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**SUPREME COURT OF THE STATE OF WASHINGTON**

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In re the Personal Restraint Petition of:  
DON WESLEY WINTON

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**SUPPLEMENTAL BRIEF OF  
INDETERMINATE SENTENCE REVIEW BOARD**

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## **I. INTRODUCTION**

This Court should reverse the Court of Appeals and uphold the community custody condition that requires Don Winton—a convicted sex offender serving a criminal sentence—to obtain authorization before traveling to the county where his victims reside, work, and attend school. This condition is crime-related, authorized by state sentencing laws, and a reasonable means of supervising Winton and protecting his victims.

In granting Winton’s Personal Restraint Petition, the Court of Appeals erroneously concluded that Winton enjoys the same right to travel as any citizen. However, Winton lost his right to travel freely upon conviction and sentencing, and his subsequent transfer to community custody did not restore the right. Moreover, even if Winton retains some right to travel, the Court of Appeals applied an overly strict standard for reviewing the travel condition. Conditions of supervision that affect constitutional rights are permissible if reasonably necessary to accomplish the essential needs of supervising the offender, protecting the victims, or ensuring public safety. Those conditions are reviewed for abuse of discretion. Here, the limited restriction on travel is a reasonable means to ensure Winton does not harm his victims through contact with him. For these reasons, this Court should dismiss Winton’s petition.

## **II. STATEMENT OF THE ISSUES**

(1) Should Winton’s challenge to the condition limiting his travel to Clark County be dismissed because Winton does not possess an unrestricted

constitutional right to travel while serving his criminal sentence?

(2) Even if Winton retains a constitutional right to travel, did the Board act within its discretion to require Winton to first obtain permission before traveling to Clark County, where his victims reside, work, and attend school, in order to protect the victims from further harm?

### III. STATEMENT OF THE CASE

#### A. **Winton is Currently Serving an Indeterminate Life Sentence in Community Custody Subject to Conditions of Supervision, Including a Condition Requiring Permission to Visit Clark County**

Winton pleaded guilty to three counts of child molestation for sexually assaulting his niece and stepdaughter over the course of several years, beginning when the victims were seven and nine years old. App. B.<sup>1</sup> The trial court imposed determinate sentences on counts one and three, and an indeterminate life sentence for count two under former RCW 9.94A.712 (2004) (currently codified at RCW 9.94A.507).<sup>2</sup> App. C.

A person sentenced under RCW 9.94A.507 must serve community custody under the supervision of the Department and the authority of the Board for any period of time the person is released from total confinement before the expiration of the maximum sentence. RCW 9.94A.507(5). “Community custody” is the “portion of an offender’s sentence subject to

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<sup>1</sup> Citations beginning with “App.” refer to the Appendices accompanying the Board’s Motion for Discretionary Review. Citations to “PRP” refer to Winton’s Personal Restraint Petition, and “PRP Response” refers to the Board’s Response to Winton’s PRP.

<sup>2</sup> Former RCW 9.94A.712 (2004) is identical to RCW 9.94A.507, so this brief refers to the statute’s current codification for ease of reference.

controls including crime-related prohibitions and affirmative conditions from the court, the board, or the department of corrections based on risk to community safety, that is served under supervision in the community, and which may be modified or revoked for violations of release conditions.” RCW 9.95.0001(2); *see also* RCW 9.94A.030(5) (“‘Community custody’ means that portion of an offender’s sentence of confinement . . . imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender’s movement and activities by the department.”). As part of the criminal sentence, community custody “imposes significant restrictions on a defendant’s constitutional freedoms.” *State v. Ross*, 129 Wn.2d 279, 286, 916 P.2d 405 (1996).

The Board determines when a person sentenced under RCW 9.94A.507 may transfer from imprisonment to community custody under RCW 9.95.420. Following expiration of the minimum term, the Board will “order the offender released, *under such affirmative and other conditions as the board determines appropriate*, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released.” RCW 9.95.420(3)(a) (emphasis added). “Offenders released under RCW 9.95.420 are subject to crime-related prohibitions and affirmative conditions established by the court, the department of corrections, or the board.” RCW 9.95.064(2). The law requires the Board to “exercise independent judgment when making any decisions concerning offenders,” including “decisions concerning offenders’ release, . . . or the

imposition of conditions of supervision.” RCW 9.95.0002(8).

As required by law, in anticipation of the expiration of Winton’s minimum sentence of 98 months, the Board conducted a hearing to decide whether Winton should transfer to community custody, “under such affirmative and other conditions as the board determines appropriate,” rather than remain imprisoned (up to the remainder of his maximum sentence). RCW 9.95.420(3)(a); App. B. In September 2014, the Board ordered Winton’s release from prison into community custody, subject to several conditions. App. E. Relevant here, the Board restricted Winton from entering Clark County without first obtaining approval from his community corrections officer (CCO) and the Board. App. E; PRP Ex. D.

Winton’s victims and a family member of the victims reside, work, and attend school in Clark County. App. G. Winton resides in King County. PRP Resp. Ex. 2. Winton is restricted from contact with the victims by both court order and a separate condition of his community custody, which he does not challenge. PRP Exs. B & E. Requiring Winton to obtain prior approval before traveling to Clark County ensures the victims receive notice, thereby minimizing the risk of contact with Winton. App. G. It also helps ensure Winton complies with the no-contact orders.

Winton was informed at the time these conditions were imposed that the conditions “must reasonably relate” to the “crime of conviction,” Winton’s “risk to reoffend,” or the “safety of the community,” and that if Winton felt that any of the conditions failed to meet that criteria, he could file an appeal with the Board under

RCW 9.94A.704(10)(c). App. E. Winton never appealed this condition, although he did communicate to the Board his position that the restriction would be acceptable if he could travel through Clark County with permission of only his CCO (not the Board). PRP Resp. Ex. 12 (letter dated Oct. 27, 2014). His concern about the Clark County restriction appeared to be centered on family dynamics. PRP Resp. Ex. 12. When Winton would travel through Clark County to visit his daughter in Portland, Winton's victims in Clark County were notified. PRP Resp. Ex. 12. Winton complained that certain family members were condemning his daughter for being in contact with Winton. PRP Resp. Ex. 12. Winton wanted the Board to stop notifying his family members in Clark County when he traveled through Clark County. PRP Resp. Ex. 12. He clarified that "[n]aturally, the condition should make it clear that under no circumstances am I allowed to make any stops for any purpose as I travel through Clark County." PRP Resp. Ex. 12. In response to Winton's letter, the Board reiterated that Winton would be permitted to travel to or through the locations covered by his release conditions if he had a reason to do so and prior permission. PRP Resp. Ex. 12 (letter dated Nov. 14, 2014). At no point has Winton ever expressed a need to travel to Clark County as a destination. PRP Resp. Ex 12.

**B. Winton Challenges the Travel Condition in this PRP**

Winton filed a PRP challenging several community custody conditions, but the only one at issue in this appeal is the one affecting

Winton’s travel to Clark County. *See* Motion for Discretionary Review (Mot. for Discr. Rev.); Answer to Motion for Discretionary Review (Ans. to Mot. for Discr. Rev.); PRP at 5. Although the condition was subsequently modified,<sup>3</sup> the Court of Appeals granted the PRP based on the condition as originally imposed. *In re Pers. Restraint of Winton*, No. 52371-0-II, 2019 WL 2811126 (Wash. Ct. App. July 2, 2019) (unpublished) (App. A).

#### IV. ARGUMENT

To succeed on his PRP, Winton must prove unlawful restraint. *In re Pers. Restraint of Dyer*, 175 Wn.2d 186, 195-96, 283 P.3d 1103 (2012) (citing RAP 16.4(c); *In re Pers. Restraint of Cashaw*, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994)) “When reviewing a Court of Appeals decision on a personal restraint petition,” this Court reviews “‘pure questions of law de novo and the question of deference to the Court of Appeals does not arise.’” *In re Pers. Restraint of Meredith*, 191 Wn.2d 300, 307, 422 P.3d 458 (2018) (quoting *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 133, 267 P.3d 324 (2011)). Here, Winton claims that the condition of community custody requiring that he obtain authorization before traveling to Clark County violates his constitutional right to travel. Community custody conditions are reviewed for abuse of discretion and reversed only if manifestly unreasonable. *State v. Nguyen*, 191 Wn.2d 671, 678, 425 P.3d 847 (2018); *In re Pers. Restraint of Dyer*, 175 Wn.2d at 196 (Board decisions reviewed

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<sup>3</sup> The Court of Appeals denied the Board’s motion to supplement the record with the fact that the Clark County restriction was modified to allow Winton to travel through Clark County on I-5 or I-205 without obtaining authorization. App. J. *See also* Order Denying Motion to Supplement the Record (Apr. 1, 2020).

for abuse of discretion).

**A. As a Convicted Offender Serving a Criminal Sentence, Winton Does Not Enjoy a Constitutional Right to Travel Freely**

A fundamental error with Winton’s challenge to his community custody condition, and with the Court of Appeals’ decision, is the incorrect assumption that Winton enjoys the same constitutional right to travel freely that ordinary citizens enjoy. *See In re Pers. Restraint of Winton*, 2019 WL 2811126, at \*3 (citing *Eggert v. City of Seattle*, 81 Wn.2d 840, 845, 505 P.2d 801 (1973) (discussing federal constitutional right to travel, which is subject to the “compelling state interest test”), and *State v. Schimelpfenig*, 128 Wn. App. 224, 226, 115 P.3d 338 (2005)). Consistent with Ninth Circuit precedent, this Court should clarify that individuals lose their constitutional right to travel freely while serving criminal sentences. *See Bagley v. Harvey*, 718 F.2d 921, 924 (9th Cir. 1983) (upholding restriction prohibiting parolee from entering Washington State while serving parole). Accordingly, the condition at issue here is entitled to no special scrutiny. *Id.*; *see also Nguyen*, 191 Wn.2d at 678 (community custody conditions authorized by sentencing laws reversed only if “manifestly unreasonable”); *In re Pers. Restraint of Dyer*, 175 Wn.2d at 196 (Board decisions reviewed for abuse of discretion).

While persons serving criminal sentences retain many constitutional rights, their right to travel is “legally extinguished by a valid conviction followed by imprisonment,” and “is not revived by the change in status from prisoner to parolee.” *Bagley*, 718 F.2d at 924. *See also Williams v.*

*Wisconsin*, 336 F.3d 576, 581 (7th Cir. 2003) (“[P]arolees . . . have no right to control where they live in the United States; the right to travel is extinguished for the entire balance of their sentences.”); *Wolff v. McDonnell*, 418 U.S. 539, 555, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974) (“[A] prisoner is not wholly stripped of constitutional protections,” but “[l]awful imprisonment necessarily makes unavailable many rights and privileges of the ordinary citizen, a ‘retraction justified by the considerations underlying our penal system.’”) (quoting *Price v. Johnston*, 334 U.S. 266, 285, 68 S. Ct. 1049, 92 L. Ed. 1356 (1948)). Thus, as this Court acknowledged, “a parolee, unlike the ordinary citizen, is subject to supervision . . . [and] limited in his mode, manner, and place of living and travel.” *Monohan v. Burdman*, 84 Wn.2d 922, 925, 530 P.2d 334 (1975).

This Court has not yet directly addressed whether an individual serving community custody has a constitutional right to travel at all, and, if so, to what extent. The Court of Appeals has assumed such a right exists in some form, although its treatment of that right has ranged from strict scrutiny to abuse of discretion. *Compare, e.g., In re Pers. Restraint of Winton*, 2019 WL 2811126, at \*3 (applying strict scrutiny); *In re Pers. Restraint of Martinez*, 2 Wn. App. 2d 904, 915, 413 P.3d 1043 (2018) (same); and *State v. Sims*, 152 Wn. App. 526, 530, 532-33, 216 P.3d 470 (2009) (state conceded trial court’s sentencing condition overbroad); with *State v. McBride*, 74 Wn. App. 460, 467, 873 P.2d 589 (1994) (“Reasonable restrictions on travel during community supervision do not violate a person’s constitutional right to travel.”) (citing

*Berrigan v. Sigler*, 499 F.2d 514, 520–22 (D.C. Cir. 1974)). None of those cases have acknowledged or discussed the Ninth Circuit’s decision in *Bagley*, which held that individuals still serving their criminal sentences do not enjoy a constitutional right to travel at all. *Bagley*, 718 F.2d at 924.

In *Bagley*, the Ninth Circuit reviewed “the propriety of a special parole condition that prevents Bagley from entering the State of Washington, his state of residence prior to incarceration, except for purposes of litigation or child visitation.” *Id.* at 922-23. After serving prison time in Washington, Bagley was paroled to Iowa and restricted from returning to Washington during his parole other than for purposes of litigation or child visitation. *Id.* at 923. “Bagley argue[d] that the special parole condition [was] unconstitutional and an abuse of discretion.” *Id.* The Ninth Circuit rejected his argument, concluding that “an individual’s constitutional right to travel” is “legally extinguished by a valid conviction followed by imprisonment,” and “is not revived by the change in status from prisoner to parolee.” *Id.* at 924. Noting that “Bagley could have been constitutionally excluded from Washington during the entire term of his sentence by being required to serve a full prison term in another state,” and that “parole in a foreign state is clearly less punitive than imprisonment in a foreign state,” the Ninth Circuit rejected Bagley’s challenges. *Id.* at 925.

In *McBride*, Division III of the Court of Appeals concluded that “[r]easonable restrictions on travel during community supervision do not violate a person’s constitutional right to travel.” *McBride*, 74 Wn. App. at 467 (citing *Berrigan*, 499 F.2d at 520-22). Although the federal court in

*Berrigan* recognized a limited right to travel during parole, the court also emphasized that parole status is inescapably significant in the context of reviewing the legitimacy of travel restrictions:

It would be unrealistic to consider their rights wholly separate and apart from their status as parolees, or to disassociate their status either from the public interest which dictated both their confinement and parole at suitable times, or from reasonable conditions upon which they are released.

*Berrigan*, 499 F.2d at 522. Like the Ninth Circuit in *Bagley*, the circuit court in *Berrigan* recognized parole as a continuing confinement on convicted criminals, legitimately “restrict[ing] their activities substantially beyond the ordinary restrictions imposed by law on an individual citizen.” *Id.* Thus, viewing the right as qualified, the court identified the proper inquiry for evaluating such conditions as determining whether they were “arbitrary, capricious,” or “unreasonable,” not whether they were the narrowest means for achieving a compelling governmental interest. *Id.*

In *Bagley*, the Ninth Circuit acknowledged but disagreed with *Berrigan*’s holding that parolees had *any* constitutional right to travel. *Bagley*, 718 F.2d at 923. This Court should similarly conclude that individuals serving their criminal sentences have lost the right to travel for the duration of their sentence—whether in prison or in community custody. Similar to parole, “community custody” is a “portion of an offender’s sentence” “served under supervision in the community,” which is “subject to controls including crime-related prohibitions and affirmative conditions from the court, the board, or the department of corrections based on risk to

community safety[.]” RCW 9.95.0001(2). Community custody is an alternative to imprisonment. *See, e.g.*, RCW 9.94A.507(4)-(6).<sup>4</sup> Since the right to travel is necessarily extinguished while in prison, and persons are still serving criminal sentences and under supervision when conditionally released from prison to community custody, their rights to travel should remain unchanged. *See Bagley*, 718 F.2d at 924. *See also In re Pers. Restraint of Mattson*, 166 Wn.2d 730, 741 n.8, 214 P.3d 141 (2009) (“Community custody is the intense monitoring of an offender in the community. . . . Although it has other purposes, community custody continues in the nature of punishment, and is not equivalent to general release.”) (quoting *In re Pers. Restraint of Crowder*, 97 Wn. App. 598, 600, 985 P.2d 944 (1999)).

Because individuals serving community custody have no constitutionally guaranteed right to travel, the Court should review conditions restricting travel under the abuse of discretion standard. *See Nguyen*, 191 Wn.2d at 678 (community custody conditions authorized by sentencing laws reversed only if “manifestly unreasonable”); *In re Pers. Restraint of Dyer*, 175 Wn.2d at 196 (Board decisions reviewed for abuse of discretion). *See also Bagley*, 718 F.2d at 925 (“Both sides agree that parole conditions must be sustained if there is a rational basis in the record for them.”). Here, Winton argues only that the travel restriction fails to meet

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<sup>4</sup> Offenders serving indeterminate sentences generally have no constitutionally-protected liberty interest in being released into community custody at all before serving the full maximum sentence in prison. *In re Pers. Restraint of McCarthy*, 161 Wn.2d 234, 240, 164 P.3d 1283 (2007). The state-created process in RCW 9.95.420 creates a limited right to minimum procedural protections associated with release to community custody. *Id.*

strict scrutiny. He does not argue that the Board's restriction was "manifestly unreasonable," or lacked a reasonable basis. *See generally* PRP; Resp. to Mot. for Discr. Rev. Nor could he. The requirement that Winton first obtain authorization before entering the county where his victims reside is a rational and reasonable means for minimizing his contact with them.

**B. The Travel Condition Is Authorized by the Sentencing Laws and Is Reasonably Necessary to Accomplish the Essential Needs of the State and Public Order**

Even if Winton retains some right to travel during his term of community custody, the applicable standard remains essentially the same: a condition of community custody authorized by sentencing laws should be upheld unless it is manifestly unreasonable. *See Nguyen*, 191 Wn.2d at 678, 683 (reviewing a court-imposed restriction). Here, the Board is authorized by sentencing laws to impose crime-related and other affirmative conditions on Winton's release from prison to facilitate supervision and protect the public, and the Clark County restriction is a reasonable means for protecting Winton's victims from harm.

As an initial matter, the case law anticipates the need for, and expressly permits, reasonable restrictions on the constitutional rights of persons serving criminal sentences. "[P]robationers, like parolees and prisoners, properly are subject to limitations from which ordinary persons are free." *United States v. Consuelo-Gonzalez*, 521 F.2d 259, 265 (9th Cir. 1975). *See also Monohan*, 84 Wn.2d at 925. Thus, "[g]reat discretion is allowed" in "setting conditions of probation."

*Malone v. United States*, 502 F.2d 554, 556 (9th Cir. 1974), *cert. denied*, 419 U.S. 1124 (1975). An offender “may be reasonably restricted as part of his sentence” with respect to constitutional rights for legitimate reasons. *Id.* In this context, then, “[l]imitations upon fundamental rights are permissible, provided they are imposed sensitively.” *State v. Riley*, 121 Wn.2d 22, 37–38, 846 P.2d 1365 (1993) (citing *Consuelo-Gonzalez*, 521 F.2d at 265). Fundamental rights may be curtailed “‘if reasonably necessary to accomplish the essential needs of the state and public order.’” *Id.* (quoting *Malone*, 502 F.2d at 556); *see also In re Pers. Restraint of Rainey*, 168 Wn.2d 367, 377, 229 P.3d 686 (2010) (same).

Accordingly, “[a] defendant’s constitutional rights during community [custody] are subject to the infringements authorized by the [Sentencing Reform Act].” *Ross*, 129 Wn.2d at 287 (quoting *In re Caudle*, 71 Wn. App. 679, 683, 863 P.2d 570 (1993) (Sweeny, J., concurring)); *State v. Hearn*, 131 Wn. App. 601, 607, 128 P.3d 139 (2006) (same) (citing *State v. Riles*, 135 Wn.2d 326, 347, 957 P.2d 655 (1998), *abrogated on other grounds by State v. Valencia*, 169 Wn.2d 782, 239 P.3d 1059 (2010)). This is because an offender’s constitutional rights “may be restricted if reasonably necessary to accomplish the essential needs of the state and public order,” *Riley*, 121 Wn.2d at 37-38, and the State’s sentencing laws exist for exactly that purpose: to accomplish public order and the essential needs of the State. *See* RCW 9.94A.010 (purpose of sentencing laws includes promoting “respect for the law by providing punishment which is just;” protecting “the public;” offering “the offender an opportunity to

improve himself or herself;” and reducing “the risk of reoffending by offenders in the community”); *State v. Autrey*, 136 Wn. App. 460, 467, 150 P.3d 580 (2006) (“‘Crime-related prohibitions’ during the period of community custody . . . further the ‘purposes of the Sentencing Reform Act of 1981 . . . [which include] imposition of just punishment, protection of the public, and offering the offender an opportunity for self-improvement.’”) (quoting *State v. Letourneau*, 100 Wn. App. 424, 431, 997 P.2d 436 (2000)).

Although this Court’s precedent has largely addressed the deference afforded to *court*-imposed sentencing conditions, this discretion should be especially apt when reviewing community custody conditions imposed by the Board: an administrative body charged with executing the sentence. “While it is the function of the judiciary to determine guilt and impose sentences, ‘the execution of the sentence and the application of the various provisions for the mitigation of punishment and the reformation of the offender are administrative in character and are properly exercised by an administrative body, according to the manner prescribed by the Legislature.’” *State v. Sansone*, 127 Wn. App. 630, 642, 111 P.3d 1251 (2005) (quoting *State v. Mulcare*, 189 Wash. 625, 628, 66 P.2d 360 (1937)).

Winton cites *State v. Olsen*, 189 Wn.2d 118, 399 P.3d 1141 (2017), for the proposition that “a condition of probation that implicates a probationer’s constitutional right to privacy is subject to strict scrutiny.” Ans. to Mot. for Discr. Rev. at 5. *Olsen* is distinguishable. In *Olsen*, this Court reviewed a challenge to a court-imposed affirmative condition requiring random urinalysis testing under article I, section 7 of the state

constitution, which, compared to the federal constitution, provides “increased protection” in certain areas, such as those involving bodily functions. *Olsen*, 189 Wn.2d at 122. In contrast, Winton here challenges a crime-related prohibition that he claims violates his constitutional right to travel freely, a right based in federal law which this Court has not decided warrants any extra protection under the state constitution. *See Eggert*, 81 Wn.2d 840. Nor has this Court found the right to travel applicable to probationers at all. *See also Bagley*, 718 F.2d at 922-23 (probationers’ right to travel extinguished by valid conviction and sentence).

Even with respect to the state constitutional right to privacy at issue in *Olsen*, this Court recognized that “probationers do not enjoy constitutional privacy protection to the same degree as other citizens,” and “have a reduced expectation of privacy because they are ‘persons whom a court has sentenced to confinement but who are serving their time outside the prison walls.’” *Olsen*, 189 Wn.2d at 124-25 (quoting *State v. Jardinez*, 184 Wn. App.518, 523, 338 P.3d 292 (2014)). “Therefore, the State may supervise and scrutinize a probationer more closely than it may other citizens.” *Id.* at 125. *See also id.* at 134 (holding random urinalysis testing was “a constitutionally permissible form of close scrutiny of DUI probationers”). And outside of the state constitutional right to privacy, this Court has generally upheld conditions authorized by sentencing laws “if reasonably crime related,” and reversed them only when “manifestly unreasonable.” *Nguyen*, 191 Wn.2d at 678, 683. *See also Hearn*, 131 Wn. App. at 607-08 (A “crime-related prohibition will be reversed only if it is

manifestly unreasonable.”) (citing *Riley*, 121 Wn.2d at 37); *Ross*, 129 Wn.2d 279; *Riles*, 135 Wn.2d 326; *Nguyen*, 191 Wn.2d at 686. This is so even when such conditions impact constitutional rights. *See, e.g., Nguyen*, 191 Wn.2d at 684-85; *In re Pers. Restraint of Rainey*, 168 Wn.2d at 375.

Applying the controlling law here, the Board did not abuse its discretion by requiring Winton to first notify the Board and his CCO and obtain authorization before traveling to Clark County—where his victims reside, work, and attend school—so that measures can be taken to avoid purposeful or inadvertent contact with Winton’s victims.

It bears emphasis that this condition has never been a banishment order. The Court of Appeals erred by construing this condition as an outright banishment order and subjecting it to the kind of scrutiny that applies outside of the confines of the criminal justice system. Winton has never been precluded from traveling through or to Clark County. *See, e.g., PRP Resp. Ex. 12*. Rather, the condition serves as a mechanism by which the Board and Winton’s CCO can help ensure that Winton’s victims are kept safe and not harmed by intentional or inadvertent contact from Winton. Winton is precluded from contacting his victims or certain family members, and he does not challenge this restriction. As explained by the victim liaison, “[b]oth of Mr. Winton’s adjudicated victims, and one unadjudicated victim, as well as the mother of two of the victims reside in Clark County.” App. G. After mapping the areas “where the victims live, work and attend school” throughout the county, the liaison concluded that she could not determine a boundary within Clark County without “highlighting the

victims' locations." App. G. Thus, "[r]equiring Mr. Winton to obtain prior approval before traveling to Clark County allows the Victim Liaison and the Board to ensure victims in the area are notified and the risk of contact with Mr. Winton is minimized during his time in the county." App. G. *See also Schimelpfenig*, 128 Wn. App. at 230 ("[W]e do not imply that countywide or other types of jurisdictional prohibitions will always be inappropriate. Relying on the well-defined boundaries of a county or city fosters the uniform enforcement of such a restriction.").

Additionally, Winton expressed no need to travel to Clark County. He does not live, work, or have any support there. PRP Resp. Ex. 10 (Offender Release Plan). In fact, he himself proposed to the Board that his restriction be modified only so that he has to obtain his CCO's permission before traveling through Clark County, and only if he is expressly precluded from making any stops in Clark County. PRP Resp. Ex. 12.<sup>5</sup>

No matter if Winton intends to travel to Clark County or not, it was reasonable for the Board to conclude that this condition serves an essential state purpose to protect the public at large and specifically the victims of crime from further harm. The State's sentencing laws authorize the Board to impose conditions that reasonably relate to "(i) [t]he crime of conviction; (ii) [t]he offender's risk of reoffending;" or "(iii) [t]he safety of the community." RCW 9.94A.704(10)(c). All three of these categories reflect the state's essential needs to punish and deter criminal conduct, rehabilitate

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<sup>5</sup> The condition Winton requested was more restrictive than that currently imposed. *See* note 3, *supra*.

offenders, protect the public (which include the victims), and otherwise maintain public order. *See* RCW 9.94A.010. Here, it was both crime-related and reasonably related to the safety of the community for the Board to impose conditions aimed at minimizing contact between Winton and his victims, while not revealing the actual locations of Winton's victims within county boundaries. *See, e.g., Nguyen*, 191 Wn.2d at 683; *In re Pers. Restraint of Rainey*, 168 Wn.2d at 377 (recognizing compelling state interest in "preventing future harm to the victims of the crime") (citing *State v. Warren*, 165 Wn.2d 17, 33, 195 P.3d 940 (2008)). The Court of Appeals below concluded that the Board had a "compelling interest in preventing contact between Winton and the victims and the victims' families still residing in Clark County," which Winton does not challenge. *In re Pers. Restraint of Winton*, 2019 WL 2811126, at \*5; Resp. to Mot. for Discr. Rev.

As this Court has emphasized, this Court's review of a community custody condition should focus on whether the Board "abused its discretion in prohibiting certain conduct. So long as it is reasonable to conclude that there is a sufficient connection between the prohibition and the crime of conviction," the Court will "not disturb" the "community custody conditions." *Nguyen*, 191 Wn.2d at 685-86. This Court should confirm that the Board has discretion to impose crime-related conditions during community custody that it believes are reasonably necessary to prevent re-offense or otherwise protect the victims and the public at large, and that the challenged limitation here falls well within that discretion.

**C. The Condition Is Narrowly Tailored**

Last, even if a heightened standard of review applied (which it should not), the travel restriction here should be affirmed. As the victim liaison explained, the locations of the victims' work, school, and residences throughout the county made providing more specific restrictions unworkable, because doing so would reveal the victims' locations. App. G. Winton has expressed no need or desire to travel to Clark County at all. And Winton is not precluded from traveling through or to Clark County; he is merely required to obtain authorization, so that his destination can be made known and steps can be taken to avoid further harm to the victims, whom Winton is prohibited from contacting. This is a sufficiently narrow means for supervising Winton and protecting his victims from further harm.

**V. CONCLUSION**

The Board did not abuse its discretion in requiring Winton to first obtain its authorization before traveling to the county where his victims reside, work, and attend school. The Board respectfully requests that this Court reverse the Court of Appeals and dismiss Winton's Petition.

RESPECTFULLY SUBMITTED this 2nd day of April 2020.

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*s/ Alicia O. Young*  
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**CERTIFICATE OF SERVICE**

I certify that on the date below I caused to be electronically filed the foregoing SUPPLEMENTAL BRIEF OF INDETERMINATE SENTENCE REVIEW BOARD with the Clerk of the Court using the electronic filing system which will serve the document to the following case participants as indicated below:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 2nd day of April 2020, at Olympia, WA.

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SUPPLEMENTAL BRIEF OF INDETERMINATE SENTENCE REVIEW BOARD

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