

NO. 45829-2-II

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

MARCO R. MEDINA,

Appellant.

BRIEF OF RESPONDENT

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A.

**STATE'S RESPONSE TO APPELLANT'S
ASSIGNMENT OF ERROR**

The defendant, Marco R. Medina, pled guilty to three deliveries of a controlled substance and possession of a controlled substance. The trial court properly imposed multiple consecutive sentencing enhancements for delivering controlled substances within 1000 feet of a designated school bus route stop.

B.

**STATE'S RESPONSE TO ISSUE PERTAINING TO
APPELLANT'S ASSIGNMENT OF ERROR**

Based on the 2006 amendment to RCW 9.94A.533(6), the trial court lawfully imposed consecutive sentencing enhancements for delivery of controlled substances within 1000 feet of a designated school bus route stop.

C.

STATEMENT OF THE CASE

The State accepts the Appellant's Statement of the Case.

D.

ARGUMENT

**THE TRIAL COURT PROPERLY IMPOSED MULTIPLE
CONSECUTIVE SCHOOL BUS ROUTE STOP
SENTENCING ENHANCEMENTS ON MR. MEDINA.**

Mr. Medina pled guilty to three counts of delivery of a controlled substance within 1000 feet of a designated school bus route stop and one count of possession of a controlled substance. CP 22, 26. Pursuant to RCW 9.94A.533(6), the trial court ruled that the three 24-month school bus route stop enhancements were to be served consecutively to each other. The Court imposed a sentence of 102 months, which included 72 months for three school bus route stop sentencing enhancements. The Appellant argues that the trial court did not have authority to impose consecutive school bus route stop sentencing enhancements. Appellant's Brief at 5-11. According to the Appellant, the legislative "fix" which was passed in 2006 to address the holding in State v. Jacobs, 154 Wash.2d 596, 115 P.3d 281 (2005) was ineffective. Appellant's Brief at 9-10. Under Jacobs, school bus route stop sentencing enhancements must run concurrently. 154 Wash.2d at 602. In 2006, the legislature amended RCW 9.94A.533(6) to read as follows:

(6) 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.605. All other enhancements under this subsection shall run consecutively to all other sentencing provision for all offenses under this chapter.

Laws of 2006, ch. 339 § 301. The last sentence of subsection contains the new additional language.

The acknowledged purpose of this new language was to overturn the decision in Jacobs. See House Bill Report on E255B 6239 (2006) at 7. (Appendix A). By referencing the Jacobs decision in the legislative history, the legislature sought to nullify the holding of Jacobs so that school bus route stop enhancements would run consecutively to each other. According to the Appellant, the legislative change in 2006 did not accomplish its implied purpose because the legislative language did not follow the court's suggestion in Jacobs to use "the same language as used in the firearm and deadly weapon statutes." Appellant's Brief at 10. Thus, from the Appellant's perspective, the 2006 legislative amendment did not evince a plain intent to run multiple school bus stop route sentencing enhancements consecutively to each other. Id.

The problem with the Appellant's argument is that the legislature clearly was aware of the holding in Jacobs which required that school bus route stop sentencing enhancements must be run concurrently. Thus, there would be no need to add additional language to RCW 9.94A.533(6) unless

the legislature wanted to overturn the Jacobs decision. The Appellant's contention that the legislature needed to use the same language that is used for the firearm and deadly weapons enhancements is without merit. This interpretation places form over substance. Also, the Appellant's reference to State v. Delgado, 148 Wash.2d 223, 63 P.3d 792 (2003) is misplaced. In Delgado, there was an absence of relevant language. In the present case, there is relevant language in the 2006 legislative amendment which states that sentencing enhancements shall run consecutively. Because the language change as the 2006 amendment is clear and because the legislative history indicates that the amendment was adopted in response to the Jacobs decision, one reasonably can infer that legislature wanted school bus stop route sentencing enhancements to run consecutively. There is no ambiguity which would allow the application of the rule of lenity.

Furthermore, the Court of Appeals has already determined that the 2006 amendment mandated that multiple school bus stop route sentencing enhancements be served consecutively. As stated in Gutierrez v. Department of Corrections, "the [2006] amendment permitted multiple enhancements and directed that they run consecutively." 146 Wash.2d 151, 156, 188 P.3d 546 (2008). The State asserts that the holding in

Gutierrez should be followed and that the argument of the Appellant should be rejected.

E.

CONCLUSION

For the reasons delineated above, the decision of the trial court which imposed three consecutive 24-month bus route stop sentencing enhancements should not be overturned. The trial court properly imposed consecutive sentencing enhancements under RCW 9.94A.533(6) based on the legislative amendment that was adopted in 2006. The argument of the Appellant which seeks the imposition of concurrent sentencing enhancements does not pass muster. The court should deny the Appellant's request for re-sentencing based on the holding in Gutierrez.

Respectfully submitted this ^{25th} day of September, 2014.

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APPENDIX 'A'

HOUSE BILL REPORT E2SSB 6239

As Passed House - Amended:
March 3, 2006

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

Brief Description: Changing provisions relating to controlled substances.

Sponsors: By 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:

Criminal Justice & Corrections: 2/21/06, 2/23/06 [DPA];
Appropriations: 2/27/06 [DPA(APP w/o CJC)s].

Floor Activity:

Passed House - Amended: 3/3/06, 98-0.

**Brief Summary of Engrossed Second Substitute Bill
(As Amended by House)**

- Authorizes counties imposing the sales and use tax for mental health services to be eligible for \$100,000 annually to provide for mental health or substance abuse treatment for persons with methamphetamine addiction.
- Provides that the Legislature intends to provide 100 additional placements for therapeutic drug and alcohol treatment in prisons until June 30, 2010.
- Establishes pilot enforcement areas in three regions of the state for the purpose of the enforcement of illegal drug laws.
- Expands the term "drug court" to include juvenile drug courts.
- Expands the definition of *neglect* under the state's abuse of children statute and the vulnerable adults statute to include the crime of endangerment with a controlled substance.
- Requires the Department of Community, Trade, and Economic Development to review various funding sources to determine whether funding is adequate to accomplish the mission of methamphetamine action teams.

- Requires the Department of Social and Health Services (DSHS) to consult with faith-based organizations to discuss their appropriate role in providing support services to persons with chemical dependency disorders.
- Requires the Agency Council on Coordinated Transportation to adopt a plan to provide recovering addicts with increased access to existing special need transportation services.
- Requires the DSHS and the Office of the Attorney General to report to the Legislature on the status of ongoing state multimedia campaigns relating to chemical dependency prevention and treatment.
- Provides that personal property is covered by the contaminated property statutes, in addition to real property.
- Allows a court to issue administrative search warrants so that property suspected of methamphetamine contamination can be inspected.
- Permits a local health officer to issue an emergency order forbidding occupancy of a contaminated property.
- Establishes new requirements for the owners of contaminated properties, including decontaminated time-lines set by a local health officer.
- Provides new conditions under which a contractor for the decontamination of property may have his or her certification suspended.
- Establishes third-party sampling of decontamination sites.
- Creates a pilot clean-up project to examine funding sources, and a study to assess options to encourage landlords to rent housing to recovering substance abusers.
- Clarifies that all sentence enhancements relating to violations of the Uniform Controlled Substance Act in drug-free zones are to be run consecutively (instead of concurrently) to all other sentencing provisions.
- Expands the prison confinement time for an offender serving a prison-based Drug Offender Sentencing Alternative (DOSA) sentence to one-half of the midpoint of the standard sentencing range or 12 months, whichever is greater.

- Requires the courts to request chemical dependency screening reports before imposing a sentence upon a defendant that has been convicted of "any" type of a felony where it is found that the offender has a chemical dependency that contributed to his or her offense.
- Requires the Washington State Institute for Public Policy (WSIPP) to study criminal sentencing provisions in other states for all crimes involving methamphetamine.
- Requires the WSIPP to conduct a study of the DOSA program.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass as amended. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kirby, Strow and Williams.

Staff: Yvonne Walker (786-7841), Amy Van Horn (786-7168), Elisabeth Frost (786-5793), Sarah Dylag (786-7109), and Sydney Forrester (786-7120).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Criminal Justice & Corrections. Signed by 29 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Bailey, Buri, Chandler, Clements, Cody, Darneille, Dunshee, Grant, Haigh, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Miloscia, Pearson, Priest, Schual-Berke, P. Sullivan, Talcott and Walsh.

Minority Report: Do not pass. Signed by 1 member: Representative Hinkle.

Staff: Bernard Dean (786-7130).

Background:

I. Sales and Use Tax. In 2005, the Legislature passed an omnibus Mental and Substance Abuse Disorder Treatment bill that authorized a local option sales and use tax of 0.1 of 1 percent to provide new or expanded chemical dependency or mental health services. Moneys were to be used solely for the purpose of providing new or expanded chemical dependency or mental health treatment services and for the operation of new or expanded therapeutic court programs.

As of January 1, 2006, no county has imposed the new authorized tax.

II. Therapeutic Drug and Substance Treatment. The Department of Corrections (DOC) currently limits chemical dependency treatment to certain inmates. Inmates prioritized for treatment include those determined to be at high risk for violent re-offending and those sentenced under the Drug Offender Sentencing Alternative (DOSA). On January 1, 2006, the DOC had a therapeutic community capacity of 475 beds.

III. Multijurisdictional Narcotics Task Forces. The Department of Community, Trade, and Economic Development (DCTED) provides technical and financial assistance to local governments and community-based organizations. Among other responsibilities, the DCTED solicits and allocates federal funding for local narcotics task forces. The vast majority of federal funding for multijurisdictional narcotics task forces is allocated to local governments by the DCTED, which receives the funding through the Justice Assistance Grant (JAG), a federal grant program. However, some counties receive a small amount of federal funding for narcotics enforcement directly through the JAG program.

In Fiscal Year (FY) 2004, the DCTED allocated approximately \$5.5 million in federal funding to support multijurisdictional narcotics task forces. Approximately \$3.5 million of this funding was allocated to local units of government to continue multijurisdictional narcotics task forces, and \$611,177 was allocated to the DCTED to continue the Drug Prosecution Assistance Program in support of multijurisdictional narcotics task forces.

In FY 2006, the total amount of federal funding available was reduced, and the DCTED allocated \$2.4 million in federal funding to support multijurisdictional narcotics task forces, with approximately \$2 million allocated to local units of government to continue multijurisdictional narcotics task forces, and \$330,000 to the DCTED to continue the Drug Prosecution Assistance Program in support of multijurisdictional narcotics task forces.

While most Washington counties have been part of a federally funded narcotics task force, 12 counties (Columbia, Lincoln, Pacific, Pend Oreille, Stevens, Walla Walla, Island, Jefferson, Kittitas, Klickitat, Mason, and San Juan) have not been members of a federally funded narcotics task force.

IV. Drug Courts. Drug courts, unlike traditional courts, divert non-violent drug offenders into court-ordered treatment programs rather than jail or prison. The program allows defendants arrested for drug possession to choose an intensive, heavily supervised rehabilitation program in lieu of incarceration and a criminal record. The term "drug court" is defined as a court that has special calendars or dockets designed to achieve a reduction in recidivism and substance abuse among non-violent, substance-abusing offenders by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic drug testing; and the use of appropriate sanctions and other rehabilitation services.

In 2002, the Legislature passed 2SHB 2338 (Chapter 290, Laws of 2002) that created a Criminal Justice Treatment Account (Account) in the state treasury. In 2003, the Legislature passed ESSB 5990 (Chapter 379, Laws of 2003) which appropriated a total of \$8.9 million to the Account. Funds in the Account may be spent solely for substance abuse treatment and

support services for adult offenders with a chemical dependency problem against whom charges are filed by a prosecuting attorney in Washington and for non-violent adult offenders participating in drug courts. No more than 10 percent of the funds may be spent for support services.

V. Children and Vulnerable Adults. State laws relating to abuse and neglect of children and vulnerable adults include provisions for mandatory reporting and investigation of allegations of neglect or abuse of these populations. A child means any person under the age of 18 years. A vulnerable adult includes a person who: (1) is age 60 years and over who has a functional, physical, or mental inability for self-care; (2) has been found to be incapacitated; (3) has a developmental disability; (4) resides in a nursing home, adult family home, residential habilitation center, or other licensed facility; or (5) is receiving hospice or home health services.

For the purposes of mandatory reporting, investigation, and protective services, *abuse and neglect* of a child means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child. Under the vulnerable adults statute, *neglect* means, conduct by a caregiver that: (1) fails to provide goods and services to maintain physical or mental health or that fails to prevent or avoid physical or mental harm to the vulnerable adult; or (2) demonstrates a serious disregard of consequences constituting a clear and present danger to the vulnerable adult's health, welfare, or safety.

Endangerment with a controlled substance.

The offense of endangerment with a controlled substance (a seriousness level IV, class B felony) occurs when a person knowingly or intentionally permits a dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with (1) methamphetamine; or (2) ephedrine, pseudoephedrine, or anhydrous ammonia, including their salts, isomers, and salts of isomers that are being used in the manufacture of methamphetamine.

VI. The Department of Community, Trade, and Economic Development. The DCTED is responsible for assisting in community and economic development in the state; providing technical and financial assistance to local governments, businesses, and community-based organizations; soliciting private and federal grants for economic and community development programs; and conducting research and analysis to support economic and community development efforts.

VII. Faith-Based Organizations. Residential and outpatient chemical dependency treatment programs may choose to be regulated by the Division of Alcohol and Substance Abuse (DASA) of the Department of Social and Health Services (DSHS). Certification of programs is voluntary. In addition, residential chemical dependency treatment programs must meet licensing requirements established by the Department of Health (DOH).

State and federal treatment funding currently is limited to programs certified by the DASA. To be certified, programs that include a religious component must make participation in that aspect of the program voluntary.

VIII. Agency Council on Coordinated Transportation. In 1998, the Legislature created the Agency Council on Coordinated Transportation (Council), declaring its intent to coordinate transportation services and programs that provide those transportation services to achieve increased efficiencies and to provide a greater number of persons with special transportation needs.

The Council consists of nine voting members and eight non-voting legislative members. The nine voting members include the Secretary of Transportation, who serves as chair; the Secretary of the DSHS; the Superintendent of Public Instruction; and six members appointed by the Governor, representing consumers of special needs transportation, pupil transportation, the Community Transportation Association of the Northwest, the Community Action Council Association, and the State Transit Association. The eight non-voting legislative members include four members of the House of Representatives and four members of the Senate (representing each caucus) and the House and Senate Transportation Committees, House Appropriations, and Senate Ways and Means Committee.

The Council is responsible for: (1) developing standards and strategies for coordinating special needs transportation; (2) identifying, developing, funding (as resources are available), and monitoring demonstration projects; (3) identifying barriers to coordinated transportation; (4) recommending statutory changes to the Legislature to assist in coordinated transportation; and (5) working with the Office of Financial Management to make necessary changes for identification of transportation costs in executive agency budgets.

IX. Anti-Methamphetamine Campaigns. The DASA of the DSHS promotes strategies that support healthy lifestyles by preventing the misuse of alcohol, tobacco, and other drugs, and support recovery from the disease of chemical dependency.

The Office of the Attorney General (AG) is responsible for defending state laws. In 2005, the AG formed an education program partnered with community-based organizations and industry associations to increase the awareness and prevention of the use of methamphetamine.

X. Contaminated Property. State law describes how properties that have been contaminated by the manufacture or use of illegal drugs are to be handled. The provisions involve reporting of the contaminated property, notice of the property being unfit for use, decontamination requirements, and contractor certification.

Reporting and notice of a contaminated property.

A law enforcement officer that discovers a property that has been contaminated to the point where it is unfit for human habitation must notify the local health officer. The local health officer must then post a written notice on the property and conduct an inspection of the property within 14 days. Notice of contamination can also be submitted by the property's owner or be discovered by the local health officer directly. If the local health officer suspects a property is contaminated, the officer may enter and inspect the property.

Determining a property unfit for use.

The local health officer may determine if a property is unfit for use due to chemical contamination. If this determination is made, the local health officer must prohibit use of the

property. Notice of this prohibition must be delivered to the property's owner and posted on the actual property itself. The property owner may request a hearing to dispute the finding that the property is unfit. In the hearing, the property owner has the burden of showing that the property is not contaminated or has already been cleaned to an acceptable level.

Actions upon finding of contamination.

Cities and counties have the option of condemning or demolishing contaminated properties. The local government must wait until all hearings have been exhausted before a demolition can occur. Alternatively, the owner of the property can pay to have the property decontaminated. If the owner chooses this course, then he or she must hire a contractor certified by the DOH. The contractor must present a decontamination plan to the local health officer, and upon its successful execution, the unfit for use determination may be lifted. The local health officer may charge the property owner fees for reviewing the plan and reinspecting the property.

Contractor certification.

A property owner may only hire a contractor for decontamination work if the contractor has been approved by the DOH. The DOH maintains performance standards and standards for training and testing contractors to ensure that they are capable of dealing with the contamination left behind from illegal drug manufacturing. Contractors can lose their certification if they violate certain standards set by the DOH.

XI. Drug-Free School Zones. If an offender is sentenced for committing certain violations of the Uniform Control Substance Act (UCSA) in a drug-free protected zone, a two-year sentence enhancement may be added to the offender's sentence. A person is subject to enhanced sentencing if he or she manufactures, sells, delivers, or possesses with intent to manufacture, sell, or deliver, a controlled substance in public areas such as schools, school buses, school bus stops, school grounds, public parks, public housing projects designated as drug-free zones, public transit vehicles, public transit stop shelters, or civic centers designated as drug-free zones. In addition, the maximum imprisonment sentence and fine may be increased up to double the amount imposed for the underlying conviction (up to the statutory maximum penalty imposed for the offense).

In *State v. Jacobs*, 120 Wn. App. 1059 (2004), the defendants challenged the statutory language regarding the sentence enhancements for violations of the UCSA on the grounds that they believed multiple sentence enhancements should be applied concurrently instead of consecutively. The courts concluded that the statutory language appeared ambiguous and as a result, under the rule of lenity, it was ruled that sentencing courts should apply multiple sentencing enhancements concurrently to each other.

XII. Prison-Based Special Drug Offender Sentencing Alternative. The prison-based DOSA is an alternative sentencing program that allows a court to waive imposition of an offender's sentence within the standard sentencing range. However, the standard sentence range for the offender's current offense must be greater than one year for the offense that he or she is being charged with. If the court determines that a prison-based DOSA sentence is appropriate for an offender, then it may impose an alternative sentence that includes confinement in a state

facility for one-half of the midpoint of the standard sentencing range. While in confinement, the offender must complete a substance abuse assessment and receive, within available resources, substance abuse treatment and counseling.

The offender must spend the remainder of the midpoint of the standard sentencing range in community custody following incarceration. The community custody portion of the sentence must include alcohol and substance abuse treatment. Offenders may also be required to adhere to crime related prohibitions and affirmative conditions as part of their sentence, as well as pay a \$30 per month fee while on community custody to offset the cost of monitoring.

XIII. Chemical Dependency Screening Reports. Before imposing a sentence upon a defendant, the court must conduct a sentencing hearing. As part of that sentencing hearing, the court must order the DOC to complete a chemical dependency screening report before imposing a sentence. These reports are only completed if the defendant has been convicted of a violation (or a criminal solicitation to commit a violation) of the UCSA, where the court finds that the offender has a chemical dependency that contributed to his or her offense.

XIV. Washington State Institute for Public Policy (WSIPP). The WSIPP carries out non-partisan research at the direction of the Legislature. Various studies over the years have centered around the following issues: education, criminal justice, welfare, children and adult services, health, utilities, and general government. Fiscal and administrative services for the WSIPP are provided by The Evergreen State College.

Summary of Amended Bill:

I. Sales and Use Tax. Any county imposing the sales and use tax for new or expanded mental health services is eligible to seek a state appropriation of \$100,000 annually in FYs 2008, 2009, and 2010. The funds must be used to provide additional mental health or substance abuse services for persons with methamphetamine addiction. Local governments receiving appropriated funds are prohibited from supplanting existing funding.

Any county receiving funding must: (1) provide an expenditure plan prior to funds being awarded; (2) report annually to the appropriate committees of the Legislature regarding the number of clients served, services provided, and a statement of expenditures; and (3) spend no more than 10 percent for administrative or information technology costs.

II. Therapeutic Drug and Substance Treatment. The Legislature intends to provide 100 additional placements above the level of treatment placements provided on January 1, 2006, for therapeutic drug and alcohol treatment in prisons until June 30, 2010. The statutory language authorizing this legislative intent expires on June 30, 2010.

III. Multijurisdictional Narcotics Task Forces. The Legislature further intends to provide assistance for jurisdictions enforcing illegal drug laws who have historically been underserved by federally funded state narcotics task forces and are considered to be major transport areas of narcotic traffickers.

Pilot enforcement areas.

Beginning July 1, 2006, three pilot enforcement areas are established for a period of four fiscal years. The pilot enforcement areas will work together to establish and implement a regional strategy to enforce illegal drug laws. The pilot enforcement areas are to be comprised of the following groups of counties:

- Pacific, Wahkiakum, Lewis, Grays Harbor and Cowlitz counties;
- Walla Walla, Columbia, Garfield, and Asotin counties; and
- Stevens, Ferry, Pend Oreille, and Lincoln counties.

Any funding provided by the Legislature must be divided equally among the three pilot enforcement areas. This funding is intended to provide at the minimum, for each of the pilot areas, four additional sheriff deputies, two deputy prosecutors, a court clerk, and clerical staff. The Legislature intends that those counties that have not previously received significant federal narcotics task force funding must be allocated funding for at least one additional sheriff's deputy.

Counties are encouraged to utilize drug courts and treatment programs and to share resources that operate in the region through the use of interlocal agreements. Funding appropriated must be used for the enforcement of illegal drug laws and cannot be used to supplant existing funding.

Funds will be allocated as follows: the Criminal Justice Training Commission will allocate funds to the Washington Association of Prosecuting Attorneys (WAPA) and the Washington Association of Sheriffs and Police Chiefs (WASPC). The WAPA is responsible for the administration of the funding and programs for the prosecution of crimes and court proceedings. The WASPC is responsible for the administration of the funds provided for law enforcement.

The WAPA, the WASPC, and the Washington Association of County Officials must jointly develop measures to determine the efficacy of the pilot programs. They must present their findings regarding these measures to the Legislature by December 1, 2008. These measures must include a comparison of arrest rates before and after the implementation of the pilot program, the reduction of recidivism, and any other factors that are determined to be relevant to evaluating the programs.

IV. Drug Courts. The definition of "drug court" is expanded to include juvenile drug courts in addition to adult drug courts. As a result, in addition to funding substance abuse treatment and support services for adult offenders with a chemical dependency problem, revenues to the Criminal Justice Treatment Account may also be spent for juvenile offenders participating in drug courts.

V. Children and Vulnerable Adults. The definition of *neglect* within both the vulnerable adults statute and the abuse of children statute is expanded to include the crime of endangerment with a controlled substance.

VI. The Department of Community, Trade, and Economic Development. The DCTED is charged with reviewing federal, state, and local funding sources and levels available to local methamphetamine action teams through the Washington State Methamphetamine Initiative to

determine whether funding is adequate to accomplish the mission of the methamphetamine action teams. The DCTED must also review the funding levels for individual drug task forces in Washington to determine if they require additional resources to successfully interdict drug trafficking organizations and clandestine labs statewide. A report on their findings and recommendations must be submitted to the Legislature by November 1, 2006.

The requirement for the DCTED to review the funding sources for the methamphetamine action teams is null and void unless funded in the Omnibus Appropriations Act.

VII. Faith-Based Organizations. The DSHS must consult with faith-based organizations to discuss the appropriate role that such organizations may have in filling support service delivery needs for persons with chemical dependency disorders. The DSHS' findings and recommendations must be submitted to the Legislature by November 1, 2006.

VIII. Agency Council on Coordinated Transportation (Council). As part of its strategic plan, the Council must adopt a plan to provide recovering addicts with increased access to existing special needs transportation services already provided by Medicaid brokerages and local transportation coalitions. The Council is authorized to implement an awareness campaign to focus helping recovering addicts use special need transportation services, the Council website, and the statewide trip planner. The Council must submit a report to the Legislature regarding the implementation of these strategies by November 1, 2006.

IX. Anti-Methamphetamine Campaigns. The DSHS, in consultation with the AG, must submit a report to the Legislature by January 15, 2007, on the status of ongoing multimedia campaigns for the prevention of methamphetamine use, underage drinking, and the promotion of chemical dependency treatment within Washington.

X. Contaminated Property. Two definitions are expanded. The definition of "hazardous chemical" is expanded to include the final product of drug manufacturing, and not just the precursor elements needed to manufacture illegal drugs. In addition, the definition of "property" is expanded to include personal property (in addition to real property), and a clarification is added that real property includes motels, hotels, and storage sheds. *Reporting and notice of a contaminated property.*

If a local health officer is denied access to a property he or she reasonably suspects is contaminated due to the manufacture of illegal drugs, the officer, in consultation with law enforcement, may seek an administrative warrant from a court in order to perform administrative inspections and to seize property. The court must determine that probable cause exists that the property is contaminated.

In an instance, where a local health officer has been notified that a hotel or motel has been contaminated by hazardous chemicals, the officer must post a written warning on the premises. If the property includes a hotel or motel holding a current license, the warning posting must be limited to being placed inside the room or on the door of the contaminated room. Written warning postings cannot be placed in the lobby of the facility. *Determining a property unfit for use.* Local health officers may issue emergency orders that a property is unfit for use if immediate action is necessary to protect public health, safety, or the

environment. Affected persons must comply with emergency orders immediately, and the orders may remain in place for up to 72 hours. If the local health officer believes the property is still unfit for use after this time, the non-emergency procedures for declaring a property unfit for use must be followed. *Actions upon finding of contamination.* The local city and county authority is expanded beyond condemning or demolishing the property. The local government can also prohibit use of the property, remove personal property, or act to decontaminate the property. Demolition and condemnation must still wait until after all appeals have been heard, but prohibition of use can occur immediately. Any person violating an order to not enter a contaminated property may be prosecuted for a misdemeanor. The property owner is permitted to contract for more than just the decontamination of the property. The owner may also contract for the property to be demolished. Demolition, like decontamination, must still be done by a certified contractor. The local health officer has 30 days to establish a time-line for the decontamination or demolition of the property, which property owners may appeal. Property owners are responsible for the costs of property testing, all costs of decontamination, and all costs incurred by the local health officer as a result of enforcing the decontamination law. *Contractor Certification.* The training and testing requirements that decontamination contractors must satisfy are expanded to include the workers of contractors. In addition, the DOH is given the authority to place restrictions on the certification of contractors, instead of only being able to suspend or revoke a certification. The list of infractions that may result in the conditioning or revoking of a contractor's certification are expanded to include failure to properly dispose of contaminated property, committing fraud or misrepresentation, failure to properly complete the decontamination work, failure to cooperate with the local health officer, or failing ongoing evaluations and inspections. In addition to contractors, supervisors and workers may also be fined \$500 for violations of this law. Contractors must pay for their own training, certification, and background checks, according to a fee schedule set by the DOH. *Third-Party Sampling.* The DOH is given the authority to hire third parties to annually evaluate a sample of decontamination projects. The evaluations must be done by independent environmental contractors or a state or local agency. The State Board of Health is required to adopt rules governing independent third-party sampling, including rules for background checks and certification of third-party samplers. If a contractor's decontamination work does not satisfy the third-party inspection, the contractor may be subject to a license suspension and a fine of up to \$500. *Study on Providing Housing to Recovering Substance Abusers.* The DCTED must study the feasibility of providing incentives and protections to landlords to encourage them to rent housing to recovering substance abusers or convicted drug offenders. The DOH must make a final report to the Legislature by January 1, 2007. *Cleanup Pilot Project.* The Department of Ecology (DOE), in partnership with local governments and health departments, must conduct a pilot program to demonstrate contamination clean-up under existing legal frameworks and grant programs under the Model Toxics Control Act, and other available authorities and funds to clean up property for a public purpose. The pilot will include sites with soil or groundwater contamination and structure and solid waste contamination. The DOE must issue a report to the Legislature by January 1, 2007.

XI. Drug-Free School Zones. Statutory language is clarified to specify that all sentence enhancements relating to violations of the UCSA in drug-free zones are to be run consecutively to all other sentencing provisions for all sentences under the Sentencing Reform Act.

XII. Prison-Based Special Drug Offender Sentencing Alternative. The prison confinement time for an offender serving a prison-based DOSA sentence is expanded. If the court determines that a prison-based DOSA sentence is appropriate for an offender, then it may impose the alternative sentence that includes confinement in a state facility for one-half of the midpoint of the standard sentencing range or 12 months, whichever is greater.

XIII. Chemical Dependency Screening Reports. In addition to those offenders that have been convicted of a drug crime, the court must order the DOC to complete a chemical dependency screening report before imposing a sentence upon a defendant that has been convicted of "any" type of a felony where the court finds that the offender has a chemical dependency that contributed to his or her offense.

XIV. Washington State Institute for Public Policy. The WSIPP must conduct a study of criminal sentencing provisions of neighboring states for all crimes involving methamphetamine. The report must include any criminal sentencing increases necessary under Washington law to reduce or remove any incentives methamphetamine traffickers and manufacturers may have to locate in Washington. The report must be completed and submitted to the Legislature by January 1, 2007.

The WSIPP must also conduct a study of the DOSA program. The WSIPP must study recidivism rates for offenders who received substance abuse treatment while in confinement as compared to offenders who received treatment in the community or received no treatment. The WSIPP must report its findings to the Legislature by January 1, 2007.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after the adjournment of the session in which the bill is passed, except for section 108, the expansion of the definition of neglect in the abuse of children statute, which takes effect January 1, 2007. Each section of the bill is null and void unless specific funding for each section of the bill is provided in the budget.

Testimony For: (Criminal Justice & Corrections) (In support) Meth use is truly a deadly disease. The good news is that since 2001 the number of meth labs in the state has decreased. But reducing meth labs is not the same as reducing meth use. There continues to be an increase in meth addiction in this state. This is an omnibus bill that takes a comprehensive look at not only meth issues but all drugs in general. The issues surrounding treatment, housing, transportation, and employment are all necessary for ensuring that offenders do not continuously cycle in and out of the system. Although the state has tried to solve Washington

drug problems in a piecemeal approach in the past, this bill is a way to address the meth issue in a comprehensive way.

This bill is a bi-partisan review of the challenges faced by law enforcement and local health officers in responding to drug contaminated properties. Many times they are asked to search certain properties but the owners will not allow them to do that. The section of the bill that allows for administrative warrants to be issued will help local health officials to do their job easier. The bill will help to place certain statutes relating to local health officers' authority presently residing in other statutes in their rightful place. It will also make it easier for the health officials to work with local prosecutors and local law enforcement officers to carry out the intent of this bill.

The Justice Assistance Grant (also known as the Byrne Grant) is administrated through the DCTED. Currently, the President's budget will eliminate the state's grant funding altogether. Historically, this money has funded a variety of programs. The sections of E2SSB 6239 allocating \$4 million to local jurisdiction will help to backfill that money. In addition, the sections that give localities up to \$100,000 for drug treatment and adds 100 beds to the DOC are also a good addition to expand drug treatment availability throughout the state. This bill will help to backfill the federal funding that was cut for drug task forces.

The drug-free work place provisions of the bill are almost identical to some provisions that went into place back in 1966 through 2000. Since eligible employers are required to have health insurance and employee assistance programs, businesses saw the benefits of this program radiate out to the worker, the family, the community, and to the neighborhoods. This bill is a good anti-meth, anti-drug, and pro-employee bill. Although, the bill provides opportunity for rehabilitation, in the past when employees have tested positive for drugs, 40 percent turned down the opportunity for getting help and keeping their jobs. This is a good bill for small businesses since most of the large companies already have a program like the one listed in the bill.

This bill takes a three-pronged approach at addressing the challenges around addiction, the environment, and law enforcement.

(Neutral with concerns) Although many of the areas identified for pilots have a disproportionate rate of people having a chemical dependency problem, many of the rural counties are border counties to Canada and they would like to be part of the pilot meth enforcement areas proposed in the bill. The definition of real property should also be expanded to include land, parcel of land, and plots of land.

This bill is a way for the entire state to deal with meth in a proactive way.

Testimony For: (Appropriations) (In support) This bill is dramatically important to rural counties in the state. We need a statewide strategy to combat methamphetamine. We've seen some success in the I-5 corridor, but it's been driven into the rural counties. Property crime is often an indicator of meth activity. Many of these indicators have increased since 2001. In Pacific County, burglaries have gone up 31 percent, shoplifting has increased by 70 percent, theft has increased by 30 percent, vehicle prowls have increased by 76 percent, and motor

vehicle thefts have gone up 149 percent. Drug task forces work and put the responsibility on local law enforcement where it belongs. For many years Washington ranked second in the nation for meth. We need legislative support to maintain task forces. This bill was funded in the Senate budget. It would restore the level of funding from 2004. Without drug task forces in place, there will be far-reaching consequences.

This bill is a request bill from the Attorney General (AG) and is a direct product of the AG's Methamphetamine Task Force. It addresses treatment, prevention, law enforcement, public health, and drug courts. The change to the definition of drug courts to include juvenile drug courts wasn't intended to allow those courts to access Criminal Justice Treatment Account funding. The change was designed to clarify the legal authority to establish juvenile drug courts.

(Support with concerns) We have concerns with the Criminal Justice and Corrections Committee striker. It contains an exemption for hotels and motels and changes Part III of the bill. This language should be restored and the hotel/motel language should be stricken.

(Concerns) It is alarming that SB 6239 would require the Department of Health to post a notice of contamination at a hotel or motel, if such contamination is suspected by local law enforcement or others. The Department of Health wouldn't even inspect the property for another 14 days.

Testimony Against: (Criminal Justice & Corrections) There will be an amendment offered to exempt hotels and motels from this bill. As an industry they already work with the DOH and there have not been any issues regarding the industry not cooperating. If a hotel had to post a notice on its front door for 45 days about it having a meth-lab, then it would literally kill their business.

In addition, businesses go through a rate setting process every year which is difficult and contentious. Employers and workers who contribute to the worker compensation system are always concerned about what their rates are going to be. Superimposing a 5 percent reduction in the premiums that are being paid would create a crisis in terms of the funding of the 608 and 609 funds. There was no consultation with the stakeholders in putting together this portion of the bill. You are giving a 5 percent windfall to companies that already have drug-free work environments. They would get a rebate for doing nothing. This causes a cost shift to other employers who would have to deal with the worker's compensation system.

It is not a good strategy to use worker compensation premiums for drug-free work places, especially since most employers have already created them.

Section 111 of the bill is a problem to the DSHS. It eliminates the non-entitlement language relating to provisions of voluntary services to parents in neglect cases as an alternative to filing dependency petitions. Since these services are voluntary, the DSHS wants to be sure that these services are available when needed and are available within legislatively appropriated amounts.

Testimony Against: (Appropriations) None.

Persons Testifying: (Criminal Justice & Corrections) (In support) Senator Hargrove, prime sponsor; Senator Johnson; Rob McKenna, Attorney General; Sandra Fangen Ross, Clallam County Meth Action Team and Clallam County Sheriff's Office; Tom Pool, Drug-Free Business; Henry Govert, Drug-Free Training; Tony Barrett, Washington State Association of Local Public Health Officials; Seth Dawson and Paul Billeci, CiviGenics, Inc., Janice Ellis, Snohomish County Prosecuting Attorney; John Flood, Snohomish Regional Drug Task Force; Jonelle Fenton-Wallace, Snohomish Health District; Don Pierce, Washington Association of Sheriffs and Police Chiefs; Mike Whelan, Grays Harbor County Sheriff; John Didion, Pacific County Sheriff; and Marie Sullivan and Paul Perz, Department of Community, Trade, and Economic Development.

(Neutral with concerns) Robert Malody, Department of Labor & Industries.

(Opposed) Sandra Miller, Ramada Inn Governor House; Robert Stern, Washington State Labor Council; Mike Ryhard, Teamsters; and David Del Villar Fox, Department of Social and Health Services.

Persons Testifying: (Appropriations) (In support) Larry Taylor, Benton County Sheriff and Washington Association of Sheriffs and Police Chiefs; John Didion, Pacific County Sheriff; and Chris Johnson, Office of the Attorney General.

(Support with concerns) Vicki Kirkpatrick, Association of Local Public Health Officials.

(Concerns) T.K. Bentler, Washington State Hotel and Lodging Association.

Persons Signed In To Testify But Not Testifying: (Criminal Justice & Corrections) Steve Whybark, Mason County Sheriff; Melanie Roberts, Department of Corrections; Kris Tefft, Association of Washington Businesses; T. K. Bentler, Washington State Hotel and Lodging Association; John Woodring, Rental Housing Association and Manufactured Housing Communities of Washington; and Maryanne Guichard, Department of Health.

Persons Signed In To Testify But Not Testifying: (Appropriations) None.

PACIFIC COUNTY PROSECUTOR

September 25, 2014 - 12:11 PM

Transmittal Letter

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Case Name: State vs. Marco R. Medina

Court of Appeals Case Number: 45829-2

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