

NO. 45829-2-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

MARCO R. MEDINA,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR PACIFIC COUNTY

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APPELLANT'S OPENING BRIEF

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A. ASSIGNMENT OF ERROR.

The court erroneously imposed multiple consecutive sentencing enhancements for committing a drug offense within 1000 feet of a designated school bus stop route.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.

The court's authority to impose additional punishment for a sentencing enhancement must be expressly authorized by statute. The statute governing enhancements does not direct the court to order that multiple enhancements for drug-related offenses must be served consecutively to each other, but the same statute explicitly directs that several other enhancements must be served consecutively to each other when multiple enhancements are found. Do established principles of statutory construction demonstrate that the court lacked authority to impose consecutive sentences for multiple enhancements under RCW 9.94A.533(6)?

C. STATEMENT OF THE CASE.

Marco Medina pled guilty to selling drugs on three occasions to an informant who was working for the police. CP 2-4, 14-15, 22. Each police-arranged drug sale occurred at the same location, which was within 1000 feet of a designated school bus stop route. CP 2-4, 22. He

also pled guilty to one count of possession of a controlled substance.  
CP 22.

Mr. Medina was sentenced with an offender score of “3.” CP 26. The standard range was 20 to 60 months on the underlying offense. *Id.* The plea did not involve an agreed sentencing recommendation. 5/11/12RP 3. Mr. Medina asked for a prison-based DOSA sentence, while the prosecution asked the court to impose a 120-month prison sentence, without the DOSA. 5/18/12RP 2. Both attorneys asserted the sentencing statute provided that the three 24-month enhancements for committing the offense within 1000 feet of a school bus stop route must be imposed consecutively to each other, and consecutively to the sentence imposed for the underlying offenses. *Id.* at 24. The court ordered Mr. Medina to serve 30 months for the three drug sales, as well as three school bus stop route enhancements served consecutively to each other and consecutively to the underlying offenses, for a total term of 102 months. CP 27. The court did not order the DOSA Mr. Medina requested. *Id.*

Mr. Medina filed a CrR 7.8 motion, arguing that the court imposed a sentence that was not authorized by statute. CP 37-45. The State argued that the motion was “just untimely” and the enhancements

are served consecutively by statute. 12/20/13RP 2; CP 66-67. The court granted the State's motion to dismiss the CrR 7.8 motion because the prosecution's argument was "persuasive" without further explanation. *Id.* at 2. Mr. Medina was not transported and therefore he did not appear, and was not represented by counsel at the hearing on his CrR 7.8 motion. CP 37; 12/20/13RP 2.

D. ARGUMENT.

**The court erroneously imposed multiple consecutive enhancements for being near a school bus stop contrary to the governing statute**

1. *The court's sentencing authority is dictated by the governing statute which must be strictly and narrowly construed.*

The court's sentencing authority is controlled by statute. *State v. Pillatos*, 159 Wn.2d 459, 469, 150 P.3d 1130 (2007). The constitutional separation of powers doctrine precludes the judiciary from imposing a sentence that is not expressly authorized by statute, because "the trial court's discretion in sentencing is that which is given by the Legislature." *State v. Ammons*, 105 Wn.2d 175, 180-81, 713 P.2d 719 (1986).

Even when this Court believes the Legislature has inadvertently omitted a sentencing provision, courts "do not have the power to read into a

statute that which we may believe the legislature has omitted, be it an intentional or an inadvertent omission.” *State v. Martin*, 94 Wn.2d 1, 8, 614 P.2d 164 (1980). The “Legislature has the power to fix the term of imprisonment,” and the court’s role is merely “to carry out the legislative mandate.” *Id.* at 629; see *In re Pers. Restraint of Acron*, 122 Wn.App. 886, 891, 95 P.3d 1272 (2004) (refusing to speculate about seriousness level for unranked offense because “[a]ppellate courts do not supply omitted language even when the legislature’s omission is clearly inadvertent”).

As a basic rule of statutory construction, courts must rely upon the plain language of the statute. *State v. Delgado*, 148 Wn.2d 723, 729, 63 P.3d 792 (2003). Penal statutes are given “a strict and literal interpretation.” *Id.* at 727. The court “cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language.” *Id.*

Mr. Medina was convicted of three drug sales, each including the additional element that the transaction occurred within 1000 feet of a designated school bus stop route. CP 22, 26. Additional punishment for selling drugs near a school bus stop route is authorized in RCW 9.94A.533(6). The court ordered each school bus stop route enhancement be served consecutively to each other, but the governing

statute does not expressly direct the court to impose bus stop enhancements consecutively to other bus stop enhancements.

2. *Unlike other provisions of the same sentencing statute, multiple school bus enhancements are not consecutive to other school bus enhancements.*

RCW 9.94A.533 authorizes a trial court to impose additional punishment for sentencing enhancements based on the terms specified in the statute. For example, RCW 9.94A.533(3) governs firearm enhancements. Subsection (3)(e) mandates the multiple firearm enhancements “shall run consecutively to all other sentencing provisions, *including other firearm or deadly weapon enhancements*, for all offenses sentenced under this chapter.” RCW 9.94A.533(3)(e) (emphasis added).

Similarly, RCW 9.94A.533(4) governs deadly weapon enhancements and it likewise requires that “all deadly weapon enhancements . . . shall run consecutively to all other sentencing provisions, *including other firearm or deadly weapon enhancements*, for all offenses sentenced under this chapter.” RCW 9.94A.533(4)(e) (emphasis added). The sexual motivation enhancement contains identical statutory language , providing that “all sexual motivation enhancements . . . shall run consecutively to all other sentencing



provisions, *including other sexual motivation enhancements.*” RCW 9.94A.533(8)(b) (emphasis added).

Unlike these enhancements, RCW 9.94A.533(6) directs the imposition of a school bus stop route enhancement as follows:

An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.827.<sup>[1]</sup> All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

RCW 9.94A.533(6).

When construing a penal statute, the court “cannot add words or clauses” that do not appear in the statute. *Delgado*, 148 Wn.2d at 727. In *Delgado*, the defendant was sentenced under the “two strike” provisions of former RCW 9.94A.030(27)(b)(i) (1998). His prior conviction was not specifically listed as an eligible prior conviction but it was comparable to a listed offense. *Id.* at 728. The statute was silent about whether a predicate conviction could be comparable to a listed offense. *Id.*

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<sup>1</sup> RCW 69.50.435 lists various additional allegations that may be proved to the jury, including selling drugs near a designated school bus stop route. RCW 9.94A.827 pertains to manufacturing methamphetamine with a special allegation that a child was present.

To determine whether a judge could consider the comparability of a prior conviction for a two-strike sentence, the Supreme Court observed that the “immediately preceding” section of the same statute addressed “three strike” sentences and it included a “comparability clause” permitting a predicate offense to be one that was comparable to a listed offense. *Id.* By using different language in these two sections of the same statute, the Legislature showed it “knew how to include comparable offenses in the definition of a persistent offender.” *Id.* Based on the two-strike statute’s failure to include the same comparability language, the court must “presume the absence of such language in the two-strike scheme was intentional.” *Id.* at 729.

The Legislature showed it knows how to expressly order that multiple enhancements must be served consecutively to each other in RCW 9.94A.533(3)(e), 4(e), and (8)(b). It did not include this explicit language for enhancements in section (6) regarding school bus stop enhancements that it used in these other sections. The failure to include clear language requiring consecutive enhancement sentences in section (6), while using it in other sections of the same statute, requires the court to “presume the absence of such language . . . was intentional.” *Delgado*, 148 Wn.2d at 729.

The Legislature does not intend that all enhancements are treated the same for sentencing purposes. Firearm and deadly weapon enhancements are also punished more harshly than other sentencing enhancements under the earned early release time statute. RCW 9.94A.729(2) prohibits “any good time credits or earned early release time for that portion of [a] sentence that results from any deadly weapon enhancements” under RCW 9.94A.533(3), (4). No other enhancements are similarly barred from good time credits.

Further confirmation of the Legislature’s intent is demonstrated by the changes it made to the sentence enhancement statute in 2006. In 2006, the Legislature added the sexual motivation enhancement to RCW 9.94A.533. *LAWS* 2006, ch. 123 §1 (SB 6460). The new provision expressly mandated that all sexual motivation enhancements must “run consecutively” to “other sexual motivation enhancements.” *Id.*

In the same 2006 session, the Legislature amended the section pertaining to school bus stop enhancements, RCW 9.94A.533(6). *LAWS* 2006, ch. 339 §301. Yet it did not include the same language mandating consecutive enhancements for multiple bus stop or other drug-related enhancements. Again, the failure to include clear language requiring consecutive sentence enhancements in section (6), while using it in the

newly added provision in section (8), shows that “the absence of such language . . . was intentional.” *Delgado*, 148 Wn.2d at 729.

The 2006 amendment to the drug-related enhancements contained in RCW 9.94A.533(6) was enacted as part of a broad-based effort at combating methamphetamine abuse, addiction, and the dangers of methamphetamine manufacturing. *LAWS* 2006, ch. 339; *see* SB 6239 (2006).<sup>2</sup> The amendment added the second sentence to RCW 9.94.533(6): “All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.”

Prior to this change in the statute, the Supreme Court had construed RCW 9.94A.533(6) as “silent” on whether enhancements should be concurrent or consecutive “to one another or to other enhancements.” *State v. Jacobs*, 154 Wn.2d 596, 602, 115 P.3d 281 (2005). The *Jacobs* Court relied on the principle that consecutive punishment is permitted only if expressly authorized by the Legislature. *Id.* It also noted that the firearm and deadly weapon enhancements specifically required courts to apply them consecutively to each other. *Id.* at 603. “Thus, the legislature clearly knows how to require

consecutive application of sentence enhancements and chose to do so only for firearms and other deadly weapons.” *Id.* The *Jacobs* Court believed the statutory language for school bus stop route enhancements “seems to weigh in favor of intending concurrent sentences.” *Id.* Based on the rule of lenity, it held that enhancements for drug-related offenses under RCW 9.94A.533(6) must be concurrent to each other. *Id.*

Although the Legislature changed the statute after *Jacobs*, it did not follow the court’s suggestion in *Jacobs* and use the same language as used in the firearm and deadly weapon statutes to demonstrate its plain intent to treat multiple enhancements consecutively when they are the same type of enhancements. *See* 154 Wn.2d at 603. The plain language of RCW 9.94A.533(6) does not mandate the imposition of multiple enhancements consecutive to each other, but instead only directs that the drug-related enhancements are served consecutively to the underlying offense.

The court misconstrued the statute when sentencing Mr. Medina and erroneously imposed three consecutive 24-month enhancements for

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<sup>2</sup> The Senate Bill Report to SB 6239 is attached as Appendix A.

selling drugs within 1000 feet of a designated school bus stop route.

3. *Remand for resentencing is required.*

An erroneous sentence may be corrected at any time. *In re Personal Restraint of Goodwin*, 146 Wn.2d 861, 873-77, 50 P.3d 618 (2002); *see also In re Pers. Restraint of Moore*, 116 Wn.2d 30, 803 P.2d 300 (1991). Mr. Medina's CrR 7.8 motion correctly challenged the consecutive imposition of multiple sentencing enhancements under RCW 9.94A.533(6). "[A] defendant cannot agree to be punished more than the Legislature has allowed for." *Goodwin*, 146 Wn.2d at 871-72; *In re Hudgens*, 156 Wn.App. 411, 418-19, 233 P.3d 566 (2010). This case should be remanded to strike the 72-month consecutive sentences imposed for the three school bus stop route enhancements and instead impose one 24-month enhancement.

E. CONCLUSION.

Based on the foregoing, this Court should direct the trial court to order that the sentencing enhancements are concurrent to each other.

DATED this 30th day of July 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nancy Collins", written over a horizontal line.

NANCY P. COLLINS (WSBA 28806)  
Washington Appellate Project (91052)  
Attorneys for Appellant

## **APPENDIX A**



# SENATE BILL REPORT

## E2SSB 6239

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As Passed Senate, February 10, 2006

**Title:** An act relating to the impact of controlled substances, primarily methamphetamine.

**Brief Description:** Changing provisions relating to controlled substances.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Hargrove, Johnson, Doumit, Oke, Stevens and Esser; by request of Attorney General).

**Brief History:**

**Committee Activity:** Human Services & Corrections: 1/16/06 1/16/06, 2/1/06 [DPS-WM].

Ways & Means: 2/6/06, 2/7/06 [DP2S].

Passed Senate: 2/10/06, 42-0.

### Brief Summary of Bill

- Declares Legislative intent to provide funding for multijurisdictional task forces and establishes a pilot project for task forces in three rural areas of the state.
- Establishes a drug free workplace program. Qualifying employers will receive a discount on worker's compensation insurance premiums.
- Makes a variety of changes to local health department and department of health provisions related to methamphetamine cleanup.
- Modifies the drug offender sentencing alternative (DOSA) statutes and sentencing enhancements for ranked drug offenses.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 6239 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, McAuliffe and Thibaudeau.

**Staff:** Indu Thomas (786-7459)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 6239 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Doumit, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Fairley, Parlette, Pflug, Rasmussen, Regala, Roach, Rockefeller and Schoesler.

**Staff:** Paula Faas (786-7449)

**Background:** Methamphetamine (meth) is an addictive stimulant drug. A task force convened by the Attorney General in 2005, which included legislators, law enforcement officers, prosecutors, treatment providers, and other stakeholders, assessed the extent of the meth problem in Washington State.

The task force recommended changes to Washington laws in the areas of substance abuse reduction including: 1) drug-free workplace provisions, pilot programs and task forces; 2) cleanup of contaminated property; and 3) criminal penalties and procedures.

Drug Task Force Funding: Previously, two federal grant programs, the Byrne Formula Grant Program and the Local Law Enforcement Block Grant, provided federal funding for local drug task forces. These grants were administered by the Department of Community, Trade, and Economic Development (CTED). In Fiscal Year (FY) 2004, CTED allocated \$4.163 million in federal funding for local drug task forces. Since then, the federal government combined these two programs into the Justice Assistance Grant (JAG), also administered by CTED. The total amount of funding available was reduced by approximately 40 percent in FY 2006 and is projected to be reduced another 40 percent in FY 2007. The current estimate of federal funding for local drug task forces is \$2.343 million for FY 2007. Counties may receive JAG money either by applying for funding through CTED or applying directly to the Department of Justice. While most Washington counties have been part of a federally funded drug task force, 10 counties have not been included. They are Columbia, Island, Jefferson, Kittitas, Klickitat, Lincoln, Mason, Pacific, Pend Oreille, San Juan, Stevens, and Walla Walla.

Chemical Dependency Treatment at the Department of Corrections: The Department of Corrections (DOC) currently limits chemical dependency treatment for inmates to priority inmates. Inmates prioritized for treatment include those determined to be at high risk for violent reoffending and those sentenced under the Drug Offender Sentencing Alternative (DOSA). In fiscal year 2004, the DOC admitted 3,800 inmates to treatment while in prison, out of a total average daily prison population of 16,700.

Senate Bill 5763: Last year the Legislature passed SB 5763. One of the provisions in the legislation provided county governments the authority to impose a 1/10 of 1 percent sales tax dedicated to new and expanded therapeutic drug courts for dependency proceedings, and a new and expanded mental health and chemical dependency treatment services.

Drug-Free Workplace Provisions: In Washington all covered employers, except those self-insured, are required to satisfy their workers' compensation obligations by purchasing insurance from the Department of Labor and Industries (L&I). L&I has several premium discount programs, but does not have a program that gives premium discounts for employers who maintain drug-free workplaces.

In 1996, the Legislature enacted a substantially similar law, which established a premium discount for employers who mandated a drug-free workplace. The legislation terminated automatically in 2001. The 1996 law required L&I to report on the effect of the premium

discount provided in the bill on workplace safety. In the report, L&I concluded that the workers' compensation premium discounts had little measurable effect on workplace safety in most industries.

Cleanup of Contaminated Property: The chemicals which are used in the manufacture of meth can contaminate structural materials, furnishings, wastewater systems, and soils. Decontamination of the property is necessary to reduce the public health risks of injuries and hazardous exposures associated with those chemicals.

The State Board of Health and the Department of Health (DOH) establish standards, procedures, and responsibilities for regulating the occupancy and use of property where hazardous chemicals or chemical residues commonly associated with the manufacture of controlled substances are or may be present. DOH Clandestine Drug Lab Program ensures that contaminated sites are cleaned to public health standards. DOH also certifies contractors to decontaminate properties, and provides technical assistance and training to local health jurisdictions, government agencies, and community organizations.

Local health jurisdictions assess properties to determine the degree and extent of contamination due to chemical residues and other biohazards. The local health officers are also responsible for: 1) providing notice regarding the property to occupants and owners; 2) reporting contaminated property to DOH; 3) determining whether a contractor is required for decontamination; 4) verifying that decontamination has occurred; and 5) recording the decontamination with the county auditor.

The Washington State Model Toxics Control Act (MTCA): MTCA outlines the liabilities and responsibilities of the owner or operator of a site that has been contaminated by a hazardous substance or substances. The cleaning of these contaminated sites can be the responsibility of a broad range of individuals.

Drug Offender Sentencing Alternative (DOSA): Offenders convicted of drug offenses, for which the standard range sentence is over 12 months in prison, may be eligible for the drug offense sentencing alternative (DOSA). In addition to the prison-based DOSA sentencing alternative, the 2005 Legislature enacted a residential treatment DOSA. If the court elects to impose a prison-based DOSA sentence, the term of incarceration is one-half of the midpoint of the standard range during which the Department of Corrections is required to provide an assessment and appropriate drug treatment. The offender must serve the remainder of the midpoint of the standard range in community custody which must include outpatient drug treatment.

**Summary of Bill:** Substance Abuse Reduction: Counties who impose the tax authorized in SB 5763 are eligible to seek up to \$100,000 from the Legislature for additional mental health or substance abuse treatment programs for persons addicted to methamphetamine, beginning in fiscal year 2008 and ending in fiscal year 2010. The bill declares legislative intent to provide funding to add 100 treatment beds to DOC facilities, to be available through fiscal year 2010. Three pilot projects are established to provide rural drug task forces to the three parts of the state. Each pilot project will receive four additional deputy sheriffs, two deputy prosecutors, and one clerk. Legislative intent is declared to provide the pilot projects with \$1.6 million in funding, and to provide a minimum of \$4 million in funding for multijurisdictional task forces currently in operation. The definition of "neglect" of vulnerable adults and children is

amended to include exposure to meth or ingredients of meth when there is intent to manufacture meth. CTED will review funding sources for local meth action teams through the Washington State meth initiative and drug task forces to determine their adequacy and report its findings to the Legislature by November 2006. However, if funding is not provided for the CTED study, the section is null and void.

Drug-Free Workplace Provisions: A program is established for state-fund employers, excluding public employers, to implement certified drug-free workplace programs and receive a five percent discount on certain industrial insurance premiums for up to three years. Employers with programs in place two years prior to the effective date of this legislation may qualify for a 2 percent premium worker discount. To qualify for a premium discount, a drug-free workplace program must include a written policy statement, substance abuse testing protocol, an employee assistance program, employee and supervisor training and confidentiality requirements. L&I is allowed to charge fees to administer the program. The total amount in premium discounts cannot exceed \$5 million per year.

The Department of Social and Health Services will conduct an evaluation to determine the costs and benefits of the program, and L&I will evaluate the effect of the premium discount on workplace safety and the state fund. Preliminary findings must be reported to the Legislature on September 1, 2007 and 2008, with final reports on December 1, 2009.

Authority and Discretion of Local Health Officers: When they have probable cause, local health officers (LHOs) in consultation with law enforcement officers are granted the authority to seek a warrant to conduct inspections of property. LHOs are granted the authority to issue emergency, seventy-two-hour orders when they determine the order is necessary to protect the public health, safety, or the environment.

In addition to condemning or demolishing contaminated property, city or county officials may take additional actions such as prohibiting use, occupancy, or removal of property, or order its decontamination. These actions are appealable; however, restrictions on use, occupancy, or removal of property are enforceable while the appeal is pending. City and county personnel, and their cleanup contractors, must comply with the local health officer's orders.

It is a misdemeanor for anyone to enter property after an order declaring it to be unfit has been issued. Exceptions are provided for governmental officials performing their duties, occupants recovering uncontaminated property, and for others as authorized by a public health officer or superior court.

In addition to decontamination, the owners or authorized contractors are required to submit written work plans for demolition or disposal activities. Property owners are responsible for: 1) the costs of any property testing which may be required to demonstrate the presence or absence of hazardous chemicals; and 2) the costs of the property's decontamination, demolition, and disposal expenses, as well as costs incurred by the local health officer. Within 30 days of issuing an order of unfitness, the local health officer must establish a time period in which decontamination, demolition, and disposal will be completed and fines or legal actions may be taken upon failure to meet the deadline.

Modification to Certification Requirements for Cleanup Workers: The DOH authority to deny, suspend, revoke, or place restrictions on certificates is expanded to include: 1) failing to

perform decontamination, demolition, or disposal work using department certified decontamination personnel; 2) failing to perform work that meets the requirements of the local health officers; 3) failing to properly dispose of contaminated property; 4) failing to cooperate with the DOH or the local health officer; or 5) failing the evaluation and inspection of decontamination projects pursuant to section 208 of this act. Additionally certified workers' fraudulent acts or acts of misrepresentation are expanded to include: 1) applying for, or obtaining a certification, recertification, or reinstatement; 2) seeking approval of a work plan; and 3) documenting completion of work to the DOH or local health officer.

Department of Health Cleanup Evaluations: The DOH must modify its rules to include methods for the testing of porous and nonporous surfaces. The DOH must also adopt rules about independent third party sampling to verify satisfactory decontamination of property.

The DOH may annually evaluate a number of the property decontamination projects performed by licensed contractors to determine the adequacy of the decontamination work. If a project fails the evaluation and inspection, the contractor is subject to a civil penalty and license suspension and is prohibited from performing additional work until deficiencies have been corrected.

Department of Ecology: DOE, in consultation with local health jurisdictions and their corresponding city or county governments, will conduct a pilot program to demonstrate application of existing MTCA and other available resources to cleanup methamphetamine contaminated property for public purpose. DOE will report to the Legislature on the effects of the pilot program by January 1, 2007.

Sentencing Modifications: Sentence enhancements for ranked drug offenses are to be served consecutively. Drug Offender Sentence Alternative offenders will serve 12 months or up to the half point of a sentence, whichever is greater. When the court determines that chemical dependency contributed to the felony offense, the offender, not just drug offenders, must receive a chemical dependency screening report prior to sentencing.

Washington State Institute for Public Policy: WSIPP must conduct two studies and report its findings to the Legislature by January 1, 2007. First, WSIPP will study neighboring states criminal sentencing provisions related to methamphetamine to determine if these provisions provide an incentive for traffickers and manufacturers to relocate to Washington. Second, the WSIPP will study DOSA's impact on recidivism rates for offenders participating in DOSA relative to offenders receiving community treatment or no treatment at all.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** Yes.

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

**Testimony For (Human Services & Corrections):** A multi-disciplinary task force, including representatives from the Legislature and law enforcement, met and proposed this comprehensive approach to reducing methamphetamine use and the criminal behavior that

results from such use. This bill also addresses the significant impact that meth use has on productivity in the workplace and the clean-up of properties contaminated by meth labs.

This bill could be improved by adding a provision to increase the number of treatment beds available in correctional facilities. The drug-free workplace aspects of the bill are a meaningful and effective way of addressing the problem of meth. The bill could be improved if extended to civil drug courts and judicial costs are included in the computation of costs. In order to avoid the potential for evidentiary problems in these cases, the law should require a team approach between law enforcement and the local health officials. The inclusion of juvenile drug courts will have a fiscal impact. The bill could be improved by using consistent terminology and definitions.

**Testimony Against (Human Services & Corrections):** This bill focuses more funding on creating task forces and too little on treatment. Employer drug testing provisions appear to encourage discrimination. The change to the definition of physical abuse is too broad. The sentence enhancements and reduction of good time provisions create a situation which is a disincentive to participation in DOSA. The Model Toxics Control Act has fair and even liability provisions which should not be modified.

**Who Testified (Human Services & Corrections):** PRO: Rob McKenna, Attorney General; Henry Govert, Drug Free Training and Consultation; Martha Harden Cesar, Superior Court Judges Association; Sophia Byrd McSherry, Association of Counties; John Didion, Pacific County Sheriff; Mike Whelan, Grays Harbor County Sheriff; and Steve Whybark, Mason County Sheriff; Sharon Case, Association of Alcoholism and Addiction Programs; Tom McBride, Washington Association of Prosecuting Attorneys; Mo McBroon, Washington Environmental Council.

CON: Jennifer Shaw, American Civil Liberties Union.

**Testimony For (Ways & Means):** This is a balanced bill that deals with treatment, clean-up, and enforcement related to methamphetamine production and usage. The JAG/ Bryne Grant has eroded over the years. When one county or task force targets meth production, the problem is pushed into rural areas of the state. This bill allows for a statewide strategy to combat the problems.

**Testimony Against (Ways & Means):** None.

**Who Testified (Ways & Means):** PRO: Don Pierce, Washington Association of Sheriffs and Police Chiefs; Ken Irwin, Yakima County Sheriff; Chris Johnson, Office of the Attorney General.

**House Amendment(s):** The Striking Amendment removes appropriations language from the intent sections of the bill. The provisions regarding the drug-free work-place program are stricken. The change to the definition of "abuse and neglect" is moved to "negligent treatment or maltreatment." The repeal of RCW 26.44.195(6) is eliminated. The provisions on clean-up of contaminated property are amended to remove the specific reference to hotels and motels. An additional modification indicates that warning postings in hotels and motels must be on the door of the contaminated room not in the lobby of the hotel. Finally, the House amendments require that the Department of Community, Trade, and Economic Development rather than the

Department of Health report to the Legislature on the feasibility of providing incentives to landlords.

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO**

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STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	NO. 45829-2-II
v.	)	
	)	
MARCO MEDINA,	)	
	)	
APPELLANT.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 31<sup>ST</sup> DAY OF JULY, 2014, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] DAVID BURKE, DPA	( )	U.S. MAIL
PACIFIC COUNTY PROSECUTOR'S OFFICE	( )	HAND DELIVERY
PO BOX 45	(X)	E-MAIL VIA COA E-FILE
SOUTH BEND, WA 98586-0045		
E-MAIL: dburke@co.pacific.wa.us		

[X] MARCO MEDINA	(X)	U.S. MAIL
358123	( )	HAND DELIVERY
CEDAR CREEK CORRECTIONS CENTER	( )	_____
PO BOX 37		
LITTLEROCK, WA 98556-0037		

**SIGNED** IN SEATTLE, WASHINGTON THIS 31<sup>ST</sup> DAY OF JULY, 2014.

X \_\_\_\_\_ 

**Washington Appellate Project**  
701 Melbourne Tower  
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# WASHINGTON APPELLATE PROJECT

**July 30, 2014 - 4:07 PM**

## Transmittal Letter

Document Uploaded: 458292-Appellant's Brief.pdf

Case Name: STATE V. MARCO MEDINA

Court of Appeals Case Number: 45829-2

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Maria A Riley - Email: [maria@washapp.org](mailto:maria@washapp.org)

A copy of this document has been emailed to the following addresses:

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