

Supreme Court NO. 97121-8
(COA No. 78154-5-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DAMIEN DANIELS,

Petitioner.

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

The Honorable Dean S. Lum

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

DAMIEN DANIELS, petitioner in this Court and appellant below, through his attorneys Katelyn Weaver and Edwin Aralica, asks this Court to accept review Court of Appeals decision terminating review in its published opinion, referred to in Section II, below. RAP 13.3(a)(1); RAP 13.4(b).

II. COURT OF APPEALS DECISION

Mr. Daniels seeks review of the published Court of Appeals decision dated March 25, 2019, a copy of which is attached hereto as Appendix A.

III. ISSUES PRESENTED FOR REVIEW

1. The Court of Appeals decided in a published opinion that the plain language of RCW 2.30.030 is unambiguous and that the consent provision in subsection 1 requires the prosecutor's case-by-case consent on criminal cases in order to be accepted to participate in therapeutic courts. The Court of Appeals looked to the text of the Senate Bill Report, failed to accurately understand Mr. Daniels' legal arguments, and neglected to account for Mr. Daniels' arguments. Did the Court of Appeals misapply the rules of statutory construction?
2. The prosecutor strictly adheres to the eligibility guidelines established in the King County Policy and Procedure Manual, which was drafted under the previous therapeutic courts statute. The Manual does not allow for exceptions. RCW 2.30.030 states in part that the therapeutic court retains discretion to establish eligibility requirements. The Court of Appeals published its decision finding that prosecutorial consent is required on all criminal cases. Is the question of whether RCW 2.30.030 can be interpreted as requiring the prosecutor's consent before an individual case criminal can be eligible to be resolved in a therapeutic court an issue of substantial public importance?
3. The Policy and Procedure Manual contains strict guidelines that limit eligibility for criminal defendants to participate in King County Drug

Diversion Court. The manual deems ineligible defendants with certain prior criminal convictions, or if certain facts are/are not present on their case. The legislature enacted RCW 2.30.030, which contains language about the benefits of reaching broad spectrum of potential participants, with a wide variety of therapeutic courts. Does the Court of Appeals' decision that the prosecutor's consent is required in criminal cases undermine the legislature's intent to make therapeutic courts more widely available for individuals in need of rehabilitation and services?

IV. STATEMENT OF THE CASE

On July 3, 2017, the King County Prosecutor's office (State) charged Damien Daniels with one count of Attempting to Elude a Pursuing Police Vehicle. He desires to resolve his case in Drug Court (DDC). Attempt to Elude, however, is not included on the King County Drug Diversion Court ("KCDDC") Policy and Procedure Manual's list of charges eligible for Drug Court. (Appendix B). KCDDC currently uses the criteria listed in the Manual to determine a criminal case's eligibility for acceptance into DDC.

On January 29, 2018, Mr. Daniels requested a motion hearing to address his eligibility for DDC. The following day, on January 30, 2018, he appeared before the court on the mainstream case setting calendar, and the State amended the charging document and added four additional counts: Burglary in the Second Degree; Possession of a Stolen Vehicle; Assault in the Third Degree; and VUCSA.

Judge Dean Lum heard Mr. Daniels' motion in Seattle in open court on February 13, 2018. Judge Lum found that RCW 2.30.030 did not authorize the court to admit him case into DDC absent the prosecutor's consent. The Court's oral ruling was reduced to a written order, which incorporated to the Court's oral ruling.

On April 25, 2018, Division One of the Court of Appeals accepted Mr. Daniels' motion for discretionary review of the trial court's decision. The Court of Appeals also granted Mr. Daniels' motion to stay his trial court proceedings pending discretionary review. In a published decision the court denied Mr. Daniels relief and held that the plain language of RCW 2.30.030 requires prosecutor consent in all criminal cases and the court only has discretion to establish eligibility criteria and to decline to accept cases. Appellant timely filed notice of intent to seek discretionary review.

V. ARGUMENT

In interpreting RCW 2.30.030, the Court of Appeals departed from basic and well-established tenets of statutory interpretation, which produced a published opinion containing unsound legal conclusions. The Court of Appeals' misapplication of the rules of statutory construction produced an outcome that, at minimum, conflicts with the legislature's expressed intent to provide those involved in the judicial system with access to treatment and services as an alternative to the traditional court process.

Eligibility for therapeutic courts is an issue of substantial public importance; a determination of how eligibility standards are established and who the ultimate gatekeeper to participation will have a significant impact on civil and criminal cases across the entire State of Washington, as well as the communities that stand to benefit from the treatment and services provided by therapeutic courts. Notably, prior to Mr. Daniels' case, there is no published authority interpreting RCW 2.30.030 on the issue of eligibility. Review by this Court will correct the misapplication of the rules of statutory interpretation, ensure that the legal and logical inconsistencies contained in the published opinion are corrected and clarified, and that the legislature's true intent behind Chapter 2.30 RCW is achieved.

1. **The Court of Appeals misapplied the rules of statutory interpretation when it focused on subsection 1 which does not address eligibility, instead the Court should have analyzed subsection 2 which clearly addresses eligibility.**

Instead of beginning the statutory analysis with the explicit, black-letter text of RCW 2.30.030 to interpret the plain meaning of the statute, which is the first step of statutory interpretation, the Court of Appeals elected to begin its interpretation of RCW 2.30.030 by citing to a portion of the Final Bill Report for S.B. 5107. Statutory interpretation requires the court to first give effect to the plain meaning of a statute as an expression of legislative intent, before looking at legislative history. In other words, the

analysis begins with plain language analysis. *State v. Larson*, 184 Wn.2d 843, 848, 365 P.3d 740, 742 (2015) (“If the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.”). Only if the plain language of the statute remains susceptible to more than one meaning, thereby making the statute ambiguous, does the statutory analysis turn to the principles of statutory construction, legislative history, and case law.

- a. *The Court of Appeals misstates Mr. Daniels’ plain language analysis and fails to address his argument explaining how each portion of the statute can be given meaning even when the sentence requiring prosecutorial consent applies only to subsection 1.*

The Court of Appeals’ published opinion misstates Mr. Daniels’ position regarding the ambiguity of RCW 2.30.030. The Court of Appeals wrote that, “Daniels claims ambiguity because RCW 2.30.030(1) requires prosecutor consent but RCW 2.30.030(2) invests therapeutic court judges with discretion to decline to accept cases and to define process and eligibility criteria [sic]¹ for therapeutic courts. RCW 2.30.030(2).” However, Mr. Daniels’ brief specifically states that, “the plain language of

¹ The Court of Appeals either misquotes or inaccurately summarizes the language of RCW 2.30.030(2). The statute reads in relevant part as follows: “therapeutic court judge retains the discretion to decline to accept a case into the therapeutic court, and while a therapeutic court retains discretion to establish processes and determine eligibility criteria...” (Emphasis added.)

RCW 2.30.030 is unambiguous...” Appellant’s Brief, p. 10. Mr. Daniels extrapolates further on the very topic again later in the same brief:

[T]he Court in this case cannot interpret RCW 2.30.030(1) and (2), in a way that would render either portion meaningless—which would result, should the Court adopt the State’s assertion that the prosecutor must consent on each case. Instead, the Court must find a reasonable interpretation that gives both provisions effect. A reasonable—and the logical—interpretation is that subsection 1 addresses the creation of therapeutic courts in a given jurisdiction, whereas subsection 2 addresses what happens after a jurisdiction creates a therapeutic court: it discusses how to establish processes and determine eligibility for admission to the therapeutic court. **Clerk’s Pages 140.** The jurisdiction’s prosecuting authority does need to consent to the creation of a therapeutic drug court for criminal cases in its jurisdiction. This makes sense because the sentence stating that the prosecutor’s consent is required is in subsection 1, which discusses the creation of such courts. In short, both subsections (1) and (2), can be given effect if section (1) is interpreted as referring to the development and processing of cases in ways that depart from traditional judicial processes not to making eligibility determinations.

Appellant’s Brief, p. 19 (emphasis added). The Court of Appeals failed to address the argument that the prosecutorial consent provision pertains to subsection 1 alone. “Unlike Daniel’s construction of the Statute, which effectively renders the prosecutor consent language meaningless except as

to the general approval of therapeutic courts, this interpretation gives effect to both provisions.” *Daniels*, 437 P.3d at 726.

In essence, the Court of Appeals misunderstood Mr. Daniels’ position regarding the ambiguity of RCW 2.30.030, and failed to meaningfully address Mr. Daniels’ reasonable, functional, and logical explanation of why the consent sentence applies only to subsection 1.

This Court should accept review and clarify the Court of Appeals’ rationale because, as it stands, it relies on a mistaken understanding of Mr. Daniels’ argument. Also, the Court should resolve the issue the Court of Appeals left outstanding when it failed to meaningfully address Mr. Daniels’ argument.

b. *The Court of Appeals fails to look to the plain meaning of the statute first, and instead improperly relies on the Senate Bill Report to suggest the legislature intended to*

The Court of Appeals acknowledged these steps of statutory interpretation as being guiding precedent, but then didn’t apply the first step- looking to the plain meaning of the statute. The Court of Appeals began instead by quoting the Senate Bill Report under the guise of providing the reader with a portion of the new statute, RCW 2.30.030. However, had that been the goal, it seems that quoting the actual text of the statute would better accomplished that goal. The Court of Appeals skipped a step and interpreted the Senate Bill Report language to explain the legislature’s

intent was to have the prosecutorial consent requirement apply to both the establishment and eligibility paragraphs. However, the use of Senate Bill Report at this point in interpreting RCW 2.30.030 is premature because the plain meaning of the statute is not ambiguous.

The Court of Appeals suggests that, because the *paragraph structure* seen in Senate Bill Report does not separate into different paragraphs the last sentence of subsection 1 regarding prosecutorial consent and subsection 2, it would then follow that RCW 2.30.030 should be read the same way. The mere suggestion that the paragraph structure contained Senate Bill Report can provide guidance in determining legislative intent behind RCW 2.30.030 is misleading, improper, and requires correction by this Court. Although the Court of Appeals stops one step short of explicitly stating that the Senate Bill Report is *proof* of the legislature's intent not to separate the topics of prosecutorial consent and eligibility, it may as well have when, immediately following the Senate Bill Report, the published opinion states that, “[t]he statute subsequently codified this structure as follows...” and then begins to quote the enacted statute. State v. Daniels, 437 P.3d 723, 725 (2019)(emphasis added). The Senate Bill Report contains an explicit warning stating, “[t]his analysis is not a part of the legislation, nor does it constitute a statement of legislative intent.” By

allowing the published opinion to stand uncorrected, the danger that future courts and litigants will repeat the misinformation indefinitely.

Interestingly, the Court of Appeals incorporated the Senate Bill Report into its statutory analysis despite acknowledging that interpretation of an unambiguous statute entails plain language analysis, and that only when the statute is deemed ambiguous does the court look to the other principles of statutory construction, legislative history, and case law to discern intent. The Court of Appeals confidently and clearly concluded that RCW 2.30.030 was unambiguous. However, it began its interpretation of RCW 2.30.030 by looking to Senate Bill Report. Thus, the Court of Appeals either ignored its own statement of the law regarding statutory interpretation of an unambiguous statute and decided to misleadingly cite to the Senate Bill Report as proof of legislative intent, or it inadvertently agreed that RCW 2.30.030 is in fact ambiguous by citing to the Senate Bill Report—which clearly falls outside of what is considered as plain language analysis.

2. **The Court of Appeals' misapplication of the rules of statutory interpretation and its fundamental misunderstanding of Mr. Daniels' argument resulted in the Court of Appeals publishing an opinion that conflicts with the expressed intent of the legislature.**

The Court of Appeals misapplication of the rules of statutory interpretation produce an outcome that conflicts – if not undermines -- the

legislature's expressed intent and the stated purpose behind establishing and operating therapeutic courts. The Court of Appeals essentially grants the power of gatekeeper of the therapeutic courts to the prosecutor. The Court of Appeals' decision means that the prosecutor can thwart *any criminal case* from being resolved in a therapeutic court simply by withholding its consent. Notwithstanding the problems this creates on ethical and constitutional levels, allowing the prosecutor to withhold consent (and/or continue to follow the current stricter guidelines provided by the Policy and Procedure Manual (CP 40)) will undoubtedly result in fewer therapeutic court participants, which means fewer people having the opportunity to obtain treatment services, and fewer benefits conferred to society as a result of that person obtaining treatment. This is the opposite of what the legislature clearly intended when it repealed the former therapeutic courts statute, and enacted the current statute, RCW 2.30.030.

The prior statute RCW 2.28.170, contained specific minimum eligibility standards that could not be overcome. It stated:

[a]ny jurisdiction that establishes a drug court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The drug court may adopt local requirements that are more stringent than the minimum."

RCWA § 2.28.170(b). The statute proceeded to explicitly delineate specifically the “minimum requirements.”² Thus, if the potential participant had a prior conviction of a serious violent offense or a sex offense, he or she was not eligible; if he or she used a firearm—ineligible.

The current statute substantially altered the above language to expand the pool of potential therapeutic court participants by doing away with the “minimum requirements,” and vesting with the trial court discretion to determine eligibility. RCW 2.30.030 states: “[t]he legislature recognizes the inherent authority of the judiciary... to establish therapeutic courts.” RCW 2.30.010(3). With respect to eligibility, the statute provides:

“[a] therapeutic court judge retains the discretion to decline to accept a case into the therapeutic court, and... a therapeutic court retains discretion to establish processes and determine eligibility for admission to the therapeutic court process unique to their community and jurisdiction...”

RCW 2.30.030(2). The fact alone that RCW 2.30.030 lacks the language mandating “minimum [eligibility] requirements,” as was previously seen in RCW.2.28.170, illustrates the legislatures intent to expand the pool of

²“(i)The offender would benefit from substance abuse treatment; (ii) The offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030; and (iii) Without regard to whether proof of any of these elements is required to convict, the offender is not currently charged with or convicted of an offense; (A) That is a sex offense; (B) That is a serious violent offense; (C) During which the defendant used a firearm; or (D) During which the defendant caused substantial or great bodily harm or death to another person.” RCW 2.28.170(b)(*repealed*).

possible participants, and allow even more citizens the opportunity to benefit from the treatment services provided by therapeutic courts. In fact, not only does RCW 2.30.030 not contain the minimum standards requirement, the current statute grants the court discretion to make special findings and allow a defendant into the therapeutic court notwithstanding having certain prior or current convictions.³ That is, the court can find that certain individuals who might otherwise be considered inappropriate for a diversionary court, are not automatically barred for life. This means that the 45 year-old woman with a heroin problem who started using after she accidentally hit and killed a pedestrian walking on the side of the highway when she was 18 years-old, who needs help because she couldn't stop using on account of her ongoing struggle from trauma experienced from bearing witness to the accident, and from the overwhelming shame and guilt she felt from taking someone's life—she is not automatically barred from therapeutic courts for life. Instead, the judge exercise the discretion granted

³ “Except under special findings by the court, the following individuals are not eligible for participation in therapeutic courts: (a) Individuals who are currently charged or who have been previously convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030; (b) Individuals who are currently charged with an offense alleging intentional discharge, threat to discharge, or attempt to discharge a firearm in furtherance of the offense; (c) Individuals who are currently charged with or who have been previously convicted of vehicular homicide or an equivalent out-of-state offense; or (d) Individuals who are currently charged with or who have been previously convicted of: An offense alleging substantial bodily harm or great bodily harm as defined in RCW 9A.04.110, or death of another person.” RCW 2.30.030(3).

by the legislature—likely for situations similar to this—and allow her to resolve her criminal case in therapeutic court.

The legislature intended for this type of inclusivity when it enacted Chapter 2.30 RCW. In fact, the legislature specifically found “that by focusing on the specific individual’s needs, providing treatment for the issues presented, and ensuring rapid and appropriate accountability... therapeutic court may decrease recidivism, improve safety of its community, and improve the life of the program participant.” RCW 2.30.010(2). In fact, the legislature stated that “trial courts have proved adept at creative approaches in fashioning a wide variety of therapeutic courts addressing the spectrum of social issues that can contribute to criminal activity.” RCW 2.30.010. (Emphasis added.) The legislature is openly urging and encouraging jurisdictions to establish a wide variety of therapeutic courts to address a spectrum of social issues. This language demonstrates the legislature’s intent to have therapeutic courts address a number of different social issues that citizens in our jurisdictions face. The legislature’s intent is stifled and undermined by the Court of Appeals’ decision to require the prosecutor’s consent.

Requiring the prosecutor’s consent is particularly exclusive and serves to stifle the number of participants allowed in therapeutic courts because many jurisdictions—King County included—still operate under the

old eligibility criteria that was established under the previous statute. For example, not only does the King County Policy and Procedure Manual still contain prohibitions based on the old statute's "minimum requirements," it contains dozens of other factors that would render a potential participant ineligible. For example, for a drug offender who was caught with pills to be eligible for DDC, he or she would have had to have possessed no less than 50 pills, but no more than 100. So, a drug user in need of treatment who happened to use ½ of his stash just before getting caught with 25 pills of oxy would be ineligible.

The manual still in use today does not embody the legislature's intent when it enacted RCW 2.30.030. By deciding that the prosecutor must consent in criminal cases, the Court of Appeals caused the resulting "world" to be in opposition with what the legislature intended.

3. The Court of Appeals' decision is an issue of substantial public interest

Eligibility for therapeutic courts is an issue of substantial public importance; a determination of how eligibility standards are established and who the ultimate gatekeeper to participation is will have a significant impact on civil and criminal cases across the entire State of Washington, as well as the communities that stand to benefit from the treatment and services provided by therapeutic courts.


There are a wide variety of therapeutic courts across the State, including drug courts, veteran's courts, and dependency courts. In addition to the sheer volume of courts in the State, there are a vast number of Washington citizens who would potentially be excluded from participating, and the impact that could have on their families and society as a whole if behaviors are left untreated. Notably, prior to Mr. Daniels' case, there is no published authority interpreting RCW 2.30.030 on the issue of eligibility for participation in therapeutic courts.

VI. CONCLUSION

For the above reasons, Mr. Daniels respectfully requests that review be granted pursuant to RAP 13.4(b).

Dated Wednesday April 24, 2019.

King County Department of Public Defense—ACA Division



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VII. APPENDIX

Court of Appeals Published Opinion.....Appendix A
RCW 2.30.010.....Appendix B
RCW 2.30.030.....Appendix C
RCW 2.28.170.....Appendix D
RCW 2.30.020Appendix E

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent,

v.

DAMIEN ANDREW DANIELS,

Appellant.

No.78154-5-I

DIVISION ONE

PUBLISHED OPINION

FILED: March 25, 2019

CHUN, J. — The State charged Damien Daniels with five felonies. Daniels sought Drug Diversion Court (DDC) to address his substance abuse issues, but certain factors rendered him ineligible under the established criteria. During a hearing to address his eligibility, the trial court ruled that RCW 2.30.030 did not authorize it to admit a case to DDC without the prosecutor's consent. We agree with the trial court. With respect to therapeutic courts, the plain language of RCW 2.30.030 requires prosecutor consent in all criminal cases but gives those courts discretion to establish eligibility criteria and to decline to accept cases.

I.

BACKGROUND

The State initially charged Daniels with one count of attempting to elude a pursuing police vehicle, and subsequently amended the information to include second degree burglary, possession of a stolen vehicle, assault in the third degree of a law enforcement officer, and Violation of the Uniform Controlled Substances Act (VUCSA).

To address his substance abuse problems, Daniels sought DDC at King County Superior Court as a means to resolve his criminal case. However, under the Drug Court Eligibility Criteria in the manual for the King County Adult Diversion Court (the Manual), felony assault and attempt to elude do not qualify as crimes eligible for DDC. Daniels's criminal history also included convictions rendering him ineligible for DDC.

Daniels does not dispute his ineligibility. Nevertheless, he wanted admission to DDC. The State objected. Daniels requested a motion hearing to address his eligibility for DDC. As an initial step, Daniels asked the court to resolve whether the court retains discretion under RCW 2.30.030 to admit a defendant to DDC over the prosecutor's objection. The trial court ruled that RCW 2.30.030 does not grant authority to the court to accept a criminal case into DDC if a prosecutor objects.

Daniels requested discretionary review in this court. A commissioner granted review on the grounds that the interpretation and application of RCW 2.30.030 involve a recurring issue warranting an appellate decision.

II. ANALYSIS

The sole issue in this case involves the interpretation of RCW 2.30.030. We review de novo questions of statutory interpretation. Ass'n of Wash. Spirits & Wine Distribs. v. Liquor Control Bd., 182 Wn.2d 342, 350, 340 P.3d 849 (2015). "The court's fundamental objective is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give

effect to that plain meaning as an expression of legislative intent.” Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn. 2d 1, 9-10, 43 P.3d 4 (2002).

The court must interpret the language in a manner rendering no portion of the statute meaningless or superfluous. Rivard v. State, 168 Wn.2d 775, 783, 231 P.3d 186 (2010).

If a statute remains susceptible to more than one reasonable meaning, we deem it ambiguous and look to principles of statutory construction, legislative history, and relevant case law to discern intent. Cockle v. Dep't of Labor & Indust., 142 Wn.2d 801, 808, 16 P.3d 583 (2001). Simply because one can conceive of differing interpretations does not render a statute ambiguous. Cerrillo v. Esparza, 158 Wn.2d 194, 201, 142 P.3d 155 (2006). For unambiguous statutes, we engage in plain language analysis. Cerrillo, 158 Wn.2d at 201.

In 1999, the legislature first authorized jurisdictions to establish and operate drug courts under RCW 2.28.170. The statute required jurisdictions to “establish minimum requirements for the participation of offenders in the program.” RCW 2.28.170(b). It allowed drug courts “to adopt local requirements that are more stringent than the minimum.” RCW 2.28.170(b). When forming its DDC, King County relied on this provision to establish the more stringent requirements outlined in the Manual.

In 2015, the Legislature repealed and replaced the original drug court statute with RCW 2.30.030, authorizing courts to establish therapeutic courts to provide treatment or address issues contributing to the conduct leading to arrest.

In establishing the new statute the legislature specified, "In criminal cases, the consent of the prosecutor is required. Therapeutic courts retain the discretion to establish processes for eligibility and admission, and therapeutic court judges retain the discretion to decline to accept a particular case into the court." S.B. REP. ON S.B. 5107, 64th Leg., Reg. Sess. (Wash. 2015). The statute subsequently codified this structure as follows:

(1) Every trial and juvenile court in the state of Washington is authorized and encouraged to establish and operate therapeutic courts. Therapeutic courts, in conjunction with the government authority and subject matter experts specific to the focus of the therapeutic court, develop and process cases in ways that depart from traditional judicial processes to allow defendants or respondents the opportunity to obtain treatment services to address particular issues that may have contributed to the conduct that led to their arrest or involvement in the child welfare system in exchange for resolution of the case or charges. In criminal cases, the consent of the prosecutor is required.

(2) While a therapeutic court judge retains the discretion to decline to accept a case into the therapeutic court, and while a therapeutic court retains discretion to establish processes and determine eligibility for admission to the therapeutic court process unique to their community and jurisdiction, the effectiveness and credibility of any therapeutic court will be enhanced when the court implements evidence-based practices, research-based practices, emerging best practices, or promising practices that have been identified and accepted at the state and national levels. Promising practices, emerging best practices, and/or research-based programs are authorized where determined by the court to be appropriate. As practices evolve, the trial court shall regularly assess the effectiveness of its program and the methods by which it implements and adopts new best practices.

RCW 2.30.030(1) (emphasis added).

Daniels contends the language of RCW 2.30.030 grants the trial court ultimate discretion over admission to DDC, with the ability to override a

prosecutor's objection. He interprets the requirement of prosecutor consent as applicable only to the general creation of therapeutic courts for criminal cases in a jurisdiction, rather than the approval of individual cases. The State argues the plain language necessitates prosecutor approval of admission to therapeutic courts for criminal cases on a case by case basis. We agree with the State.

RCW 2.30.030(1) opens with general language authorizing and encouraging courts to establish and operate therapeutic courts. In the next sentence, however, the statute focuses on case-specific application: it requires therapeutic courts, governmental authorities, and subject matter experts to develop ways "to allow defendants or respondents the opportunity to obtain treatment services to address particular issues that may have contributed to the conduct that led to their arrest or involvement in the child welfare system in exchange for resolution of the case or charges." RCW 2.30.030(1). The third sentence mandates prosecutor consent in criminal cases. This indicates the legislature intended for prosecutors to consent to admission of criminal cases to therapeutic courts on a case by case basis.

Daniels claims ambiguity because RCW 2.30.030(1) requires prosecutor consent but RCW 2.30.030(2) invests therapeutic court judges with discretion to decline to accept cases and to define process and eligibility criteria for therapeutic courts. RCW 2.30.030(2). Contrary to Daniels's claim of ambiguity, one can easily harmonize these provisions.

The plain language of the statute reflects that both prosecutors and therapeutic courts have roles in admission to DDC. The therapeutic court has

the discretion to establish general process and eligibility criteria against which the prosecutor evaluates individual criminal cases and consents to admission. The therapeutic court then has discretion to decline a case otherwise approved by the prosecutor. Unlike Daniels's construction of the statute, which effectively renders the prosecutor consent language meaningless except as to the general approval of therapeutic courts, this interpretation gives effect to both provisions. The interpretation provides the prosecutor's required consent while giving the requisite discretion to the courts.

Furthermore, this interpretation ensures other provisions of the statute do not become superfluous. For example, RCW 2.30.030(8) specifies, "Nothing in this section prohibits a district or municipal court from ordering treatment or other conditions of sentence or probation following a conviction, without the consent of either the prosecutor or defendant." This provision clearly serves to mitigate against the risk of misinterpreting the statute to require prosecutor consent for treatment outside the therapeutic court context. The legislature would not have included Subsection (8) to differentiate these treatment options if prosecutor consent did not remain mandatory for admission to therapeutic courts in all criminal cases.

While the courts have ultimate discretion to establish criteria for admission and to decline to accept a case, RCW 2.30.030 requires initial consent by the prosecutor for each case. This construction of the statute tracks the plain language and harmonizes and effectuates the various provisions. The trial court

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did not err in ruling that it cannot accept a defendant into therapeutic court over the objection of the prosecutor.

Affirmed.

Chen, J.

WE CONCUR:

Smith, J.

Vulliamy

APPENDIX B

RCW 2.30.010**Findings—Scope of therapeutic court programs.**

(1) The legislature finds that judges in the trial courts throughout the state effectively utilize what are known as therapeutic courts to remove a defendant's or respondent's case from the criminal and civil court traditional trial track and allow those defendants or respondents the opportunity to obtain treatment services to address particular issues that may have contributed to the conduct that led to their arrest or other issues before the court. Trial courts have proved adept at creative approaches in fashioning a wide variety of therapeutic courts addressing the spectrum of social issues that can contribute to criminal activity and engagement with the child welfare system.

(2) The legislature further finds that by focusing on the specific individual's needs, providing treatment for the issues presented, and ensuring rapid and appropriate accountability for program violations, therapeutic courts may decrease recidivism, improve the safety of the community, and improve the life of the program participant and the lives of the participant's family members by decreasing the severity and frequency of the specific behavior addressed by the therapeutic court.

(3) The legislature recognizes the inherent authority of the judiciary under Article IV, section 1 of the state Constitution to establish therapeutic courts, and the outstanding contribution to the state and local communities made by the establishment of therapeutic courts and desires to provide a general provision in statute acknowledging and encouraging the judiciary to provide for therapeutic court programs to address the particular needs within a given judicial jurisdiction.

(4) Therapeutic court programs may include, but are not limited to:

- (a) Adult drug court;
- (b) Juvenile drug court;
- (c) Family dependency treatment court or family drug court;
- (d) Mental health court, which may include participants with developmental disabilities;
- (e) DUI court;
- (f) Veterans treatment court;
- (g) Truancy court;
- (h) Domestic violence court;
- (i) Gambling court;
- (j) Community court;
- (k) Homeless court;
- (l) Treatment, responsibility, and accountability on campus (Back on TRAC) court.

[2015 c 291 § 1.]

NOTES:

Conflict with federal requirements—2015 c 291: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules

adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2015 c 291 § 14.]

APPENDIX C

RCW 2.30.030

Therapeutic courts authorized—Establishment of processes—Determination of eligibility—Persons not eligible—Use of best practices—Dependency matters—Foreign law limitations.

(1) Every trial and juvenile court in the state of Washington is authorized and encouraged to establish and operate therapeutic courts. Therapeutic courts, in conjunction with the government authority and subject matter experts specific to the focus of the therapeutic court, develop and process cases in ways that depart from traditional judicial processes to allow defendants or respondents the opportunity to obtain treatment services to address particular issues that may have contributed to the conduct that led to their arrest or involvement in the child welfare system in exchange for resolution of the case or charges. In criminal cases, the consent of the prosecutor is required.

(2) While a therapeutic court judge retains the discretion to decline to accept a case into the therapeutic court, and while a therapeutic court retains discretion to establish processes and determine eligibility for admission to the therapeutic court process unique to their community and jurisdiction, the effectiveness and credibility of any therapeutic court will be enhanced when the court implements evidence-based practices, research-based practices, emerging best practices, or promising practices that have been identified and accepted at the state and national levels. Promising practices, emerging best practices, and/or research-based programs are authorized where determined by the court to be appropriate. As practices evolve, the trial court shall regularly assess the effectiveness of its program and the methods by which it implements and adopts new best practices.

(3) Except under special findings by the court, the following individuals are not eligible for participation in therapeutic courts:

(a) Individuals who are currently charged or who have been previously convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030;

(b) Individuals who are currently charged with an offense alleging intentional discharge, threat to discharge, or attempt to discharge a firearm in furtherance of the offense;

(c) Individuals who are currently charged with or who have been previously convicted of vehicular homicide or an equivalent out-of-state offense; or

(d) Individuals who are currently charged with or who have been previously convicted of: An offense alleging substantial bodily harm or great bodily harm as defined in RCW 9A.04.110, or death of another person.

(4) Any jurisdiction establishing a therapeutic court shall endeavor to incorporate the therapeutic court principles of best practices as recognized by state and national therapeutic court organizations in structuring a particular program, which may include:

(a) Determining the population;

(b) Performing a clinical assessment;

(c) Developing the treatment plan;

(d) Monitoring the participant, including any appropriate testing;

(e) Forging agency, organization, and community partnerships;

(f) Taking a judicial leadership role;

(g) Developing case management strategies;

(h) Addressing transportation, housing, and subsistence issues;

(i) Evaluating the program;

(j) Ensuring a sustainable program.

(5) Upon a showing of indigence under RCW 10.101.010, fees may be reduced or waived.

(6) The department of social and health services shall furnish services to therapeutic courts addressing dependency matters where substance abuse or mental health are an issue unless the court contracts with providers outside of the department.

(7) Any jurisdiction that has established more than one therapeutic court under this chapter may combine the functions of these courts into a single therapeutic court.

(8) Nothing in this section prohibits a district or municipal court from ordering treatment or other conditions of sentence or probation following a conviction, without the consent of either the prosecutor or defendant.

(9) No therapeutic or specialty court may be established specifically for the purpose of applying foreign law, including foreign criminal, civil, or religious law, that is otherwise not required by treaty.

(10) No therapeutic or specialty court established by court rule shall enforce a foreign law, if doing so would violate a right guaranteed by the Constitution of this state or of the United States.

[2015 c 291 § 3.]

NOTES:

Conflict with federal requirements—2015 c 291: See note following RCW 2.30.010.

APPENDIX D

2014 Revised Code of Washington

Title 2 - COURTS OF RECORD

2.28 Powers of courts and general provisions.

2.28.170 Drug courts.

Universal Citation: WA Rev Code § 2.28.170 (2014)

RCW 2.28.170 Drug courts.

(1) Jurisdictions may establish and operate drug courts.

(2) For the purposes of this section, "drug court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism and substance abuse among nonviolent, substance abusing felony and nonfelony offenders, whether adult or juvenile, 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.

(3)(a) Any jurisdiction that seeks a state appropriation to fund a drug court program must first:

(i) Exhaust all federal funding that is available to support the operations of its drug court and associated services; and

(ii) Match, on a dollar-for-dollar basis, state moneys allocated for drug court programs with local cash or in-kind resources. Moneys allocated by the state must be used to supplement, not supplant, other federal, state, and local funds for drug court operations and associated services. However, from July 26, 2009, until June 30, 2015, no match is required for state moneys expended for the administrative and overhead costs associated with the operation of a drug court pursuant to RCW 70.96A.350.

(b) Any jurisdiction that establishes a drug court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The drug court may adopt local requirements that are more stringent than the minimum. The minimum requirements are:

(i) The offender would benefit from substance abuse treatment;

(ii) The offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030; and

(iii) Without regard to whether proof of any of these elements is required to convict, the offender is not currently charged with or convicted of an offense:

(A) That is a sex offense;

(B) That is a serious violent offense;

(C) During which the defendant used a firearm; or

(D) During which the defendant caused substantial or great bodily harm or death to another person.

[2013 2nd sp.s. c 4 § 952; 2013 2nd sp.s. c 4 § 951; 2013 c 257 § 5; 2009 c 445 § 2; 2006 c 339 § 106;
2005 c 504 § 504; 2002 c 290 § 13; 1999 c 197 § 9.]

APPENDIX E

RCW 2.30.020**Definitions.**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Emerging best practice" or "promising practice" means a program or practice that, based on statistical analyses or a well-established theory of change, shows potential for meeting the evidence-based or research-based criteria, which may include the use of a program that is evidence-based for outcomes other than those listed in this section.
- (2) "Evidence-based" means a program or practice that: (a) Has been tested in heterogeneous or intended populations with multiple randomized, or statistically controlled evaluations, or both; or one large multiple site randomized, or statistically controlled evaluation, or both, where the weight of the evidence from a systemic review demonstrates sustained improvements in at least one outcome; or (b) may be implemented with a set of procedures to allow successful replication in Washington and, when possible, is determined to be cost-beneficial.
- (3) "Government authority" means prosecutor or other representative initiating action leading to a proceeding in therapeutic court.
- (4) "Participant" means an accused person, offender, or respondent in the judicial proceeding.
- (5) "Research-based" means a program or practice that has been tested with a single randomized, or statistically controlled evaluation, or both, demonstrating sustained desirable outcomes; or where the weight of the evidence from a systemic review supports sustained outcomes as described in this subsection but does not meet the full criteria for evidence-based.
- (6) "Specialty court" and "therapeutic court" both mean a court utilizing a program or programs structured to achieve both a reduction in recidivism and an increase in the likelihood of rehabilitation, or to reduce child abuse and neglect, out-of-home placements of children, termination of parental rights, and substance abuse and mental health symptoms among parents or guardians and their children through continuous and intense judicially supervised treatment and the appropriate use of services, sanctions, and incentives.
- (7) "Therapeutic court personnel" means the staff of a therapeutic court including, but not limited to: Court and clerk personnel with therapeutic court duties, prosecuting attorneys, the attorney general or his or her representatives, defense counsel, monitoring personnel, and others acting within the scope of therapeutic court duties.
- (8) "Trial court" means a superior court authorized under Title 2 RCW or a district or municipal court authorized under Title 3 or 35 RCW.

[2015 c 291 § 2.]

NOTES:

Conflict with federal requirements—2015 c 291: See note following RCW 2.30.010.

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