was amended and recodified that affect Calvin Finley's supervision.

offender fails to abide by the terms and conditions of their supervision. But this control is only possible through continuous, direct contact with the offender allowing community corrections officers to take such actions. When an offender absconds, the officer can no longer use these tools because the offender cannot be monitored.

Contrary to Appellants' assertions, the Court of Appeals' ruling is consistent with this Court's decision in *Taggart*. DOC could not have an ongoing, continuous relationship with Finley after he absconded, and therefore had no duty to control him.

C. DOC's Internal Polices And Statutes Do Not Create A Duty To Apprehend Fugitive Offenders

Appellants' also rely on DOC's authority to monitor offenders and DOC's internal policies to claim the appellate court's ruling conflicts with *Taggart*. *See* Pet. Review at 14-15. The reliance is misplaced because DOC's authority to monitor offenders and DOC's internal policies do not create a duty to apprehend a fugitive offender.

At the threshold, agencies' policies do not give rise to a duty in tort. *Melville v. State*, 115 Wn.2d 34, 793 P.2d 952 (1990). The fact that an agency may have a policy regarding the ability to engage in a particular act is insufficient to overcome the strong policy reasons behind creating a duty to perform the particular action. This is particularly true when the

duty advocated by the Appellants here is an unlimited duty, unconstrained by any circumstances, and that is not recognized by any court.

The *Taggart* duty is derived from the common law as outlined in the *Restatement (Second) of Torts § 315* (1965). *See Taggart*, 118 Wn.2d at 218. The scope of that duty is dictated by the "the court order that put the offender on the supervising officer's caseload and the statutes that describe and circumscribe the officer's power to act." *Couch v. State Dep't of Corr.*, 113 Wn. App. 556, 54 P.3d 197 (2002). But here, neither the court's order placing Finley on supervision, nor the statutes granting DOC authority to monitor Finley, dictate that DOC had a duty to monitor Finley when DOC is unable to do so. Thus, DOC's own internal policy directives are irrelevant to the issue of duty.

In sum, the Court of Appeal's ruling does not conflict with *Taggart* because Appellants' cannot identify any authority imposing a duty on DOC to take action further than issuing a warrant for an offender who has absconded, which it did here.

D. The Court of Appeal's Ruling Is Consistent with *Joyce v. Dep't of Corrections*

Appellants' also assert that the Court of Appeals' decision conflicts with *Joyce v. Dep't of Corr.*, 155 Wn.2d 306, 119 P.3d 825 (2005), claiming that the lower court allegedly ruled an offender has the

ability to switch on and off DOC's authority to monitor an offender. Pet. Review at 14.

First, as discussed above, Appellants assertions lack merit because the Court of Appeals' decision was not based on a mere "missed appointment." Pet. Review at 14-15. Rather, the Court of Appeals found that DOC had no continuing duty of control over Finley once he absconded and a warrant was issued for his arrest.

Second, the Appellate Court's holding is consistent with *Joyce* because DOC had minimal to no contact with Finley after he had absconded. But unlike here, in *Joyce* there was no issue that despite failing to report as directed, Stewart maintained contact with his community corrections officer and no warrant was issued for his arrest. *Joyce*, 155 Wn.2d at 312-15. Because DOC "maintained a definite, established, and continuing relationship by assigning a community corrections officers to monitor and notify the judge if [the offender] failed to substantially comply with the court's conditions of release," this court found that a duty existed. *Id.* at 320.

In this case, other than a brief phone call, DOC did not have any contact with Finley once he absconded.. CP at 233. Thus, unlike in *Joyce*, DOC had no ability to maintain a relationship with Finley allowing it to enforce his conditions of release, and no duty could exist.

Finally, this court in *Joyce* recognized that DOC's breach of duty was the failure to issue a warrant. *Joyce*, 155 Wn.2d at 322-23. In *Joyce*, the offender had been arrested shortly before the accident, which had injured the plaintiff. The plaintiff presented competent evidence that the offender would have been in the King county jail on the day of the accident injuring plaintiff had DOC issued a warrant as was required. *Id.* at 322. In effect, this court held that issuing the warrant is the last act of "control" DOC has over an absconding offender and thus to the extent *Joyce* creates a duty to issue a warrant, DOC met that duty here by issuing a warrant the day Finley failed to report.

The Court of Appeals' ruling is consistent with *Joyce* and there is no basis for further review.

E. The Court of Appeals' Ruling Is Consistent With *Bordon v. State*

Appellants also claim that the Court of Appeal's ruling conflicts with *Estate of Bordon v. Dep't of Corrections* because the Court of Appeals should have found that DOC knew it had a duty to monitor Finley's behavior. *See* Pet. Review at 16. Appellants' reliance on the ruling in *Bordon* is misplaced because the facts and issues in this case are different. The dispositive issue in *Bordon* was the plaintiff's failure to establish proximate cause that the offender would have been in jail at the

time of the incident. *Estate of Bordon v. Dep't of Corr.*, 122 Wn. App. 227, 95 P.3d 764 (2004), *review denied*, 154 Wn.2d 1003 (2005). Here, the Court of Appeals never reached the issue of proximate cause because of its determination that DOC had no duty.[6]

The issue in this case is not about whether DOC knew or should have known it had the authority to monitor Finley either. Rather, the issue is whether DOC had the ability to do so when it did not have a direct, ongoing, continuous relationship with him whereby it could control his behavior. DOC did not and so the appellate court's ruling does not conflict with *Bordon*.

In *Bordon*, the offender was being supervised for financial obligations stemming from a number of convictions at the time he killed Ms. Bordon in a drunk driving accident. *Bordon*, 122 Wn. App. 227. Prior to the accident, the offender had failed to report to supervision twice. *Id.* at 231-235. Because DOC was unaware of another eluding conviction, the community corrections officer believed the offender was only being monitored for financial obligations and did not issue a warrant for his arrest for failing to report. *Id.* The court of appeals in that case found

[6] If this matter is accepted for review and the appellate court's ruling is overturned, which it should not be, the matter should be remanded back to the appellate court to address the issue of proximate cause.

DOC should have known of the conviction and, therefore, had a duty to monitor the offender. *Id.* at 237.

Here, the Court of Appeals decision does not conflict with *Bordon* for several reasons.

First, unlike in this case, the offender in *Bordon* was in custody when the community corrections officer failed to report to the court that the offender had violated his supervision. *Bordon*, 122 Wn. App at 233-34. Because the officer had the ability to seek sanctions against the offender while he was in custody, the court of appeals found that a duty arose. *Id.* That is the exact opposite of this case. Finley immediately absconded upon his release from jail so there was no ongoing, continuous, contact whereby DOC could monitor Finley's behavior.

Second, unlike in *Bordon*, DOC issued a warrant for Finley's arrest. If Finley had come in contact with law enforcement and been arrested on his warrant, DOC could have reported the violations to a sanctioning authority and began monitoring his behavior consistent with its duty. Unfortunately, Finley evaded contact with law enforcement and DOC was unable to establish any relationship with him such that it could attempt to control his behavior.

F. The Court's Ruling Does Not Conflict With *In Re Personal Restraint of Dalluge*

Finally, Appellants' assert that the Court of Appeal's decision conflicts with *In re Personal Restraint of Dalluge* because the court in that case found DOC had the authority to discipline an offender for violating conditions of his supervision even though the term of supervision is tolled while the offender is in confinement. *See In re Personal Restraint of Dalluge*, 162, Wn.2d 814, 177 P.3d 675 (2008). However, just as the Court of Appeals found in its decision below, Appellants' reliance on *Dalluge*, is misplaced. *See Husted*, 348 P.3d at 781.

In *Dalluge*, the court held that, although a term of community custody is tolled while an offender is incarcerated on another matter, DOC is not precluded from sanctioning the offender for violating terms of his or her supervision. *Dalluge*, 162 Wn.2d at 818-19. The offender in that case was serving a one year term of community custody when he was arrested and taken to jail. *Id.* at 816. While at jail he was involved in an altercation. DOC determined the altercation violated the offender's community custody conditions and after a hearing, sanctioned the offender. *Id.* The offender claimed that since his community custody term was tolled while he was in confinement on another matter, DOC did not have the authority to discipline him for the violation. *Id.* The court

ruled otherwise finding DOC could sanction him for violating the terms of his supervision even though his term of community custody was tolled while he was incarcerated. *Id.* at 819

The Court of Appeals was correct in finding that *Dalluge* is not applicable to the situation here. It does not address whether a duty to control an offender's behavior arises when an offender absconds and DOC lacks a continuous ongoing relationship with the offender such that DOC can control the offender's behavior.

Further, *Dalluge* is entirely consistent with the fact the *Taggart* duty is premised on an ongoing, continuing relationship between the offender and DOC. When the offender is in custody or having contact with his or her community custody officer that relationship exists and the officers can seek to control the offender by seeking sanctions or imposing other conditions. Conversely, when the offender absconds, the ongoing continuation relationship is not existent and DOC lacks the ability to impact the offender's behavior, therefore no duty can exist.

VI. CONCLUSION

The Court of Appeals properly concluded that the duty recognized in *Taggart* did not arise in this case because when an offender absconds and is on warrant status DOC lacks an ongoing continuous relationship with the offender whereby DOC can control the offender's behavior. Thus

the appellate court's decision does not conflict with any decisions of this court or the Court of Appeals and Appellants' petition should be denied.

RESPECTFULLY SUBMITTED this 24th day of July, 2015.

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CERTIFICATE OF SERVICE

I certify that on this 24th day of July, 2015, I caused a true and correct copy of the State Of Washington's Answer to Petition for Review to be served on the following in the manner indicated below:

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NATASHA CEPEDA, Legal Assistant

APPENDIX A

RCW 9.94A.171
Tolling of term of confinement, supervision.

(1) A term of confinement ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented himself or herself from confinement without the prior approval of the entity in whose custody the offender has been placed. A term of partial confinement shall be tolled during any period of time spent in total confinement pursuant to a new conviction.

(2) Any term of community custody shall be tolled by any period of time during which the offender has absented himself or herself from supervision without prior approval of the entity under whose supervision the offender has been placed.

(3)(a) For offenders other than sex offenders serving a sentence for a sex offense as defined in RCW 9.94A.030, any period of community custody shall be tolled during any period of time the offender is in confinement for any reason unless the offender is detained pursuant to RCW 9.94A.740 or 9.94A.631 for the period of time prior to the hearing or for confinement pursuant to sanctions imposed for violation of sentence conditions, in which case, the period of community custody shall not toll. However, sanctions that result in the imposition of the remaining sentence or the original sentence will continue to toll the period of community custody. In addition, inpatient treatment ordered by the court in lieu of jail time shall not toll the period of community custody.

(b) For sex offenders serving a sentence for a sex offense as defined in RCW 9.94A.030, any period of community custody shall be tolled during any period of time the sex offender is in confinement for any reason.

(4) For terms of confinement or community custody, the date for the tolling of the sentence shall be established by the entity responsible for the confinement or supervision.

(5) For the purposes of this section, "tolling" means the period of time in which community custody or confinement time is paused and for which the offender does not receive credit towards the term ordered.

[2011 1st sp.s. c 40 § 1; 2008 c 231 § 28; 2000 c 226 § 5. Prior: 1999 c 196 § 7; 1999 c 143 § 14; 1993 c 31 § 2; 1988 c 153 § 9; 1981 c 137 § 17. Formerly RCW 9.94A.625, 9.94A.170.]

Notes:

Application -- Recalculation of community custody terms -- 2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date -- 2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231: See notes following RCW 9.94A.701.

Severability -- 2008 c 231: See note following RCW 9.94A.500.

Effective date -- 2000 c 226 § 5: "Section 5 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 2000]." [2000 c 226 § 7.]

Finding -- Intent -- Severability -- 2000 c 226: See notes following RCW 9.94A.505.

Construction -- Short title -- 1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability -- 1999 c 196: See note following RCW 9.94A.010.

Effective date -- Application of increased sanctions -- 1988 c 153: See notes following RCW 9.94A.030.

Effective date -- 1981 c 137: See RCW 9.94A.905.

APPENDIX B

(b) As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department under RCW 9.94A.720. The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. In addition, the department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws. The department may impose electronic monitoring as a condition of community custody for an offender sentenced to a term of community custody under this section pursuant to a conviction for a sex offense. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring imposed under this section using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology.

(c) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions. The department shall notify the offender in writing of any such conditions or modifications. In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

(3) If an offender violates conditions imposed by the court or the department pursuant to this section during community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.94A.737 and 9.94A.740.

(4) Except for terms of community custody under RCW 9.94A.670, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.

(5) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

(6) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection.

(7) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to any of the following: (a) The crime of conviction; (b) the offender's risk of reoffending; or (c) the safety of the community. [2008 c 276 § 305. Prior: 2006 c 130 § 2; 2006 c 128 § 5; 2003 c 379 § 6; 2001 2nd sp.s. c 12 § 302; 2001 c 10 § 5; 2000 c 28 § 25.]

Reviser's note: *(1) RCW 9.94A.712 was recodified as RCW 9.94A.507 pursuant to the direction found in section 56(4), chapter 231, Laws of 2008, effective August 1, 2009.

(2) RCW 9.94A.715 was amended by 2008 c 276 § 305 without cognizance of its repeal by 2008 c 231 § 57, effective August 1, 2009. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Intent—Effective date—2001 c 10: See notes following RCW 9.94A.505.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

9.94A.715 Community custody for specified offenders—Conditions. [2006 c 130 § 2; 2006 c 128 § 5; 2003 c 379 § 6; 2001 2nd sp.s. c 12 § 302; 2001 c 10 § 5; 2000 c 28 § 25.] Repealed by 2008 c 231 § 57, effective August 1, 2009.

Reviser's note: RCW 9.94A.715 was amended by 2008 c 276 § 305 without cognizance of its repeal by 2008 c 231 § 57, effective August 1, 2009. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

9.94A.716 Community custody—Violations—Arrest. *(Effective August 1, 2009.)* (1) The secretary may issue warrants for the arrest of any offender who violates a condition of community custody. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation.

(2) A community corrections officer, if he or she has reasonable cause to believe an offender has violated a condition of community custody, may suspend the person's community custody status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community custody status.

(3) If an offender has been arrested for a new felony offense while under community custody the department shall hold the offender in total confinement until a hearing before the department as provided in this section or until the offender has been formally charged for the new felony offense, whichever is earlier. Nothing in this subsection shall be construed as to permit the department to hold an offender past his or her maximum term of total confinement if the offender has not completed the maximum term of total confinement or to permit the department to hold an offender past the offender's term of community custody.

(4) A violation of a condition of community custody shall be deemed a violation of the sentence for purposes of RCW 9.94A.631. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.631. [2008 c 231 § 21.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.720 Supervision of offenders. *(Effective until August 1, 2009.)* (1)(a) Except as provided in RCW 9.94A.501, all offenders sentenced to terms involving community supervision, community restitution, community placement, or community custody shall be under the supervision of the department and shall follow explicitly the instructions and conditions of the department. The department may require an offender to perform affirmative acts it deems

appropriate to monitor compliance with the conditions of the sentence imposed. The department may only supervise the offender's compliance with payment of legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.501.

(b) The instructions shall include, at a minimum, reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.

(c) For offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (b) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals.

(d) For offenders sentenced to terms of community custody for crimes committed on or after July 1, 2000, the department may impose conditions as specified in RCW 9.94A.715.

The conditions authorized under (c) of this subsection may be imposed by the department prior to or during an offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to RCW 9.94A.710 occurs during community custody, it shall be deemed a violation of community placement for the purposes of RCW 9.94A.740 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.737. At any time prior to the completion of an offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to RCW 9.94A.710 or 9.94A.715 be continued beyond the expiration of the offender's term of community custody as authorized in RCW 9.94A.715 (3) or (5).

The department may require offenders to pay for special services rendered on or after July 25, 1993, including electronic monitoring, day reporting, and telephone reporting, dependent upon the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(2) No offender sentenced to terms involving community supervision, community restitution, community custody, or community placement under the supervision of the department may own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the violation process and sanctions under RCW 9.94A.634, 9.94A.737, and 9.94A.740. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection has the same definition as in RCW 9.41.010. [2003 c 379 § 7; 2002 c 175 § 14; 2000 c 28 § 26.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Effective date—2002 c 175: See note following RCW 7.80.130.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

9.94A.722 Court-ordered treatment—Required disclosures. When an offender receiving court-ordered mental health or chemical dependency treatment or treatment ordered by the department of corrections presents for treatment from a mental health or chemical dependency treatment provider, the offender must disclose to the mental health or chemical dependency treatment provider whether he or she is subject to supervision by the department of corrections. If an offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the offender must provide the mental health or chemical dependency treatment provider with a copy of the order granting the relief. [2004 c 166 § 9.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

9.94A.723 Court-ordered treatment—Offender's failure to inform. An offender's failure to inform the department of court-ordered treatment upon request by the department is a violation of the conditions of supervision if the offender is in the community and an infraction if the offender is in confinement, and the violation or infraction is subject to sanctions. [2004 c 166 § 7.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

9.94A.725 Offender work crews. Participation in a work crew is conditioned upon the offender's acceptance into the program, abstinence from alcohol and controlled substances as demonstrated by urinalysis and breathalyzer monitoring, with the cost of monitoring to be paid by the offender, unless indigent; and upon compliance with the rules of the program, which rules require the offender to work to the best of his or her abilities and provide the program with accurate, verified residence information. Work crew may be imposed simultaneously with electronic home detention.

Where work crew is imposed as part of a sentence of nine months or more, the offender must serve a minimum of thirty days of total confinement before being eligible for work crew.

Work crew tasks shall be performed for a minimum of thirty-five hours per week. Only those offenders sentenced to a facility operated or utilized under contract by a county or the state, or sanctioned under RCW 9.94A.737, are eligible to participate on a work crew. Offenders sentenced for a sex offense are not eligible for the work crew program.

An offender who has successfully completed four weeks of work crew at thirty-five hours per week shall thereafter receive credit toward the work crew sentence for hours worked at approved, verified employment. Such employment credit may be earned for up to twenty-four hours actual employment per week provided, however, that every such offender shall continue active participation in work crew projects according to a schedule approved by a work crew supervisor until the work crew sentence has been served.

The hours served as part of a work crew sentence may include substance abuse counseling and/or job skills training.

The civic improvement tasks performed by offenders on work crew shall be unskilled labor for the benefit of the community as determined by the head of the county executive branch or his or her designee. Civic improvement tasks shall

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Good Afternoon,

Please find the attached State of Washington's Answer to Petition for Review. Please consider this the original filing.

Thank you,

Natasha S. Cepeda
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