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COURT OF APPEALS

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STATE OF WASHINGTON

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NO. 39776-5-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

CHRISTIAN DOSCHER,

Appellant,

v.

STATE OF WASHINGTON AND THURSTON COUNTY,

Respondents.

BRIEF OF RESPONDENT STATE OF WASHINGTON

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I. INTRODUCTION

Christian Doscher pled guilty to the misdemeanor **Possession of Stolen Property 3** in 1990. Mr. Doscher came to learn, also in 1990, that the court order memorializing that plea which was sent by the Thurston County Clerk's Office to the Washington State Patrol Criminal Records Section indicated that he had pled guilty to **Possession of Stolen Property 2**, a felony. He admits making attempts to fix the record that same year. Eighteen years later, in 2008, Mr. Doscher obtained an order correcting his criminal history. By statute, when this corrected information was sent to WSP, the agency promptly updated Mr. Doscher's criminal history. In 2009, he sued the State of Washington and Thurston County in tort alleging a host of damages as a result of the felony conviction noted in his criminal history for nineteen years.

Mr. Doscher alleges wrongdoing on the part of Thurston County employees in submitting an order that contained errors. He alleges wrongdoing on the part of the State of Washington, Washington State Patrol, for including that information in Mr. Doscher's criminal history.

II. RESTATEMENT OF ISSUES

Does Mr. Doscher fail to state a claim against the State of Washington, Washington State Patrol, because all the agency did was the ministerial task of posting the order sent by Thurston County in Washington's criminal history database? Yes.

Are Mr. Doscher's causes of action barred by the statute of limitations because he waited to seek damages until nineteen years after he first became aware that the order sent by Thurston County to WSP incorrectly identified that he had been convicted of a felony and because there is no legal basis to toll the statute of limitations? Yes.

III. RESTATEMENT OF FACTS

A. Substantive Facts

By statute, the Washington State Patrol (WSP) is the agency charged with maintaining all criminal justice history records. RCW 10.97.045; RCW 43.43.745. The WSP's Identification and Criminal History Section serves as the central repository for all criminal history information statewide. CP 101. The agency is obligated by statute to publish all of the criminal records it receives to the system. CP 101-102; RCW 43.43.735-.745. It processes more than 275,000 pieces of criminal history information annually. CP 102. Due to the sheer volume of information received, WSP cannot investigate or verify the court orders containing criminal history sent by court clerks from around the state. CP 102.

On February 28, 1990, the Thurston County Superior Court Clerk sent the WSP Identification and Criminal History Section an order indicating that Mr. Doscher pled guilty to **Possession of Stolen Property 2nd**, a felony. CP 102, 107. As required by law, WSP posted that criminal history in its database under Mr. Doscher's name. CP 101-102. Eighteen years later, in 2008, the County sent WSP an order indicating that in 1990 Mr. Doscher had been convicted of **Possession of Stolen Property 3rd**, a misdemeanor. CP 102, 110. When WSP received the amended order, it promptly updated his criminal history. CP 103. WSP received no criminal record history regarding Mr. Doscher between 1990 and 2008. CP 102.

In a number of claims filed with state and county offices, Mr. Doscher acknowledges that he knew in 1990 that his criminal history showed that conviction as a felony. CP 20-21, 131, 134, 168. He claims: "my multiple attempts to fix this problem in 1990 didn't work" and "I spoke with WSP and Thurston County Clerk all in 1990 about this matter and was unable to correct it". CP 131, 134, 168. But while Mr. Doscher alleges significant harm as a result of this 1990 court order, including violations of his right to vote, own a firearm and sit on a jury, his hearsay allegations of damages are not born out by the evidence in the record which show none of that to be true. CP 84-89.

B. Procedural History

Mr. Doscher served his amended complaint suing Thurston County and the State of Washington on April 23, 2009. CP 53-54. On August 24, 2009, the trial court granted Thurston County and the State's motions for summary judgment and denied Mr. Doscher's motion for summary judgment. CP 10-12. He timely filed an appeal of the order granting the State and Thurston County's motions only. CP 3-9.

IV. SUMMARY OF ARGUMENT

Mr. Doscher fails to state a claim for which relief can be granted because WSP owed him no duty to independently verify all criminal history information that it receives and the criminal history it received from Thurston County was properly entered. Further, Mr. Doscher's claims are barred by the statute of limitations. Mr. Doscher readily and repeatedly admits throughout his filings that he became aware of the facts underlying his cause of action in 1990. It was then that the statute of limitations began to run. None of the legal exceptions which could toll the statute of limitations applies. As such, his lawsuit filed in 2008 for actions that took place in, and that he first learned of in, 1990 is barred.

V. LAW AND ARGUMENT

A. **The standard of review for a motion for summary judgment is de novo.**

This Court reviews an order on summary judgment *de novo*; the inquiry is the same as that which is made by a trial court. *Cummins v. Lewis County*, 156 Wn.2d 844, 852, 133 P.3d 458 (2006). An appellate court may affirm on any ground supported by the record even if it is not considered or applied by the trial court. *See, e.g., LaMon v. Butler*, 112 Wn.2d 193, 200-01, 770 P.2d 1027, *cert. denied*, 493 U.S. 814 (1989).

B. **Mr. Doscher fails to state a claim because no duty was owed to him under the public duty doctrine to independently verify the criminal history information sent from Thurston County.**

Mr. Doscher argues that an unnamed court clerk and unnamed deputy prosecutor committed fraud against him. CP 53. Both of these unnamed individuals would have been employees of Thurston County. CP 62-66. The only allegation against the WSP is that it disseminated a “false felony” between 1990 and 2008. CP 54. Although not clearly stated by him, this appears to be a broad allegation of negligence by WSP in the maintenance and publication of its criminal records database. CP 54. But WSP owed Mr. Doscher no duty to independently verify the criminal history information it received from Thurston County before disseminating it. As such he fails to state a claim.

The Washington State Criminal Records Privacy Act allows for the inspection of criminal history records, as well as challenges to the correctness of those records. RCW 10.97.080. But there is no evidence in the record that Mr. Doscher availed himself of that process. What is in the record are clear admissions by him that he knew there was a problem with his criminal history in 1990 at the time the criminal history was transmitted by Thurston County to the WSP, and yet he did nothing until 2008 to challenge or otherwise correct the information. CP 20-21, 101-102, 131, 134, 168,

As with all negligence claims, Mr. Doscher must establish duty, breach, causation and damages. *Hartley v. State*, 103 Wn.2d 768, 777, 698 P.2d 77 (1985). But, under the public duty doctrine, a government entity is not liable for the negligence of its actors unless the plaintiff can show that the actor breached a duty owed to the plaintiff individually, rather than a duty that was owed to all members of the public. *Vergeson v. Kitsap County*, 145 Wn. App. 526, 535, 186 P.3d 1140 (2008).

In *Vergeson*, a woman claimed negligence on the part of Kitsap County for failing to quash two warrants it had entered in Washington's criminal history database. *Id.* Many years after the warrants should have been quashed, the plaintiff was wrongly arrested. *Id.* (The difference between that case and this one is that unlike Mr. Doscher, who knew that

the WSP records showed him convicted of a felony, the plaintiff in *Vergeson* did not know the records had not been quashed. *Id.*) The court upheld the summary judgment dismissal of the plaintiff's negligence claims because the plaintiff could not establish any exceptions to the public duty doctrine and thus no duty was owed. *Id.* Likewise, Mr. Doscher cannot establish that a legal duty existed and as a result he fails to state a claim.

Moreover, WSP properly entered the criminal history information that it received from Thurston County regarding Mr. Doscher, so he cannot establish a breach of the duty he asserts.

C. Mr. Doscher's claims are barred by the statute of limitations because more than eighteen years passed from the time he learned the Thurston County court order incorrectly stated he had pled guilty to a felony and the time he filed this lawsuit.

Mr. Doscher's complaint alleges defamation, outrage, fraud and gross negligence. CP 54. The statute of limitations for a defamation claim is two years. RCW 4.16.100. The statute of limitations for the remaining claims is three years. RCW 4.16.080. A statute of limitations serves two different policy purposes. *Kittinger v. Boeing Co.*, 21 Wn. App. 484, 486, 585 P.2d 812 (1978).

First is the policy of repose, i.e., it is intended to instill a measure of certainty and finality into one's affairs by eliminating the fears and burdens of threatened litigation. Second, it is intended to protect one against stale claims

because they are more likely to be spurious and consist of untrustworthy evidence than are fresh claims. One is also less likely to have witnesses and relevant evidence available to defend against stale claims.

Id.

Both of the policy considerations which a statute of limitations are intended to address are present in this case. The actions about which Mr. Doscher complains happened in 1990. Specifically, on or about February 28, 1990, Thurston County employees transmitted an order containing Mr. Doscher's criminal history to WSP for inclusion in the statewide criminal history database. CP 102. That order indicated that Mr. Doscher had pled guilty to **Possession of Stolen Property 2**, a felony, and the WSP recorded that information in its database. CP 102, 107. Due to the volume of criminal history record information that WSP receives, more than 275,000 pieces annually, there is no way to verify the information. CP 102. The order was incorrect when it was submitted to WSP because Mr. Doscher had pled guilty to **Possession of Stolen Property 3**, a misdemeanor. CP 159-162. However, what is fatal to Mr. Doscher's claim is that he knew in 1990 that the information that Thurston County submitted and that WSP recorded was incorrect.

Mr. Doscher has repeatedly admitted that he knew in 1990 that the information in his criminal history was incorrect. CP 20-21, 131, 134,

168. He has repeatedly admitted that he tried in 1990 to correct his criminal history but could not. CP 20-21, 131, 134, 168. And while he alleged years and years of problems enforcing or attaining important rights including the right to vote, sit on a jury, or own a firearm, the admissible evidence establishes that this is not true. CP 84-89, 131. Mr. Doscher's lawsuit was filed more than sixteen years after his cause of action accrued and is time barred. As such, summary judgment for Respondents was properly granted.

D. No exceptions to the statute of limitations apply to allow Mr. Doscher's claim to go forward because he knew the facts underlying his claim in 1990.

Mr. Doscher submitted a declaration in support of his motion for summary judgment in which he argued that the discovery rule, fraud¹ and statutes related to various disabilities apply such that his failure to file his lawsuit nineteen years ago is explained. CP 18-23. Even putting aside the inadmissibility of the information on which he relies, the exceptions to the applicable statutes of limitations do not apply as he has argued them.

1. No tolling due to the discovery rule.

While the general rule is that the statute of limitations begins to run following the time period that an act occurs, in some instances there is a

¹ While Mr. Doscher makes allegations of fraud generally, he identifies only job classes that belong to county employees in his complaint. CP 53. For the reasons articulated by Thurston County, those fraud allegations do not toll the statute of limitations. CP 63-65.

delay between the injury and the plaintiff's discovery of it. *Allen v. State*, 118 Wn.2d 753, 758, 826 P.2d 200 (1992). If the delay was not caused by the plaintiff sleeping on his rights, the court may apply the discovery rule. *Crisman v. Crisman*, 85 Wn. App. 15, 20, 931 P.2d 163 (1997). The discovery rule operates to toll the date of accrual until the plaintiff knows or, through the exercise of due diligence, should have known all the facts necessary to establish a legal claim. *Allen*, 118 Wn.2d at 758. This balances the policies underlying statutes of limitations against the unfairness of cutting off a valid claim where the plaintiff, due to no fault of his or her own, could not reasonably have discovered the claim's factual elements until some time after the date of the injury. *Gazija v. Nicholas Jerns Co.*, 86 Wn.2d 215, 220-21, 543 P.2d 338 (1975).

The discovery rule does not apply in the factual situation presented by Mr. Doscher. He readily and repeatedly admits that he knew in 1990 that the WSP records showed that he had been convicted of a felony, even though he actually had only pled guilty to a misdemeanor. CP 20-21, 131, 134, 168. Mr. Doscher further admits that he took a number of steps in 1990 to try and correct the record. CP 22. He states that he was told nothing could be done about it by unnamed and unidentified members of the criminal justice system. CP 22. He further states that he suffered

damages throughout the years due to the felony that he knew was on his record. CP 19.

But what actually happened in 2008 belies his claims that nothing could be done when he learned of the error in 1990. In 2008, Mr. Doscher availed himself of the statutory process for correcting criminal history. CP 22. WSP records show no attempt by Mr. Doscher to correct the record until 2008. CP 102. When WSP received updated criminal history information in 2008, the agency promptly corrected the criminal history. CP 102. Had Mr. Doscher acted similarly in 1990, when he first learned the felony was on the record, the issue would have been resolved then.

A reasonable inquiry in 1990 would have led the Mr. Doscher to the place where he ended up in 2008 – undergoing a challenge to what was contained in the record and promptly resolving the issue. Any acts or omissions occurred in 1990. Mr. Doscher was aware of the issue in 1990 and any lawsuit had to be filed within three years, at the latest, of the time in 1990 when he first learned that the WSP record contained an indication of a felony conviction. However, for reasons that are unclear, Mr. Doscher chose not to undertake the examination and correction of his records back at the time that he first learned that a felony was listed in the WSP records. The discovery rule does not toll the statute of limitations under the circumstances presented here and, as such, his lawsuit filed

nineteen years after he learned of the facts and harm is untimely and must be dismissed.

2. No tolling due to RCW 4.16.350.

Mr. Doscher argued below that the statute of limitation should be tolled indefinitely based on a reading of RCW 4.16.350. CP 66. However, RCW 4.16.350, entitled “[a]ction for injuries resulting from health care or related services--Physicians, dentists, nurses, etc.--Hospitals, clinics, nursing homes, etc” is inapplicable here. As it states:

“Any civil action for damages for injury occurring as a result of health care which is provided after . . .”

RCW 4.16.350.

This statute on its face relates to claims of medical malpractice. Since Mr. Doscher’s claim does not involve medical malpractice, the statute is inapplicable.

3. No tolling due to disability.

Relying on RCW 4.16.260, Mr. Doscher argues that he had disabilities that prevented him from acting in 1990 and which toll the statute of limitations. CP 18, 67. That statute states:

When two or more disabilities shall coexist at the time the right of action accrues, the limitation shall not attach until they all be removed.

But this statute is inapplicable, because it refers to legal disabilities as set forth in RCW 4.16.190:

Unless otherwise provided in this section, if a person entitled to bring an action mentioned in this chapter...be at the time the cause of action accrued either **under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW, or imprisoned on a criminal charge prior to sentencing, the time of such disability shall not be a part of the time limited for the commencement of action.**

RCW 4.16.190(1) (emphasis added).

Mr. Doscher produced no admissible evidence that the disabilities outlined in this statute were the reason for his inability to file his lawsuit nineteen years ago when he first became aware of the incorrect order. Furthermore, he produced no admissible evidence that anytime between 1990 and 2008 his mental disorders were of such a quality that he required guardianship under Chapter 11.88 or that he was incompetent.

Mr. Doscher knew of the facts underlying this cause of action in 1990. CP 19-22. He produced no admissible evidence that meets any of the statutory requirements for a legal disability that would excuse his failure to file within the period allowed for his claims. CP 18. Accordingly, there is no basis to toll the statute of limitations due to any disability and his claims should be dismissed.

VI. CONCLUSION

For the foregoing reasons, the State of Washington requests that the trial court order granting the State's motion for summary judgment be affirmed.

RESPECTFULLY SUBMITTED this 18th day of June, 2010.

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APPENDIX

- Exhibit 1 - RCW 4.16.080
- Exhibit 2 - RCW 4.16.100
- Exhibit 3 - RCW 4.16.190
- Exhibit 4 - RCW 4.16.260
- Exhibit 5 - RCW 4.16.350
- Exhibit 6 - RCW 10.97.045
- Exhibit 7 - RCW 10.97.080
- Exhibit 8 - RCW 43.43.735 - .745



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[RCWs](#) > [Title 4](#) > [Chapter 4.16](#) > [Section 4.16.080](#)

[4.16.070](#) << [4.16.080](#) >> [4.16.085](#)

RCW 4.16.080
Actions limited to three years.

The following actions shall be commenced within three years:

- (1) An action for waste or trespass upon real property;
- (2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;
- (3) Except as provided in RCW [4.16.040\(2\)](#), an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;
- (4) An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;
- (5) An action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution; but this subdivision shall not apply to action for an escape;
- (6) An action against an officer charged with misappropriation or a failure to properly account for public funds intrusted to his custody; an action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribed a different limitation: PROVIDED, HOWEVER, The cause of action for such misappropriation, penalty or forfeiture, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statutes of limitations, or the bar thereof, even though complete, shall not be deemed to accrue or to have accrued until discovery by the aggrieved party of the act or acts from which such liability has arisen or shall arise, and such liability, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statute of limitation, or the bar thereof, even though complete, shall exist and be enforceable for three years after discovery by aggrieved party of the act or acts from which such liability has arisen or shall arise.

[1989 c 38 § 2; 1937 c 127 § 1; 1923 c 28 § 1; Code 1881 § 28; 1869 p 8 § 28; 1854 p 363 § 4; RRS § 159.]

Notes:

Reviser's note: Transitional proviso omitted from subsection (6). The proviso reads: "PROVIDED, FURTHER, That no action heretofore barred under the provisions of this paragraph shall be commenced after ninety days from the time this act becomes effective;".



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[RCWs](#) > [Title 4](#) > [Chapter 4.16](#) > [Section 4.16.100](#)

[4.16.090](#) << [4.16.100](#) >> [4.16.110](#)

RCW 4.16.100

Actions limited to two years.

Within two years:

- (1) An action for libel, slander, assault, assault and battery, or false imprisonment.
- (2) An action upon a statute for a forfeiture or penalty to the state.

[Code 1881 § 29; 1877 p 8 § 29; 1869 p 9 § 29; 1854 p 363 § 5; RRS § 160.]

Notes:

Limitation of action for recovery of transportation charges: RCW [81.28.270](#).





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[RCWs](#) > [Title 4](#) > [Chapter 4.16](#) > [Section 4.16.190](#)

[4.16.180](#) << [4.16.190](#) >> [4.16.200](#)

RCW 4.16.190

Statute tolled by personal disability.

(1) Unless otherwise provided in this section, if a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter [11.88](#) RCW, or imprisoned on a criminal charge prior to sentencing, the time of such disability shall not be a part of the time limited for the commencement of action.

(2) Subsection (1) of this section with respect to a person under the age of eighteen years does not apply to the time limited for the commencement of an action under RCW [4.16.350](#).

[2006 c 8 § 303; 1993 c 232 § 1; 1977 ex.s. c 80 § 2; 1971 ex.s. c 292 § 74; Code 1881 § 37; 1877 p 9 § 38; 1869 p 10 § 38; 1861 p 61 § 1; 1854 p 364 § 11; RRS § 169.]

Notes:

Findings -- Intent -- Part headings and subheadings not law -- Severability -- 2006 c 8: See notes following RCW [5.64.010](#).

Purpose -- Intent -- 1977 ex.s. c 80: "It is the purpose of the legislature in enacting this 1977 amendatory act to provide for a comprehensive revision of out-dated and offensive language, procedures and assumptions that have previously been used to identify and categorize mentally, physically, and sensory handicapped citizens. It is legislative intent that language references such as idiots, imbeciles, feeble-minded or defective persons be deleted and replaced with more appropriate references to reflect current statute law more recently enacted by the federal government and this legislature. It is legislative belief that use of the undefined term "insanity" be avoided in preference to the use of a process for defining incompetency or disability as fully set forth in chapter [11.88](#) RCW; that language that has allowed or implied a presumption of incompetency or disability on the basis of an apparent condition or appearance be deleted in favor of a reference to necessary due process allowing a judicial determination of the existence or lack of existence of such incompetency or disability." [1977 ex.s. c 80 § 1.]

Severability -- 1977 ex.s. c 80: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 80 § 76.]

Severability -- 1971 ex.s. c 292: See note following RCW [26.28.010](#).

Adverse possession, personal disability, limitation tolled: RCW [7.28.090](#).





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[4.16.250](#) << [4.16.260](#) >> [4.16.270](#)

RCW 4.16.260
Coexisting disabilities.

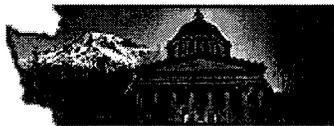
When two or more disabilities shall coexist at the time the right of action accrues, the limitation shall not attach until they all be removed.

[Code 1881 § 43; 1877 p 10 § 44; 1854 p 365 § 17; RRS § 175.]



EXHIBIT 4

RCW 4.16.260



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[4.16.340](#) << [4.16.350](#) >> [4.16.360](#)

RCW 4.16.350

Action for injuries resulting from health care or related services — Physicians, dentists, nurses, etc. — Hospitals, clinics, nursing homes, etc.

Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976 against:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, podiatric physician and surgeon, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative;

(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative;

based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: PROVIDED, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect, until the date the patient or the patient's representative has actual knowledge of the act of fraud or concealment, or of the presence of the foreign body; the patient or the patient's representative has one year from the date of the actual knowledge in which to commence a civil action for damages.

For purposes of this section, notwithstanding RCW 4.16.190, the knowledge of a custodial parent or guardian shall be imputed to a person under the age of eighteen years, and such imputed knowledge shall operate to bar the claim of such minor to the same extent that the claim of an adult would be barred under this section. Any action not commenced in accordance with this section shall be barred.

For purposes of this section, with respect to care provided after June 25, 1976, and before August 1, 1986, the knowledge of a custodial parent or guardian shall be imputed as of April 29, 1987, to persons under the age of eighteen years.

This section does not apply to a civil action based on intentional conduct brought against those individuals or entities specified in this section by a person for recovery of damages for injury occurring as a result of childhood sexual abuse as defined in RCW 4.16.340(5).

[2006 c 8 § 302. Prior: 1998 c 147 § 1; 1988 c 144 § 2; 1987 c 212 § 1401; 1986 c 305 § 502; 1975-'76 2nd ex.s. c 56 § 1; 1971 c 80 § 1.]

EXHIBIT 5
RCW 4.16.350

Notes:

Purpose -- Findings -- Intent -- 2006 c 8 §§ 301 and 302: "The purpose of this section and section 302, chapter 8, Laws of 2006 is to respond to the court's decision in *DeYoung v. Providence Medical Center*, 136 Wn.2d 136 (1998), by expressly stating the legislature's rationale for the eight-year statute of repose in RCW 4.16.350.

The legislature recognizes that the eight-year statute of repose alone may not solve the crisis in the medical insurance industry. However, to the extent that the eight-year statute of repose has an effect on medical malpractice insurance, that effect will tend to reduce rather than increase the cost of malpractice insurance.

Whether or not the statute of repose has the actual effect of reducing insurance costs, the legislature finds it will provide protection against claims, however few, that are stale, based on untrustworthy evidence, or that place undue burdens on defendants.

In accordance with the court's opinion in *DeYoung*, the legislature further finds that compelling even one defendant to answer a stale claim is a substantial wrong, and setting an outer limit to the operation of the discovery rule is an appropriate aim.

The legislature further finds that an eight-year statute of repose is a reasonable time period in light of the need to balance the interests of injured plaintiffs and the health care industry.

The legislature intends to reenact RCW 4.16.350 with respect to the eight-year statute of repose and specifically set forth for the court the legislature's legitimate rationale for adopting the eight-year statute of repose. The legislature further intends that the eight-year statute of repose reenacted by section 302, chapter 8, Laws of 2006 be applied to actions commenced on or after June 7, 2006." [2006 c 8 § 301.]

Findings -- Intent -- Part headings and subheadings not law -- Severability -- 2006 c 8: See notes following RCW 5.64.010.

Application -- 1998 c 147: "This act applies to any cause of action filed on or after June 11, 1998." [1998 c 147 § 2.]

Application -- 1988 c 144: See note following RCW 4.16.340.

Preamble -- Report to legislature -- Applicability -- Severability -- 1986 c 305: See notes following RCW 4.16.160.

Severability -- 1975-'76 2nd ex.s. c 56: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 56 § 15.]

Actions for injuries resulting from health care: Chapter 7.70 RCW.

Complaint in personal injury actions not to include statement of damages: RCW 4.28.360.

Evidence of furnishing or offering to pay medical expenses inadmissible to prove liability in personal injury actions for medical negligence: Chapter 5.64 RCW.

Immunity of members of professional review committees, societies, examining,

licensing or disciplinary boards from civil suit: RCW 4.24.240.

Proof and evidence required in actions against hospitals, personnel and members of healing arts: RCW 4.24.290.

Verdict or award of future economic damages in personal injury or property damage action may provide for periodic payments: RCW 4.56.260.



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[RCWs](#) > [Title 10](#) > [Chapter 10.97](#) > [Section 10.97.045](#)

[10.97.040](#) << [10.97.045](#) >> [10.97.050](#)

RCW 10.97.045

Disposition data to initiating agency and state patrol.

Whenever a court or other criminal justice agency reaches a disposition of a criminal proceeding, the court or other criminal justice agency shall furnish the disposition data to the agency initiating the criminal history record for that charge and to the identification section of the Washington state patrol as required under RCW [43.43.745](#).

[1979 ex.s. c 36 § 6.]



EXHIBIT 6



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RCWs > Title 10 > Chapter 10.97 > Section 10.97.080

[10.97.070](#) << [10.97.080](#) >> [10.97.090](#)

RCW 10.97.080

Inspection of information by subject — Challenges and corrections.

*** CHANGE IN 2010 *** (SEE 6239-S.SL) ***

All criminal justice agencies shall permit an individual who is, or who believes that he may be, the subject of a criminal record maintained by that agency, to appear in person during normal business hours of that criminal justice agency and request to see the criminal history record information held by that agency pertaining to the individual. The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigative, or other related files, and shall not be construed to include any information other than that defined as criminal history record information by this chapter.

Every criminal justice agency shall adopt rules and make available forms to facilitate the inspection and review of criminal history record information by the subjects thereof, which rules may include requirements for identification, the establishment of reasonable periods of time to be allowed an individual to examine the record, and for assistance by an individual's counsel, interpreter, or other appropriate persons.

No person shall be allowed to retain or mechanically reproduce any nonconviction data except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete. The provisions of chapter 42.56 RCW shall not be construed to require or authorize copying of nonconviction data for any other purpose.

The Washington state patrol shall establish rules for the challenge of records which an individual declares to be inaccurate or incomplete, and for the resolution of any disputes between individuals and criminal justice agencies pertaining to the accuracy and completeness of criminal history record information. The Washington state patrol shall also adopt rules for the correction of criminal history record information and the dissemination of corrected information to agencies and persons to whom inaccurate or incomplete information was previously disseminated. Such rules may establish time limitations of not less than ninety days upon the requirement for disseminating corrected information.

[2005 c 274 § 206; 1979 ex.s. c 36 § 3; 1977 ex.s. c 314 § 8.]

Notes:

Part headings not law -- Effective date -- 2005 c 274: See RCW 42.56.901 and 42.56.902.



EXHIBIT 7

RCW 10.97.080



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[RCWs](#) > [Title 43](#) > [Chapter 43.43](#) > [Section 43.43.735](#)

[43.43.730](#) << [43.43.735](#) >> [43.43.740](#)

RCW 43.43.735

Photographing and fingerprinting — Powers and duties of law enforcement agencies — Other data.

(1) It shall be the duty of the sheriff or director of public safety of every county, and the chief of police of every city or town, and of every chief officer of other law enforcement agencies duly operating within this state, to cause the photographing and fingerprinting of all adults and juveniles lawfully arrested for the commission of any criminal offense constituting a felony or gross misdemeanor. (a) When such juveniles are brought directly to a juvenile detention facility, the juvenile court administrator is also authorized, but not required, to cause the photographing, fingerprinting, and record transmittal to the appropriate law enforcement agency; and (b) a further exception may be made when the arrest is for a violation punishable as a gross misdemeanor and the arrested person is not taken into custody.

(2) It shall be the right, but not the duty, of the sheriff or director of public safety of every county, and the chief of police of every city or town, and every chief officer of other law enforcement agencies operating within this state to photograph and record the fingerprints of all adults lawfully arrested.

(3) Such sheriffs, directors of public safety, chiefs of police, and other chief law enforcement officers, may record, in addition to photographs and fingerprints, the palmprints, soleprints, toeprints, or any other identification data of all persons whose photograph and fingerprints are required or allowed to be taken under this section when in the discretion of such law enforcement officers it is necessary for proper identification of the arrested person or the investigation of the crime with which he or she is charged.

[2009 c 549 § 5130; 2006 c 294 § 6; 1991 c 3 § 297. Prior: 1989 c 334 § 9; 1989 c 6 § 2; prior: 1987 c 486 § 12; 1987 c 450 § 2; 1985 c 201 § 13; 1972 ex.s. c 152 § 8.]





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[43.43.735](#) << [43.43.740](#) >> [43.43.742](#)

RCW 43.43.740

Photographing and fingerprinting — Transmittal of data.

(1) It shall be the duty of the sheriff or director of public safety of every county, and the chief of police of every city or town, and of every chief officer of other law enforcement agencies duly operating within this state to furnish within seventy-two hours from the time of arrest to the section the required sets of fingerprints together with other identifying data as may be prescribed by the chief, of any person lawfully arrested, fingerprinted, and photographed pursuant to RCW [43.43.735](#).

(2) Law enforcement agencies may retain and file copies of the fingerprints, photographs, and other identifying data and information obtained pursuant to RCW [43.43.735](#). Said records shall remain in the possession of the law enforcement agency as part of the identification record and are not returnable to the subjects thereof.

[2006 c 294 § 7; 1989 c 334 § 10. Prior: 1987 c 486 § 13; 1987 c 450 § 3; 1985 c 201 § 14; 1972 ex.s. c 152 § 9.]





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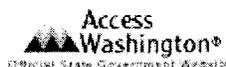
[43.43.740](#) << [43.43.742](#) >> [43.43.745](#)

RCW 43.43.742

Submission of fingerprints taken from persons for noncriminal purposes — Fees.

The Washington state patrol shall adopt rules concerning submission of fingerprints taken by local agencies after July 26, 1987, from persons for license application or other noncriminal purposes. The Washington state patrol may charge fees for submission of fingerprints which will cover as nearly as practicable the direct and indirect costs to the Washington state patrol of processing such submission.

[1987 c 450 § 4.]





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[43.43.742](#) << [43.43.745](#) >> [43.43.750](#)

RCW 43.43.745

Convicted persons, fingerprinting required, records — Furloughs, information to section, notice to local agencies — Arrests, disposition information — Convicts, information to section, notice to local agencies — Registration of sex offenders.

(1) It shall be the duty of the sheriff or director of public safety of every county, of the chief of police of each city or town, or of every chief officer of other law enforcement agencies operating within this state, to record the fingerprints of all persons held in or remanded to their custody when convicted of any crime as provided for in RCW [43.43.735](#) for which the penalty of imprisonment might be imposed and to disseminate and file such fingerprints in the same manner as those recorded upon arrest pursuant to RCW [43.43.735](#) and [43.43.740](#).

(2) Every time the secretary authorizes a furlough as provided for in RCW [72.66.012](#) the department of corrections shall notify, thirty days prior to the beginning of such furlough, the sheriff or director of public safety of the county to which the prisoner is being furloughed, the nearest Washington state patrol district facility in the county wherein the furloughed prisoner is to be residing, and other similar criminal justice agencies that the named prisoner has been granted a furlough, the place to which furloughed, and the dates and times during which the prisoner will be on furlough status. In the case of an emergency furlough the thirty-day time period shall not be required but notification shall be made as promptly as possible and before the prisoner is released on furlough.

(3) Disposition of the charge for which the arrest was made shall be reported to the section at whatever stage in the proceedings a final disposition occurs by the arresting law enforcement agency, county prosecutor, city attorney, or court having jurisdiction over the offense: PROVIDED, That the chief shall promulgate rules pursuant to chapter [34.05](#) RCW to carry out the provisions of this subsection.

(4) Whenever a person serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, is released on an order of the state indeterminate sentence review board, or is discharged from custody on expiration of sentence, the department of corrections shall promptly notify the sheriff or director of public safety, the nearest Washington state patrol district facility, and other similar criminal justice agencies that the named person has been released or discharged, the place to which such person has been released or discharged, and the conditions of his or her release or discharge.

Local law enforcement agencies shall require persons convicted of sex offenses to register pursuant to RCW [9A.44.130](#). In addition, nothing in this section shall be construed to prevent any local law enforcement authority from recording the residency and other information concerning any convicted felon or other person convicted of a criminal offense when such information is obtained from a source other than from registration pursuant to RCW [9A.44.130](#) which source may include any officer or other agency or subdivision of the state.

(5) The existence of the notice requirement in subsection (2) of this section will not require any extension of the release date in the event the release plan changes after notification.

[1994 c 129 § 7; 1993 c 24 § 1; 1990 c 3 § 409; 1985 c 346 § 6; 1973 c 20 § 1; 1972 ex.s. c 152 § 10.]

Notes:

Findings -- Intent -- 1994 c 129: See note following RCW 4.24.550.

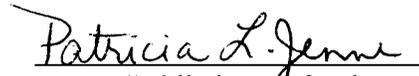
**Index, part headings not law -- Severability -- Effective dates --
Application -- 1990 c 3:** See RCW 18.155.900 through 18.155.902.

Construction -- Prior rules and regulations -- 1973 c 20: See note following RCW 72.66.010.


Lynn Jordan

SUBSCRIBED AND SWORN TO Before me this 21st day of
June, 2010.




Notary Public in and for the
State of Washington
Residing at Yelm, WA
My Commission Expires: 4-12-12