

FILED

No. 355101

NOV 20 2017

WASHINGTON STATE COURT OF APPEALS

DIVISION III

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

James E. Ellis, Appellant

v.

State of Washington, Respondent

APPELLANT'S BRIEF

Julie A. Anderson WSBA#15214
Attorney for Appellant Nancy Fechner
409 N. Mission Wenatchee, WA 98801
Phone 509-663-0635
Fax 509-662-9328
Julie.anderson@jaallaw.net
reception@jaallaw.net

A. <u>Procedural History</u>	1
B. <u>Statement Of Facts</u>	2
II. <u>ARGUMENT</u>	3
A. <u>James Ellis Stated a Cause of Action for Unlawful Imprisonment</u>	3
B. <u>The Trial Court erred in granting Summary Judgment, where the Department of Corrections Failed to Compute Mr. Ellis’s Earned Early Release Credits</u>	4
C. <u>The Court Erred in Classifying James Ellis as a Determinate Offender Under DOC Policy 350.100</u>	14
D. <u>There Was A Genuine Issue Of Material Fact As To Whether James Ellis Had Committed Any “Serious Infractions” during his Incarceration which would justify the Loss of his Good Conduct Time</u>	16

E. <u>To The Extent That Any DOC Policy Conflicts with The Washington State Statute, the Washington State Statute will Control</u>	19
III. <u>CONCLUSION</u>	12

TABLE OF AUTHORITIES

TABLE OF CASES	<u>PAGE NO.</u>
<u>Eyman v. Mcgehee</u> , 173 Wn.App. 684, 689, 294 P. 3d 847 (Div. 1 2013)	9
<u>Hartley v. State</u> , 103 Wn. 2d 768, 775, 698 P. 2d 77 (1985).....	4
<u>Lallas v. Skagit County</u> , 167 Wn. 2d 861, 225 P. 3d 910 (2009).....	1

<u>Lipscomb v. Farmers Ins. Co. of Wash.</u> , 142 Wash. App. 20, 27, 174 P 3d 1182 (Div. I (2007)).....	5
<u>Puget Sound’s Best Chicken, Inc.</u> , 185 Wn. App. 691, 695, 345 P. 3d 811(2015).....	4
<u>Sea-Pac Co. v. United Food and Commercial Workers Local Union 44</u> , 103 Wash.2d 800, 802, 699 P.2d 217 (1985).....	17
<u>Sellen Constr. Co. v. Dept. of Revenue</u> , 7 Wn. 2d 878, 883, 558 P. 2d 1342 (1976).....	10
<u>State v. Delgado</u> , 148 Wn.2d 723, 727, 63 P.3d 792 (2003).....	11
<u>State v. Jacobs</u> , 154 Wn.2d 596, 600, 115 P.3d 281 (2005).....	10
<u>Stalter v. State</u> , 151 Wn.2d 148, 155, 86 P.3d 1159 (2004).....	3

<u>State v. Winkle</u> , 159 Wn.App. 323, 245 P. 3d 249 (Div. 1 2011)	11
<u>Tufte v. City of Tacoma</u> , 71 Wn. 2d 866, 870, 431 P. 2d 183 (1967).....	4
<u>Weatherbee v. Gustafson</u> , 64 Wn.App. 128, 822 P.2d 1257 (Div.1 1992).....	17

STATUTES

RCW 9.95.420 (3).....	1
RCW 9.94A.728(1)(a).....	5
RCW 9.94A.728.....	5
RCW 9.94A.729.....	6,10
RCW 9.94A.411(2).....	8,11
RCW 9.94A.729.....	11,13
RCW 9.94A.729(5).....	11,12
RCW 9.94A.729(5)(a).....	11,13
RCW 9.94A.715.....	13

RCW 9.94A.030(18).....	16
RCW 9.94A.507.....	16
RCW 7209.010(5).....	18
RCW 72.09.460.....	17
RCW 92.92.151(1).....	19

OTHER AUTHORITIES

DOC Policy 350.100.....	14,16,19
DOC Policy 350.100.1 G.....	15
DOC Policy 350.100.II.....	20

Assignment of Error No. 1: The trial court erred in granting summary judgment to the Defendant State of Washington.

Issue Pertaining to Assignment of Error No. 1: Did the trial court err in granting summary judgment to the Defendant, where there were genuine issues of material fact concerning Ellis’s right to early release credits? (The standard of review for an order granting summary judgment is de novo. Lallas v. Skagit County, 167 Wn. 2d 861, 225 P. 3d 910 (2009).)

I. STATEMENT OF THE CASE

A. Procedural History

James Ellis filed a Complaint for Unlawful Imprisonment against the State of Washington on February 26, 2016. CP 1-7. Defendant State of Washington moved for Summary Judgment. CP 31-33. The trial court granted summary judgment in favor of the State. CP 161-162. Ellis made a motion for reconsideration, which the trial court denied on July 11,

2017. CP 246-256.

B. Statement Of Facts

James Ellis was sentenced on **June 13, 2005**. **CP 54**. That judgment and sentence set a minimum term of 60 months and a maximum term of 10 years. **CP 60**. The Indeterminate Sentence Review Board conducted three hearings pursuant to RCW 9.95.420 (3). **CP 70-97**. After the second hearing on May 26, 2010, the Indeterminate Sentence Review Board concluded on July 9, 2010 that Ellis's release date would be "Release on maximum expiration date of **February 10, 2015**." (Emphasis added.) **CP 85**. **Exhibit H**. See also CP 94. See also CP 72-92. Although Ellis was apparently given some good time served credits from County time, since he was released 10 years from the *date of his crime* instead of the from the date of *his sentence*, Ellis was not given a third off of the 10 year maximum sentence. (Had he not been given credit for time served in the Spokane County jail, 10 years would have expired on **June 13, 2015**, i.e., 10 years from the date of *sentence*.)

Prior to Ellis's release, Ellis repeatedly requested that he be given earned early release credit. See Appendix A to the Declaration of James Ellis in Opposition To Defendant's Motion for Summary

James Ellis in Opposition To Defendant's Motion for Summary Judgment. **CP 129-143**. At the time of the May 20, 2010 parole hearing, James Ellis had a good record and should have accrued his early release credits. See CP 127; CP 144-145.

Ellis alleged in his declaration that he never committed a serious infraction which would have caused him to lose his early release credits. **CP 127**. He also alleged that he did work on his program. He never refused to program. He provided proof of his programming participation. **CP 127; 145**. Despite the fact that Ellis had participated in programming and had never committed a serious infraction, he was never given a third off for earned early release to community custody. **CP 127**.

After Ellis's release, he filed a Summons and Complaint for Unlawful Imprisonment on February 26, 2016. **CP 1-7**.

II. ARGUMENT

A. James Ellis Stated a Cause of Action for Unlawful Imprisonment.

A claim for false imprisonment arises if an institution "holds an individual for an unreasonable time after it is under a duty to release the individual." Stalter v. State, 151 Wn.2d 148, 155, 86 P.3d 1159 (2004).

An initially lawful imprisonment “may under some circumstances become unlawful.” Tufte v. City of Tacoma, 71 Wn. 2d 866, 870, 431 P. 2d 183 (1967).

Here, Ellis alleged in his Complaint that he was held after the State had a duty to release him, so a cause of action for unlawful imprisonment has been stated.

B. The Trial Court erred in granting Summary Judgment, where the Department of Corrections Failed to Compute Mr. Ellis’s Earned Early Release Credits.

Under CR 56 (c), a genuine issue of material fact exists, if after weighing the evidence, reasonable minds could reach different factual conclusions about an issue that is material to the disputed claim. Hartley v. State, 103 Wn. 2d 768, 775, 698 P. 2d 77 (1985). Summary Judgment is appropriate when the “pleadings, depositions, answers to interrogatories, and admissions on file, along with affidavits , show that no material issues of fact exist and that the moving party is entitled to judgment as a matter of law.’ Puget Sound’s Best Chicken, Inc., 185 Wn. App. 691, 695, 345 P. 3d 811(2015). In reviewing a decision on a motion for summary judgment, the court must review evidence and all reasonable inferences in the light most favorable to the non-moving party.

Lipscomb v. Farmers Ins. Co. of Wash., 142 Wash. App. 20, 27, 174 P
3d 1182 (Div. I (2007)).

RCW 9.94A.728(1)(a) *effective August 1, 2009* provided as
follows:

AN ACT Relating to extraordinary medical
placement for offenders; amending RCW
9.94A.728; and providing an effective date.
BE IT ENACTED BY THE
LEGISLATURE OF THE STATE OF
WASHINGTON:

Sec.1. RCW 9.94A.728 and 2008 c 231 s 34
are each amended to read as follows:

No person serving a sentence imposed
pursuant to this chapter and committed to
the custody of the department shall leave the
confines of the correctional facility or be
released prior to the expiration of the
sentence except as follows:

- (1) Except as otherwise provided for in
subsection (2) of this section, the term
of the sentence of an offender
committed to a correctional facility
operated by the department may be
reduced by earned release time in
accordance with procedures that shall
be developed and promulgated by the
correctional agency having jurisdiction
in which the offender is confined. The
earned release time shall be for good

behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time.

....

At the hearing on May 20, 2010, when the Department set Ellis's sentence to the maximum term, former RCW 9.94A .729, which was effective 5/11/09, applied regarding Mr. Ellis's earned release time. See certification of enrollment chapter 455, Laws of 2009, **CP 118**.

Under the 2009 law, "An offender may earn early release time as authorized by section 3 of this act." Sec 1, page 5 of Chapter 455:

NEW SECTION: Sec 3. A new section is added to chapter 9.94A RCW to read as follows:

- (1) The term of this sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in

accordance with procedures that shall be developed and adopted by the correctional agency having jurisdiction in which the offender is confined. They earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of the County jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time.

Chapter 455 goes on to allow earned early release credits depending on the classification of the particular offense. In Mr. Ellis's case, he falls under section 3(1)(d) which provides: "In no other case shall the aggregate earned release time exceed one-third of the total sentence. "

Section 2(d)(4) provides as follows:

(4) The department shall perform a risk assessment for each offender who may qualify for earned early release under

subsection (3) (c) of this section utilizing the risk assessment tool recommended by the Washington state Institute for public policy. Subsection (3)(c) of this section shall not apply to offenders convicted after July 1, 2010.

Because Mr. Ellis was a sex offender, Sec 3 (5) applies:

- (a) A person who is eligible for earned early released as provided in this section and he was convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94 A .411(2), or a felony offense under chapter 69.50 or 69.52 RCW, *shall be transferred to community custody in lieu of earned release time;*
- (b) The department *shall*, as part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community custody terms eligible for release to community custody in lieu of earned release shall provide an improved

residence and living arrangement prior
to release to the community;

(Emphasis added.) See CP 117-125.

The statute used the term “**shall**” be transferred to community custody in lieu of earned release time. When a statute contains the word "shall," courts have typically interpreted this as a mandated duty. Eyman v. Mcgehee, 173 Wn.App. 684, 689, 294 P. 3d 847 (Div. 1 2013) . "The primary goal of statutory construction is to carry out legislative intent." If statutory language is clear on its face, that plain meaning must be given effect. Courts should generally "accord terms their most 'plain and ordinary meaning' when interpreting a statute." Eyman, 173 Wn.App. at 689.

At the time of the May 20, 2010 parole hearing, James Ellis had a good record and should have accrued his early release credits. The Department had the authority to increase the release date to the maximum term date which it did.

With a maximum term of 10 years then at issue, Mr. Ellis should have had one third off for earned early release credits. Ten years equals 120 months. Thus, Mr. Ellis should have been released to community custody and 120-33.33 months. Given that July 13, 2015 was 10 years, Ellis

should have been released to community custody 33.33 months before the date the State actually released him, (after taking in account the jail credits given) which was on February 10, 2015. At that point, James Ellis should have been released to community custody based on **Sec 3 5(a) supra.**

By denying Ellis his earned release credits, the Department failed to follow the terms of RCW 9.94A.729 in effect in 2009. Obviously the legislature intended even sex offenders to earn early release court credits, as it gave violent sexual offenders 15 percent off and other sex offenders one third off. The difference is that instead of being entitled to outright release, a sex offender, as set forth above, is released to community custody instead of full release.

The Washington courts from the well-settled principle of statutory construction that the legislature “does not engage in unnecessary or meaningless acts, and we presume some significant purpose or objective in every legislative enactment.” In re Recall of Pearsall-Stipek, 141 Wn. 2d 756, 769, 10 P. 3d 1034(2000), quoting, Sellen Constr. Co. v. Dept. of Revenue, 7 Wn. 2d 878, 883, 558 P. 2d 1342 (1976).

When interpreting the words of a statute, courts seek to determine the legislature's intent. State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). If the plain language is clear and unambiguous, the legislative

intent is clear. State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). The meaning of a statutory provision is also harmonized with the other provisions in the statute and the statutory scheme as a whole. Jacobs, 154 Wn.2d at 600.

Earned release means a combination of good conduct time credits and earned time credits. See In re Pers. Restraint of Fogle, 128 Wn.2d 56, 59-60, 904 P.2d 722 (1995) (describing the computation of earned release and the maximum allowed of the aggregate credits).

The court in State v. Winkle, 159 Wn.App. 323, 245 P. 3d 249 (Div. 1 2011) discussed RCW 9.94A.729 as follows:

However, the legislature did not change the requirement that a convicted sex offender "shall be transferred to community custody in lieu of earned release time." RCW 9.94A.729(5). RCW 9.94A.729(5)(a) provides, in pertinent part:

A person who is eligible for earned early release as provided in this section and who is convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense

under chapter 69.50 or 69.52 RCW, shall be transferred to community custody in lieu of earned release time.

¶ 17 Winkle contends that under the 2009 amendments to the SRA, when the court sentences a sex offender to the statutory maximum, the court does not have the authority to impose community custody in lieu of earned early release. Winkle also argues that the language of RCW 9.94A.729(5) is not directed to the court at sentencing, but rather to the Department of Corrections (DOC). The State asserts the court has the authority under the SRA to impose a statutory maximum sentence for a sex offender that includes a period of community custody limited to earned early release as long as the term of community custody does not exceed the statutory maximum.

¶ 18 In construing the statute as a whole, and giving effect to each provision, we conclude that the legislative intent is to require a sex offender to serve community

custody in lieu of earned early release.

While the legislature deleted the language in former RCW 9.94A.715 that "community custody shall begin ... [u]pon completion of the term of confinement [, or] ... at such time as the offender is transferred to community custody in lieu of earned release," the legislature did not amend RCW 9.94A.729(5)(a). RCW 9.94A.729(5)(a) unambiguously requires DOC to transfer a convicted sex offender to community custody in lieu of earned early release.

Regardless of whether RCW 9.94A.729(5)(a) is directed to DOC, the plain language of the statute clearly mandates transferring a convicted sex offender to community custody rather than allowing early release.

(Emphasis added.) Winkle, 159 Wn.App. at 329 -330.

The Defendant State of Washington's policy interpretation completely eliminated Ellis's earned early release credits, which, according to RCW 9.94 A.729 (below), applies even to sex offenders. Thus the Department rendered virtually meaningless RCW 9.94A.729 which governs earned early release time. This was error, because the State

should have required Mr. Ellis to propose a release plan. This was not done.

C. The Court Erred in Classifying James Ellis as a Determinate Offender Under DOC Policy 350.100 .

This motion for reconsideration was brought under CR 59 (7), which provides, “That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;” and CR 59(8) which provides: “Error in law occurring at the trial and objected to at the time by the party making the application;....”

Judge Nakata indicated in her oral opinion that James Ellis was not eligible to earn good conduct time because DOC policy 350.100 (Revision Date 8/28/06).

Section 1. G provides as follows:

All offenders sentenced for crimes committed on or after July 1, 1984, will be eligible for good conduct time, with the exception of those under the death penalty and/or life without the possibility of release. Offenders with mandatory minimum terms are not eligible for good conduct time while serving the mandatory minimum portion of the sentence. Good conduct time will be applicable to all class A, B, and C felonies, with the following exceptions:

1. *Determinate offenders* may not earn good conduct time if the minimum term has expired and may have not been paroled or transferred to a consecutive sentence.
2. Offenders who are serving time as a result of lost earned time or lost good conduct time may not earn good conduct time.

(Emphasis added.) See CP 176-185. Judge Nakata, in her oral opinion, indicated that James Ellis was a “determinate offender” under DOC policy 350.100 1.G, and that because his minimum term had expired and he had not been *paroled* or transferred to consecutive sentences, he was not, therefore, eligible for good conduct time. This was error.

“Determinate sentence” is defined as “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 were, 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.”

RCW 9.94A.030(18).

Under the above definition, James Ellis was not a determinate offender because his actual period of confinement was not stated in the judgment and sentence with *exactitude in the number of actual years, months, or days of total confinement*. The court should not have used that section as a basis to deny Ellis his one-third credit for earned release time. The State, and in its Reply Brief, stated as follows: “As a result, there is no dispute that Mr. Ellis was sentenced to an indeterminate sentence under RCW 9.94A.507 with a minimum term of 60 months and a maximum term of 10 years.” Reply in Support of Defendant’s Motion for Summary Judgment, **CP 157**. Thus, even the State acknowledges that James Ellis was an *indeterminate* offender.

D. There Was A Genuine Issue Of Material Fact As To Whether James Ellis Had Committed Any “Serious Infractions” during his Incarceration which would justify the Loss of his Good Conduct Time.

DOC policy 350.100 (revision date 8/28/06) makes it clear under section 1.E, that quote offenders may fail to earn good conduct time if

found guilty of *serious infractions* per WAC 137-28 or WAC 137-56. WAC 137-56 deals with work-release violations and does not apply here. WAC 137-28-260 provides that WAC 137-25- 030 contains the “list of serious infractions.” **Attached as Appendix A** is WAC 137-25-030 list of serious infractions.

James Ellis attached as **Appendix B** to his **Declaration** a list of all of the programming he had done which included work training and classes. James Ellis also indicated in his declaration that he had not ever been found guilty of a “serious infraction” which would have precluded him from earning good time. The State did not produce any evidence that James Ellis had ever been found guilty of a “serious infraction.” Thus, this matter should not have been determined on summary judgment where James Ellis *denied* in his Declaration that he ever been convicted of a serious infraction, and the State of Washington did not bring any proof on that matter. In a summary judgment hearing, all doubts must be resolved in favor of the nonmoving party. Sea-Pac Co. v. United Food and Commercial Workers Local Union 44, 103 Wash.2d 800, 802, 699 P.2d 217 (1985). The granting of summary judgment is proper if the non-moving party, after the motion is made, fails to establish any facts which would support an essential element of its claim. Weatherbee v. Gustafson, 64 Wn.App. 128, 822 P.2d 1257 (Div.1 1992). See also RCW 72.09.460

inmate's participation in education and work programs. Judge Nakata quoted from RCW 72.09.010(5) which provides in pertinent part:

(d) Linking the receipt or denial of privileges to responsible behavior and accomplishments. The individual who works to improve himself or herself and the community should be rewarded for his efforts. As a corollary, there should be no rewards for no effort.

Number "557" is the serious infraction number for the offense of "refusing to participate in an available work, training, education, or other mandatory programming assignment." Because James Ellis alleged that he never refused to participate in a program, and because he provided a list of work and education programs he participated in, and because the State has neither denied his participation in those programs, nor shown that he has ever been written up as a "serious offense" under section 557 for not programming, there is a genuine issue of material fact as to whether or not James Ellis did anything to lose his earned release credits. According to James Ellis, he was never written up for a 557 failing to participate in any mandatory programming assignment. He was never issued a serious infraction for any offense. **CP 127.**

E. To The Extent That Any DOC Policy Conflicts
with The Washington State Statute, the Washington
State Statute will Control.

To the extent that the Judge Nakata found something in the DOC policy which disqualifies James Ellis for earned release credits, when there is an inconsistency in the DOC policy versus a state statute, the statute controls. In re Personal Restraint of Tally, 172 Wn. 2d 642, 60 P. 3d 868 (Wash, 2011), the court found that Skamania County's program for earned early release credit, which provided that an inmate *could not earn any type of good time credit*, violated former RCW 9.92.151(1), and that the policy had to be consistent with the statute, or if it was not, the statute would prevail. That statute required that "[A]ny program... shall allow an offender to earn early release credits for presentence incarceration." (Emphasis added.) DOC policy 350.100 (revision date 8/28/06) states under "II." that "Offenders who participate in approved programs, including work and school, are eligible to earn earned time for each calendar month as follows... 3. ET eligible under 33% rule 5.00 days."

In In Re the Personal Restraint Petition of David L King, 146 Wn. 2d 658, 663-665 49 P. 3d 854 (2002), the court held that when there is a

conflict between a statute and a DOC policy, the courts will interpret the DOC policy to give full meaning to statute. King, 146 Wn. 2d 662-66.

The court in King also discussed the importance of incentive of earned early release credit for good behavior to the penal system. King, 146 Wn. 2d at 665.

Here Ellis participated in school and work programs, was never written up for a 557 serious infraction for refusing to program, or for any other serious infraction, he was therefore entitled to his one third percent earned release credits, which should have accrued at the rate of five days per month of incarceration. DOC policy 350.100 II.

F. The court should have granted the Motion for Reconsideration based on the same issues above.

The Motion for Reconsideration was brought under CR 59 (7), which provides, “That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;” and CR 59(8) which provides: “Error in law occurring at the trial and objected to at the time by the party making the application;....” Because Ellis was not a “determinate offender,” and because there were questions of fact about whether Ellis had refused to program or ever

NOV 27 2017

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTONBy 35510-1

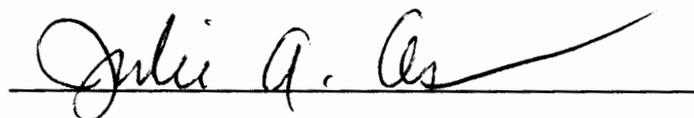
committed a “serious offense” that would have disqualified him from earning early release to community custody, the trial court should have granted Ellis’s Motion for Reconsideration.

III. CONCLUSION

The trial court erred in granting the Defendant’s Motion for Summary Judgment as a matter of law, and in denying Ellis’s Motion for Reconsideration, where 1) Ellis alleged a cause of action for unlawful imprisonment, 2) the Department failed to recognize his credits and failed to release him to community custody, 3) Ellis was not a determinate offender, 4) the trial court erroneously construed DOC policy in a way that conflicted with the state statutes. The trial court Order Granting Summary Judgment should be reversed, and the case should be remanded for trial.

Respectfully submitted this 16th day of November, 2017

LAW OFFICES OF JULIE A ANDERSON



Julie A. Anderson, WSBA #15214

APPENDIX A

§ 137-25-030. Serious infractions

Category A

501 - Committing homicide.

502 - Aggravated assault on another offender.

507 - Committing an act that would constitute a felony and that is not otherwise included in these rules.

511 - Aggravated assault on a visitor or community member.

521 - Taking or holding any person hostage.

550 - Escape.

601 - Possession, manufacture, or introduction of an explosive device or any ammunition, or any components of an explosive device or ammunition.

602 - Possession, manufacture, or introduction of any gun, firearm, weapon, sharpened instrument, knife, or poison or any component thereof.

603 - Possession, introduction, use or transfer of any narcotic, controlled substance, illegal drug, unauthorized drug, mind altering substance, or drug paraphernalia.

604 - Aggravated assault on a staff member.

611 - Sexual assault on a staff member.

612 - Attempted sexual assault of staff.

613 - Abusive sexual contact with staff.

635 - Sexual assault on another offender.

636 - Attempted sexual assault of another offender.

637 - Abusive sexual contact with another offender.

650 - Rioting.

651 - Inciting others to riot.

882 - Possession or unauthorized use of a cell phone.

Category B - Level 1

504 - Engaging in sexual acts with others within the facility with the exception of approved conjugal visits.

553 - Setting a fire.

560 - Unauthorized possession of items or materials likely to be used in an escape attempt.

633 - Assault on another offender.

704 - Assault on a staff member.

711 - Assault on a visitor or community member.

744 - Making a bomb threat.

884 - Urinating, defecating or placing feces or urine, in any location other than a toilet or authorized receptacle.

886 - Adulteration of any food or drinks.

892 - Giving, selling or trading any prescribed medication with another offender.

Category B - Level 2

505 - Fighting with any person.

556 - Refusing to submit or cooperate in a search when ordered to do so by a

staff member.

607 - Refusing to submit to a urinalysis and/or failure to provide a urine sample when ordered to do so by a staff member within the allotted time frame.

608 - Refusing or failing to submit to a breathalyzer or other standard sobriety test when ordered to do so by a staff member.

609 - Refusing or failing to submit to testing required by policy, statute, or court order, such as DNA blood tests when ordered to do so by a staff member.

652 - Engaging in or inciting a group demonstration.

655 - Making intoxicants, alcohol, controlled substances, narcotics, or possession of ingredients, equipment, items, formulas, or instructions that are used in making intoxicants, alcohol, controlled substances, or narcotics.

682 - Engaging in or inciting an organized work stoppage.

707 - Possession, introduction, or transfer of any alcoholic or intoxicating beverage or substance.

716 - Unauthorized use of an over the counter medication or failure to take prescribed medication as required when administered under supervision.

736 - Possession, manufacture or introduction of unauthorized keys.

750 - Indecent exposure.

752 - Receiving a positive test for use of unauthorized drugs, alcohol, or other intoxicants.

830 - Any escape from work release with voluntary return within 24 hours.

Category B - Level 3

503 - Extortion, blackmail, demanding or receiving money or anything of value in return for protection against others, or under threat of informing.

506 - Threatening another with bodily harm or with any offense against another person, property, or family.

509 - Refusing a direct order by any staff member to proceed to or disperse from a particular area.

525 - Violating conditions of a furlough.

558 - Interfering with staff members, medical personnel, firefighters, or law enforcement personnel in the performance of their duties.

600 - Tampering with, damaging, blocking, or interfering with any locking or security device.

605 - Impersonating any staff member, contracted staff member, volunteer, other offenders or visitor.

653 - Causing an inaccurate count or interfering with count by means of unauthorized absence, hiding, concealing oneself, or other form of deception or distraction.

654 - Counterfeiting, forgery, altering, falsification, or unauthorized reproduction of any document, article of identification, money, security, or official paper.

660 - Unauthorized possession of money or other negotiable instruments the value of which is five dollars or more.

709 - Out-of-bounds: Being in another offender's cell or being in an area in the facility with one or more offenders without authorization.

738 - Possession of clothing or assigned equipment of a staff member.

739 - Possession of personal information about currently employed staff, contractors, or volunteers, or their immediate family members, not voluntarily given to the offender by the individual involved; including, but not limited to: Social Security numbers, unpublished home addresses or telephone numbers, driver's license numbers, medical, personnel, financial, or real estate records, bank or credit card numbers, or other like information not authorized by the court or the superintendent.

745 - Refusing a transfer to another institution.

746 - Engaging in or inciting an organized hunger strike.

762 - Failing to complete, or administrative termination from, DOSA substance abuse treatment program. Note: This infraction must be initiated by authorized staff and heard by a community corrections hearing officer in accordance with chapter 137-24 WAC.

777 - Causing injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain.

813 - Unauthorized/unaccounted time in the community or being in an unauthorized location in the community.

814 - While in work release, violation of an imposed special condition.

831 - While in work release, failure to return from an authorized sign out.

879 - Operating a motor vehicle without permission or in an unauthorized manner or location.

889 - Unauthorized use of facility phones/related equipment or use of computer to conduct unauthorized or illegal business.

Category C - Level 1

508 - Throwing objects, materials, substances, or spitting in the direction of another person(s).

517 - Committing any act that would constitute a misdemeanor and that is not otherwise included in these rules.

555 - Theft of property or possession of stolen property.

557 - Refusing to participate in an available education or work program or other mandatory programming assignment.

563 - Making a false fire alarm or tampering with, damaging, blocking, or

interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other firefighting equipment or devices.

610 - Unauthorized possession of prescribed medication greater than a single or daily dose.

620 - Receipt or possession of contraband during participation in off-grounds or outer perimeter activity or work detail.

659 - Sexual harassment.

663 - Using physical force, intimidation or coercion against any person.

702 - Possession, manufacture or introduction of an unauthorized tool.

708 - Organizing or participating in unauthorized group activity or meeting.

714 - Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from, another offender or that offender's friend(s) or family, the value of which is ten dollars or more.

717 - Causing a threat of injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain.

720 - Flooding a cell or other area of the institution/facility.

724 - Refusing a cell or housing assignment.

734 - Participating or engaging in the activities of any unauthorized club, organization, gang or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang or security threat group.

810 - Failure to seek/maintain employment or training or maintain oneself financially or being terminated from a job for negative or substandard performance.

Category C - Level 2

552 - Causing an innocent person to be penalized or proceeded against by

providing false information.

554 - Damaging or destroying state property or any other item the value of which is ten dollars or more and that is not the personal property of the offender.

559 - Gambling; possession of gambling paraphernalia.

656 - Giving, receiving, or offering any person a bribe or anything of value for an unauthorized favor or service.

706 - Giving false information when proposing a release plan.

710 - Being tattooed while incarcerated, tattooing another, or possessing tattoo paraphernalia.

718 - Use of mail or telephone in violation of court order or local, state, or federal law.

725 - Any telephonic or written correspondence with any offender in a correctional facility without prior written approval of the superintendent/community corrections supervisor/designee.

726 - Telephoning or sending written communication or otherwise initiating communication with a minor without the approval of that minor's parent or guardian.

727 - Telephoning or sending written communications to any person contrary to previous written warnings or direction and/or documented disciplinary action.

728 - Possession of any sexually explicit material(s), as defined by department policy and/or WAC 137-25-020.

740 - Fraud, embezzlement, or obtaining goods, services, money, or anything of value under false pretense.

742 - A pattern of creating a false emergency by feigning illness.

778 - Providing a urine specimen that has been diluted, substituted or altered in any way.

Category C - Level 3

551 - Providing false information to the disciplinary hearings officer or on a disciplinary appeal.

606 - Possession, introduction, or transfer of any tobacco, tobacco products, matches, or tobacco paraphernalia.

657 - Being found guilty of four or more general infractions arising out of separate incidents within a 90-day period.

658 - Failing to comply with any administrative or posthearing sanction imposed for committing any general or serious infraction.

662 - Soliciting goods or services for which the provider would expect payment when the offender knows or should know that no funds are available to pay for those goods or services.

712 - Attempted suicide as determined by mental health staff.

713 - Self-mutilation or self-harm.

741 - Theft of food the value of which is more than five dollars.

755 - Misuse or waste of issued supplies, goods, services, or property the replacement value of which is ten dollars or more.

811 - Entering into an unauthorized contract.

812 - Failure to report/turn in all earnings income.

861 - Performing or taking part in an unauthorized marriage.

890 - Failure to follow a medical directive and/or documented medical recommendations resulting in injury.

(1) In determining whether a #728 infraction or a #328 infraction pursuant to WAC 137-25-030 should be charged, the infracting officer shall consider mitigating factors as defined in WAC 137-25-020.

(2) Attempts to commit infraction #611 or #635 are now separate infractions #612 and #636 for the Prison Rape Elimination Act (PREA) reporting purposes only and do not impact the definition in WAC 137-25-020 which includes "attempts."

History. Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 09-01-195, § 137-25-030, filed 12/24/08, effective 1/24/09; 06-21-054, § 137-25-030, filed 10/13/06, effective 11/13/06. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-25-030, filed 11/28/05 and 12/28/05, effective 5/1/06.