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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY 
DEPUTY

NO. 40271-8-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Appellant,

vs.

CRAIG ALLEN OLSON,

Respondent.

BRIEF OF RESPONDENT

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ORIGINAL

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STATEMENT OF THE CASE

By information filed December 31, 2008, the Cowlitz County Prosecutor charged the defendant Craig Allen Olson with one count of possession of methamphetamine. CP 4-5 This charge arose out of an incident in which a police officer made a traffic stop on the vehicle the defendant was driving and then arrested him based solely upon the existence of a Department of Corrections (DOC) warrant issued by the defendant's Community Corrections Officer. CP 1-3. During a search incident to that arrest, the officer found a small amount of methamphetamine on the defendant's person. *Id.*

Following his arrest, the defendant moved to suppress the evidence seized, arguing that the DOC warrant was invalid because it was issued in violation of the statutory rules the legislature set for the issuance of such warrants, and that it also violated Washington Constitution, Article 1, § 7, and United States Constitution, Fourth Amendment, in that it was not issued upon a statement given under oath or affirmation and it was not reviewed by a neutral magistrate. CP 6, 7-25. Following argument, the trial court granted the motion and suppressed the evidence. CP 61-64. The court later entered the following findings of fact and conclusions of law on the motion:

FINDINGS OF FACT

1. On October 29, 2008, the defendant Craig Allen Olson plead

guilty in Lewis County Superior Court to possession of methamphetamine. As part of his sentence, the court ordered him to serve 12 months of community supervision with the Washington State Department of Corrections (DOC).

2. Following his sentence in Lewis County, the defendant reported to DOC, who assigned DOC officer Cody Muller out of the Chehalis office to supervise him.

3. On December 23, 2008, DOC Officer Muller issued a warrant for the defendant's arrest by filling in a "Wanted Person Entry Form" on his DOC computer. He then e-mailed this form to the main office of DOC in Olympia, where a clerk typed the information into the Washington Criminal Information Computer (WACIC).

4. In the "Wanted Person Entry Form", Officer Muller did not provide any information concerning his claim that the defendant had failed to report. Neither did he sign the document or make it under oath or affirmation. A copy of the wanted person entry form is attached.

5. On December 27, 2008, Kelso Officer Voelker stopped the defendant as he was driving in the City of Kelso. After running the defendant's name, the WACIC computer confirmed the existence of the DOC warrant issued by the defendant's probation officer. Officer Voelker then arrested the defendant based solely upon the existence of that warrant.

6. Following the arrest, Officer Voelker searched the defendant incident to the arrest on the DOC warrant. Officer Voelker claimed no other justification for his search of the defendant other than as a search incident to arrest on the DOC warrant. During this search of the defendant's person, Officer Voelker found a small amount of methamphetamine that underlies the defendant's current charges.

CONCLUSIONS OF LAW

1. The defendant has argued that the DOC warrant was invalid because DOC Officer Mueller failed to follow the requirements of former RCW 9.94A.740 in the issuance of the warrant in that (1) the wanted person entry form contains no facts from which a reviewing

entity could determine whether or not the defendant had violated his community custody, and (2) neither the secretary nor any designee of the secretary reviewed the wanted person entry form to determine whether or not the defendant had violated his community custody. The court rejects this argument and finds as a matter of law that under RCW 9.94A.716 and former RCW 9.94A.740, as well as DOC regulations, the secretary was authorized to delegate and did delegate the authority for issuing warrants to the individual DOC officers, who need not include any underlying information on them.

2. Under the United States Constitution, Fourth Amendment, as interpreted by the Ninth Circuit Court of Appeals in *United States v. Vargas-Amaya*, 389 F.3d 901 (9th Cir. 2004), arrest warrants for probationers may not issue unless a neutral and detached magistrate finds probable cause to support the issuance of the warrant based upon facts set out by oath or affirmation. In the case at bar, the warrant violates the Fourth Amendment because it was not reviewed by a neutral and detached magistrate, and no statement of facts was given under oath or affirmation in support of the request for the warrant.

3. As the decision in *State v. Parker*, 139 Wn.2d 486, 493, 987 P.2d 73 (1999), clarifies, every violation of the Fourth Amendment is automatically a violation of Washington Constitution, Article 1, § 7. Thus, the warrant in the case at bar also violates Washington Constitution, Article 1, § 7, because it was not reviewed by a neutral and detached magistrate, and no statement of facts was given under oath or affirmation in support of the request for the warrant.

4. Since the arrest warrant in the case was invalid, the arrest based solely upon this warrant was also invalid. Since the search of the person of the defendant incident to arrest in the case at bar was the only exception to the warrant requirement claimed by the state, the search of the person made pursuant to the arrest on the invalid warrant was a search made “without authority of law.” As a result, under Washington Constitution, Article 1, § 7, the evidence found during this search should be suppressed.

RP 61-63.

Based upon a lack of evidence, the trial court granted a motion to

dismiss by the defendant. CP 65. The state thereafter filed timely notice of appeal.

ARGUMENT

I. THIS COURT SHOULD AFFIRM THE TRIAL COURT'S DECISION TO SUPPRESS IF IT FINDS ANY LEGAL BASIS TO DO SO EVEN IF THAT BASIS WAS NOT ARGUED BELOW.

Under RAP 2.4(a), this court “may refuse to review any claim of error which was not raised in the trial court.” The rule lists three arguments that are exceptions to this rule: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. By contrast, under this same rule, the party respondent “may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground.” RAP 2.5(a). *See also Cheney v. City of Mountlake Terrace*, 87 Wn.2d 338, 552 P.2d 184 (1976); *State v. Heiner*, 29 Wn.App 193, 627 P.2d 983 (1981).

In this case at bar, the defendant made a number of arguments before the trial court as to why the warrant upon which the defendant was arrested was invalid. However, the defendant did not argue that (1) the warrant was invalid because it violated the enhanced privacy protections afforded the citizens of this case under Washington Constitution, Article 1, § 7, and (2) that the warrant was issued in violation of the defendant's due process rights under either Washington Constitution, Article 1, § 3, or United States Constitution, Fourteenth Amendment. In this brief, the defendant makes both

of these arguments. In the case at bar, the facts before this court are not at issue. Indeed, the state did not assign errors to any of the findings of fact. Thus, they are verities on appeal. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Consequently, the record before the trial court and before this court is complete and sufficient to allow the defendant to present both of these arguments.

II. UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 7, ARREST WARRANTS FOR PROBATIONERS CANNOT ISSUE EXCEPT UPON FACTUAL ALLEGATIONS GIVEN ON OATH OR AFFIRMATION WITH INDEPENDENT REVIEW EVEN THOUGH THESE REQUIREMENTS DO NOT APPLY UNDER THE FOURTH AMENDMENT.

In the opening brief of appellant, the state argued that the trial court erred when it relied upon the decision in *United States v. Vargas-Amaya*, 389 F.3d 901 (9th Cir. 2004), for the proposition that arrest warrants issued for probationers have to meet the “oath and affirmation” requirement from the Fourth Amendment. In particular, the trial court relied upon the following from that Ninth Circuit Case.

The government argues that a parole violation warrant may issue without “probable cause” supported by “oath or affirmation” because parolees are subject to lesser or no *Fourth Amendment* protections. We disagree.

Although, while on supervised release, Vargas was subject to lesser *Fourth Amendment* protection, he was nonetheless protected by the *Fourth Amendment*. See *United States v. Knights*, 534 U.S. 112, 122, 151 L. Ed. 2d 497, 122 S. Ct. 587 (2001); *Latta v. Fitzharris*, 521 F.2d 246, 248 (9th Cir. 1975) (“It is thus too late in the day to

assert that searches of parolees by their parole officers present no *Fourth Amendment* issues.”). The cases dealing with lesser *Fourth Amendment* protection are generally concerned with which searches and seizures are reasonable without a warrant. See e.g., *Knights*, 534 U.S. at 122 (holding “that the warrantless search of *Knights*, supported by reasonable suspicion and authorized by a condition of probation, was reasonable within the meaning of the *Fourth Amendment*”). The cases do not address whether a warrant for violation of the terms of release must comply with the *Warrant Clause*.

Here, by statute, a warrant was required to extend the court’s jurisdiction. Unlike the *Fourth Amendment*’s malleable restriction on unreasonable searches and seizures, the *Warrant Clause* is exceptionally clear and provides that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation.” *U.S. Const. amend. IV* (emphasis added). Thus while certain searches may be permissible when there is less than probable cause, under the *Fourth Amendment*, no warrant is valid unless there is probable cause supported by sworn facts.

United States v. Vargas-Amaya, 389 F.3d at 906-907 (Italics in original; footnote omitted).

In making this argument, the state cites to the subsequent decision of the Ninth Circuit in *United States v. Sherman*, 502 F.3d 869 (9th Cir. 2007). In this case, the defendant was arrested upon a warrant issued by the parole commission based upon two allegations that he had violated the conditions of his parole. The defendant subsequently challenged the validity of that warrant, arguing that under the decision in *Vargas-Amaya*, the warrant was defective because it was issued in reliance upon allegations not given under oath or affirmation. Thus, it violated his rights under the Fourth Amendment.

The Ninth Circuit Court rejected the defendant's arguments, holding that in *Vargas-Amaya*, the court held that a judicially issued warrant that extended probation could only issue upon a claim made on oath or affirmation, while in the case before it, the court was reviewing the validity of an administrative warrant issued in reliance upon a statutory provision that did not include a requirement that claims of violation be supported by oath or affirmation.

In the case at bar, the state has argued that the secretary's warrant at issue is an "administrative warrant" and is no more subject to the oath and affirmation requirement of the Fourth Amendment that was the warrant in *Sherman*. The defendant herein argues that this analysis is not completely correct because in making it the state has ignored the language the legislature adopted when it granted DOC the authority to issue warrants. This authority is found in RCW 9.94A.740(1), wherein the legislature did include a requirement that the warrant only issue upon "reasonable cause." This statute states:

(1) The secretary may issue warrants for the arrest of any offender who violates a condition of community placement or community custody. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation. The department shall compensate the local jurisdiction at the office of financial management's adjudicated rate, in accordance with RCW 70.48.440. *A community corrections officer, if he or she has reasonable cause to believe an offender in community placement or community custody has violated a condition of*

community placement or community custody, may suspend the person's community placement or community custody status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community placement or community custody status. A violation of a condition of community placement or community custody shall be deemed a violation of the sentence for purposes of RCW 9.94A.631. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.631.

RCW 9.94A.740(1) (effective until August 1, 2009) (emphasis added).

Since this statute failed to incorporate an “oath or affirmation” requirement, just as the federal statute in *Sherman* did not include such a requirement, then there is a good argument that this portion of the Fourth Amendment does not apply. However, unlike the state in *Sherman*, RCW 9.94A.740 does include a requirement that the warrant only issue upon “reasonable cause,” this portion of the requirements under the Fourth Amendment still applies in the case at bar, even though it did not in *Sherman*.

However, as the following explains, even if the state’s argument is correct and the warrant at issue in the case at bar is not subject to the “oath and affirmation” requirement of the Fourth Amendment, it is still subject to the enhanced privacy protections found in Washington Constitution, Article 1, § 7, which also requires that all warrants, administrative and judicial, issue only upon oath or affirmation reviewed by a neutral party.

In order to enable courts to determine whether greater protection under the state constitution is warranted in a particular case, the Washington State Supreme Court has established six nonexclusive criteria to be applied as part of that analysis. *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986). If these criteria are present, a court must decide the case on independent state constitutional grounds, which afford more protection to individuals from searches and seizures by the government than the Fourth Amendment to the United States Constitution. *See State v. Carter*, 127 Wn.2d 836, 904 P.2d 290 (1995); *see also State v. Boland*, 115 Wn.2d 571, 800 P.2d 1112 (1990). However, since the *Gunwall* case involved comparing the same constitutional provisions as those to be examined here (Washington Constitution, Article 1, § 7), it is only necessary to examine the fourth and sixth *Gunwall* factors as they apply to this case. *Boland*, 115 Wn.2d at 576-77.

The fourth *Gunwall* factor is whether or not “preexisting bodies of law, including statutory law” militate toward a conclusion that greater protection was intended under the state constitution. *Gunwall*, 106 Wn.2d at 61-62. As was previously mentioned, the statute here at issue itself requires that the warrant only issue upon reasonable suspicion. It also requires that the “community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community

placement or community custody status.” Whereas the decision in *Sherman* indicates that the federal statute has no such requirement, RCW 9.94A.740 includes such requirements and indicates a legislative desire to give more protection to privacy rights than exist under the Fourth Amendment.

In addition, the very language of Washington Constitution, Article 1, § 7, and the cases interpreting the issuance of arrest warrants also indicate the desire for enhanced protections under the state constitution. Under the language of Fourth Amendment, four core areas of individual privacy interest are given specific protection from governmental intrusion: “persons, houses, papers, and effects.” By contrast, under Washington Constitution, Article 1, § 7, the two specific areas of protection are “private affairs and homes.” This provision states:

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

Washington Constitution, Article 1, § 7.

Just what constitutes a “private affair” under this constitutional provision has been argued in numerous cases. However, chief among our “private affairs” is the right to be free from state intrusion into one’s own body, which is the first interest protected from governmental intrusion under the Fourth Amendment. Justice Sanders put this proposition as follows in his dissent in *State v. Surge*, 160 Wn.2d 65, 156 P.3d 208 (2007):

A person's body is cardinal among the "private affairs" protected by Article I, section 7. And the right to preserve the integrity of one's body is fundamental.

State v. Surge, 160 Wn.2d at 89.

As the court noted in *State v. Walker*, 157 Wn.2d 307, 313, 138 P.3d 113 (2007), any analysis under Article 1, § 7, begins with two questions: (1) "was there a disturbance of one's private affairs," and (2) "if so, was the disturbance authorized by law?" (citing *In re Pers. Restraint of Maxfield*, 133 Wn.2d 332, 339, 945 P.2d 196 (1997)). As was just noted, the most private of affairs is the integrity of one's body. Thus, the government intrudes or disturbs a person's "private affairs" when the police make a custodial arrest. As the court notes in *State v. Walker*, 101 Wn.App. 1, 999 P.2d 1296 (2000):

Washington Constitution, Article I, § 7, provides that "no person shall be disturbed in his private affairs, or his home invaded, without authority of law." When served, a warrant of arrest disturbs a person in his private affairs.

State v. Walker, 101 Wn.App. at 5.

Thus, the fourth *Gunwall* factor supports the conclusion that Washington Constitution, Article 1, § 7 provides more privacy protection than the Fourth Amendment in regards to the issuance of administrative warrants for the arrest of a person.

The sixth *Gunwall* factor also militates towards finding a state

constitutional protection in excess of that existent under the federal constitution if the issue before the court involves “matters of particular state or local concern.” *Gunwall*, 106 Wn.2d at 61-62. The question under this factor becomes: Is the subject matter local in character, or does there appear to be a need for national uniformity? The privacy interests protected by Article 1, § 7 include “those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant.” *State v. Mendez*, 137 Wn.2d 208, 217, 970 P.2d 722 (1999) (the sixth *Gunwall* factor leads to the conclusion that Washington Constitution, Article 1, § 7 provides greater protection to privacy than the Fourth Amendment). Thus, our courts have held that Washington law recognizes a particularized interest in the privacy interest of its citizens well beyond that found at the national level. *State v. Ferrier*, 136 Wn.2d 103, 960 P.2d 927 (1998)

Given the increased protections under Washington Constitution, Article 1, § 7, this court should find that even if the Fourth Amendment oath and affirmation requirements do not apply to the issuance of administrative arrest warrants for probationers, the oath or affirmation requirements do continue to apply to the issuance of administrative arrest warrants for probationers under Washington Constitution, Article 1, § 7. Thus, even though the warrant issued in this case without a statement of facts and

without oath or affirmation might not violate United States Constitution, Fourth Amendment, it did violate Washington Constitution, Article 1, § 7. As a result, the trial court did not err when it granted the defendant's motion to suppress.

III. THE ARREST WARRANT IN THIS CASE VIOLATED DUE PROCESS UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 3, AND UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT, BECAUSE IT FAILED TO GIVE NOTICE OF THE CLAIM OF VIOLATION.

Under United States Constitution, Fourteenth Amendment, no state shall "deprive any person of life, liberty, or property, without due process of law." Although a parolee does not have the full panoply of constitutional rights guaranteed an ordinary citizen, he or she has a conditional liberty interest in continued release and is thus entitled to minimal due process protections. *Morrissey v. Brewer*, 408 U.S. 471, 480-81, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972).

The United States Supreme Court has determined that, in the context of parole violations, minimal due process includes the following: (1) written notice of the claimed violations; (2) disclosure to the parolee of the evidence against him; (3) the opportunity to be heard; (4) the right to confront and cross-examine witnesses (unless there is good cause for not allowing confrontation); (5) a neutral and detached hearing body; and (6) a statement by the court as to the evidence relied upon and the reasons for the revocation.

Morrissey, 408 U.S. at 489. Since community supervision in Washington is the equivalent to federal parole, these rights also apply to persons under community supervision. *In re McNeal*, 99 Wn.App. 617, 631, 994 P.2d 890 (2000).

While most of the minimal due process rights enumerated in *Morrissey* come into play in a revocation hearing after the parolee has been arrested, the notice requirement relates to the procedures used to initiate the arrest. *Sherman v. U.S. Parole Com'n*, 502 F.3d 869, 880 (9th Cir. 2007). As the *Morrissey* Court held, at the first stage of the parole revocation process, the arrest and detention, the parolee is entitled to notice that a preliminary hearing will take place to determine whether there is probable cause to believe he has committed a parole violation. The notice must also state what violations have been alleged. *Morrissey*, 408 U.S. at 485-87.

In *Sherman, supra*, the Ninth Circuit Court of Appeals held that the oath or affirmation requirement of the Fourth Amendment does not apply to parole violation warrants. Because parolees have already been convicted, they are entitled to only minimal due process protections, rather than the full protections of the Fourth Amendment. These protections were codified by Congress in the federal statute at issue in *Sherman*, which specifically required that a parole violation warrant notify the parolee of the conditions he or she is alleged to have violated, his or her rights, and any actions that

may be taken. *See* 18 U.S.C. § 4123(c). Thus, even though a parole violation warrant does not have to be based on an oath or affirmation, minimal due process protections require notice of the alleged parole violations and notice of the parolee's rights. *Sherman*, 502 F.3d at 880.

Under Washington law, the secretary of the Department of Corrections is authorized to issue warrants for the arrest of offenders who violate conditions of community supervision. RCW 9.94A.740(1). Moreover, a community corrections officer may suspend community supervision and arrest or cause the arrest of an offender on "reasonable cause" to believe the offender has violated a condition of community custody. In doing so, the community corrections officer must report to the secretary the facts, circumstances, and reasons for suspending community custody. RCW 9.94A.740(2). While the statute does not explicitly state that the facts and circumstances of the alleged violation must be included in the warrant, under *Morrissey*, such notice is required to comport with the offender's due process rights.

In the case at bar, the court found that the Wanted Person Entry Form filled out by the defendant's community corrections officer contained no statement of facts. The warrant for the defendant's arrest was issued based on this form, and the arrest was based solely on the warrant. Thus, regardless of whether the Fourth Amendment oath or affirmation and review

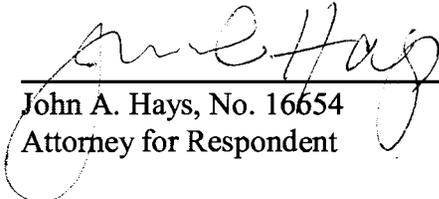
requirements apply, the warrant issued in this case was invalid because it did not provide the full notice required by due process. The court's decision suppressing evidence seized during a search incident to the defendant's arrest on the unlawful warrant should be affirmed.

CONCLUSION

The trial court did not err when it held that the warrant upon which the defendant was arrested failed to meet the requirements of the constitution. Thus, the trial court did not err when it granted the defendant's motion to suppress.

DATED this 22nd day of September, 2010.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Respondent

APPENDIX

**WASHINGTON CONSTITUTION
ARTICLE 1, § 3**

No person shall be deprived of life, liberty, or property, without due process of law.

**WASHINGTON CONSTITUTION
ARTICLE 1, § 7**

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

**UNITED STATES CONSTITUTION,
FOURTH AMENDMENT**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons and things to be seized.

**UNITED STATES CONSTITUTION,
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

RCW 9.94A.740 (former)

(1) The secretary may issue warrants for the arrest of any offender who violates a condition of community placement or community custody. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation. The department shall compensate the local jurisdiction at the office of financial management's adjudicated rate, in accordance with RCW 70.48.440. A community corrections officer, if he or she has reasonable cause to believe an offender in community placement or community custody has violated a condition of community placement or community custody, may suspend the person's community placement or community custody status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community placement or community custody status. A violation of a condition of community placement or community custody shall be deemed a violation of the sentence for purposes of RCW 9.94A.631. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.631.

(2) Inmates, as defined in RCW 72.09.015, who have been transferred to community custody and who are detained in a local correctional facility are the financial responsibility of the department of corrections, except as provided in subsection (3) of this section. The community custody inmate shall be removed from the local correctional facility, except as provided in subsection (3) of this section, not later than eight days, excluding weekends and holidays, following admittance to the local correctional facility and notification that the inmate is available for movement to a state correctional institution.

(3) The department may negotiate with local correctional authorities for an additional period of detention; however, sex offenders sanctioned for community custody violations under RCW 9.94A.737(2) to a term of confinement shall remain in the local correctional facility for the complete term of the sanction. For confinement sanctions imposed under RCW 9.94A.737(2)(a), the local correctional facility shall be financially responsible. For confinement sanctions imposed under RCW

9.94A.737(2)(b), the department of corrections shall be financially responsible for that portion of the sanction served during the time in which the sex offender is on community custody in lieu of earned release, and the local correctional facility shall be financially responsible for that portion of the sanction served by the sex offender after the time in which the sex offender is on community custody in lieu of earned release. The department, in consultation with the Washington association of sheriffs and police chiefs and those counties in which the sheriff does not operate a correctional facility, shall establish a methodology for determining the department's local correctional facilities bed utilization rate, for each county in calendar year 1998, for offenders being held for violations of conditions of community custody, community placement, or community supervision. For confinement sanctions imposed under RCW 9.94A.737(2) (c) or (d), the local correctional facility shall continue to be financially responsible to the extent of the calendar year 1998 bed utilization rate. If the department's use of bed space in local correctional facilities of any county for confinement sanctions imposed on offenders sentenced to a term of community custody under RCW 9.94A.737(2) (c) or (d) exceeds the 1998 bed utilization rate for the county, the department shall compensate the county for the excess use at the per diem rate equal to the lowest rate charged by the county under its contract with a municipal government during the year in which the use occurs.

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STATE OF WASHINGTON

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

STATE OF WASHINGTON,
Appellant,

vs.

CRAIG A. OLSON,
Respondent.

**NO. 08-1-01451-4
COURT OF APPEALS NO:
40271-8-II**

AFFIRMATION OF SERVICE

STATE OF WASHINGTON)
County of Cowlitz) : ss.

CATHY RUSSELL, states the following under penalty of perjury under the laws of Washington State. That at all times herein mentioned I was and now am a citizen of the United States and resident of the State of Washington, over the age of eighteen and competent to be a witness and make service herein.

On **September 22nd, 2010**, I personally placed in the mail the following documents

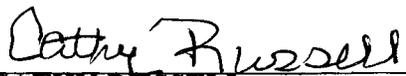
- 1. **BRIEF OF RESPONDENT**
- 2. **AFFIRMATION OF SERVICE**

to the following:

**SUSAN BAUR
COWLITZ CO. PROSECUTING ATTY
312 SW FIRST AVE.
KELSO, WA 98626**

**CRAIG A. OLSON
1932 SR 505, SPACE B
TOLEDO, WA 98501**

Dated this **22nd** day of September, 2010 at **LONGVIEW**, Washington.



CATHY RUSSELL
LEGAL ASSISTANT TO JOHN A. HAYS