

NO. 38775-1-II
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

COURT OF APPEALS
STATE OF WASHINGTON
BY 
DEPUTY

STATE OF WASHINGTON,

Respondent,

JOHN T. ENTLER,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF COWLITZ COUNTY

Before the Honorable James E. Warme

OPENING BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

1. The trial court erred in entering an order denying appellant's motion for refund of funds collected by the Department of Corrections and applied to legal financial obligations in Cowlitz County Cause No. 90-1-00077-7.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

1. The trial court loses jurisdiction to collect fees and costs, or to extend the time for collecting fees and costs, ten years after the defendant is sentenced or released from total incarceration. Did appellant's legal financial obligations in Cause No. 90-1-00077-7 expire in December, 2000 because more than ten years have passed since his release from total confinement in 1990 for the crime for which the legal financial obligations were ordered, and no extension was ever sought or ordered?

C. STATEMENT OF THE CASE

John Entler was convicted of second degree theft in Cowlitz County cause number 90-1-00077-7 in 1990. He was sentenced to approximately two to three months in the Cowlitz County Jail and was also ordered to pay legal financial obligations ("LFO's"). Clerk's Papers [CP] 1-7, 61. After serving his ordered jail time, he was released from total confinement in December, 1990. CP 61. Mr. Entler was convicted

in 1993 of second degree theft in Cowlitz County 93-1-00469-6 and ordered to pay LFOs in the amount of \$660.00. CP 21. Mr. Entler remains in the custody of the Department of Corrections, during which time the State collected approximately \$2025 in LFOs. CP 21. That amount was transferred to satisfy LFOs in Cowlitz County Cause Numbers 93-1-00469-6, 93-1-00470-0, and 93-1-00641-9. CP 21. His LFOs in 93-1-00469-6 was satisfied in August, 2003. CP 21. Additional money was collected in that cause number beyond that date and applied to 90-1-00077-7. CP 21.

Mr. Entler moved for refund of the overpayment applied to Cause No. 90-1-00077-7 on October 14, 2008. CP 20-54. The court denied the motion on December 9, 2008. Report of Proceedings (December 9, 2008) at 3-4. The court entered an order denying the motion for refund of LFOs on December 19, 2008. CP 72. Mr. Entler appeals from that order. CP 73-74.

D. ARGUMENT

1. THE ORDER DENYING THE MOTION TO REFUND LFO'S COLLECTED AND APPLIED TO CAUSE NO. 90-1-00077-7 MUST BE VACATED BECAUSE THE TEN-YEAR ENFORCEMENT PERIOD EXPIRED.

- a. The trial court lacked jurisdiction to apply the overpayment to the**

**1990 Cause Number after
December, 2000.**

Under RCW 9.94A.760, an order of jurisdiction must be predicated on a factual showing that the defendant was either sentenced or released from confinement within the last ten years. Here, the State failed to carry its burden of demonstrating the court retained jurisdiction in this matter.

Proof of jurisdiction beyond a reasonable doubt is an integral component of the State's burden in every criminal prosecution. *State v. Squally*, 132 Wn.2d 333, 937 P.2d 1069 (1997) citing *State v. Svenson*, 104 Wn.2d 533, 707 P.2d 120 (1985) The relevant statute in the present case is RCW 9.94A.760(4), which provides in part:

All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments.

“Total confinement” means “confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.” RCW 9.94A.030(51).

- b. Mr. Entler's subsequent convictions and incarceration did not toll the statute.**

In this case, the court lost jurisdiction in 90-1-00077-7 after expiration of the ten year time period after his release in late 1990. This Court should grant the relief requested, terminate Mr. Entler's legal financial obligations, refund any funds collected in 90-1-00077-7, after expiration of the LFO's and order the Cowlitz County Clerk's Office to cease any collection efforts.

The ten year period was not tolled by Mr. Entler's subsequent convictions in 1993. *In re Personal Restraint of Sappenfield*, 138 Wn.2d 588, 980 P.2d 1271 (1999), which addresses the issue of tolling in the context of restitution ordered under former RCW 9.94A.142, is instructive. In that case, the Supreme Court held that the trial court's jurisdiction over restitution orders entered in 1986 expired ten years after Sappenfield was released from incarceration in 1987, despite the fact that Sappenfield was convicted of second degree murder and reincarcerated in 1989. *Sappenfield*, 138 Wn.2d at 591, 593. The Court found that Sappenfield's 1989 murder conviction did not toll the ten year period in the restitution statute, noting that "Sappenfield's subsequent reincarceration in 1989 had no impact on the life of the 1986 restitution orders, and no language within RCW 9.94A.142 (a) provides otherwise." *Sappenfield*, 138 Wn.2d at 593.

Similarly, the reasoning prohibiting tolling in former RCW

9.94A.142 is applicable to LFOs in general. Nothing in former RCW 9.94A.145¹ and RCW 9.94A.760(4), provides for tolling in the event of incarceration in an unrelated crime.

Under the plain language of the statutes, Mr. Entler's legal financial obligations expired. "The primary purpose of statutory construction is to give effect to the legislature's intent." *City of Bellevue v. E. Bellevue C.C.*, 138 Wn.2d 937, 983 P.2d 602 (1999). "When a statute is not ambiguous, a court must determine the Legislature's intent by the language of the statute alone." *State v. S.M.H.*, 76 Wn. App. 550, 887 P.2d 903 (1995). The court must then apply the language as written. *In re Personal Restraint of Sappenfield*, 138 Wn.2d 588, 980 P.2d 1271 (1999). "Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 909 P.2d 1303 (1996).

Furthermore, in *State v. Adams*, 153 Wn.2d 746, 108 P.3d 130 (2005), the Supreme Court addressed the expiration of LFOs where the appellant was released and then reincarcerated on unrelated matters. In

¹Former RCW 9.94A.145 provides that the time period for enforcing legal financial obligations such as victim assessments was 10 years for offenses committed before July 1, 2000. Such obligations "may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever ends later." Former RCW 9.94A.145(4) (2000), recodified as RCW 9.94A.760(4).

that case, the Court held that the enforcement period for LFO's imposed in 1990 expired in March, 2003, ten years after Adams' release date of March, 1993 following Adams' 1990 convictions. *Id.*, 153 Wn.2d at 751. Adams pleaded guilty to possession of stolen property and taking a vehicle without permission. He was sentenced to incarceration and LFO's which included a victim assessment. *Id.* at 748. He was released from prison on March 18, 1993. *Id.* Upon release Adams was immediately transferred to the Oregon Department of Corrections regarding an unrelated case, and paroled in Oregon in June, 1994. *Id.* Adams made no payments toward his LFOs and did not appear for a hearing scheduled to address his outstanding LFOs. *Id.* Adams later returned to Washington and was jailed on new charges in 2002. *Id.* The Supreme Court held that despite Adams' reincarceration in Oregon in 1993 and incarceration on new charges in Washington in 2002, the trial court's jurisdiction over the 1990 case was set to expire in March, 2003, "ten years after his March 18, 1993, release date for the 1990 convictions." *Id.* at 751. Although the Court did not specially base its ruling on "tolling," it is clear that Adams' subsequent incarceration in Oregon and Washington had no effect on the running of the ten year period provided by the statutes.

The language used in the statutes addressing legal financial obligations and restitution plainly indicates that the court's jurisdiction

over Mr. Entler's LFO's expired in 2000. The LFO statute provides that “[L]egal financial obligations for an offense committed prior to July 1, 2000, *may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later.*” RCW 9.94A.760(4) (emphasis added). Similarly, the restitution statute provides, “For the purposes of this section, for an offense committed prior to July 1, 2000, the offender shall remain under the court’s jurisdiction for a term of ten years following the offender’s release from total confinement or ten years subsequent to the entry of judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. . . .” RCW 9.94A.753(4). Restitution is a subject LFO’s. RCW 9.94A.030 (31).

Therefore, “[t]he plain language of the statute dictates that LFOs from pre-July 2000 offenses expire after the 10-year limitation period.” *State v. Gossage*, 165 Wn.2d 1, 195 P.3d 525, 527 (2008). Furthermore, “if the court does not extend the criminal judgment, the judgment expires and the LFOs are unenforceable.” *Id.*

It is undisputed that the criminal judgment in Mr. Entler's case was not extended for a 10-year period. Rather, the State argued in its

Response filed December 8, 2008 that Mr. Entler was never released from total confinement so as to trigger the initiation of the original 10-year period he was incarcerated for other offenses in 1993. CP 57-58.

Our Supreme Court, however, has made it clear that with respect to the initiation of the 10-year enforcement period for LFO's, "release from total confinement' can only mean release from confinement *for the crime for which restitution was ordered.*" *Sappenfield*, 138 Wn.2d at 593 (emphasis added). Furthermore, time spent in confinement for a different violation does not toll the court's jurisdiction over the restitution order. *Id.* See also, *Adams*, supra.

Mr. Entler was released from confinement for the crime for which LFOs were ordered in late 1990. Approximately eighteen years have passed since his release in that cause, and the 10-year enforcement period was never extended. Accordingly, under the plain language of the statutes, Mr. Entler's LFOs expired. Although Mr. Entler was jailed again in 1993, that confinement was not for the crime for which LFOs were ordered, so would not count as a portion of the "total confinement" relevant to the 10-year period. *Sappenfield*, 138 Wn.2d at 593.

Accordingly, the 1993 cases are irrelevant to the question of when Mr. Entler was released from total confinement "for the crime for which restitution was ordered." *Sappenfield*, 138 Wn.2d at 593. Because more

than 10 years have passed since release for that crime, Mr. Entler's LFO's have expired. *Id.*; RCW 9.94A.760(4); RCW 9.94A.753(4).

Even if the statutes were ambiguous, termination of Mr. Entler's legal financial obligations is consistent with legislative intent. As stated above, Mr. Entler's financial obligations expired under the unambiguous language of the statutes. However, even if the statutes are ambiguous, the rules of statutory construction lead to the same result.

When legislative intent is not clear from the language of the statute, a court may consider extrinsic evidence of that intent. *Department of Transp. v. SEIB*, 97 Wn.2d 454, 645 P.2d 1076 (1982). Courts must also apply the rule of lenity, under which statutory ambiguities are to be resolved in favor of criminal defendants. *In re Personal Restraint of Sietz*, 124 Wn.2d 645, 880 P.2d 34 (1994).

Although compensating victims is one legislative goal, another is to "make frugal use of the state's and local governments' resources." RCW 9.94A.010(6). Ceasing collection efforts after 10 years furthers this goal. Terminating LFO's also promotes the goal of reintegration, as it is more difficult for an offender to successfully rejoin society if he has a high level of debt. See, e.g., *Restraint of Smith*, 130 Wn. App. 897, 125 P.3d 233 (2005) (although the state has an interest in recouping debt, it also "unquestionably has an interest in reducing recidivism and in fostering an

inmate's return to the community").

In amending the LFO and restitution statutes in 2000 to provide for lifetime collection of LFO's for some offenders, the Legislature evinced an intent to promote the goal of revenue collection over the goals of cost saving and reintegration. See RCW 9.94A.760(4); RCW 9.94A.753(4). However, the Legislature "chose to do so for offenses committed only from July 1, 2000, forward. As a corollary, the legislature left the limitation period for offenses committed before July 1, 2000, unchanged." *Gossage* 195 P.3d at 528. For the latter category of offenses, LFO's expire 10 years after release from total confinement for the underlying crime, and incarceration for other offenses does not toll the enforcement period. RCW 9.94A.760(4); RCW 9.94A.753(4); *Sappenfield*, 138 Wn.2d at 593.

In sum, the under the plain language of the statutes, far more than 10 years have passed since Mr. Entler's release from total confinement in the relevant cause, and his LFO's have expired. The Legislature intended to preclude expiration for more recent offenders, and to allow financial obligations to expire for people like Mr. Entler.

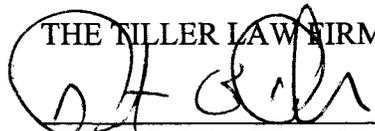
E. CONCLUSION

Under the plain language of RCW 9.94A.760(4) and RCW 9.94A.753(4), Mr. Entler's legal financial obligations have expired. This

Court should vacate the order to pay LFO's, and enter an order relieving him any further legal financial obligation in cause No. 90-1-00077-7. *Sappenfield*, 138 Wn.2d at 594. Any funds collected from Mr. Entler under the relevant cause number and applied to other cause numbers after expiration of jurisdiction should be refunded to Mr. Entler.

DATED: July 7, 2009.

Respectfully submitted,

THE TILLER LAW FIRM

PETER B. TILLER-WSBA 20835
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STATUTES

RCW 9.94A.010

Purpose.

The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve him or herself;
- (6) Make frugal use of the state's and local governments' resources; and
- (7) Reduce the risk of reoffending by offenders in the community.

RCW 9.94A.030

Definitions.

***** CHANGE IN 2009 *** (SEE 5190-S.SL) *****

***** CHANGE IN 2009 *** (SEE 5288-S.SL) *****

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.850, for crimes committed on or after July 1, 2000.

(7) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(8) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

(9) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(10) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(11) "Confinement" means total or partial confinement.

(12) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(13) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(14) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(15) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(16) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(17) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); or promoting pornography (chapter 9.68 RCW).

(18) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(19) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(20) "Department" means the department of corrections.

(21) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(22) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the

payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(23) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

(24) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(25) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(26) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (*RCW 72.66.060), willful failure to return from work release (*RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(27) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(28) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(29) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(30) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

(31) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

(32) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

- (a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;
- (b) Assault in the second degree;
- (c) Assault of a child in the second degree;
- (d) Child molestation in the second degree;
- (e) Controlled substance homicide;
- (f) Extortion in the first degree;
- (g) Incest when committed against a child under age fourteen;
- (h) Indecent liberties;
- (i) Kidnapping in the second degree;
- (j) Leading organized crime;
- (k) Manslaughter in the first degree;
- (l) Manslaughter in the second degree;
- (m) Promoting prostitution in the first degree;
- (n) Rape in the third degree;
- (o) Robbery in the second degree;
- (p) Sexual exploitation;
- (q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;
- (r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle

in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under **RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if:
(A) The crime was committed against a child under the age of fourteen; or
(B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997;

(w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under Title 9 or 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

(33) "Nonviolent offense" means an offense which is not a violent offense.

(34) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction

under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(35) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

(36) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in RCW 9.94A.030, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by RCW 9.94A.030, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Malicious Harassment (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

(37) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (37)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was

sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

(38) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(39) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; or (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority.

(40) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

(41) "Public school" has the same meaning as in RCW 28A.150.010.

(42) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

(43) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

(44) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(45) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(46) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(12);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080; or

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(47) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(48) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(49) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(50) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

(51) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(52) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(53) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(54) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(55) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(56) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(57) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

RCW 9.94A.753

Restitution — Application dates.

This section applies to offenses committed after July 1, 1985.

(1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days

except as provided in subsection (7) of this section. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have.

(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances.

(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime.

(4) For the purposes of this section, for an offense committed prior to July 1, 2000, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. For an offense committed on or after July 1, 2000, the offender shall remain under the court's jurisdiction until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The portion of the sentence concerning restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence

for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confinement in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the offender has satisfied support obligations under the superior court or administrative order for the period provided in

RCW 4.16.020 or a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

(7) Regardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the judgment and sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

(8) In addition to any sentence that may be imposed, an offender who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(9) This section does not limit civil remedies or defenses available to the victim, survivors of the victim, or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim.

RCW 9.94A.760

Legal financial obligations. (Effective until August 1, 2009.)

(1) Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration, if incarcerated in a prison, or the court may require the offender to pay the actual cost of incarceration per day of incarceration, if incarcerated in a county jail. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice

of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain

jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7)(a) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the department in

order to prepare the collection schedule.

(b) Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, or if the department set the monthly payment amount and the department has subsequently turned the collection of the legal financial obligation over to the county clerk, the clerk may modify the monthly payment amount without the matter being returned to the court. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office of the courts, whichever is providing the monthly billing for the offender.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a

COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY _____
DEPUTY

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,	COURT OF APPEALS NO.
	38775-1-II
Appellant,	
vs.	COWLITZ COUNTY NO.
	90-1-00077-7
JOHN T. ENTLER,	
Respondent.	CERTIFICATE OF MAILING

The undersigned attorney for the Respondent hereby certifies that one original and one copy of the Opening Brief of Respondent was mailed by first class mail to the Court of Appeals, Division 2, and copies were mailed to, John T. Entler, Respondent, and Ms. Susan Baur, Deputy Prosecuting Attorney, by first class mail, postage pre-paid on July 7, 2009, at the Centralia, Washington post office addressed as follows:

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Deputy Prosecuting Attorney
312 SW 1st Avenue
Kelso, WA 98626-1799

Mr. David Ponzoha
Clerk of the Court
Court of Appeals
950 Broadway, Ste.300
Tacoma, WA 98402-4454

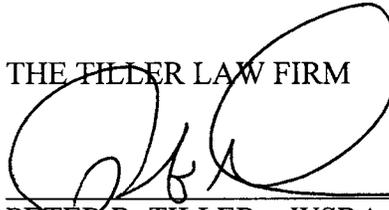
CERTIFICATE OF
MAILING

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Dated: July 7, 2009.

THE TILLER LAW FIRM



PETER B. TILLER – WSBA #20835
Of Attorneys for Respondent

CERTIFICATE OF
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