

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
CLERK

Supreme Court No. 97232-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CARRI D. WILLIAMS,

Petitioner,

v.

JO WOFFORD, Superintendent, Washington Corrections
Center for Women, and the WASHINGTON
DEPARTMENT OF CORRECTIONS,

Respondents.

**ORIGINAL ACTION IN THE NATURE OF A PETITION FOR A
WRIT OF PROHIBITION AND/OR MANDAMUS**

Emergency Relief Requested in Accompanying Motion

James E. Lobsenz WSBA #8787
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Carri D. Williams, Petitioner, brings this original action in the nature of a petition for a writ of prohibition and/or mandamus.

PARTIES

1. Carri D. Williams is an inmate at the Washington Correctional Center for Women.

2. Jo Wofford is the Superintendent of the Washington Corrections Center for Women.

3. The Washington Department of Corrections is an agency of the State of Washington.

JURISDICTION

4. The events giving rise to this action occurred at the Washington Corrections Center for Women in Gig Harbor Washington.

5. This Court has jurisdiction over this matter pursuant to RAP 16.2.

FACTS

6. In June of 2016, Correctional Officer Kaleopa, an employee of the Department of Corrections, inappropriately touched Williams while doing a pat down of Williams' person.

7. Officer Kaleopa touched Williams' breast in a manner that did not comply with Washington Administrative Code § 504.26.221. (Copy attached as Appendix A).

8. Williams reported the incident to a different Corrections Officer.

9. On May 26, 2017, Officer Kaleopa inappropriately touched Williams' breast again and also grabbed her crotch.

10. Williams reported this second incident to a different Corrections Officer.

11. So far as Williams knows, the prison took no action in response to her first two complaints that she made informally and verbally to another Corrections Officer.

12. On September 21, 2018, Officer Kaleopa inappropriately touched Williams' breast again.

13. On September 25, 2018, Williams reported the incident over the PREA (Prison Rape Elimination) telephone hotline.

14. On February 19, 2019, Officer Kaleopa inappropriately touched Williams' breast again.

15. On February 20, 2019, Williams reported the February 19th incident over the PREA (Prison Rape Elimination) telephone hotline.

16. On May 15, 2019, PREA investigator Lance Byrne contacted Williams and told her that she was being infractioned for violation of the prison rule against "lying". He told her that she would be having an infraction hearing on May 31, 2019 at 8:30 a.m.

17. Byrne gave Williams a *Disciplinary Hearing Notice* that says she is charged with a violation of 549: "Providing false or misleading information during any stage of an investigation of sexual misconduct, as defined in department policy." (Copy attached as Appendix B).

18. Byrne also gave Williams a copy of a document entitled *Initial Serious Infraction Report*. (Copy attached as Appendix C). That report states “This report is a summary of the PREA investigation.” The narrative portion of the report states as follows:

On 5/3/2019, I, Investigator Torres *was given pre-approval by Superintendent Wofford to infract Offender Williams*, Carrie DOC #370021 for a WAC 549 as a result of investigation 18-18197 per DOC 490.860, Prison Rape Elimination Act (PREA) investigation. *Superintendent Wofford reviewed the investigation conducted on the allegations made by offender Williams and determined the allegations to be unfounded; that they did not occur.* In this instance of alleged staff sexual misconduct, *the Appointing Authority determined by a preponderance of the evidence Offender Williams caused, an innocent person to be accused by providing false or misleading information* during any stage of the investigation. Allegations made are listed below.

1. It is alleged that C/O Kaleopa conducted a pat search that included too much time being spent over the victim’s breast area and her thumbs made contact with the victims [sic] nipples.

(Emphasis added).

19. On the *Initial Serious Infraction Report* the “Yes” box next to the word “Evidence” is checked. After “Description of evidence” it states “PREA Case 18-18197 held in Investigations Office for review.” After the words “Related reports attached” a box labeled “Supplemental” is checked. However, no Supplemental Report was attached and Petitioner Williams was not provided with either “PREA Case 18-18197” or with any “Supplemental report.” She also was not provided with any witness statements.

ORIGINAL ACTION IN THE NATURE OF A PETITION FOR A WRIT OF PROHIBITION AND/OR MANDAMUS

20. The *Disciplinary Hearing Notice* (Appendix B) informs Williams that (a) she does not have the right to cross-examine witnesses against her; (b) she does have the right to have access to video; that she may request copies of all witness statements; (c) that she may request other persons to be present as witnesses, unless it is determined by the hearing officer that doing so would be unduly hazardous to facility safety or security; (d) that she has the right to review all related reports; (e) that she may request a department advisor; and (f) she may waive her right to be present at the hearing; and that she may appeal the decision and/or sanctions to the superintendent/facility supervisor within 15 working days.

21. Williams subsequently requested copies of all witness statements and related reports, asked for a department advisor, and asked that another inmate be called as a witness.

22. Williams first came to the Washington Correctional Center for Women on October 31, 2013 and she has been there continuously since that time. During her entire 5-1/2 years at the prison she has been infraction free. This is the first time she has ever been charged with an infraction.

23. Washington State DOC Policy No. 490.860, the "Prison Rape Elimination Act (PREA) Investigation" Policy, governs how the Department of Corrections investigates inmate complaints regarding sexual assaults. It was first adopted and put into effect on October 1, 2013 and has been revised a number of times since then. A copy of the policy as revised on June 1, 2018 is attached as Appendix D.

24. Part II(A) of Policy No. 490.860 states that Retaliation is prohibited. That section states:

Retaliation against anyone for opposing or reporting sexual misconduct or participating in an investigation of such misconduct ***is prohibited***. Individuals may be subject to disciplinary actions if found to have engaged in retaliation, failed to report such activities, or failed to take immediate steps to prevent retaliation.

(Emphasis added).

29. Part IV(B) of Policy No. 490.860 provides:

Contract staff and volunteers who are found to have committed staff sexual misconduct will be terminated from service and prohibited from contact with offenders. For any other violations of Department PRE policies, appropriate actions will be taken.

25. Policy No. 490.860 Part V(B) states in general that an alleged victim of sexual misconduct is immune from any disciplinary action *except* when the “Appointing Authority” determines that the alleged victim lied and caused an innocent person to be accused of sexual misconduct. This section of the Policy states in pertinent part:

Alleged victims are not subject to disciplinary action related to violating PREA policies *except when*:

1. . . .
2. ***The Appointing Authority determines, by a preponderance of the evidence, that the offender caused an innocent person to be accused by providing false or misleading information during any stage of the investigation.***
 - a. A 549 violation will be written and served upon the completion of the investigation and

must be authorized by the Appointing Authority.

- b. A report of sexual abuse made in good faith will not constitute providing false information, even if the investigation does not establish sufficient evidence to substantiate the allegation.

(Emphasis added).

26. A “549” violation is classified as a “serious violation” in WAC 137-25-030 and it is further classified as a Category B, Level 3 serious violation.

CLAIMS

CLAIM ONE. DENIAL OF DUE PROCESS: ABSENCE OF AN IMPARTIAL HEARING OFFICER.

27. DOC Policy No. 490.860 is facially unconstitutional because it fails to afford the accused inmate with a neutral decision maker. The decision maker is a correctional officer employed by the prison, and is charged with making a decision as to whether the inmate falsely accused a fellow correctional officer of sexual misconduct. The decision maker cannot possibly be impartial in this situation since he is charged with deciding whether or not his or her co-worker – a fellow guard – committed sexual misconduct. If he decides that the fellow correctional officer did commit sexual misconduct then the fellow officer will automatically be fired. Allowing correctional officers to exonerate each other when charged with sexual misconduct, the prison procedure provides hearing officers who can never meet the minimum due process requirement of a fair and impartial

ORIGINAL ACTION IN THE NATURE OF A PETITION FOR A WRIT OF PROHIBITION AND/OR MANDAMUS

- 6

decision maker which is required by both the Fourteenth Amendment Due Process Clause and by Wash., Const., art. 1, §3.

**CLAIM TWO. DENIAL OF DUE PROCESS:
ABSENCE OF A MEANINGFUL OPPORTUNITY
TO BE HEARD BY THE SUPERINTENDENT.**

28. DOC Policy 490.860 is facially unconstitutional because the accused inmate has *no* opportunity to be heard before the Appointing Authority (the Superintendent) makes the initial determination that the inmate has committed 549 violation of lying. This procedure is constitutionally inadequate to meet the minimum procedural fairness standard required by both the Fourteenth Amendment Due Process Clause and by Wash., Const., art. 1, §3.

**CLAIM THREE. DENIAL OF DUE PROCESS:
ABSENCE OF A MEANINGFUL OPPORTUNITY
TO BE HEARD BY THE HEARING OFFICER.**

29. DOC Policy No. 490.860 is facially unconstitutional because it fails to afford the accused inmate a meaningful opportunity to be heard. By the time the disciplinary hearing is held pursuant to DOC Policy No. 460.000 the Superintendent of the prison has already determined by a preponderance of the evidence that the inmate is guilty of the infraction. This procedure is constitutionally inadequate to meet the minimum procedural fairness required by both the Fourteenth Amendment Due Process Clause and by Wash., Const., art. 1, §3.

ORIGINAL ACTION IN THE NATURE OF A PETITION FOR A WRIT OF PROHIBITION AND/OR MANDAMUS

- 7

**CLAIM FOUR. DENIAL OF DUE PROCESS:
AT THE HEARING, THE INMATE MAY BE FOUND
GUILTY ON THE BASIS OF "SOME EVIDENCE"**

30. The DOC need only prove a violation of a prison disciplinary rule by the "some evidence" standard. This evidentiary standard is constitutionally inadequate to meet the minimum procedural fairness required by the Fourteenth Amendment Due Process Clause and by Wash., Const., art. 1, §3.

**CLAIM FIVE. VIOLATION OF RCW 4.24.515:
DEPRIVATION OF IMMUNITY FOR
MAKING A REPORT TO THE APPROPRIATE AGENCY**

31. The attempt by Respondents to impose disciplinary sanctions against her for the alleged 549 violation would violate Petitioner's absolute right under RCW 4.24.515 to be free from civil liability for having made a report to the appropriate state agency.

**CLAIM SIX: VIOLATION OF THE STATE CONSTITUTIONAL
RIGHT TO PETITION.**

32. The attempt by Respondents to impose disciplinary sanctions against her for the alleged 549 violation would violate Petitioner's absolute immunity from any sanction for having exercised her state constitutional right to petition for redress of grievances.

NO EVIDENTIARY HEARING REQUIRED.
TRANSFER TO THE SUPERIOR COURT IS
NOT APPROPRIATE

33. All of Petitioners' claims regarding the constitutionality of DOC Policy No. 490.860 are claims that the policy is unconstitutional on its face. Therefore, no evidentiary hearing is required because Petitioner is maintaining that there is no factual situation where the challenged law can ever be constitutional.

34. Similarly, Petitioner is claiming that *every* inmate is *always* absolutely immune from disciplinary action whenever he or she makes a report to the prison that he or she was sexually assaulted by a prison employee. Therefore, no evidentiary hearing is required to decide these claims.

35. Since no factual determinations need to be made, this Court should not transfer this petition to the Superior Court pursuant to RAP 16.2(d). This Court should retain jurisdiction over this petition. Pursuant to RAP 8.3 this Court should issue a stay, as requested in the accompanying emergency motion, so as to preserve the status quo, and should set a briefing schedule pursuant to RAP 16.2(d) and (e).

RELIEF REQUESTED

Petitioner asks this Court to grant the following relief:

1. Grant an immediate stay enjoining respondents from conducting any further proceedings in connection with the pending 549 serious infraction now set for hearing on May 31, 2019. This stay should

ORIGINAL ACTION IN THE NATURE OF A PETITION FOR A WRIT OF
PROHIBITION AND/OR MANDAMUS

- 9

prohibit respondents from acting until this case has been resolved and a final ruling has been made on the merits of Petitioner's request for a writ of prohibition.

2. After briefing and full consideration of the merits, grant the requested writ of prohibition, or alternatively, a writ of mandamus, and in that writ to prohibit Respondents from conducting a disciplinary hearing for a 549 serious violation.

3. Declare provisions of DOC Policy No. 490.860 unconstitutional, null and void.

4. Declare that RCW 4.12.510 provides Petitioner with complete immunity from prison discipline for having made her complaints of sexual misconduct to the prison.

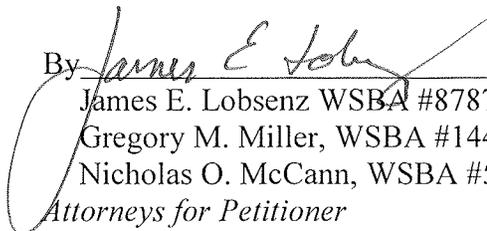
5. Award Petitioner reasonable attorneys' fees and costs pursuant to RCW 4.24.515 and other provisions of statutory and common law.

4. And grant Petitioner such other relief as the Court may deem just.

DATED this 21st day of May, 2019.

CARNEY BADLEY SPELLMAN, P.S.

By


James E. Lobsenz WSBA #8787
Gregory M. Miller, WSBA #14459
Nicholas O. McCann, WSBA #53875
Attorneys for Petitioner

ORIGINAL ACTION IN THE NATURE OF A PETITION FOR A WRIT OF PROHIBITION AND/OR MANDAMUS

- 10

APPENDIX A

WAC 504-26-221**Sexual misconduct.**

(1) Sexual misconduct is an egregious form of sex discrimination/sexual harassment. A number of acts may be regarded as sexual misconduct including, but not limited to, nonconsensual sexual contact (including sexual intercourse) and sexual exploitation. Sexual misconduct includes sexual assault and other sexual violence.

(2) Consent. Consent to any sexual activity must be clear, knowing, and voluntary. Anything less is equivalent to a "no." Clear, knowing, and voluntary consent to sexual activity requires that, at the time of the act, and throughout the sexual contact, all parties actively express words or conduct that a reasonable person would conclude demonstrates clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Consent is active; silence or passivity is not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(a) Force or coercion is threatened or used to procure compliance with the sexual activity.

(i) Force is the use of physical violence, physical force, threat, or intimidation to overcome resistance or gain consent to sexual activity.

(ii) Coercion is unreasonable pressure for sexual activity. When an individual makes it clear through words or actions that the individual does not want to engage in sexual contact, wants to stop, or does not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive. Other examples of coercion may include using blackmail or extortion to overcome resistance or gain consent to sexual activity.

(b) The person is asleep, unconscious, or physically unable to communicate his or her unwillingness to engage in sexual activity; or

(c) A reasonable person would or should know that the other person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, defect, the influence of alcohol or another substance, or some other cause. When alcohol or drugs are involved, a person is considered incapacitated or unable to give valid consent if the individual cannot fully understand the details of the sexual interaction (i.e., who, what, when, where, why, and how), and/or the individual lacks the capacity to reasonably understand the situation and to make rational, reasonable decisions.

(3) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object or body part, by one person against another person's intimate parts (or clothing covering any of those areas), or by causing another person to touch his or her own or another person's intimate body parts without consent and/or by force. Sexual contact also can include any intentional bodily contact in a sexual manner with another person's nonintimate body parts. It also includes nonconsensual sexual intercourse.

(4) Sexual exploitation occurs when a person takes nonconsensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses explained above. Examples of sexual exploitation may include, but are not limited to:

(a) Causing or attempting to cause the incapacitation of another person to gain sexual advantage over such other person;

- (b) Invading another person's sexual privacy;
 - (c) Prostituting another person;
 - (d) Engaging in voyeurism. A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, records, or films another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where he or she has a reasonable expectation of privacy;
 - (e) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection;
 - (f) Exposing one's intimate parts in nonconsensual circumstances;
 - (g) Sexually based stalking and/or bullying.
- (5) Use of alcohol or other drugs is not a valid defense to a violation of this policy.

[Statutory Authority: RCW **28B.30.150**. WSR 17-13-049, § 504-26-221, filed 6/15/17, effective 7/16/17; WSR 14-11-025, § 504-26-221, filed 5/12/14, effective 6/12/14; WSR 06-23-159, § 504-26-221, filed 11/22/06, effective 12/23/06.]

APPENDIX B

Infraction Group Number: 2

Offender Name WILLIAMS, Carri D.	DOC Number 370021	Facility WCCW	Date 5/15/2019
Type of Review	Hearing Scheduled Date 5/31/2019	Location WCCW	Time 0830
<input type="checkbox"/> Disciplinary	* Infraction		Hearing Date - # Time

Reason For Hearing (Include all Allegations of Misconduct, if Appropriate)
549 - Providing false or misleading information during any stage of an investigation of sexual misconduct, as defined in department policy

Offender Rights:

- You have the right to remain silent at the hearing. If you choose to remain silent, your silence may be used against you and the decision will be based on the evidence presented.
- You may waive your appearance at the hearing.
- You do not have a right to cross examine witnesses, have the infracting staff present at the hearing, have access to video, have access to audio from the offender phone system, or have a polygraph or other supplemental test(s).
- You may request witness statements and/or that staff, offenders, or other persons be present as witnesses, unless it is determined by the hearing officer that doing so would be unduly hazardous to facility safety or security: (list witnesses below)

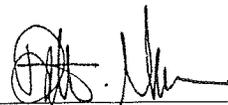
EMPLOYEE NAME	STATEMENT	WITNESS	POSITION	OFFENDER NAME	STATEMENT	WITNESS	DOC NUMBER
	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	

Criminal charges may be pending. Anything you say henceforth may be used against you in a court of law.

Status Of Criminal Charges: None Unknown Pending in _____ County _____ Charges

- You have the right to review all related reports and a summary of any confidential information.
- You may request a Department advisor. Requested Waived
- You may request an interpreter if you are unable to read, speak, or understand English. Requested Waived
- You may request a certified sign language interpreter if you are hearing impaired. Requested Waived
- You may appeal the decision and/or sanctions to the superintendent/facility supervisor within 15 working days.
- If you are an indeterminate sentence case and within 60 days of an established release date, a guilty finding could result in the cancellation of your release date.
- I, _____, DOC # _____ waive my right to the required 24 hours notice prior to being seen by the Disciplinary Hearing Officer and authorize the Disciplinary Hearing Officer to make a disposition regarding the information and evidence presented to the Disciplinary Hearing Officer as pertains to my particular situation.
- I, _____, DOC # _____ waive my right to attend this scheduled hearing. I Understand that the hearing will be held in my absence.

Copy of this form and infraction, with attachments received.

Offender/Witness Signature _____ Date _____ Time _____ Employee Signature  Date 5-15-19 Time 2130

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

APPENDIX C



COPY

INITIAL SERIOUS INFRACTION REPORT
INFORME INICIAL DE INFRACCION GRAVE

Williams, Carrie 370021 MB151
Offender name DOC number Facility/housing assignment
Nombre del interno Numero DOC Instalación
5/9/2019 N/A N/A N/A
Infraction date Incident date Incident time Incident place
Fecha de infracción Fecha incidente Hora Inc. Lugar Inc.
549: Providing false or misleading information during any stage of an investigation of sexual misconduct, as defined by department policy.
Rule violations/Reglas que se violaron

Witnesses/Testigos

NARRATIVE

State a concise description of the rule violations, (e.g., injuries, property damage, use of force) and answering the questions of When? Where? Who? What? Why? and How? Attach all related reports.

(Work Release offenders may submit written comments to their case manager)

Dé una descripción breve de las violaciones a las reglas (p.ej., lesiones, daños a la propiedad, uso de la fuerza) respondiendo las preguntas de ¿Cuándo? ¿Dónde? ¿Quién? ¿Qué? ¿Por qué? y ¿Cómo? Adjunte todos los informes relacionados.

(Infractores en reclusorios nocturnos pueden presentar comentarios escritos a su administrador de caso)

On 5/3/2019, I, Investigator Torres was given pre-approval by Superintendent Wofford to infract Offender Williams, Carrie DOC#370021 for a WAC 549 as a result of investigation 18-18197 per DOC 490.860, Prison Rape Elimination Act (PREA) Investigation. Superintendent Wofford reviewed the investigation conducted on the allegations made by offender Williams and determined the allegations to be unfounded; that they did not occur. In this instance of alleged staff sexual misconduct; the Appointing Authority determined by a preponderance of the evidence Offender Williams, caused an innocent person to be accused by providing false or misleading information during any stage of the investigation.

Allegations made are listed below:

- 1. It is alleged that C/O Kaleopa conducted a pat search that included too much time being spent over the victim's breast area, and her thumbs made contact with the victims nipples.

This report is a summary of the PREA investigation.

Evidence: [X] Yes [] No Photo(s)/video: [] Yes [X] No Evidence locker number:
Pruebas: Si No Foto(s)/video: Si No Número de Locker de Pruebas:

Evidence case number: Description of evidence: PREA Case 18-18197 held in
Investigations Office for review.

Número de caso de Pruebas: Descripción de Pruebas:

Related reports attached: [X] Supplemental [] Medical [] Witness statements [] Other: PREA Case 18-18197 held in Investigations Office for review

Informes adjuntos: Complementario Medico Declaración de testigos Otro: Especifique

Offender placed in: [] Pre-Hearing Confinement [] Administrative Segregation Date:
Interno asignado a: Reclusión previa a la audiencia Segregación Administrativa Fecha:

Recommended sanctions/Sanciones recomendadas:

ALLEGED VICTIMS/PRESUNTAS VICTIMAS

Name: [] Employee/contract staff [] Volunteer/visitor/other [] Offender DOC #
Nombre: Empleado/contratista Voluntario/Visitante/Otro Interno #DOC

Name: [] Employee/contract staff [] Volunteer/visitor/other [] Offender DOC #

Nombre:

Empleado/contratista

Voluntario/Visitante/Otro Interno #DOC

COPY	APPROVALS/APROBACIONES
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Donavan Torres
 Reporting employee/contract staff
 Empleado/contratista que reporta


 Signature
 Firma

Sat/Sun
 Shift/days off
 Turno/Días libres

LANE BYRNE
 Infraction Reviewer
 Revisor de Infracciones


 Signature
 Firma

5/13/19
 Date
 Fecha

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

El contenido de este documento puede calificar para la revelación pública. Se consideran confidenciales los números de seguro social y serán eliminados en caso de tal petición. Este formulario queda gobernado por la Orden Ejecutiva 00-03, RCW 42.56 y RCW 40.14.

Distribution: **ORIGINAL** - Imaging System/Central File
COPY - Hearing Officer, Offender, Indeterminate Sentence Review Board

APPENDIX D



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
DEPARTMENT WIDE
OFFENDER/SPANISH MANUALS

REVISION DATE
6/1/18

PAGE NUMBER
1 of 14

NUMBER
DOC 490.860

POLICY

TITLE
**PRISON RAPE ELIMINATION ACT (PREA)
INVESTIGATION**

REVIEW/REVISION HISTORY:

Effective: 10/1/13
Revised: 9/15/14
Revised: 11/21/15
Revised: 5/1/14
Revised: 4/13/15
Revised: 9/1/16
Revised: 9/19/16
Revised: 6/1/18

SUMMARY OF REVISION/REVIEW:

Added I.A.1. that the Appointing Authority will develop local procedures to ensure the alleged victim is notified of formal review decisions
I.A.2., V.A.3., V.A.5., V.B.2.a., and VIII.A.2.a.1) - 3) - Adjusted language for clarification
I.A.4., I.M., II.C.4.b. & c., and X.C. - Added clarifying language
I.A.5. - Removed unnecessary language for clarification
Added I.B. that the Appointing Authority may place a confidential hold as needed to ensure the offender is not transferred during the course of the investigation
Added I.G.1.a. that notification of findings may be provided in writing if the offender is in restrictive housing
Added I.H. that the Superintendent/Work Release Administrator where the offender is housed will be notified and investigation reports made available upon request
Added II.A. that retaliation against anyone for opposing/reporting sexual misconduct or participating in an investigation of misconduct is prohibited
Added III.C.1. that Hearing Officers cannot serve as a PREA Review Committee member for any violation(s) for which they conducted the hearing
Added V.A.3.a. that the Superintendent/designee may assign on alternate Hearing Officer
Added X.C. that investigation records will be reviewed prior to destruction

APPROVED:

Signature on file

STEPHEN SINCLAIR, Secretary
Department of Corrections

5/1/18
Date Signed



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
DEPARTMENT WIDE
OFFENDER/SPANISH MANUALS

REVISION DATE
6/1/18

PAGE NUMBER
2 of 14

NUMBER
DOC 490.860

POLICY

TITLE
**PRISON RAPE ELIMINATION ACT (PREA)
INVESTIGATION**

REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 9A.44.160; RCW 9A.44.170; RCW 42.56; RCW 72.09.225; WAC 137-28-190; DOC 280.515 Electronic Data Classification; DOC 320.180 Separatee and Facility Prohibition Management; DOC 420.365 Evidence Management for Work Release; DOC 420.375 Contraband and Evidence Handling; DOC 420.395 Evidence/Property Procedures for Field; DOC 450.050 Prohibited Contact; DOC 460.050 Disciplinary Sanctions; DOC 460.130 Response to Violations and New Criminal Activity; DOC 460.135 Disciplinary Procedures for Work Release; DOC 490.800 Prison Rape Elimination Act (PREA) Prevention and Reporting; DOC 490.820 Prison Rape Elimination Act (PREA) Risk Assessments and Assignments; DOC 530.100 Volunteer Program; Collective Bargaining Agreements; PREA Standards; Prison Rape Elimination Act; Records Retention Schedule

POLICY:

- I. The Department will thoroughly, promptly, and objectively investigate all allegations of sexual misconduct involving offenders under the jurisdiction or authority of the Department.
 - A. Investigations will be completed even if the offender is no longer under Department jurisdiction or authority and/or the accused staff, if any, is no longer employed by or providing services to the Department.
 - B. Allegations may be referred to law enforcement agencies for criminal investigation.
- II. The Department may discipline and refer for prosecution, when appropriate, individuals determined to be perpetrators of sexual misconduct. Investigations involving represented employees will be conducted per the provisions of the applicable collective bargaining agreement.
- III. Information related to investigations of sexual misconduct is confidential and will only be disclosed when necessary for related treatment, security, and management decisions. Staff who breach confidentiality may be subject to corrective/disciplinary action.
 - A. This provision is not intended to affect the Department's obligation to gather, review, and potentially gather, review, and potentially produce records of allegations or incidents of sexual misconduct as required per RCW 42.56.
- IV. Terms used in this policy are defined in DOC 490.800 Prison Rape Elimination Act (PREA) Prevention and Reporting.

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY DEPARTMENT WIDE OFFENDER/SPANISH MANUALS		
	REVISION DATE 6/1/18	PAGE NUMBER 3 of 14	NUMBER DOC 490.860
	TITLE PRISON RAPE ELIMINATION ACT (PREA) INVESTIGATION		

DIRECTIVE:

I. Investigations

- A. The Prison Rape Elimination Act (PREA) Coordinator/designee will review all allegations, determine which allegations fall within the definition of sexual misconduct, and forward those allegations to the appropriate Appointing Authority for investigation.
1. The Appointing Authority will develop local procedures to ensure the alleged victim is notified of formal review decisions (e.g., case initiated, appended to existing case, not PREA).
 2. The Appointing Authority/designee may review the allegation with the PREA Coordinator/designee if s/he disagrees with a decision to open an investigation.
 3. All allegations that appear to be criminal in nature will be referred to law enforcement for investigation by the Appointing Authority/designee. Referrals may be made using DOC 03-505 Law Enforcement Referral of PREA Allegation.
 - a. Investigation reports received from law enforcement will be an attachment to the final PREA investigation report submitted.
 4. For allegations involving employees, the Appointing Authority/designee will notify the local Human Resource Representative and the employee of the investigation. Appointing Authorities/designees are encouraged to verbally notify employees when possible.
 5. If an allegation is determined not to fall within the definition of sexual misconduct, the PREA Coordinator/designee will notify the Appointing Authority/designee, who will ensure any necessary action is taken.
 - a. If an Appointing Authority disagrees with the decision and requests to have a PREA investigation initiated, the PREA Coordinator/designee will defer to the Appointing Authority.
- B. The Appointing Authority/designee may place a confidential PREA hold on an offender in the electronic file as needed to ensure the offender is not transferred during the course of an investigation.

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY DEPARTMENT WIDE OFFENDER/SPANISH MANUALS		
	REVISION DATE 6/1/18	PAGE NUMBER 4 of 14	NUMBER DOC 490.860
	TITLE PRISON RAPE ELIMINATION ACT (PREA) INVESTIGATION		

- C. Investigators will be assigned by the Appointing Authority/designee and must be trained per DOC 490.800 Prison Rape Elimination Act (PREA) Prevention and Reporting. Investigators will:
1. Interview alleged victims, accused offenders/staff, and witnesses. Individuals interviewed will be provided and asked to sign DOC 03-484 Interview Acknowledgment.
 2. Refer the offender for mental health assessment using DOC 13-509 PREA Mental Health Notification if the investigation uncovers new information that the offender was the victim of any physical and/or emotional trauma of a sexual nature, whether in an institutional setting or in the community.
 3. Collect any additional evidence per DOC 420.375 Contraband and Evidence Handling, DOC 420.365 Evidence Management for Work Release, or DOC 420.395 Evidence/Property Procedures for Field, as applicable.
- D. Investigators will submit the investigation report and DOC 02-382 PREA Data Collection Checklist to the appropriate Appointing Authority/designee. All reports will follow DOC 02-351 Investigation Report Template.
1. Photocopies/photographs of all physical evidence and evidence cards will be included in the investigation report.
 2. Electronic evidence (e.g., video recording, JPay message, telephone recording) used as part of an investigation will be submitted with the investigation report.
- E. The Appointing Authority will review the report and prior complaints/reports of sexual misconduct involving the accused, when available, and ensure DOC 02-382 PREA Data Collection Checklist is completed.
1. Previous complaints/reports of sexual misconduct involving the alleged victim may be reviewed, as applicable.
- F. For each allegation in the report, the Appointing Authority will determine whether the allegation is:
1. Substantiated: The allegation was determined to have occurred by a preponderance of the evidence,



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
DEPARTMENT WIDE
OFFENDER/SPANISH MANUALS

REVISION DATE
6/1/18

PAGE NUMBER
5 of 14

NUMBER
DOC 490.860

POLICY

TITLE

**PRISON RAPE ELIMINATION ACT (PREA)
INVESTIGATION**

2. Unsubstantiated: Evidence was insufficient to make a final determination that the allegation was true or false, or
 3. Unfounded: The allegation was determined not to have occurred.
- G. Once the Appointing Authority has made a determination, the alleged victim will be notified of the findings.
1. The Appointing Authority/designee of the facility where the offender is housed will inform the offender of the findings in person, in a confidential manner.
 - a. Notification may be provided in writing if the offender is in restrictive housing.
 2. If the offender has been released, the Appointing Authority will inform the offender of the findings in writing to the offender's last known address as documented in his/her electronic file.
- H. If the Appointing Authority is responsible for an investigation and is not the Superintendent/Work Release Administrator where the offender is housed, s/he will notify the Superintendent/Work Release Administrator of administrative findings, PREA Local Review Committee outcomes, and changes to the status of involved employees.
1. Investigation reports will be made available to the Superintendent/Work Release Administrator upon request.
- I. Findings and notification of the alleged victim will be documented on DOC 02-378 Investigative Finding Sheet.
- J. For allegations against offenders, the Appointing Authority/designee will notify the accused of the findings in writing using DOC 02-400 Notice of PREA Investigation Findings.
- K. For allegations against staff, the Appointing Authority/PREA Compliance Manager or Human Resources Manager will verbally notify the accused of the findings. If the allegation is substantiated, the notification may be provided during the predisciplinary process.
- L. When a substantiated allegation is criminal in nature, the Appointing Authority/designee will notify:



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
DEPARTMENT WIDE
OFFENDER/SPANISH MANUALS

REVISION DATE
6/1/18

PAGE NUMBER
6 of 14

NUMBER
DOC 490.860

POLICY

TITLE
**PRISON RAPE ELIMINATION ACT (PREA)
INVESTIGATION**

1. Law enforcement, unless such referral was made previously during the course of the investigation, and
 2. Relevant licensing bodies.
- M. For substantiated allegations of offender-on-offender sexual assault/abuse or staff sexual misconduct, the Appointing Authority/designee will notify the assigned Classification Counselor/Community Corrections Officer, who will complete a for cause PREA risk assessment per DOC 490.820 Prison Rape Elimination Act (PREA) Risk Assessments and Assignments to reflect the determination.
- N. For substantiated allegations of offender-on-offender sexual assault or abuse, the Appointing Authority will ensure the offenders are separated per DOC 320.180 Separatee and Facility Prohibition Management. The Appointing Authority will determine the required level of separation.
- O. The Appointing Authority/designee will submit the following to the PREA Coordinator/designee:
1. DOC 02-378 Investigative Finding Sheet
 2. The complete investigation report, including copies of electronic evidence
 3. DOC 02-382 PREA Data Collection Checklist
- II. Retaliation
- A. Retaliation against anyone for opposing or reporting sexual misconduct or participating in an investigation of such misconduct is prohibited. Individuals may be subject to disciplinary actions if found to have engaged in retaliation, failed to report such activities, or failed to take immediate steps to prevent retaliation.
- B. Staff and offenders who cooperate with an investigation will report all concerns regarding retaliation to the Appointing Authority. The Appointing Authority will take appropriate measures to address the concerns.
- C. When an investigation of offender-on-offender sexual assault/abuse or staff sexual misconduct is initiated, the Appointing Authority/designee of the facility where the alleged victim is housed will monitor to assess indicators or reports of retaliation against alleged victims and reporters. If another Appointing Authority is assigned to investigate, s/he or his/her designee will notify the applicable Appointing Authority to initiate monitoring.
1. Indicators of retaliation may include, but are not limited to:



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
DEPARTMENT WIDE
OFFENDER/SPANISH MANUALS

REVISION DATE
6/1/18

PAGE NUMBER
7 of 14

NUMBER
DOC 490.860

POLICY

TITLE
**PRISON RAPE ELIMINATION ACT (PREA)
INVESTIGATION**

- a. Disciplinary reports,
 - b. Changes in grievance trends,
 - c. Housing/program changes and reassignments, or
 - d. Negative performance reviews.
2. The Appointing Authority of the facility where the alleged victim is housed will notify the following employees, as applicable, when monitoring is required, but will not provide specific details regarding the allegation and investigation:
- a. The PREA Compliance Manager/Specialist at the facility where the report was made will ensure alleged victims and offender reporters are monitored and met with at least monthly.
 - b. The local Human Resource Manager/Community Corrections Supervisor will monitor employee reporters.
 - c. The PREA Compliance Manager/Specialist at the facility where the report was made will monitor contract staff and volunteer reporters.
3. Any report of retaliation expressed or indicated during the monitoring period will be immediately reported to the Appointing Authority, who will take appropriate action.
4. Retaliation monitoring will continue for 90 days following notification, or longer if the Appointing Authority determines it is necessary.
- a. The PREA Compliance Manager/Specialist will complete and submit DOC 03-503 PREA Monthly Retaliation Monitoring Report to the Appointing Authority each month. No monitoring-related activities will be documented in chronological entries or supervisory files.
 - b. If a reporter or alleged victim transfers to another facility during the monitoring period, the PREA Compliance Manager/designee at the sending facility will notify the PREA Compliance Manager/designee at the receiving facility. The receiving facility will assume monitoring responsibilities and provide monthly monitoring documentation to the sending facility.
 - c. Monitoring activities may be discontinued if the allegation is determined to be unfounded or the offender is released from incarceration.

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY DEPARTMENT WIDE OFFENDER/SPANISH MANUALS		
	REVISION DATE 6/1/18	PAGE NUMBER 8 of 14	NUMBER DOC 490.860
	TITLE PRISON RAPE ELIMINATION ACT (PREA) INVESTIGATION		

d. The Appointing Authority will notify the PREA Compliance Manager/Specialist or Human Resource Manager when monitoring activities are no longer required.

D. For allegations of sexual harassment, retaliation monitoring for reporters and alleged victims may occur at the discretion of the Appointing Authority.

III. Multidisciplinary PREA Review

A. For each substantiated or unsubstantiated finding of offender-on-offender sexual assault/abuse and staff sexual misconduct, the Appointing Authority/designee will convene a local PREA Review Committee to examine the case.

1. Unfounded investigations and any investigation of sexual harassment may be reviewed at the discretion of the Appointing Authority.
2. For Prisons, if the Superintendent of the facility where the allegation took place is not the Appointing Authority, the Superintendent or his/her designee will be on the committee.

B. The committee will meet every 30 days, or as needed.

C. The committee will be multidisciplinary and include facility management, with input from supervisors, investigators, and medical/mental health practitioners.

1. Hearing Officers cannot serve as a PREA Review Committee member for any violation(s) for which they conducted the hearing.

D. The committee will review policy compliance, causal factors, and systemic issues using DOC 02-383 Local PREA Investigation Review Checklist.

IV. Staff Discipline

A. Employees may be subject to disciplinary action, up to and including termination, for violating Department PREA policies.

B. Contract staff and volunteers who are found to have committed staff sexual misconduct will be terminated from service and prohibited from contact with offenders. For any other violations of Department PREA policies, appropriate actions will be taken.

1. For contract staff terminations:



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
DEPARTMENT WIDE
OFFENDER/SPANISH MANUALS

REVISION DATE
6/1/18

PAGE NUMBER
9 of 14

NUMBER
DOC 490.860

POLICY

TITLE
**PRISON RAPE ELIMINATION ACT (PREA)
INVESTIGATION**

- a. The Appointing Authority will notify the contract staff/organization in writing with a copy to the PREA Coordinator/designee, who will alert all facilities of the termination.
 - b. Facilities will establish procedures to track contract staff terminations and notify appropriate control points to ensure facility access is not granted to terminated individuals.
2. Volunteer terminations will be tracked per DOC 530.100 Volunteer Program.
- C. In cases of substantiated staff sexual misconduct:
1. Telephone, mail including eMessaging, and visiting restrictions will be imposed between the employee/contract staff/volunteer and the named offender victim(s) per DOC 450.050 Prohibited Contact.
 2. The Appointing Authority will ensure the finding(s) is reported to relevant licensing bodies.
- D. Any other substantiated misconduct discovered during a PREA investigation will be reported to relevant licensing bodies.
- V. Offender Discipline
- A. Prison and Work Release offenders may be subject to disciplinary action per DOC 460.050 Disciplinary Sanctions or DOC 460.135 Disciplinary Procedures for Work Release for violating Department PREA policies.
1. For substantiated allegations against an offender, an infraction must be written against the perpetrator for the applicable violation listed:
 - a. 635 - Committing sexual assault against another offender, as defined in Department policy (i.e., aggravated sexual assault or offender-on-offender sexual assault)
 - b. 637 - Committing sexual abuse against another offender, as defined in Department policy
 - c. 659 - Committing Sexual harassment against another offender, as defined in Department policy
 2. If the accused offender transfers to another facility before a hearing is held, the sending Appointing Authority/designee will forward an electronic



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
DEPARTMENT WIDE
OFFENDER/SPANISH MANUALS

REVISION DATE
6/1/18

PAGE NUMBER
10 of 14

NUMBER
DOC 490.860

POLICY

TITLE
**PRISON RAPE ELIMINATION ACT (PREA)
INVESTIGATION**

copy of the investigation report to the receiving Appointing Authority/designee.

3. Hearings on PREA-related infractions will be heard by the primary Hearing Officer.
 - a. The Superintendent/designee may assign one alternate Hearing Officer per DOC 460.000 Disciplinary Process for Prisons.
4. The Hearing Officer may request access to review the investigation report from the Appointing Authority/designee. The review will be conducted in the location where the records are maintained. Copies will not be made for this purpose.
5. Appeals of findings or sanctions imposed for PREA-related violations will be submitted to the Prisons Command B Deputy Director. The offender will be notified of the appeal decision on DOC 09-197 Disciplinary Hearing Appeal Decision.

B. Alleged victims are not subject to disciplinary action related to violating PREA policies except when:

1. An investigation of staff sexual misconduct determines that the staff did not consent to the contact.
2. The Appointing Authority determines, by a preponderance of evidence, that the offender caused an innocent person to be accused by providing false or misleading information during any stage of the investigation.
 - a. A 549 violation will be written and served upon completion of the investigation and must be authorized by the Appointing Authority.
 - b. A report of sexual abuse made in good faith will not constitute providing false information, even if the investigation does not establish sufficient evidence to substantiate the allegation.

C. Community custody offenders may be subject to sanction for violating conditions of supervision per DOC 460.130 Response to Violations and New Criminal Activity.

VI. Victim Services for Offenders

A. Victims of sexual misconduct will be provided information on community victim service providers from health services employees/contract staff, Classification



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
DEPARTMENT WIDE
OFFENDER/SPANISH MANUALS

REVISION DATE
6/1/18

PAGE NUMBER
11 of 14

NUMBER
DOC 490.860

POLICY

TITLE
**PRISON RAPE ELIMINATION ACT (PREA)
INVESTIGATION**

Counselors, and Community Corrections Officers/Supervisors. Information is available on the Prison Rape Elimination Act page on iDOC.

- B. Victim services for offenders in Prisons and Work Releases include crisis intervention and trauma-specific treatment. The Appointing Authority, in conjunction with mental health professionals, will determine if victim services are necessary beyond resources available through the Department.

VII. Staff Resources

- A. Staff Counselors and the Employee Assistance Program are available to assist staff in addressing issues such as false accusations, stress management, conflict resolution, and fear of victimization. Specific information regarding resources is available from supervisors and Human Resources offices.

VIII. Ongoing Notifications to Alleged Victims

- A. The Department will make the following notifications, in writing, to alleged victims until they are no longer under Department jurisdiction:
1. Offender-on-Offender Allegations of Sexual Assault or Abuse
 - a. The alleged victim will be notified if the Department learns that the accused has been indicted on or convicted of a charge related to sexual assault or abuse within the facility.
 - b. The PREA Coordinator/designee will track all cases and make required notifications.
 2. Substantiated/Unsubstantiated Allegations of Staff Sexual Misconduct against employees
 - a. The alleged victim will be notified:
 - 1) When the accused employee is no longer regularly assigned to the offender's housing unit,
 - 2) When the accused employee no longer works at the same facility as the offender, and
 - 3) If the Department learns that the accused employee has been indicted on or convicted of any charge related to staff sexual misconduct within the facility.

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY DEPARTMENT WIDE OFFENDER/SPANISH MANUALS		
	REVISION DATE 6/1/18	PAGE NUMBER 13 of 14	NUMBER DOC 490.860
	TITLE PRISON RAPE ELIMINATION ACT (PREA) INVESTIGATION		

X. Record Retention

A. Records associated with allegations of sexual misconduct will be maintained according to the Records Retention Schedule.

1. PREA records may include, but will not be limited to:

- a. Incident reports
- b. Investigation reports
- c. Electronic evidence
- d. Investigation findings/dispositions
- e. Law enforcement referrals
- f. Criminal investigation reports
- g. Required report forms
- h. Documentation of:
 - 1) Local PREA Review Committees,
 - 2) Completed DOC 02-382 PREA Data Collection Checklists, and
 - 3) Ongoing notifications.

B. The Appointing Authority/designee will maintain original PREA case records as general investigation reports per the Records Retention Schedule.

C. The PREA Coordinator/designee will maintain electronic PREA case records per the Records Retention Schedule.

1. Prior to destruction, all investigation records will be reviewed to ensure the accused has been released from incarceration or Department employment for a minimum of 5 years. If a review of the investigation records reveals that the accused individual does not meet this 5 year requirement, the records will be maintained until this requirement is met, even if it exceeds the established retention schedule.

DEFINITIONS:

The following words/terms are important to this policy and are defined in the glossary section of the Policy Manual: Trauma. Other words/terms appearing in this policy may also be defined in the glossary section.

ATTACHMENTS:

None



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
DEPARTMENT WIDE
OFFENDER/SPANISH MANUALS

REVISION DATE
6/1/18

PAGE NUMBER
14 of 14

NUMBER
DOC 490.860

POLICY

TITLE
**PRISON RAPE ELIMINATION ACT (PREA)
INVESTIGATION**

DOC FORMS:

- [DOC 02-351 Investigation Report Template](#)
- [DOC 02-378 Investigative Finding Sheet](#)
- [DOC 02-382 PREA Data Collection Checklist](#)
- [DOC 02-383 Local PREA Investigation Review Checklist](#)
- [DOC 02-400 Notice of PREA Investigation Findings](#)
- [DOC 03-484 Interview Acknowledgment](#)
- [DOC 03-503 PREA Monthly Retaliation Monitoring Report](#)
- [DOC 03-505 Law Enforcement Referral of PREA Allegation](#)
- [DOC 09-197 Disciplinary Hearing Appeal Decision](#)
- [DOC 13-509 PREA Mental Health Notification](#)

CARNEY BADLEY SPELLMAN

May 21, 2019 - 3:44 PM

Filing Original Action Against State Officer

Transmittal Information

Filed with Court: Supreme Court

Appellate Court Case Number: Case Initiation

The following documents have been uploaded:

- OAS_Affidavit_Declaration_20190521152951SC958954_5130.pdf
This File Contains:
Affidavit/Declaration - Compliance
The Original File Name was Certificate of Compliance with RAP 17 4 b.PDF
- OAS_Motion_20190521152951SC958954_7986.pdf
This File Contains:
Motion 1 - Stay
The Original File Name was Emergency Motion for Stay of Prison Disciplinary Hearing.PDF
- OAS_Other_20190521152951SC958954_8251.pdf
This File Contains:
Other - Declaration in Support of Motion for Stay,Declaration in Support of Motion for Stay
The Original File Name was Declaration of James E. Lobsenz in Support of Emergency Motion for a Stay.PDF
- OAS_Petition_for_Writ_20190521152951SC958954_8165.pdf
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Petition for Writ
The Original File Name was Petition for a Writ of Prohibition and or Mandamus.PDF

A copy of the uploaded files will be sent to:

- JohnS@ATG.WA.GOV
- lobsenz@carneylaw.com
- mccann@carneylaw.com
- miller@carneylaw.com
- timothyl@atg.wa.gov

Comments:

A \$250 check for the filing fee will be sent to the court via US Mail

Sender Name: Deborah Groth - Email: groth@carneylaw.com

Filing on Behalf of: James Elliot Lobsenz - Email: lobsenz@carneylaw.com (Alternate Email:)

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Seattle, WA, 98104

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