

Supreme Court Issues
Cases Not Yet Set & September Term 2024
October 17, 2024

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- Landlord and Tenant—Eviction—Nuisance and Criminal Activity—Notice—Time Period—Coronavirus Aid, Relief, and Economic Security Act—Applicability.
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- Wage theft—Collection of Wages in Private Employment Act—prerequisites to State wage collection action—payment order—necessity.
- *Washington Equal Pay and Opportunities Act—Disclosure of Wage Scale or Salary Range—Job Applicant—Qualification.
- Weapons—Firearms—Regulation—Right to Bear Arms—Federal Constitutional Protection—State Constitutional Protection.
- Weapons—Possession—By Felon—Prior Conviction—Vehicular Homicide—Notice of Weapons Prohibition—Validity—Constitutionality.
- Weapons—Right of Possession—Restoration of Right—Petition—Venue—Former Statute—Applicability.

Cases Not Yet Set

Constitutional Law—Private Affairs—Felony Prosecution—“Pre-Trial Releasee”—Arraignment—Administrative Booking Process—Validity

Whether in a criminal prosecution in King County, the administrative booking process facilitating the collection of fingerprints and other data from pre-trial releasees violates the right to be free from government intrusion into private affairs under Article I, section 7 of the Washington State Constitution to the extent the process allows (1) search and seizure of the subject person’s belongings, (2) handcuffing of the person for purposes of transporting the person, and (3) detention of the person in a cell.

No. 103136-0, *State* (petitioner) v. *Evans* (respondent).

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Constitutional Law—Sex Offender Records—Right of Access—Personal Identifying Information—Use of Pseudonyms in Caption

Whether in this action to enjoin the disclosure of sex offender records requested under the Public Records Act, the superior court erred by allowing the plaintiffs to proceed in pseudonym.

No. 102976-4, *John Doe P., et al.* (petitioners) v. *Zink, et al.* (respondents). (*See also: Constitutional Law—Sex Offender Records—Right of Access—Personal Identifying Information—Use of Pseudonyms in Caption—Sealing—Disclosure Document Containing Real Names*).

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Constitutional Law—Sex Offender Records—Right of Access—Personal Identifying Information—Use of Pseudonyms in Caption—Sealing—Disclosure Document Containing Real Names

Whether in this action to enjoin the disclosure of sex offender records requested under the Public Records Act, where the plaintiffs were permitted to proceed in pseudonym, the superior court properly applied [GR 15](#) and the factors set forth in *Seattle Times Co. v. Ishikawa*, [97 Wn.2d 30, 640 P.2d 716 \(1982\)](#), in ordering the continued sealing of a court document disclosing the plaintiffs' real names.

No. 102976-4, *John Doe P., et al. (petitioners) v. Zink, et al. (respondents)*. (See also: [Constitutional Law—Sex Offender Records—Right of Access—Personal Identifying Information—Use of Pseudonyms in Caption](#)).

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Criminal Law—Aggravated First Degree Murder—Punishment—Sentence—Life Imprisonment Without Parole—Youthful Offender—Resentencing—Sentencing Authority—Community Custody as Exceptional Sentence

Whether in resentencing a 20-year-old offender pursuant to *In re Personal Restraint of Monschke*, [197 Wn.2d 305, 482 P.3d 276 \(2021\)](#), on a conviction for aggravated first degree murder for which the original sentence was mandatory life without release, the trial court had authority to impose a determinate sentence, and whether it could impose community custody as an exceptional sentence.

No. 101859-2, *State (appellant) v. Reite (respondent)*.

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Criminal Law—Judgment—Vacation—Discretion of Court—Release from Custody—Subsequent Incarceration—Effect—Evidence of Rehabilitation—Necessity

Whether, for purposes of vacating a conviction under [RCW 9.94A.640\(2\)](#), a defendant was “released from custody” when the sentence on the conviction expired, even though the defendant remained incarcerated on a subsequent conviction, and if so, whether the trial court had discretion to vacate the conviction without evidence of rehabilitation.

No. 103058-4, [State \(respondent\) v. Abrams \(petitioner\)](#).

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Criminal Law—Jury—Peremptory Challenge—Person of Color—Claimed Inattentiveness—Objection to Challenge—Overruling of Objection—Claimed Error—Remedy

Whether in this criminal prosecution, the trial court erred by overruling the defendant’s [GR 37](#) objection to the State’s use of a peremptory challenge against a juror of color purportedly for inattentiveness, and if so, whether reversal of the defendant’s convictions is required.

No. 103077-1, [State \(petitioner\) v. Bell \(respondent\)](#).

[Unpublished.](#)

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Criminal Law—Unlawful Possession of a Controlled Substance—Obstructing a Public Servant—Motion to Withdraw Guilty Plea—Invalidation of Possession Conviction

Whether a defendant who pleaded guilty to two offenses under a single plea agreement is entitled to withdraw the plea to both offenses on the basis one of the offenses—unlawful possession of a controlled substance—was invalidated under *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021).

No. 102326-0, *State* (respondent) *v. Willyard* (petitioner).

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Financial Institutions—Checking Accounts—Customer Agreement—Overdraft Penalties—Breach of Contract—Consumer Protection—Unfair or Deceptive Conduct.

Whether a credit union member stated a claim for which relief could be granted in alleging that the credit union’s method of calculating overdraft fees under its optional checking account overdraft protection service violated the terms of the membership agreement or was unfair or deceptive for purposes of the Consumer Protection Act.

No. 101288-8, *Feyen* (respondent) *v. Spokane Teachers Credit Union* (petitioner).

23 Wn. App. 2d 264 (2023).

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***Negligence—Government Liability—Duty of Care—Jail Inmate—Self-Inflicted Harm—Drug Overdose—Statutory Defenses—Plaintiff Engaged in Felony—Intoxication Comparative Fault**

Whether, in this negligence lawsuit against a county for a jail inmate’s drug overdose death, the county’s special relationship to the inmate precludes it from asserting statutory affirmative defenses under [RCW 5.40.060\(1\)](#) based on the decedent’s comparative fault related to intoxication, or under former [RCW 4.24.420 \(1987\)](#) based on the decedent having died while committing a felony.

No. 103111-4, *Anderson, et al. (respondent) v. Grant County (petitioner)*.

[28 Wn. App. 2d 796 \(2024\)](#).

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Products Liability—Asbestos—Limitation of Actions—Statute of Repose—Application—Improvement Upon Real Property

Whether the defendant’s installation of asbestos-containing insulation on piping and machinery components in a refinery constituted construction of an improvement upon real property for purposes of the statute of repose in this products liability action, [RCW 4.16.300](#), [.310](#).

No. 102782-6, *Polinder (respondent) v. Aecom Energy & Constr., Inc., et al. (petitioner)*.

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***Products Liability—Choice of Law—Statute of Repose—Punitive Damages**

Whether, in this Washington Product Liability Act (WPLA) action against a chemical manufacturer alleging that exposure to the chemical injured plaintiffs in Washington based on conduct that occurred in Missouri, choice of law principles dictate application of Missouri law on repose rather than the WPLA's statute of repose, and whether Missouri law on punitive damages applies.

No. 103135-1, [Erickson, et al. \(petitioners\) v. Pharmacia, LLC \(respondent\)](#). (See also: [Products Liability—Constitutional Law—Limitations of Actions—Privileges and Immunities—Rational Basis](#); [Products Liability—Expert Testimony—Scientific Testimony—Admissibility](#)).

[548 P.3d 226 \(2024\)](#).

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***Products Liability—Constitutional Law—Limitations of Actions—Privileges and Immunities—Rational Basis**

Whether the Washington Product Liability Act's statute of repose violates the privileges and immunities clause of article I, section 12 of the Washington Constitution.

No. 103135-1, [Erickson, et al. \(petitioners\) v. Pharmacia, LLC \(respondent\)](#). (See also: [Products Liability—Choice of Law—Statute of Repose—Punitive Damages](#); [Products Liability—Expert Testimony—Scientific Testimony—Admissibility](#)).

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***Products Liability—Expert Testimony—Scientific Testimony—Admissibility**

Whether in this products liability action, testimony from plaintiffs’ expert on the quantity of polychlorinated biphenyls (PCBs) to which they were exposed was admissible under *Frye v. United States*, [293 F. 1013 \(D.C. Cir. 1923\)](#).

No. 103135-1, *Erickson, et al. (petitioners) v. Pharmacia, LLC (respondents)*. (See also: [Products Liability—Constitutional Law—Limitations of Actions—Privileges and Immunities—Rational Basis](#); [Products Liability—Constitutional Law—Limitations of Actions—Privileges and Immunities—Rational Basis](#)).

[548 P.3d 226 \(2024\)](#).

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Public Employment—Military Leave—Paid Leave—“Scheduled to Work”—Meaning—Long-Term Military Leave—Effect

Whether under [RCW 38.40.060](#), which provides public employees 21 days of paid military leave annually from October 1 to the following September 30 for days the employee was “scheduled to work,” an employee who was on extended military leave from the fall of 2019 to May 2021 was not entitled to paid leave for 21 days in October 2020 because he was not “scheduled to work” that month due to his extended military leave.

No. 103121-1, *Bearden (plaintiff) v. City of Ocean Shores, et al. (defendants)*.

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**Relief from Judgement—Deeds of Trust—Quiet Title—Limitation of Actions—
Accrual of Cause—Subsequent Decision—Clarification of Law**

Whether the lender in this action to enforce a deed of trust is entitled to relief under [CR 60](#) from a judgment dismissing the action as time-barred where subsequent caselaw clarified that the limitations period did not expire prior to the lender filing suit.

No. 103031-2, [Luv \(respondent\) v. W. Coast Servicing, Inc. \(petitioner\)](#).

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**Statutes—Initiatives—Ballots—Initiative 2117—Initiative 2109—Initiative
2121—Public Investment Impact Disclosure—Validity**

Whether Initiative 2117 (repealing the state’s cap and invest program), Initiative 2109 (repealing the capital gains tax), and Initiative 2121 (making participation in long-term care insurance program optional) would repeal or modify any “tax or fee” and have the effect of causing a net change in state revenue, making it appropriate for the attorney general to prepare public investment impact disclosure statements to appear on the ballots for those initiatives pursuant to [RCW 29A.72.027](#).

No. 103174-2, *Walsh, et al. (appellant) v. Hobbs, et al. (respondents)*.

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Unlawful Detainer—Default Judgment—Statutory Right to Attorney—Notification—Show Cause Hearing—Necessity

Whether in this unlawful detainer action, the superior court failed to comply with [SPR 98.24W\(1\)](#) when it granted the landlord’s motion for default judgment without first holding a show cause hearing or informing the tenant of their statutory right to an attorney.

No. 103332-0, *Sangha* (respondent) v. *Keen, et al.* (petitioners).

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***Vehicular assault—admissibility of laboratory toxicology test results—right of confrontation—testimony of supervisor of technician**

Whether in this prosecution for vehicular assault, the defendant’s right of confrontation was violated when laboratory THC blood test results were admitted without testimony from the technician who performed the test but through the testimony of a supervisor who reviewed the results.

102405-3, *State* (respondent) v. *Hall-Haught* (petitioner).

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***Washington Equal Pay and Opportunities Act—Disclosure of Wage Scale or Salary Range—Job Applicant—Qualification**

This certified federal district court question asks what a plaintiff in an action under the Washington Equal Pay and Opportunities Act, chapter [49.58 RCW](#), must prove to qualify as a “job applicant” within the meaning of [RCW 49.58.110\(4\)](#), including whether the plaintiff must prove that they are a “bona fide” applicant.

No. 103394-0, *Branson, et al.* (plaintiffs) v. *Wash. Fine Wines & Spirits, LLC* (defendant).

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Weapons—Firearms—Regulation—Right to Bear Arms—Federal Constitutional Protection—State Constitutional Protection

Whether Engrossed [Substitute Senate Bill 5078](#), which prohibits the sale, importation, and manufacture in this state of large capacity magazines for firearms, violates the federal and state constitutional rights to bear arms.

No. 102940-3, *State* (appellant) *v. Gator’s Custom Guns, Inc., et al.* (respondents).

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Weapons—Possession—By Felon—Prior Conviction—Vehicular Homicide—Notice of Weapons Prohibition—Validity—Constitutionality

Whether a trial court order prohibiting the defendant from possessing firearms on the basis of his conviction for vehicular homicide is unconstitutional under the Second Amendment to the United States Constitution or article I, section 24 of the Washington Constitution.

No. 103274-9, *State* (respondent) *v. Hamilton* (petitioner). **(Stricken)**

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Weapons—Right of Possession—Restoration of Right—Petition—Venue—Former Statute—Applicability

Whether, in this case involving a criminal offender’s petition to restore firearm rights, the petitioner’s right to restoration vested under the former statute, RCW 9.41.040(4) (2011), such that he may file his petition in his county of residence rather than only in the county where the firearm prohibition was issued, as required under the current statute.

No. 103068-1, [Arends](#) (petitioner) *v. State* (respondent).

[548 P.3d 553 \(2024\)](#).

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**Criminal Law—Automobiles—Arrest—Driving While Intoxicated—
Investigatory Stop—Citizen Informant Tip—911 Call—Factual Basis—
Reliability—Named But Unknown Informant—Corroboration—Police
Observations**

Whether in this criminal prosecution for driving under the influence, a named citizen informant’s tip to a 911 dispatcher that he saw a man staggering through a parking lot before getting behind the wheel of a truck was sufficiently reliable or independently corroborated to support an investigatory traffic stop.

No. 102680-3, *City of Wenatchee* (petitioner) v. *Stearns* (respondent). (Oral Argument: 10/29/24).

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**Criminal Law—Punishment—Sentence—Offender Score—Prior Convictions—
“Out-of-State” Convictions—Foreign Country Convictions**

Whether the requirement of the offender score statute, [RCW 9.94A.525\(3\)](#), that the offender score includes comparable “out-of-state” prior convictions encompasses convictions from foreign countries.

No. 102910-1, *State* (respondent) v. *Lewis* (petitioner). (Oral argument: 11/19/24).

[29 Wn. App. 2d 565 \(2024\).](#)

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**Elections—Ballot—Absentee or Provisional Ballot—Signature Verification—
Constitutional Law—Civil Rights—Deprivation—Standard of Review**

Whether Washington’s voter signature verification statute imposes an unconstitutional burden on the right to vote, and whether the trial court applied the correct standard of review in denying both parties’ motions for summary judgment on this issue.

No. 102569-6, *Vet Voice Found., et al.* (petitioner) v. *Hobbs, et al.* (respondent). (Oral Argument: 10/31/24).

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**Homicide—Multiple Perpetrators—Inferences or Deductions From Evidence—
Circumstantial Evidence—Flight or Surrender**

Whether in this prosecution for second degree felony murder, circumstantial evidence, including flight evidence, is sufficient to support the defendant’s conviction as an accomplice.

No. 102787-7, *State* (petitioner) v. *Zghair* (respondent). (Oral Argument: 10/31/24).

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Industrial Insurance—Tort Claim—Asbestos Exposure—Employer’s Immunity—Exception—Intent to Injure—Actual Knowledge of Certain Injury—Willful Disregard of Knowledge—Proof

Whether in this personal injury action against an employer based on asbestos exposure in the workplace, the plaintiffs, for purposes of the deliberate injury exception to employer immunity under the Industrial Insurance Act, presented sufficient evidence to create a genuine issue of material fact as to whether the employer had actual knowledge that an injury was certain to occur, and if so, whether the employer willfully disregarded that knowledge.

No. 102881-4, *Cockrum* (petitioners) v. *Murphy/Clark-Ullman, Inc., et al.*, (respondents/cross-petitioners). (Oral argument: 11/21/24).

29 Wn. App. 2d 565 (2024).

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Juveniles—Child Abuse—Sexual Abuse—Civil Cause of Action—Statute of Limitations—Acts Occurring When Plaintiff No Longer a Minor—Applicability

Whether in this civil action for child sexual abuse based on acts that began when the plaintiff was a minor and continued after the plaintiff turned 18, the statute of limitations on civil actions for child sexual abuse, [RCW 4.16.340\(1\)](#), applies to the acts committed against the plaintiff after the age of majority.

No. 102899-7, *M.R.* (petitioner) v. *State of Wash., et al.* (respondents). (Oral argument: 11/19/24).

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Juveniles—Juvenile Justice—Community Supervision—Violations—Bench Warrant—Limitation—Court Rule—Validity—Conflict With Statute—Substantive or Procedural Rule

Whether [JuCR 7.16](#), which prohibits the issuance of bench warrants for juveniles for community supervision violations unless there is a serious threat to public safety, conflicts with the Juvenile Justice Act, which authorizes the issuance of juvenile bench warrants without such limitation, and if so, whether it is a substantive rule that must yield to the statute.

No. 102658-7, *State* (respondent) v. *J.M.H.* (petitioner). (Oral argument: 11/21/24).

Consolidated with: 103006-1, *State* (respondent) v. *A.M.W.* (petitioner).

[545 P.3d 394 \(2024\)](#).

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Landlord and Tenant—Eviction—Nuisance and Criminal Activity—Notice—Time Period—Coronavirus Aid, Relief, and Economic Security Act—Applicability

Whether the requirement of the federal Coronavirus Aid, Relief, and Economic Security Act, [15 U.S.C. § 9058\(c\)\(1\)](#), that landlords evicting tenants give tenants 30 days’ notice to vacate applies to evictions for any reason or only to evictions based on failure to pay rent.

No. 102905-5, *The Housing Auth. Of the Cty. of King* (respondent) v. *Knight* (petitioners). (Oral argument: 11/21/24).

[543 P.3d 891 \(2024\)](#).

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Negligence—Owner or Occupier of Land—State—Contractor Working on Land—Hazard Created by Logging—Immunity—Forest Practices Act

Whether the State and forestry companies who conducted logging operations on State land are immune under the Forest Practices Act of 1974, [RCW 76.09.330](#), from liability for injuries caused by a falling tree that had been left standing in a riparian zone pursuant to the act.

No. 102586-6, *Pub. Util. Dist. No. 1 of Snohomish* (respondents) *v. State, et al.* (petitioners). (Oral Argument: 10/29/24).

[28 Wn.2d 124 534 P.3d 1210](#).

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Premises Liability—Falling Object—Summary Judgment—Exception To Traditional Notice Requirements—Dangerous Conditions—Reasonable Foreseeability Standard—Issue Of Fact

Whether in this premises liability case involving injury caused by a roll of fencing falling off of a hardware store shelf, there is a genuine issue of material fact as to whether the unsafe conditions in the store were reasonably foreseeable so as to warrant the application of the exception to traditional notice requirements articulated in *Pimentel v. Roundup Co.*, [100 Wn.2d 39, 666 P.2d 888 \(1983\)](#).

No. 102410-0, *Galassi* (respondent) *v. Lowe's Home Centers, LLC* (petitioner). (Oral argument 11/14/24).

[27 Wn.App.2d 593, 534 P.3d 354 \(2023\)](#).

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Sexual Offenses—Punishment—Sentence—Special Sex Offender Alternative—Suspended Sentence—Community Custody—Conditions—Breathalyzer—Urinalysis—Validity

Whether in sentencing a defendant to a special sex offender sentencing alternative, the superior court properly imposed as community custody conditions that the defendant submit to random breathalyzer and urinalysis tests to monitor his compliance with a condition that he not consume drugs or alcohol, even though the use of drugs and alcohol were not related to the defendant's crimes.

No. 102942-0, *State (respondent) v. Nelson (petitioner)*. (Oral argument: 11/19/24).

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Wage theft—Collection of Wages in Private Employment Act—Prerequisites to State Wage Collection Action—Payment Order—Necessity

Whether the Department of Labor and Industries may initiate a lawsuit against an employer to collect wages allegedly owed without first ordering the employer to pay wages owed under [RCW 49.48.040\(1\)\(b\)](#).

No. 102922-5, *Dep't of Labor & Indus. (petitioner) v. Cannabis Green, LLC (respondent)*. (11/14/24)

[544 P.3d 533 \(2024\).](#)

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