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NO. ~~44841-6~~

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

JANET G. 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;

Plaintiffs/Appellants,

vs.

STATE OF WASHINGTON,

Defendant/Respondent.

PETITION FOR REVIEW BY SUPREME COURT

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I. IDENTITY OF PETITIONER, CITATION TO COURT OF APPEALS DECISION AND INTRODUCTION

Janet G. Husted, Wilbert R. Pina, and Joel Flores, Petitioners, *State of Washington*, Washington State Court of Appeals No. 71662-0-1 (March 16, 2015).

This Court ruled in *Taggart v. State*, 118 Wn.2d 195, 223, 822 P.3d 243 (1992), that "a parole officer takes charge of the parolees he or she supervises despite the lack of a custodial or **continuous** relationship" (emphasis added). Yet the Court of Appeals' decision holds that an offender terminates supervision simply by missing an appointment. This decision contradicts and undermines *Taggart* and its numerous progeny, and carves a hole in the State's duty to supervise, which will leave the public unprotected from the dangerous propensities of offenders who refuse to submit to supervision.

Contrary to the Court's reasoning, the "take charge" relationship that creates the duty to supervise flows from the judgment and sentence, statutes, and Department of Corrections' ("DOC") own policies and procedures. All of these remained in full force and effect after this offender missed his appointment. Moreover, the State had issued policies and procedures to assist and empower Community Corrections Officers in their efforts to re-establish contact and control over an absconding

offender. The "take charge" relationship "continued" even though DOC chose not to do much to find Finley, and merely issued a Secretary's Warrant for his arrest.

This Court should accept review and reverse the Court of Appeals and the Trial Court.

II. ISSUES PRESENTED FOR REVIEW

This Court has long held that the government's duty to supervise offenders in the community flows from the "take charge" relationship existing by virtue of the statutes that empower and authorize supervision, the judgment and sentence, and the supervising agency's rules and regulations. When DOC issues a warrant because an offender misses an appointment, does the "take charge" relationship and duty to supervise end?

III. STATEMENT OF THE CASE

On June 2, 2009 Calvin Finley shot and killed Kurt Husted and wounded Wilbert Pina during a robbery. CP 519-521, 528-538, 539-551.

At the time of this murder Finley was subject to a sentence of Community Custody supervision resulting from his September 1, 2006 conviction for Domestic Violence Court Order Violation. CP 484-492.[1]

On Saturday, February 14, 2009, Finley gained release from confinement imposed for a violation of his supervision. DOC ordered Finley to report within one (1) business day of his release from jail. CP 110, 177-179. When Finley failed to report on the next day of business, February 17, 2009, DOC requested a Secretary's Warrant for his arrest.

The State moved for summary judgment dismissal on March 13, 2013. CP 79-102. The Plaintiffs resisted the motion. CP 213-1406. The Trial Court dismissed this case, ruling that once DOC issued its warrant it had no further duty to supervise Finley. Report of Proceedings (RP) 22; CP1477-1479.

The Court of Appeals affirmed in its opinion filed on March 16, 2015[2]. See Appendix 1 ("Opinion"). The Court ruled that (Opinion, p.13):

> [T]he State had no duty to control Finley's behavior at the time he committed the acts giving rise to the claims in this

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[1] Prior to June 2, 2009 the Washington State Department of Corrections had identified Finley as an imminent threat and risk to the community. CP 344-348,925-926.

[2] The Court filed an amended opinion on May 11, 2015. Appendix 1.

> case, because Finley had absconded supervision, had only minimal contact with DOC and was on warrant status at that time.

The Court found no duty because Finley missed his appointment with his CCO. The Court found that missing the appointment rendered Finley's relationship with the State no longer "continuous" (Opinion. P.10):

> But *Taggart* also tells us that a take charge relationship entails ongoing contact between the parole officer and the parolee because the relationship must be a "direct, established and continuing" one. *Id.* at 219. It is the continuing nature of the relationship that allows the parole officer to exercise control. A parolee who has absconded and for whom a warrant has been issued no longer has a continuing relationship with the parole officer. When this occurs the offender is not subject to the parole officer's control because he or she cannot be monitored, given direction or sanctioned.

The Cities of Kirkland and Pasco moved to publish the decision. The State also moved to publish, and also moved the Court to amend the opinion to change language in the opinion. The Court of Appeals granted the motions. It issued an Order Granting Motion to Amend and Motion to Publish and Withdrawing and Replacing Opinion, on May 11, 2015. *See* Appendix 1

IV. ARGUMENT

RAP 13.4(b) reads, in pertinent part, as follows:

> **(b) Considerations Governing Acceptance of Review.** A petition for review will be accepted by the Supreme Court only:
>
> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals.

The decision of the Court of Appeals conflicts with decisions of this Court and other decisions of the Court of Appeals. This court should grant review and reverse.

A. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH *TAGGART V. STATE,* 118 WN.2D 195, 219-222, 822 P.2D 243 (1992), AND ITS PROGENY.

This Court ruled in 1992 that the relationship between a parole officer and the parolees he or she supervises creates a duty to exercise reasonable care to control the parolee to protect anyone who might reasonably be endangered by the parolee's dangerous propensities. *Taggart v. State,* 118 Wn.2d 195, 219-222, 822 P.2d 243 (1992).

The relationship between a parole officer and a parolee constitutes a "special relationship" under the Restatement of Torts (Second) § 315 (1965). The relationship gives rise to a duty to protect the public from harm that the parolee might cause. *Taggart*, 118 Wn.2d at 219. The Court explained, at 220, as follows:

> When a parolee's criminal history and progress during parole show that the parolee is likely to cause bodily harm to others if not controlled, the parole officer is under a duty

> to exercise reasonable care to control the parolee and prevent him or her from doing such harm.

The Court cited to the Restatement (Second) of Torts § 319 (1965) for the proposition that "[O]ne who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm." *Taggart*, 118 Wn.2d at 219.

Various aspects of the relationship between DOC and an offender under supervision give rise to the "take charge" relationship that gives rise to a duty to supervise offenders to protect the public from their dangerous propensities. The statute that authorizes and empowers supervision establishes the "take charge" relationship. *Taggart v. State* 118 Wn.2d 195, 219-220, 822 P.2d 243 (1992); *Joyce v. State*, 155 Wn.2d 306, 317, 119 P.3d 825 (2005); *Couch v. State*, 113 Wn. App 556, 565, 54 P.3d 197 (2002). The terms of the judgment and sentence can create the relationship. *Bishop v. Miche,* 137 Wn.2d 518, 528, 973 P. 2d 465 (1999); *Joyce* 155 Wn.2d at 318; *Bordon v. State,* 122 Wn. App 227, 236, 95 P.3d 764 (2004). The supervising agency's rules and regulations governing supervision can create the take charge relationship as well. *Bishop*, 137 Wn.2d at 528.

The supervising agency need not actually know of the Court order sentencing the offender to supervision for the take charge relationship to arise. *Bordon,* 122 Wn. App at 232, 236-238. In addition, the take charge relationship can exist in the absence of the power to arrest or full custodial control of the offender. *Hertog v. City of Seattle*, 138 Wn.2d 265, 290, 979 P.2d 400 (1999).

DOC had a "take charge" relationship with Calvin Finley resulting from the judgment and sentence in the underlying crime, pursuant to RCW 9.94A.700 and pursuant to DOC's own policies. CP 376-373, 500-510, 374-378, 248-249.

The Court of Appeals recognized that "it is undisputed that DOC 'took charge' of Finley within the meaning of § 319 when he reported for supervision in 2007, as required by his 2006 judgment and sentence. RCW 9.94A.700 et seq. empowered DOC to control Finley and gave rise to the definite, established, and continuing relationship necessary to create a duty to control under § 319." Opinion, p.7.

Nonetheless, the Trial Court and the Court of Appeals held that Finley had the power to terminate DOC's responsibility to supervise him by skipping an appointment on February 17.

The Court of Appeals held that the duty to supervise Finley vanished because when he missed the appointment and DOC

issued a warrant, "the requisite continuing relationship is terminated and the ability to monitor and control the parolee's behavior no longer exists." Opinion, p.7.

This holding flies in the face of *Taggart's* formulation of the "continuing relationship" (*Taggart,* 118 Wn.2d at 219):

> We hold that the relationship between a parole officer and the parolees he or she supervises creates a similar duty for the officers. As a preliminary matter, we note that a duty will be imposed under § 315 only upon a showing of a "definite, established and continuing relationship between the defendant and the third party." *Honcoop v. State,* 111 Wash. 2d 182, 193, 759 P.2d 1188 (1988). Under RCW 72.04A.080, parolees "shall be subject to the supervision of the department of corrections, and the probation and parole officers of the department shall be charged with the preparation of progress reports of parolees and to give guidance and supervision to such parolees within the conditions of a parolee's release from custody." RCW 72.04A.080. This statute is sufficient to establish that parole officers have a "definite, established and continuing relationship" with their parolees.

The *Taggart* Court rejected the State's argument that a duty to supervise required a full custodial relationship. It rejected the reasoning of out-of-state cases requiring such control at 118 Wn.2d 222-223 (emphasis added):

> Some courts have adopted such a view, holding that parole officers do not have sufficient control over parolees as to justify imposing on the officers a duty to control the parolees. *Fox v. Custis,* 236 Va. 69, 372 S.E.2d 373 (1988); *Small v. McKennan Hosp.,* 403 N.W.2d 410 (S.D.1987); *Lamb v. Hopkins,* 303 Md. 236, 492 A.2d 1297

> (1985). In *Fox,* for example, the victims of a parolee's crimes sued the state parole officers responsible for the parolee's supervision. The case was analyzed under § 319, and the court held that the parole officers did not "take charge" of the parolee because the statute empowering the officers to supervise parolees "does not contemplate continuing hourly or daily dominance and dominion by a parole officer over the activities of a parolee." Similarly, in *Lamb* the Maryland court expressly adopted § 319, but held that probation officers do not "take charge" of probationers such as to give rise to a duty to exercise due care in controlling the probationers because of the lack of a custodial relationship and the relative freedom the probationers have in conducting their day-to-day affairs. *Lamb,* 303 Md. at 248-49, 492 A.2d 1297. The Maryland court distinguished *Petersen* on the basis that *Petersen* concerned the negligent release of patients from psychiatric institutions. *Lamb,* at 250, 492 A.2d 1297. Likewise, the South Dakota Supreme Court in *Small* declared that "because there was no custodial relationship involved in this case, we conclude that the officers did not take charge of the probationer," and so held that § 319 did not give rise to any duty on the part of probation officers to control the dangerous propensities of probationers. 403 N.W.2d at 414 (quoting *Lamb*, 303 Md. at 248, 492 A.2d 1297).
>
> We reject this approach and hold that a parole officer takes charge of the parolees he or she supervises **despite the lack of a custodial or continuous relationship.**

The Court of Appeals incorrectly ruled that the "definite, established and continuing relationship" required to impose a duty to supervise only arose if the offender maintained some contact with his CCO. It inaccurately cited *Taggart's* formulation of the take charge

relationship as dependent upon such ongoing contact, citing to *Taggart* at p. 219 (Opinion, p. 9):

> The flaw in the argument made by Husted and Pina is that it conflates two distinct concepts discussed in *Taggart*: "[Custody or [a] continuous relationship," which is not required to establish a take charge relationship, and a "definite, established and continuing relationship", which is. *Taggart*. 118 Wn.2d at 219-23.
>
> ***
>
> But *Taggart* also tells us that a take charge relationship entails ongoing contact between the parole officer and the parolee because the relationship must be a "direct, established and continuing" one. *Id.* at 219. It is the continuing nature of the relationship that allows the parole officer to exercise control.

This Court in *Taggart* made no such ruling in the passage cited. In reality, the Court ruled that the **statute** empowering supervision created the "definite, established and continuing relationship" which gave rise to the duty to supervise (*Taggart*, 118 Wn.2d at 219, emphasis added):

> We hold that the relationship between a parole officer and the parolees he or she supervises creates a similar duty for the officers. As a preliminary matter, we note that a duty will be imposed under §315 only upon a showing of a "definite, established and continuing relationship between the defendant and the third party." *Honcoop v. State,* 111 Wash. 2d 182, 193, 759 P.2d 1188 (1988). Under RCW 72.04A.080, parolees "shall be subject to the supervision of the department of corrections, and the probation and parole officers of the department shall be charged with the preparation of progress reports of parolees and to give guidance and supervision to such parolees within the conditions of a parolee's release from custody." RCW 72.04A.080. **This statute is sufficient to**

establish that parole officers have a "definite, established and continuing relationship" with their parolees.

Likewise, as the Court of Appeals acknowledged, at a minimum RCW 9.94A.700 sufficed to create the take charge relationship that gave rise to DOC's duty to supervise Finley. Opinion, p.9. Nonetheless, the Court undermined *Taggart by* declaring that the continuous relationship, and the resulting duty to supervise, will switch off and on with the offender's inclination to cooperate. The Court offered no explanation of how this statutorily generated relationship evaporated when Finley missed his appointment. This aspect of the Court's decision directly conflicts with *Taggart's* holding that the duty to supervise does not require "continuous supervision..." [3]

One simply cannot reconcile the Court of Appeals' parsing of *Taggart* with this Court's years of jurisprudence affirming the government's duty to supervise offenders based upon the "take charge" relationship. *See, e.g., Bishop v. Miche,* 137 Wn.2d 518, 973 P.2d 465 (1999); *Hertog v. City of Seattle,* 138 Wn.2d 265, 979 P.2d 400 (1999);

[3] This Court in *Taggart*, at 223, specifically rejected out-of-state authority the State submitted to support its continuous relationship argument: "In addition, we recognize that the Washington statute empowering parole officers to supervise parolees contemplates neither a custodial relationship, such as the Maryland court required in *Lamb,* nor continuous supervision, such as the Virginia court demanded in *Fox.* In *Tarasoff* and *Lipari,* however, which we followed in *Petersen,* the defendant therapists had neither custodial nor continuous relationships with their patients."

and *Joyce v. State* 155 Wn.2d 306, 119 P.3d 825 (2005). Notwithstanding this line of authority, the Court of Appeals dissected the "continuing relationship" into discrete parts never approved or contemplated by any decision of this Court. The "continuing" relationship results from the factors that give rise to the duty to supervise (statute, judgment and sentence, DOC Policies), not the offender's inclination to cooperate. *Taggart,* at 219.

As a matter of fact, an offender's lack of cooperation does not end DOC's supervision efforts. If the offender declines to cooperate the CCO has numerous tools to compel or influence compliance. These include, as the Court of Appeals acknowledged, "Coercive action against the parolee as authorized by the legislature," including RCW 9.94A.720. Opinion, pp. 6-7. These tools also include the measures authorized and prescribed by DOC 350.750, which only comes into play to empower apprehension of an offender who has absconded. CP 192-199; Appendix 2.

Furthermore, the decision of the Court of Appeals will encourage offenders to refuse to submit to supervision. Offenders will know that they can walk away from supervision and the government will make no efforts to apprehend them because their refusal to acquiesce ends supervision.

The public will suffer from an offender's dangerous propensities, from which the government is charged to protect them.[4]

Beyond this, offenders who abscond pose the greatest threat to public safety. Offenders who comply with the imposed restrictions will need less management than those who do not. The decision of the Court of Appeals directs supervision away from the worst of the offenders, and leaves the community at risk.

The danger from this approach is manifest. The facts of this case illustrate the peril. Because DOC stopped supervising violent offender Calvin Finley he enjoyed the freedom to plan and participate in the robbery where he murdered Kurt Husted and wounded Wilbert Pina.

The decision of the Court of Appeals irreconcilably conflicts with *Taggart*. This Court should grant review pursuant to RAP 13.4(b)(1) and reverse.

B. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH *JOYCE V STATE*, 155 WN.2D 306, 119 P.3D 825 (2005).

Joyce v State, 155 Wn.2d 306, 119 P.3d 825 (2005), involved an offender under supervision who caused an automobile collision that killed the plaintiff's wife. The offender had failed to report to DOC for

[4] "We conclude that parole officers have a duty to protect others from reasonably foreseeable dangers engendered by parolees' dangerous propensities." *Taggart,* at 224.

supervision for seven months in one instance, and for three months prior to the criminal act that was at issue in that case. *Joyce*, 155 Wn.2d at 313-314, 320. Despite the lack of reporting and lack of contact between the offender in *Joyce* and DOC for three months prior to the criminal act, this Court still recognized that a duty existed as a result of the conditions imposed in the offender's judgment and sentence. *Joyce*, 155 Wn.2d at 315. The offender's decisions to periodically break contact did not switch the duty off and on.

In the case at bench, the Court of Appeals contradicted *Joyce* when it acknowledged that the State had a duty to supervise Finley, but still concluded that duty disappeared because Finley declined to show up for an appointment. Opinion, pp. 7, 11. *Joyce* tells us that "[o]nce the duty exists, the question remains whether the injury was reasonably foreseeable." *Joyce*, 155 Wn.2d at 315. Until the Court of Appeals issued its ruling in this case, no court had ever held that a missed appointment and issuance of a Secretary's Warrant renders DOC powerless to fulfill its statutorily mandated obligations.

The Court of Appeals and the State continually repeat that DOC issued a Secretary's Warrant for Finley's arrest on February 17, 2009, as if this act produced some sort of enchanted charm that removed the duty to supervise. CP 2- 3. DOC's own policies do not support this contention.

DOC issued that warrant pursuant to Policy DOC 350.750, which empowers and compels DOC workers to take numerous actions to apprehend an absconded offender. CP 192-199, Appendix 2. Even a casual perusal of the policy shows that DOC itself did not contemplate that absconding and issuance of a warrant ended the duty to supervise.

Under *Joyce*, because the State admits the duty to supervise existed, and because the Court ruled that the State owed a duty to supervise, the jury needed to decide whether the State acted reasonably in its efforts to supervise and apprehend Finley and whether the harm to the plaintiffs was foreseeable. The decision of the Court of Appeals thus irreconcilably conflicts with *Joyce* as well. This Court should grant review pursuant to RAP 13.4(b)(1) and reverse.

C. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH *BORDON V. STATE*, 122 WN.APP. 227, 95 P.3D 764 (2004)

Bordon v. State, 122 Wn. App. 227, 95 P.3d 764 (2004), involved an offender sentenced to four months of confinement and 12 months of community supervision for the crime of eluding. Upon release from jail the offender failed twice to report to his DOC supervisor. DOC never received a copy of the judgment and sentence for the eluding conviction and therefore did not supervise the offender for that conviction. The offender killed the plaintiff's decedent in an automobile collision while

driving drunk. The plaintiff sued DOC for failing to supervise the offender.

After a verdict for the plaintiff, DOC appealed. It argued to the Court of Appeals that it owed no duty to supervise for the eluding conviction "because it did not know about the eluding charge, [and] the "take charge" relationship described in *Taggart* did not exist ..." *Bordon,* at 236.

The Court of Appeals rejected this argument. DOC owed a duty to supervise for the eluding conviction because the CCO should have known about the conviction for numerous reasons, and because RCW 9.94A.120(13) mandated DOC's supervision. *Bordon*, at 236-238.

Under the reasoning of the Court of Appeals in the case at bench, if DOC does not know of a conviction for which a sentencing court ordered supervision, then there can be no "continuing relationship" to give rise to a duty to supervise. The *Bordon* court rejected this thinking and imposed the duty to supervise notwithstanding DOC's ignorance of the judgment and sentence. As in the case at bench, the *Bordon* court specifically addressed the "continuing" nature of the relationship critical to imposing the duty to supervise. ("[A] special relationship between the actor and the third party may give rise to a duty if the relationship is 'definite, established and continuing'." *Bordon,* at 235, citing *Hertog,* 138 Wash. 2d at 276, 288,

979 P.2d 400. The *Bordon* court found that the relationship existed, even though DOC had no knowledge of the eluding conviction and consequently did not supervise for that conviction. The absence of a "continuing relationship," as the Court of Appeals in this case conceived it, did not prevent imposition of a duty in *Bordon*.

The Court of Appeals's reasoning in *Bordon* and its reasoning in this case irreconcilably clash. This Court should grant review pursuant to RAP 13.4(b)(2) and reverse.

D. THE COURT'S DECISION IN THIS CASE CONFLICTS WITH *IN THE MATTER OF THE PERSONAL RESTRAINT OF AMEL W. DALLUGE, PETITIONER*, 162 WN.2D 814, 177 P.3D 675 (2008).

In the Matter of the Personal Restraint of Amel W. Dalluge, Petitioner, 162 Wn.2d 814, 177 P.3d 675 (2008) required this Court to decide whether DOC's power to enforce the conditions of community custody became suspended during an offender's confinement.

Former RCW 9.94A.625(3) provided that a "period of community custody...shall be tolled during any period of time the offender is in confinement for any reason." The offender contended that since confinement tolled the "period," it tolled the Department's power to enforce community custody conditions as well. This Court disagreed. It held as follows, at 818-819 (emphasis the Court's in original):

> The Sentencing Reform Act of 1981, Chapter 9.94A RCW says nothing about the Department's power and responsibility being tolled while offenders are confined and instead uses sweeping language. E.G., RCW 9.94A.720(1)(a) ("all offenders sentenced to terms involving...*community custody shall be under the supervision of the Department and shall follow explicitly the instructions and conditions of the Department.* (Emphasis added)). It would be peculiar, to say the least, if an offender could evade the requirements of Section 720(1)(a) by committing an offense that results in confinement. It also seems very unlikely to us that the legislature intended that community custody conditions, such as no contact orders, would be suspended while an offender is in jail. *Cf. United States v. Camarata,* 828 F.2d 974, 981 (3d Cir. 1987) (parole could be revoked before it began based on offender violation of laws); *see also State v. Keller,* 98 Wash 2d 725, 728, 657 P.2d 1384 (1983) (court will not read statutes in an absurd or strained way).

This Court in *Dalluge* highlighted the legislature's intent that Community Custody supervision continue uninterrupted, at 819 (emphasis the Court's in original):

> The department's reading is consistent with the legislature's uncodified statement of purpose:
>
> > The Legislature intends that all terms and conditions of an offender's supervision in the community, *including the length of supervision,* and payment of legal financial obligations, *not be curtailed by an offender's absence from supervision for any reason, including confinement in any correctional institution.*
>
> Laws of 2000, ch. 226, § 1. Based on all these statutes, we conclude that the Legislature intended the department to retain supervisory power and responsibility while offenders on community supervision are confined.

DOC argued in *Dalluge* that an offender's absence from supervision, even confinement in prison, does not terminate DOC's power to enforce the terms of community custody. In a like manner, an offender's refusal to report certainly would fall within the scope of the Legislature's contemplation of "any reason." Thus, Finley's missed appointment did not terminate DOC's power to supervise him.

The Court of Appeals distinguished *Dalluge* for two reasons. First, it declared that the case did not "discuss to what extent, if any, RCW 9.94A.171 affects DOC's take charge relationship with an offender who absconds from supervision." Opinion, p.12. Second, it reasoned that *Dalluge* was "entirely consistent with the idea that the take charge relationship is linked to an ongoing, continuing relationship between the community corrections officer and the offender." Opinion, p.12.

The Court of Appeals' Opinion evaded this Court's unequivocal deference to the Legislature's statement of purpose. *Dalluge, at 819.* One cannot reconcile this Court's deference to the Legislature's intent that supervision continue during an offender's absence from supervision "for any reason" with the sidestepping of the Court of Appeals in the case at

bench. This Court should grant review pursuant to RAP 13.4(b)(1)and reverse.

V. CONCLUSION

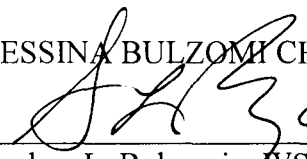
The Legislature, in imposing supervision upon offenders, has determined that offenders in the community need oversight to ensure compliance with the terms of the judgment and sentence and to protect the public.

The ruling of the Court of Appeals removes control of supervision from DOC and places it into the hands of the offender. The Court of Appeals has offered no sound policy rationale for permitting DOC to delegate its duty to control the offender and protect the public to the whim of an offender.

This Court has repeatedly rebuffed efforts to water down *Taggart* and its progeny. The Court should do the same in this case, and grant review and reverse the Court of Appeals and the Trial Court.

Respectfully submitted this 9th day of June, 2015

MESSINA BULZOMI CHRISTENSEN



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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

JANET G. 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;	)	No. 71662-0-I
Appellants,	)	ORDER GRANTING MOTION TO AMEND AND MOTION TO PUBLISH AND WITHDRAWING AND REPLACING OPINION
v.	)	
STATE OF WASHINGTON,	)	
Respondent.	)	

A motion to amend and a motion to publish was filed by respondent, State of Washington asking the court to amend the opinion filed in this case on March 16, 2015. Appellants filed an opposition to the respondent's motion to publish. The panel has considered the motions and determined they should be granted.

Now, therefore, it is hereby

ORDERED that the motion to amend and the motion to publish are granted and the opinion of this court filed March 16, 2015 is withdrawn and replaced with a revised opinion.

SO ORDERED

Dated this 11th day of May, 2015.

FOR THE COURT:

Spearman, C.J.

Schindler, J.

Leach, J.

Appendix 1

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

JANET G. 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;	)	No. 71662-0-I
	)	DIVISION ONE
Appellants,	)	PUBLISHED OPINION
v.	)	
STATE OF WASHINGTON,	)	
Respondent.	)	FILED: May 11, 2015

SPEARMAN, C.J. — This appeal arises from entry of summary judgment in an action for negligent supervision of an offender, Calvin Finley, by the Department of Corrections (DOC). Appellants contend the trial court erred in concluding that, as a matter of law, DOC had no duty to control the offender once he absconded from supervision and a warrant was issued for his arrest. Finding no error, we affirm.[1]

FACTS

On September 1, 2006, Calvin Finley was convicted of a violation of a domestic violence court order in Pierce County and sentenced to 15 months confinement and 9 to 18 months of community custody. After his release from the

[1] In light of our disposition of the case, we do not address the issues of qualified immunity and proximate cause.

Pierce County Jail on March 1, 2007, he reported to DOC for supervision, as required by his judgment and sentence. Over the course of the next year and a half, Finley repeatedly violated the terms of his supervision. He was found guilty of several violations, sanctioned repeatedly, and eventually remanded to the Kitsap County Jail.

While Finley was in jail, DOC filed another violation report, charging Finley with eleven separate violations. DOC requested the hearing officer to impose 240 days confinement as a sanction. A hearing was held on October 15, 2008, and Finley was found guilty of seven violations and sanctioned with 200 days confinement. Finley was ordered to report for supervision within one business day of his release from jail.

Finley was released on Saturday, February 14, 2009. According to the terms of his supervision, he was to report to DOC on the next business day, Tuesday, February 17, 2009. He failed to do so. A DOC officer immediately requested a Secretary's Warrant for his arrest and attempted to ascertain his whereabouts. However, the officer was unable to locate Finley, who remained a fugitive until June 2, 2009.

On June 2, 2009, Finley robbed an armored car at the Lakewood, Washington Walmart store. During the course of the robbery, Finley shot and killed Kurt Husted and injured Wilbert Pina. He was subsequently apprehended and found guilty of various crimes and community custody violations. He was sanctioned with 120 days confinement for the community custody violations. And, on March 19, 2010, Finley plead guilty to the following crimes: aggravated first degree murder; assault in the first degree; robbery in the first degree; criminal

solicitation to commit robbery in the first degree; and unlawful possession of a firearm in the first degree.

On May 16, 2012, appellants Janet G. Husted and Wilbert Pina initiated this action against the State of Washington in Pierce County Superior Court, alleging that DOC was negligent in its supervision of Finley and, as a result, the State is liable for the injuries he inflicted during the June 2, 2009 robbery committed by Finley. The State moved for summary judgment that it had no duty to control Finley at the time he caused the death of Husted and injuries to Pina. The trial court agreed and entered judgment for the State. Husted and Pina appeal.

DISCUSSION

Because this appeal arises from the trial court's entry of summary judgment, we review de novo, making the same inquiry as the trial court, i.e., summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Hertog, ex rel. S.A.H. v. City of Seattle, 138 Wn.2d 265, 275, 979 P.2d 400 (1999) (citing Taggart v. State, 118 Wn.2d 195, 199, 822 P.2d 243 (1992); CR 56(c)). We construe all facts and reasonable inferences from the facts in the light most favorable to the nonmoving party. Id. (citing Taggart, 118 Wn.2d at 199). Questions of law are reviewed de novo. Sherman v. State, 128 Wn.2d 164, 183, 905 P.2d 355 (1995).

Summary judgment is subject to a burden-shifting scheme. Ranger Ins. Co. v. Pierce Cnty., 164 Wn.2d 545, 552, 192 P.3d 886 (2008).The initial burden to show the nonexistence of a genuine issue of material fact is on the moving party. Id.; see also Vallandigham v. Clover Park School Dist. No. 400, 154 Wn.2d 16, 26, 109 P.3d

805 (2005). For example, a defendant may move for summary judgment by showing that there is an absence of evidence to support the plaintiff's case. Sligar v. Odell, 156 Wn. App. 720, 725, 233 P.3d 914 (2010) (citing Young v. Key Pharm., Inc., 112 Wn.2d 216, 225 n. 1, 770 P.2d 182 (1989). Once this initial showing is made, the inquiry shifts to the plaintiff because the plaintiff bears the burden of proof at trial. Id. at 725.

In order to make a prima facie case for negligence, Appellants, as plaintiffs, bore the burden of first establishing the existence of a duty owed them by the State. Hertog, 138 Wn.2d at 275 (citing Degel v. Majestic Mobile Manor, Inc., 129 Wn.2d 43, 48, 914 P.2d 728 (1996)). The State moved for summary judgment, arguing that Appellants failed to do so.

The parties agree that under Taggart and its progeny, DOC officers and the State have a duty to control the behavior of persons committed to DOC for supervision. The dispute hinges on whether those cases also dictate that the State's duty extends to an offender who absconds supervision, has no contact with his community corrections officer, and for whom a warrant has been issued for his or her arrest. The State contends that under these circumstances the duty is suspended until the offender is apprehended. Husted and Pina argue the duty continues at all times until the State's duty to supervise the offender is terminated or modified in some material way. We conclude that under the facts of this case, the State had no such duty and affirm.

In Taggart, our supreme court recognized an exception to the common law rule that a person has no duty to prevent another person from causing physical injury to

another. Taggart, 118 Wn.2d at 219-20. The exception to the common law rule is set forth in Restatement (Second) of Torts, §§ 315 and 319. Section 315(a) states in relevant part:

> There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless
> (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third persons conduct. . . .

The court specifically adopted one class of the "special relation" cases described in § 319 as most relevant to the relationship between parole officer and parolee.[2] Id. at 219. Section 319 provides:

> One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm.

The Taggart court held that to "take charge" of a third person as that term is used in § 319 means to have a "'definite, established and continuing relationship between the defendant and the third party.'" Id. (quoting Honcoop v. State, 111 Wn.2d 182, 193, 759 P.2d 1188 (1988)). The court determined that such a relationship existed between parole officers and parolees based on RCW 72.04A.080, which states that parolees "'shall be subject to the supervision of the department of corrections, and the probation and parole officer of the department

[2] The terms "parole officer" and "parolee" are generally associated with cases arising before enactment of the Sentencing Reform Act (SRA) or with opinions from courts in other jurisdictions. Under the SRA, the term "offender" is generally used to refer to individuals under the supervision of DOC while on parole, probation, community supervision, or community custody, while the term "community corrections officer" (CCO) refers to DOC officers who supervise sentenced offenders and monitor sentence conditions. See former RCW 9.94A.720(1)(a) and (b) (2009). For purposes of this opinion, the terms "parole officer" and "parolee" are interchangeable, respectively, with the terms "community corrections officer" and "offender."

shall be charged with ... giv[ing] guidance and supervision to such parolees within the conditions of a parolee's release from custody.'"[3] Id. (quoting RCW 72.04A.080). Under this statute, the State could, among other things, regulate the parolee's movements within the state, require the parolees to report, impose special conditions such as refraining from alcohol or undergoing drug rehabilitation or psychiatric treatment, and order parolees not to possess firearms. Further, under the statute, parole officers are or should be aware of their parolee's criminal histories and monitor or should monitor, their parolee's progress. The Taggart court concluded that "[b]ecause of these factors ... parole officers have 'taken charge' of the parolees they supervise for purposes of § 319." Taggart, 118 Wn.2d at 220. Thus, "the 'take charge' aspect of special relationship liability became a term of art incorporating the kinds of attributes described in Taggart." Sheikh v. Choe, 156 Wn.2d 441, 449, 128 P.3d 574 (2006).

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[3] RCW 72.04A.080, which Taggart found created the take charge relationship between the parole officer and the parolee, is inapplicable to felonies committed on or after July 1, 1984, the effective date of the SRA. The authority of DOC officers to supervise and monitor felony offenders was recodified under RCW 9.94A.700 et seq., effective date July 1, 1984. See, Estate of Davis v. State, Dept. of Corrections, 127 Wn. App. 833, 842-43, 113 P.3d 487 (2005). Laws of 2008, ch. 9.94A, § 720 RCW (repealed August 1, 2009) provides in relevant part:

> (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.

In this case, it is undisputed that DOC "took charge" of Finley within the meaning of § 319 when he reported for supervision in 2007, as required by his 2006 judgment and sentence. RCW 9.94A.700 et seq. empowered DOC to control Finley and gave rise to the definite, established, and continuing relationship necessary to create a duty to control under § 319. But at the time of the robbery that lead to the death of Husted and the injuries to Pina, Finley had absconded from supervision and a warrant had been issued for his arrest. The State contends that under these circumstances, its duty to control Finley was suspended.

The State argues that Taggart recognizes that the premise underlying of § 319 is the continuing relationship between the community corrections officer and the offender. Because of the continuing relationship, the community corrections officer has the ability to monitor and supervise the offender. He or she can also control and modify the offender's conduct by coercive action against the offender as authorized by the legislature. But when the offender absconds from supervision and a warrant is issued for his or her arrest, the State argues that the requisite continuing relationship is terminated and the ability to monitor and control the offender's behavior no longer exists. Accordingly, the State contends that during such times, because the rationale for imposing the duty under § 319 and Taggart has disappeared, so to should the duty itself, until the offender is apprehended and the continuing relationship is re-established.

Husted and Pina contend the State's duty to third persons under Taggart and § 319 is not diminished because an offender has absconded and is on warrant status. They point out that the Taggart court expressly rejected the State's

argument in that case that a take charge relationship requires "nothing less than a full custodial relationship. . . ." Taggart, 118 Wn.2d at 222. They also point out that the court distinguished and rejected the principal cases upon which the State relied, Fox v. Custis, 236 Va. 69, 372 S.E.2d 373 (1988) and Lamb v. Hopkins, 303 Md. 236, 492 A.2d 1297 (1985). In Fox, the victims of a parolee's crimes sued the state parole officers responsible for the parolee's supervision. The Taggart court observed:

> The case was analyzed under § 319, and the court held that the parole officers did not 'take charge' of the parolee because the statute empowering the officers to supervise parolees 'does not contemplate continuing hourly or daily dominance and dominion by a parole officer over the activities of a parolee.'

Taggart, 118 Wn. 2d at 222 (quoting Fox, 236 Va. at 75). Similarly, the court noted that in Lamb:

> the Maryland court expressly adopted § 319, but held that probation officers do not 'take charge' of probationers such as to give rise to a duty to exercise due care in controlling the probationers because of the lack of a custodial relationship and the relative freedom the probationers have in conducting their day-to-day affairs.

Taggart, 118 Wn. 2d at 222. Taggart explicitly rejected these views. The court observed that "the Washington statute empowering parole officers to supervise parolees contemplates neither a custodial relationship, such as the Maryland court required in Lamb, nor continuous supervision, such as the Virginia court demanded in Fox." Id. at 223. Accordingly, the court held that "a parole officer takes charge of the parolee he or she supervises despite the lack of a custodial or continuous relationship." Id. at 223. Thus, Husted and Pina contend that because neither custody nor a continuous relationship are necessary components of the duty under

§ 319, the State's take charge relationship with Finley continued even though he had absconded from supervision and a warrant had been issued for his arrest.

The flaw in the argument made by Husted and Pina is that it conflates two distinct concepts discussed in Taggart. "[C]ustody or [a] continuous relationship" which is not required to establish a take charge relationship and a "definite, established and continuing relationship" which is. Taggart, 118 Wn.2d at 219-23.

In this case, the basis of the take charge relationship, and the duty created thereby, is the community corrections officer's statutory authority to supervise the offender under RCW 9.94A.720. Pursuant to that statute, a community corrections officer must monitor the offender's compliance with the conditions of supervision and his or her progress while on supervision. And when necessary, the community corrections officer can control the offender's behavior by threat of incarceration, limiting movements to prescribed boundaries, increasing reporting requirements and the like. RCW 9.94A.720(1). Taggart tells us that the exercise of this authority depends on neither custody nor a condition of "'continuing hourly or daily dominance and dominion.'" Taggart, at 224, (quoting Fox, 236 Va. at 75). Thus, even though an offender may have only weekly or monthly contact with a community corrections officer, that is sufficient to establish and maintain a take charge relationship. But Taggart also tells us that a take charge relationship entails ongoing contact between the community corrections officer and the offender because the relationship must be a "direct, established and continuing" one. Id. at 219. It is the continuing nature of the relationship that allows the community corrections officer to exercise control. An offender who has absconded and for

whom a warrant has been issued, no longer has a continuing relationship with the community corrections officer. When this occurs the offender is not subject to the community corrections officer's control because he or she cannot be monitored, given direction or sanctioned.

Husted and Pina cite Joyce v. Dep't of Corrections, 155 Wn.2d 306, 119 P.3d 825 (2005) in support of their argument that the State still had a take charge relationship with Finley. But the case is distinguishable. In Joyce, the parolee, Stewart, was on DOC supervision as a result of convictions for assault, possession of stolen property and driving offenses. Although he repeatedly failed to report to his community corrections officer as directed, the evidence showed that he had continuing and ongoing contact with her by phone, through family members and unscheduled visits. As a result, the community corrections officer filed two "notices of violation" with the court, but did not request a warrant for Stewart's arrest.[4] Subsequently, Stewart drove a stolen car at a high rate of speed into a small pickup truck driven by Paula Joyce, killing her. The supreme court rejected the State's argument in that case that it owed no duty to Joyce. 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. Thus, the requisite continuing relationship between the community corrections officer and offender was intact and the State's take charge duty remained.

[4] The facts of the case are set forth in great chronological detail in Joyce v. Dep't of Corrections, 116 Wn. App. 569, 575-85, 75 P.3d 548 (2003).

In this case, however, it is undisputed that only one brief telephone contact occurred between Finley and DOC from the date of his release from custody on February 14, 2009 and the date of his arrest on June 3, 2009. It is also undisputed that a warrant for his arrest was issued on February 18, 2009, the day after he failed to report as directed. Here, unlike in Joyce, there was no continuing relationship between Finley and his community corrections officer and since the basis for the take charge did not exist, the State had no duty to control him.

Husted and Pina rely on In re Pers. Restraint of Dalluge, 162 Wn.2d 814, 177 P.3d 675 (2008), to argue that the take charge relationship continues even after an offender is on warrant status. Dalluge was serving a year of community custody when he was arrested and taken to jail where he was involved in an altercation. DOC determined that the altercation violated the terms of his community custody and, after a hearing, sanctioned him. Dalluge argued that since his term of community custody was tolled while he was in confinement pursuant to former RCW 9.94A.625 (2008), recodified as RCW 9.94A.171, the department did not have the authority to discipline him for the alleged violation. The supreme court disagreed, holding that although the statute tolled Dalluge's term of community custody while he was incarcerated, that did not diminish DOC's authority to enforce the terms of his supervision.

Husted and Pina point out that under RCW 9.94A.171 the period of community supervision is similarly tolled for an offender who absconds from supervision. They contend that here, as in Dalluge, absconding does not diminish DOC's power and duty to supervise the offenders committed to it. Thus, they argue

that even though Finley's supervision was tolled by issuance of the warrant, DOC's authority to supervise him continued and the take charge relationship remained intact. We disagree that Dalluge is controlling.

First, Dalluge does not discuss to what extent, if any, RCW 9.94A.171 affects DOC's take charge relationship with an offender who absconds from supervision. It held only that when a person subject to DOC supervision is in custody, the terms of supervision remain in effect and are enforceable even though the term of community custody is tolled for the duration of the offender's confinement. Second, even if Dalluge were controlling, it is entirely consistent with the idea that the take charge relationship is linked to an ongoing, continuing relationship between the community corrections officer and the offender. That relationship exists when the offender is in custody and subject to control by his or her community corrections officer.

We conclude 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. Accordingly, we hold that the State had no duty to control Finley's behavior at the time he committed the acts giving rise to the claims in this case because Finley had absconded supervision, had only minimal contact with DOC and was on warrant status at that time. The trial court did not err when it granted the State's motion for summary judgment dismissal.

Affirmed.

Spearman, C.J.

WE CONCUR:

Leach, J.

Schindler, J.

STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS	APPLICABILITY FIELD		
	REVISION DATE 8/4/08	PAGE NUMBER 1 of 8	NUMBER DOC 350.750
POLICY	TITLE WARRANTS AND DETAINERS		

REVIEW/REVISION HISTORY:

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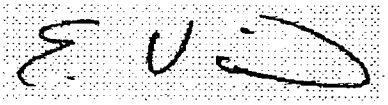

ELDON VAIL, Secretary
Department of Corrections

5/12/08
Date Signed

Appendix 2

STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS	APPLICABILITY FIELD		
	REVISION DATE 8/4/08	PAGE NUMBER 2 of 8	NUMBER DOC 350.750
POLICY	TITLE **WARRANTS AND DETAINERS**		

REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 9.94A; DOC 320.100 Indeterminate Sentence Review Board (ISRB) Reports; DOC 320.145 Violator Confinement in Department Facilities; DOC 380.605 Interstate Compact; DOC 420.390 Arrest and Search; DOC 460.130 Hearings for Community Custody and Work Release; Behavior Sanction/Response Guide

POLICY:

I. The Department has the authority to:

A. Issue a written order by the Secretary of the Department (i.e., Secretary's Warrant) to any sheriff, police, peace officer, law enforcement officer, and designated community corrections staff to arrest and detain offenders in violation of community custody.

B. Arrest and detain an offender under its jurisdiction using the established Department guidelines for confinement, based on the seriousness of the alleged violation(s), commission of a new offense, and the offender's current risk to public safety.

C. Request a Bench Warrant be issued and recommend the arrest and detention of an offender who is under the court's jurisdiction and absconds from or violates supervision.

D. Issue a parole suspension for any Washington parolee or Community Custody Board (CCB) offender who absconds from or violates supervision.

DIRECTIVE:

I. Responsibility

A. The following classifications will have the authority to issue or recommend the issuance of warrants and detainers on offenders under Department supervision:

1. Secretary
2. Deputy Secretary
3. Assistant Secretary
4. Hearings, Records, and Interstate Compact Administrator
5. Hearings Administrator
6. Field Administrator
7. Designated Community Corrections Specialists
8. Hearings Officers
9. Community Corrections Supervisor (CCS)
10. Community Corrections Officer (CCO)

II. Attempts to Locate Offender

A. Within 72 hours of learning that an offender has escaped or absconded (i.e., failed to make a required contact and cannot be located or failed to return to the state of Washington when ordered to do so), the CCO will make reasonable attempts to locate him/her.

1. For Risk Level Classification (RLC) High Violent (HV), High Non-Violent (HNV), Moderate (MOD), and Low Risk Sex Offenders, the CCO must conduct a field contact at the last known residence, unless a credible community contact verifies the offender is no longer residing at the residence.

2. For Non-Sex Offender Low Risk offenders, the CCO must attempt to locate the offender by telephone at the last known residence, employer, or emergency contact.

3. If the offender has known out-of-state ties, the CCO will attempt to locate the offender through those contacts.

B. If a CCJ violator escapes from Work Release, Work Release staff must contact the CCO and Headquarters Warrants Desk immediately.

C. The CCO will document all attempts to locate the offender in the offender's electronic file.

D. The CCO may issue, or request the immediate issuance of, a warrant in emergent situations without first making an attempt to locate the offender.

1. The CCO will document the emergency and the need for immediate issuance/request for a warrant.
2. Within 72 hours of the issuance or request of a warrant, the CCO will make attempts to locate the offender and document the attempts in the offender's electronic file.

E. If the CCO cannot locate the offender within the 72 hours, s/he will issue or request the issuance of a warrant and document in the offender's electronic file.

F. The CCO/designee will enter Escape and Failure to Report tolling in the offender's electronic file.

III. Secretary's Warrant

A. The CCO will issue DOC 09-239 Secretary's Warrant for Community Custody cases.

1. Only one warrant is required regardless of how many Community Custody causes the offender has.

B. Within 72 hours of learning that an offender has escaped or absconded, the CCO will:

1. Email DOC 11-005 Wanted Person Entry Request to the Headquarters Warrants Desk at rechqwarrants@doc1.wa.gov and to the section Correctional Records Supervisor to provide details of the incident.

2. Maintain the Secretary's Warrant in the offender's file for future service.

C. If the offender was on Global Positioning System (GPS) monitoring at the time of escaping or absconding, the "GPS Monitoring" box on DOC 11-005 Wanted Person Entry Request will be checked.

1. The Headquarters Warrants Desk will immediately forward to the Victim Services Program, at victimservices@doc1.wa.gov, any DOC 11-005 Wanted Person Entry Request in which the "GPS Monitoring" box is checked.

2. Outside of regular business hours, the Headquarters Warrants Desk will also immediately contact by telephone the Victim Services Program Manager or designee to provide information regarding the Wanted Person Entry Request in which the "GPS Monitoring" box is checked.

D. Only the CCS/designee may authorize cancellation of a submitted DOC 11-005 Wanted Person Entry Request.

E. The CCS may authorize cancellation of DOC 09-239 Secretary's Warrant anytime prior to the offender's arrest on the warrant via email to the Headquarters Warrants Desk at rechqwarrants@doc1.wa.gov and the section Correctional Records Supervisor.

F. When a CCO determines that a Secretary's Warrant has been served on an offender, s/he will notify the Headquarters Warrants Desk and section Correctional Records Supervisor.

G. When the Headquarters Warrants Desk receives notice that a Secretary's Warrant has been either cancelled or served on an offender, the staff member receiving the notice will convey that information via email to the Victim Services Program at victimservices@doc1.wa.gov.

IV. Warrant Service Area

A. The offender's risk level will determine the warrant service area. The CCO will review the available criminal history to determine the Risk Level Classification (RLC) prior to submitting DOC 11-005 Wanted Person Entry Request.

1. High Violent (HV), High Non-Violent (HNV) and Out of State offenders under Interstate Compact is nationwide Washington Crime Information Center/National Crime Information Center (WACIC/ NCIC).

2. Moderate and Low-Risk Sex Offenders is WACIC/NCIC for the bordering states of Idaho and Oregon.

3. Non-Sex Offender Low Offenders and Community Custody Inmate (CCI) violators within 30 days of completing the Community Custody portion of their sentence is in state WACIC only.

B. Based on new risk behavior and/or other information, the CCO may recommend increasing the warrant service area through an override request to the CCS and approval by the Field Administrator/delegated authority.

V. Bench Warrants

A. The CCO will request issuance of a Bench Warrant via DOC 09-122 Court - Notice of Violation for an offender under the jurisdiction of the court who absconds from supervision and is under Sentencing Reform Act (SRA), Post Release Supervision, Special Sex Offender Sentencing Alternative (SSOSA), Community Residential Drug Offender Sentencing Alternative (DOSA), Gross Misdemeanors, or Probation.

VI. Detainers

A. Detainers will be used to effect the immediate arrest of the offender in the absence of a warrant. Except in emergent situations, the CCO must have the CCS's prior approval to issue the detainer.

B. Indeterminate Sentence Review Board (ISRB) Jurisdiction

1. The CCO has the authority to issue DOC 09-191 Community Custody Board, Parolee Suspension, Arrest, and Detention for Indeterminate Sentence Review Board cases who are in violation of their conditions.

2. Only the ISRB may cancel DOC 09-191 Community Custody Board, Parolee Suspension, Arrest, and Detention.

3. If the parole violator is considered to have a high potential for violence, the CCO will recommend to the ISRB, using DOC 17-078 Parole Absconder

Request for Law Enforcement Assistance, that the Suspension Warrant be entered into NCIC.

C. Department Jurisdiction

1. The CCO has the authority to issue DOC 09-325 Order for Arrest and Detention or DOC 09-076A Compact - Interstate Order to Detain on Sentencing Reform Act (SRA), Offender Accountability Act (OAA), probation, misdemeanor, and interstate offenders who are in violation of conditions.

   a. On Department jurisdiction only cases, (i.e., CCI, CCP, CCJ, FOS), the CCO will submit DOC 09-246 Probable Cause Determination Request to probablecause@doc1.wa.gov within 24 hours of the offender's arrest.

   b. The CCO will issue orders for Insanity Acquittal and cases on appeal on a case-by-case basis.

2. The CCO will use DOC 09-014 Cancellation of Order for Arrest and Detention and Order for Release or Transfer to cancel DOC 09-325 Order for Arrest and Detention for Sentencing Reform Act (SRA), Community Custody, or probation offenders.

3. The CCO will use DOC 09-014A Cancellation of Detainer to cancel DOC 09-076A Compact - Interstate Order to Detain for interstate offenders.

VII. Arrest

A. The CCO will follow DOC 420.390 Arrest and Search when arresting offenders.

VIII. New Felony Arrest

A. When Headquarters Warrant Unit staff are notified by a law enforcement agency that an offender supervised in the community has been arrested on a felony offense, staff will:

1. Immediately notify the supervising CCO and the CCO's supervisor by email, and

2. Document the information received and the date the CCO was notified in the offender's electronic file.

B. During non-business hours, Warrants Unit staff will contact the Community Corrections Statewide Duty Officer for approval to issue arrest and detainer paperwork.

C. When a CCO receives notice that an offender has been arrested on a new felony offense, the CCO will:

1. Verify the jurisdiction,

2. Verify the scheduled end date of supervision after updating the appropriate tolling information,

3. Issue DOC 09-325 Order for Arrest and Detention within one business day, and

a. The CCO will insert the following on Page 2: "Whereas, it now appears the above has violated conditions(s) or requirements of sentence or supervision as follows: Pursuant to your recent arrest for a felony offense, and in accordance with RCW 9.94A.737, you are being detained."

4. Submit DOC 09-246 Probable Cause Determination Request to probablecause@doc1.wa.gov within 24 hours of the offender's arrest.

D. When the CCO confirms that the offender has been formally charged for the new felony offense, the CCO may, with CCS's approval, cancel the detainer using DOC 09-014 Cancellation of Order for Arrest and Detention and Order for Release or Transfer and notify the Hearings Unit to cancel the scheduled hearing.

E. If the offender is not formally charged for the new felony offense prior to the date of the scheduled hearing, the CCO must proceed with the formal hearing process per DOC 460.130 Violations and Hearings for Community Custody and Work Release.

IX. Fugitive Task Force

A. Warrants for offenders who pose the highest risk to the community, or escapees from Work Release, will be referred to the Fugitive Task Force(s) for more concentrated search efforts.

X. Warrant Caseloads

A. When a Secretary's Warrant has been issued, the office from which the warrant was issued or the offender was last supervised will maintain the file.

B. When both a Secretary's Warrant and Bench Warrant have been issued on causes under the jurisdiction of the Department, the county from which the Bench Warrant was issued will maintain the file. However, files for cases managed by the Offender Minimum Management Unit (OMMU) will go to the OMMU in the jurisdiction from which the Bench Warrant was issued.

C. Field Administrators may identify catchment area/designated units that may maintain Secretary's Warrant and Bench Warrant cases after 60 days of issuance.

DEFINITIONS:

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

ATTACHMENTS:

None

DOC FORMS:

DOC 09-014 Cancellation of Order for Arrest and Detention and Order for Release or Transfer
DOC 09-014A Cancellation of Detainer
DOC 09-076A Compact - Interstate Order to Detain
DOC 09-122 Court - Notice of Violation
DOC 09-191 Community Custody Board, Parolee Suspension, Arrest, and Detention
DOC 09-239 Secretary's Warrant
DOC 09-246 Probable Cause Determination Request
DOC 09-325 Order for Arrest and Detention
DOC 11-005 Wanted Person Entry Request
DOC 17-078 Parole Absconder Request for Law Enforcement Assistance