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Stephens, C. J.
CHIEF JUSTICE

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JEREMIAH J. JEFFRIES-PORTER, Petitioner.	No. 104576-0 EN BANC Filed: October 15, 2026

GORDON MCCLOUD, J.—Jeremiah Jeffries-Porter was convicted of first degree child molestation. At sentencing, the court imposed a community custody condition prohibiting him from possessing or accessing "sexually exploitive materials (as defined by Defendant's treating therapist or CCO [(Community Corrections Officer)])." Clerk's Papers (CP) at 75.

Trial courts have discretion to impose all sorts of conditions of release to protect the public and rehabilitate the offender. And trial courts have the discretion to delegate supervision of conditions to experts—like a therapist or CCO—with the skills to promote and monitor compliance.

But constitutional due process clause protections limit the trial court's power to create and delegate those conditions. The due process clauses of the state and United States constitutions require such conditions to be clear enough to provide fair notice to not just the therapist and CCO—but also to the defendant—of what is prohibited. U.S. CONST. amend. XIV; WASH. CONST. art. I, § 3. In a case like this, where a government prohibition limits access to First-Amendment-protected content, the state and federal constitutions also require such conditions to be narrowly tailored and directly related to the goals of protecting the public and promoting rehabilitation. U.S. CONST. amend. I.

Jeffries-Porter argues that this community custody condition fails those constitutional requirements. We agree. "Sexually exploitive" can mean many different things. The community custody condition does not define that phrase or specify which one of its many possible meanings applies to Jeffries-Porter. Neither does any statute, regulation, or court case. The State has offered several competing definitions of that phrase in this very case. And of all the appellate court decisions that have considered the constitutionality of this condition, not one has been able to define what it means in this context.

Neither can we. We therefore hold that the condition prohibiting Jeffries-Porter from possessing or accessing "sexually exploitive materials (as

defined by Defendant's treating therapist or CCO)" is unconstitutionally vague. CP at 75. We remand to the trial court for further proceedings consistent with this opinion.

FACTUAL AND LEGAL BACKGROUND

Jeremiah Jeffries-Porter pleaded guilty to one count of first degree child molestation in violation of RCW 9A.44.083.[1] The trial court sentenced him to 51 months in prison and 36 months of community custody. CP at 1, 72-73.

The trial court also imposed several community custody conditions, to start upon his release from prison. One of those conditions directs him to "[p]ossess/access no sexually exploitive materials (as defined by Defendant's treating therapist or CCO)." CP at 75.

Jeffries-Porter challenged this condition as unconstitutionally vague. The Court of Appeals rejected that challenge in a split decision. *State v. Jeffries-Porter*, No. 59267-3-II (Wash. Ct. App. Aug. 19, 2025) (unpublished), https://www.courts.wa.gov/opinions/pdf/D2%2059267-3-II%20Unpublished%20Opinion.pdf.

[1] "A person is guilty of child molestation in the first degree when the person has . . . sexual contact with another who is less than twelve years old and the perpetrator is at least thirty-six months older than the victim." RCW 9A.44.083(1).

The Court of Appeals majority reasoned that the condition survived a constitutional vagueness challenge because two statutes—which were neither charged nor referenced in the condition or anywhere else in this case and which were not called to the defendant's, the therapist's, or the CCO's attention—could define the condition's scope.

The first unreferenced statute upon which the Court of Appeals relied is RCW 9.68A.040. That statute defines the crime of sexual exploitation of a minor (not charged here) as follows:

> (1) A person is guilty of sexual exploitation of a minor if the person:
>
> (a) Compels a minor by threat or force to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;
>
> (b) Aids, invites, employs, authorizes, or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance; or
>
> (c) Being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.

RCW 9.68A.040.

But this statute does not define or mention the term at issue here, "sexually exploitive materials," at all. Instead, it defines a different crime than the one charged here—the crime of "sexual exploitation of a minor." It defines that crime as

compelling, aiding, or permitting sexually explicit conduct by a child, knowing that such conduct would be photographed or part of a live performance.

The second unreferenced statute upon which the Court of Appeals relied, RCW 9.68A.011, defines yet another phrase—"sexually explicit conduct"—not sexually exploitive conduct. And of course "explicit" carries a different meaning than "exploitive." The statute defines that other phrase—sexually explicit conduct—as "actual or simulated":

> (a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;
>
> (b) Penetration of the vagina or rectum by any object;
>
> (c) Masturbation;
>
> (d) Sadomasochistic abuse;
>
> (e) Defecation or urination for the purpose of sexual stimulation of the viewer;
>
> (f) Depiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer . . . ; or
>
> (g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

RCW 9.68A.011(8).[2]

[2] A prior version of this statute was in effect when Jeffries-Porter committed his crime. *See* LAWS OF 2010, ch. 227, § 3. The subsection has been amended and renumbered. LAWS OF 2026, ch. 223, § 2. Because the amendments do not affect our analysis, we cite the current version of the statute.

In other words, this statute defines a phrase, "sexually explicit conduct," that is absent from the child molestation statute defining Jeffries-Porter's crime and absent from the condition at issue in this case.

The Court of Appeals majority concluded that reading the community custody condition at issue in this child molestation case in conjunction with these statutes concerning different phrases and a different crime narrows the condition's meaning—even though nothing in Jeffries-Porter's case told him or his CCO or his therapist to read the condition in conjunction with those statutes. *Jeffries-Porter*, slip op. at 9. The majority also noted that several other unpublished Court of Appeals decisions upheld this same condition for the same reasons. *Id.* at 7-8 (citing *State v. Perkins*, No. 42793-1-II (Wash. Ct. App. Dec. 20, 2013) (unpublished), https://www.courts.wa.gov/opinions/pdf/D2%2042793-1-II%20%20Unpublished%20Opinion.pdf; *State v. Thompson*, No. 81044-8-I (Wash. Ct. App. June 8, 2020) (unpublished), https://www.courts.wa.gov/opinions/pdf/810448.pdf; *State v. Fenney*, No. 56886-1-II (Wash. Ct. App. Aug. 29, 2023) (unpublished), https://www.courts.wa.gov/opinions/pdf/D2%2056886-1-II%20Unpublished%20Opinion.pdf).[3] The majority did not mention an additional

[3] We discuss these cases at pages 13-14, *infra*.

unpublished Court of Appeals decision that accepted the State's concession that "sexually exploitative materials" was "'vague as written'" and remanded for the trial court to clarify it. *State v. Foley*, No. 56498-0-II, slip op. at 28 (Wash. Ct. App. Mar. 21, 2023) (unpublished), https://www.courts.wa.gov/opinions/pdf/D2%2056498-0-II%20Unpublished%20Opinion.pdf#search=56498-0-II.

The Court of Appeals dissent came to the opposite conclusion. It decided that this condition does not explain to a person of ordinary intelligence what materials were off-limits. *Jeffries-Porter*, slip op. at 18 (Veljacic, A.C.J., dissenting). The dissent explained that neither statute cited by the majority defines the term at issue in this case. It explained that only one of those cited statutes even uses the word "exploitation," that the statute that uses the word "exploitation" fails to define that word, and that the statute that uses that word uses it only to explain the elements of a different crime. *Id*. at 18-19. The dissent continued that the other statute upon which the majority relied defines "sexually explicit conduct," not "sexually exploitive materials," and "explicit" carries a different meaning from "exploitive." *See id*.

Finally, the dissent pointed out that although other Court of Appeals decisions rely on those two statutes to conclude that the phrase "sexually exploitive materials"

survives a constitutional vagueness challenge, "[t]ellingly, no opinion . . . actually *provides* a definition" of that challenged phrase. *Id.* at 19.

We granted review to resolve this conflict over whether a condition barring a defendant from accessing or possessing "sexually exploitive materials (as defined by defendant's therapist or CCO)" provides sufficient notice, protects against arbitrary enforcement, and is narrowly tailored to promote the State's interest in community safety and offender rehabilitation.

We hold that it does not. We also conclude that everything that might be prohibited by this phrase, according to any of the multiple definitions that the State has offered, is already covered by a separate, broader community custody condition already imposed in this case. We therefore reverse the Court of Appeals and remand to the trial court for further proceedings consistent with this opinion.

ANALYSIS

The Fourteenth Amendment and article I, section 3 of the Washington Constitution require the government to provide fair warning about what conduct it prohibits.[4] *State v. Bahl*, 164 Wn.2d 739, 752, 193 P.3d 678 (2008)

[4] Jeffries-Porter cites both the federal and state constitutional provisions but does not argue that the state constitution provides greater protection than the federal constitution in this context.

(citing *City of Spokane v. Douglass*, 115 Wn.2d 171, 178, 795 P.2d 693 (1990)). A community custody condition violates these due process protections if it (1) fails to define the offense with sufficient definiteness that ordinary people (not just therapists or CCOs) can understand what is proscribed or (2) fails to provide ascertainable standards to protect against arbitrary enforcement. *Id*. at 752-53. We apply these due process protections to community custody conditions in essentially the same manner as we apply them to statutes and other enactments. *See id*. at 753.

But a condition like this, which implicates First Amendment rights, must meet an additional constitutional requirement. To prevent a chilling effect on free speech, conditions that restrict free speech rights must also be "*narrowly tailored* and *directly related* to the goals of protecting the public and promoting the defendant's rehabilitation." *Id*. at 757 (emphasis added); *see Grayned v. City of Rockford*, 408 U.S. 104, 109, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972) ("Uncertain meanings inevitably lead citizens to '"steer far wider of the unlawful zone" . . . than if the boundaries of the forbidden areas were clearly marked.'" (alteration in original) (quoting *Baggett v. Bullitt*, 377 U.S. 360, 372, 84 S. Ct. 1316, 12 L. Ed. 2d 377 (1964) (quoting *Speiser v. Randall*, 357 U.S. 513, 526, 78 S. Ct. 1332, 2 L. Ed. 2d 1460 (1958)))).

As discussed below, the condition barring access to "sexually exploitive materials" (without defining those terms, without relying on statutes that do define those terms, and without providing helpful examples) is not clear and definite, does not protect against arbitrary enforcement, and is not narrowly tailored to protecting the public or promoting rehabilitation.

I. State and federal due process clause protections require community custody conditions to be clear and definite. The condition barring access to "sexually exploitive materials" fails to define that phrase or use other permissible sources to define that phrase; it therefore violates due process clause protections

A. The Condition at Issue Here Is Not Clear. We Must Therefore Consider Whether Anything Else in This Case or in Any Other Relevant Source Provides the Needed Clarity

As discussed above, a community custody condition must be clear and definite. Such a condition is not unconstitutionally vague "'merely because a person cannot predict with complete certainty the exact point at which their actions would be classified as prohibited conduct.'" *State v. Hai Minh Nguyen*, 191 Wn.2d 671, 679, 425 P.3d 847 (2018) (quoting *City of Seattle v. Eze*, 111 Wn.2d 22, 27, 759 P.2d 366 (1988)).

However, the condition must be clear enough that a person of ordinary intelligence can understand what is prohibited, despite some possible areas of disagreement. *Id.* (quoting *Douglass*, 115 Wn.2d at 179).

The condition in this case is not clear enough for a person of ordinary intelligence to understand what is prohibited. The State essentially acknowledges this by directing our attention to other sources to explain what it means. And the Court of Appeals essentially acknowledges this by looking to other sources to explain it, too.

We agree that an imperfectly written community custody condition might survive constitutional scrutiny if other appropriate sources clarify its meaning. That clarity can come from a definition in the judgment and sentence (J&S) itself. That clarity can come from a dictionary definition. *Bahl*, 164 Wn.2d at 754, 759; *Nguyen*, 191 Wn.2d at 681-82. It can come from a statutory definition. *State v. J.H.-M.*, 4 Wn.3d 648, 652, 566 P.3d 847 (2025). It can come from other cases providing a definition. *Id.* at 656-58. That clarity might even come from a list of illustrative examples. *See State v. Wallmuller*, 194 Wn.2d 234, 236, 449 P.3d 619 (2019) (an illustrative list of prohibited places clarified and defined the condition, such that it was not vague); *State v. Frederick*, 20 Wn. App. 2d 890, 906, 506 P.3d 690 (2022) (a clarifying list of prohibited material limits vagueness).

But none of those potential sources clarify the meaning of "sexually exploitive materials" in this case.

B. Nothing in Jeffries-Porter's Case Defines This Condition

Neither the J&S nor any other document in Jeffries-Porter's own case defines this condition or provides a list of clarifying examples.

C. No Statute, Combination of Statutes, or Court of Appeals Decision Defines This Condition

We have stated that criminal defendants are expected to research other statutes and court rulings to clarify the meaning of an ambiguous community custody condition. We have adopted the fiction that such sources satisfy due process clause requirements because they are "'presumptively available to all citizens.'"[5] *Bahl*, 164 Wn.2d at 756 (internal quotation marks omitted) (quoting *State v. Watson*,

[5] This apparent limitation of the reach of due process clause protections to "citizens" was certainly an oversight, even at the time it was written. The protections of the due process clause, and the sources that might satisfy the due process clause, clearly apply to all persons within the territory of the United States—not just citizens. As the United States Supreme Court explained 130 years ago in *Yick Wo v. Hopkins*, 118 U.S. 356, 369, 6 S. Ct. 1064, 30 L. Ed. 220 (1886), "*The Fourteenth Amendment to the Constitution is not confined to the protection of citizens*. It says: '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 laws.' These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws. . . . The questions we have to consider and decide in these cases, therefore, are to be treated as involving *the rights of every citizen of the United States equally with those of the strangers and aliens who now invoke the jurisdiction of the court*." (Emphasis added.); *see also Plyler v. Doe*, 457 U.S. 202, 210, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982) (noncitizens in this country are guaranteed equal protection of the laws, just as they are guaranteed due process of law under the Fifth and Fourteenth Amendments).

160 Wn.2d 1, 8, 154 P.3d 909 (2007)); *State v. Smith*, 111 Wn.2d 1, 7, 759 P.2d 372 (1988).

As a result, we have upheld community custody conditions against vagueness challenges when their terms are sufficiently defined in cross-referenced statutes or case law. *J.H.-M.*, 4 Wn.3d at 656-58 (upholding condition in part because our prior case law defines and limits the term's scope), 652 (upholding condition in part because sentencing court explicitly limited condition's scope by cross-referencing a statutory definition); *Nguyen*, 191 Wn.2d at 676 (upholding condition because an ordinary person can understand its meaning in the context of its dictionary definition and a cross-referenced statutory definition).

But the disputed community custody condition at issue here contains no such cross-referenced statutory definition to limit its scope. And a defendant subject to this condition (or a CCO/treating therapist supervising such a defendant) will find no clarity about the definition of "sexually exploitive materials" in the handful of Court of Appeals decisions that have considered it.

As the Court of Appeals dissent explained, that court has repeatedly said in unpublished decisions that "sexually exploitive materials" is not vague. But the Court of Appeals itself has never actually defined that term. It has simply concluded that its meaning is clear from two different non-cross-referenced statutes, without

ever saying what that meaning is.[6] And as the Court of Appeals dissent further explained, those two non-cross-referenced statutes are not clarifying. *See Jeffries-Porter*, slip op. at 18-19. They discuss a different crime and a different phrase and can be read together to support different meanings for the phrase, "sexually exploitive materials."

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[6] *Perkins*, slip op. at 9 ("When viewed together, these statutes do not require persons of ordinary intelligence to guess at what is meant by the condition prohibiting access to or possession of 'sexually exploitive materials.'"); *Thompson*, slip op. at 12-13 ("'When viewed together, these statutes do not require persons of ordinary intelligence to guess at what is meant by the condition prohibiting access to or possession of "sexually exploitative materials."'" (quoting *Perkins*, slip op. at 9)); *State v. Amaro*, No. 56915-9-II, slip op. at 13 (Wash. Ct. App. Aug. 15, 2023) (unpublished), https://www.courts.wa.gov/opinions/pdf/D2%2056915-9-II%20Unpublished%20Opinion.pdf ("Together, the two statutes provide sufficient notice of what 'sexually exploitive materials' are prohibited and do not require persons of ordinary intelligence to guess at what is meant by the condition prohibiting access to or possession of 'sexually exploitive materials.'"); *Fenney*, slip op. at 13 ("Together, the two statutes provide sufficient notice of what sexually exploitive materials are prohibited. Ordinary people would not have to guess at the meaning of a condition prohibiting access or possession of sexually exploitive materials after reviewing these statutes, which are presumptively available to all."); *State v. Braae*, No. 59270-3-II, slip op. at 21 (Wash. Ct. App. Oct. 14, 2025) (unpublished), https://www.courts.wa.gov/opinions/pdf/D2%2059270-3-II%20Unpublished%20Opinion.pdf ("Two statutory provisions, when viewed together, provide sufficient information so that a person of ordinary intelligence is aware of what type of materials this condition refers to."), 22 ("Considering these two statutes together, it is not so subjective what types of materials would qualify as 'sexually exploitive' so to make the term constitutionally suspect."), *review denied*, 5 Wn.3d 1039 (2026); *Jeffries-Porter*, slip op. at 9 ("We agree that the statutory elements of the crime of sexual exploitation of a minor read in conjunction with the statutory definition of 'sexually explicit conduct' are sufficient to limit the discretion of therapists and CCOs when defining the types of materials that offenders may not access under this condition.").

In fact, the State itself relies on those two non-cross-referenced statutes to provide several inconsistent interpretations of "sexually exploitive materials."

The State's supplemental brief in this court asserts that based on those two other statutes, the condition at issue here bars access to materials containing "*persons* engaged in sexually explicit conduct" rather than "minors," even though both statutes apparently pertain to minors: RCW 9.68A.040 explicitly references minors, and RCW 9.68A.011(8) appears in the "Definitions" section of chapter 9.68A RCW, titled "Sexual Exploitation of Children." Suppl. Br. of Resp't at 10-11 (emphasis added).

At oral argument before this court, however, the State changed its proposed definition. It asserted that this condition, when read together with those two other statutes, barred access to "live or photographic materials that showed the performance of a *minor* engaged in sexually explicit conduct." Wash. Sup. Ct. oral arg., *State v. Jeffries-Porter*, No. 104576-0 (May 19, 2026), at 17 min., 49 sec. through 18 min., 14 sec., (emphasis added), *video recording by* TVW, Washington State's Public Affairs Network, https://www.tvw.org.

The State also expressed uncertainty about whether the condition is limited to materials depicting a live or photographed performance of *actual* sexually explicit conduct or whether it includes material depicting *simulated* conduct. When asked

whether the condition includes material depicting simulated conduct, counsel responded, "I believe it does . . . ", *id*. at 21 min., 45 sec. through 21 min., 50 sec., even though the definitions proposed by the State in its brief and at oral argument both included a limitation to "live or photographic performances." Suppl. Br. of Resp't at 10; Wash. Sup. Ct. oral arg., *supra*, at 17 min., 49 sec. through 18 min., 14 sec. (Remember, RCW 9.68A.011(8) includes simulated acts, but RCW 9.68A.040 is limited to live or photographic performances, so either reading is plausible.)

In sum, even the State acknowledges that the statutes upon which the Court of Appeals majority relied support several conflicting definitions of the condition. The State's own proposed definitions based on these two statutes differ on whether the condition refers to materials concerning persons, materials concerning minors, materials concerning actual live and photographed or videoed acts, or materials concerning simulated acts. These distinctions matter; a condition that applies to depictions of *persons* engaged in simulated acts would capture a significantly broader set of materials than a condition that applies to depictions of *minors* engaged in live or photographed sex acts.

Adding to the confusion, all those statute-based definitions—alone or in combination—differ from the dictionary definitions of the same words.

D. The Dictionary Defines the Words Used in the Disputed Condition. But the Dictionary Definition Differs from Both the Court of Appeals Majority's Definition and the State's Many Definitions

When a community custody condition uses an undefined term or phrase, the court may also consider its plain and ordinary meaning as set forth in a standard dictionary. *See Bahl*, 164 Wn.2d at 754; *Nguyen*, 191 Wn.2d at 681-82.

In this case, though, the dictionary suggests a definition of the condition that differs from the definitions suggested by the State. *Webster's Third New International Dictionary* defines "sexually" as "in a sexual manner" or "with regard to or by means of sex." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2082 (2002). "Exploitive," which shares the same definition as "exploitative," is defined as "relating to exploitation." *Id*. at 802. "Exploitation" is defined as "an unjust or improper use of another person for one's own profit or advantage." *Id.* at 801-02. So, according to the dictionary, sexually exploitive materials are those that "unjust[ly] or improper[ly] use … another person for one's own profit or advantage" "in a sexual manner."

This dictionary definition is also plausible. But it conflicts with the definitions that the State proposes and that the Court of Appeals majority seemed to accept (discussed above).

E. The State Expressed Uncertainty About Whether a Separate Community Custody Condition Already Imposed in This Case Covers the Prohibitions in the "Sexually Exploitive Materials" Condition; Its Uncertainty on That Point Underscores the Difficulty of Pinning Down the Phrase's Meaning

At oral argument, the State expressed uncertainty about whether material barred by its proposed interpretation(s) of "sexually exploitive materials" would also be barred by a separate, broader condition in Jeffries-Porter's J&S prohibiting him from "own[ing], us[ing], possess[ing] or pursu[ing] sexually explicit materials."[7] CP at 83.

The fact that two community custody conditions overlap does not necessarily indicate that one of the conditions is vague or problematic. But the State's confusion about whether these conditions overlap does underscore the "sexually exploitive materials" phrase's vagueness: it demonstrates that even the State has difficulty defining that condition's scope.

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[7] Wash. Sup. Ct. oral arg., *supra*, at 18 min., 21 sec. through 19 min, 02 sec. (The Court: "So, going from [the State's] definition, . . . isn't everything that would be covered by what you said . . . already covered in the bar on possessing sexually explicit materials?" The State: "I think they're pretty overlapping."), 23 min., 8 sec. through 23 min., 24 sec. (The Court: "What [does] this condition [do] that isn't already covered by the sexually explicit materials condition that we've said repeatedly is constitutional?" The State: "I was not involved in the drafting, so I really can't answer that question specifically."), 32 min., 18 sec. through 32 min., 39 sec. (The Court: "So you really think it is doing work independent of the bar on sexually explicit materials?" The State: "What I think is that I am not enough of a specialist in the sex crime area to know if it's doing work.").

II. The First Amendment requires community custody conditions that limit access to written or visual materials to meet "a greater degree of specificity." The condition barring access to "sexually exploitive materials" also fails that First Amendment requirement

The First Amendment implications of the condition magnify its problems. *See Kolender v. Lawson*, 461 U.S. 352, 358, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983) ("Our concern [with the challenged statute's vesting of discretion to the police] is based upon the 'potential for arbitrarily suppressing First Amendment liberties . . . .'" (quoting *Shuttlesworth v. City of Birmingham,* 382 U.S. 87, 91, 86 S. Ct. 211, 15 L. Ed. 2d 176 (1965))); *Bahl*, 164 Wn.2d at 753 ("'Vagueness concerns are more acute when a law implicates First Amendment rights and a heightened level of clarity and precision is demanded of criminal statutes because their consequences are more severe.'" (quoting *United States v. Williams*, 444 F.3d 1286, 1306 (11th Cir. 2006), *rev'd on other grounds*, 553 U.S. 285, 128 S. Ct. 1830, 170 L. Ed. 2d 650 (2008))).

"[A] restriction implicating First Amendment rights demands a greater degree of specificity and must be reasonably necessary to accomplish the essential needs of the state and public order." *State v. Padilla*, 190 Wn.2d 672, 678, 416 P.3d 712 (2018) (citing *State v. Riley*, 121 Wn.2d 22, 37-38, 846 P.2d 1365 (1993) (quoting *Malone v. United States*, 502 F.2d 554, 556 (9th Cir. 1974))).

This condition fails to meet that stricter standard. It lacks definitional terms, statutory references, case law definitions, illustrative examples, or any other elaboration on what it covers. The trial court may certainly rely on the therapist and CCO to define the precise contours of a condition based on those individuals' professional expertise in supervising sex offenders. But the condition itself must provide guidance to the therapist, the CCO, and the defendant about what the court means. This condition fails to do so.

CONCLUSION

"[E]ither the condition as written provides constitutional notice and protection against arbitrary enforcement or it does not." *State v. Sanchez Valencia*, 169 Wn.2d 782, 789, 239 P.3d 1059 (2010).

Here, it does not. The condition fails to define "sexually exploitive materials." No statute or case defines that term. No list of explanatory examples helps limit the condition. And although the State claims that two non-cross-referenced statutes clarify the term's meaning (and the Court of Appeals agreed in a series of unpublished opinions), the State itself acknowledges that those two statutes can be read together to produce multiple—materially different—possible definitions of the phrase. In addition, all the State's proposed definitions differ from the dictionary definitions of the words at issue. We therefore hold that the condition prohibiting

Jeffries-Porter from possessing or accessing "sexually exploitive materials (as defined by [his] treating therapist or CCO)" fails to provide constitutional notice, fails to protect against arbitrary enforcement, and fails to narrowly tailor its prohibition to achieve the State's lawful goals.

Accordingly, we reverse the Court of Appeals and remand to the trial court for further proceedings consistent with this opinion.

Gordon McCloud, J.

WE CONCUR:

Mungia, J.

González, J.

Melody, J.

Montoya-Lewis, J.

Angelis, J.

No. 104576-0

STEPHENS, C.J. (dissenting)—Jeremiah Jeffries-Porter pleaded guilty to first-degree child molestation and as part of his conviction was required to follow several community custody conditions. He challenges a condition that prohibits him from possessing or accessing "sexually exploitive materials," a phrase he argues is unconstitutionally vague and violates his First Amendment rights. U.S. CONST. amend. I. The majority agrees, broadly construing the phrase "sexually exploitive materials" based on dictionary definitions rather than the clear context of Jeffries-Porter's conviction and statutes defining "sexual exploitation." When considered in this proper context, the condition provides sufficient notice to Jeffries-Porter that he may not access materials depicting the sexual exploitation of children. Such materials are unprotected by the First Amendment, and the condition at issue provides sufficient guidance to overcome a vagueness challenge. For this reason, I respectfully dissent.

ANALYSIS

The Fourteenth Amendment to the U.S. Constitution and article I, section 3 of our state constitution both prohibit overly vague criminal statutes or community

custody conditions.[1] This due process protection ensures that individuals have fair warning of proscribed conduct such that a person of ordinary intelligence could reasonably understand what is prohibited. *Spokane v. Douglass*, 115 Wn.2d 171, 178, 795 P.2d 693 (1990). Under this framework, a community custody provision is unconstitutionally vague if it (1) fails to define the offense with sufficient definiteness that ordinary people can understand what is proscribed or (2) fails to provide ascertainable standards of guilt to protect against arbitrary enforcement. *State v. Bahl*, 164 Wn.2d 739, 752-53, 193 P.3d 678 (2008). We apply the same rules of interpretation to community custody conditions as we do to statutes, but with one distinction. *See id*. at 753. Unlike the "heavy burden" borne by challengers of vague statutes and ordinances, community custody conditions are not enacted by the legislature and, rather, are "within the discretion of the sentencing court and will be reversed if manifestly unreasonable." *Id*.

We do not consider community custody provisions in a vacuum; rather, we examine them in the context in which they are used to determine whether they are sufficiently definite to satisfy due process protections. *Id.* at 754 (citing *Douglass*, 115 Wn.2d at 180). Community custody conditions appropriately address risks posed by an offender upon release and are therefore "afforded a sensible,

[1] I agree with the majority that in this context, Jeffries-Porter does not argue that the state constitution provides greater protection than the federal constitution and thus we need not examine the issue. Majority at 8 n.4.

meaningful, and practical interpretation." *Douglass*, 115 Wn.2d at 180; *see also State v. Dixon*, 78 Wn.2d 796, 805, 479 P.2d 931 (1971) ("Where a statute is specifically directed at a manifest evil and couched in language drawn from history and practice, courts should not 'parse the statute as grammarians or treat it as an abstract exercise in lexicography.'" (quoting *Beauharnais v. Illinois*, 343 U.S. 250, 253, 72 S. Ct. 725, 96 L. Ed. 919 (1952))).

Our precedent recognizes the impossibility of defining every risk or prohibition with absolute certainty, and "[i]f 'persons of ordinary intelligence can understand what the [law] proscribes, notwithstanding some possible areas of disagreement, the [law] is sufficiently definite.'" *Bahl*, 164 Wn.2d at 754 (second and third alterations in original) (quoting *Douglass*, 115 Wn.2d at 179); *In re Pers. Restraint of Ansell*, 1 Wn.3d 882, 899, 533 P.3d 875 (2023) (plurality opinion) ("Due process does not require that [a defendant] should be able to 'predict with complete certainty the exact point at which [their] actions would be classified as prohibited conduct,' as long as a person of ordinary intelligence can understand what is proscribed." (internal quotation marks omitted) (quoting *State v. Padilla*, 190 Wn.2d 672, 677, 416 P.3d 712 (2018))). Courts will not strain to construe a statute or community custody condition as vague simply because different interpretations are possible. *Dixon*, 78 Wn.2d at 804-05; *see, e.g.*, *State v. Hai Minh Nguyen*, 191 Wn.2d 671, 680-81, 425 P.3d 847 (2018). Indeed, we have avoided imposing

"'[i]mpossible standards of specificity,'" in large part because "language always involves some degree of vagueness." *Bahl*, 164 Wn.2d at 759 (internal quotation marks omitted) (quoting *State v. Halstien*, 122 Wn.2d 109, 118, 857 P.2d 270 (1993)).

This approach follows the tenet that the vagueness doctrine "is not a principle designed to convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited." *Colten v. Kentucky*, 407 U.S. 104, 110, 92 S. Ct. 1953, 32 L. Ed. 2d 584 (1972). We do not willingly walk into a constitutional crisis by construing language broadly; rather, we endeavor to avoid constitutional concerns by considering language in context. With respect to community custody conditions, the context necessary to ascertain the meaning of a term used to proscribe the conduct of a criminal defendant includes the nature of the conviction, language used in related statutes, and, when appropriate, dictionary definitions of the words or phrases used in similar contexts.

The phrase "sexually exploitive materials" is sufficiently clear when considered in proper context. In Washington, the term "sexual exploitation" is used in only one context in the criminal statutes and is uniquely tied to minors. *See, e.g.*, RCW 9.68A.040 (defining the scope of "sexual exploitation of a minor"); RCW

9.68A.011(8)[2] (defining "sexually explicit conduct" in the context of sexual exploitation of a minor). The majority points to other statutes describing exploitation, but these neither reference nor define "sexual exploitation," a term used exclusively in the context of crimes involving minors. *See, e.g.*, RCW 74.34.020(2)(a)-(d) (defining forms of abuse in the context of vulnerable adults as "sexual abuse" and separate from "personal exploitation"), (2), (7) (defining "abuse," "personal exploitation," and "financial exploitation"). Jeffries-Porter was convicted of first-degree child molestation. It therefore follows that the "'animating context of [the] well-defined usage'" of "sexually exploitive materials" logically refers to materials that depict the sexual exploitation of a minor. *Dixon*, 78 Wn.2d at 805 (quoting *Beauharnais*, 343 U.S. at 253); *State v. J.H.-M.*, 4 Wn.3d 648, 661, 566 P.3d 847 (2025) (recognizing that the "facts of the underlying criminal offense" provide "context to the prohibitions that would apply").

The majority rejects the relevance of statutes using the phrase "sexual exploitation" in connection with minors on the ground that these statutes were not charged or referenced explicitly in the community custody condition. Majority at 13-14. No such requirement exists in our case law. To the contrary, in *Bahl* we

[2] A prior version of this statute was in effect when Jeffries-Porter committed his crime. *See* LAWS OF 2010, ch. 227, § 3. The subsection has been amended and renumbered. LAWS OF 2026, ch. 223, § 2. Because the amendments do not affect our analysis, we cite the current version of the statute.

considered a statute that was not charged or explicitly referenced as part of the context in which the phrase "sexually explicit" was used, declining to consider whether, standing alone, this definition would provide sufficient notice to satisfy our vagueness inquiry. 164 Wn.2d at 760. The analysis is more nuanced than the majority would allow. We have never adopted an explicit cross-referencing requirement largely because our vagueness inquiry is not so formalistic. In *Bahl* we drew on statutory and dictionary definitions the condition never cited, *id.* at 759-60; in *J.H.-M.* we considered the facts of the underlying conviction, 4 Wn.3d at 661; and while the condition in *Nguyen* happened to reference statutory definitions, nothing in our analysis suggested the reference was *necessary* to survive a vagueness challenge, 191 Wn.2d at 684-85.

In concluding that the condition at issue violates Jeffries-Porter's First Amendment rights, the majority seems to collapse the due process vagueness inquiry under the Fourteenth Amendment with an overbreadth analysis under the First Amendment. Majority at 19-20. While "vagueness and overbreadth may sometimes overlap," they are nonetheless distinct inquiries that impose discrete constitutional requirements. *J.H.-M.*, 4 Wn.3d at 654-55. The majority holds that the condition at issue here is vague and then, based on the broadest possible reading of the phrase "sexually exploitive materials," concludes that it therefore must implicate Jeffries-Porter's First Amendment rights. Majority at 9-10, 19-21. This line of reasoning

fails to account for the statutory definition of "sexual exploitation" that is used only in the context of minors and therefore suggests a narrower definition of "sexually exploitive materials" limited to materials that do not enjoy First Amendment protections. *New York v. Ferber*, 458 U.S. 747, 764, 102 S. Ct. 3348, 73 L. Ed. 2d 1113 (1982) (holding that child pornography falls outside the protections of the First Amendment); *cf.* RCW 9.68A.001 ("The definition of 'sexually explicit conduct' and other operative definitions demarcate a line between protected and prohibited conduct and should not inhibit legitimate scientific, medical, or educational activities.").

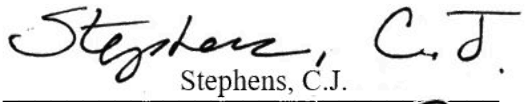
Even accepting that the condition at issue could be read broadly to encompass other materials that enjoy First Amendment protection, that does not mean that it is vague or overbroad. *State v. Pauling*, 149 Wn.2d 381, 389, 69 P.3d 331 (2003) ("A statute will be invalidated *only if* the court is unable to limit sufficiently its standardless sweep by a limiting construction."). Rather, as discussed, reading the condition in the context of Jeffries-Porter's conviction and related statutes, a person of ordinary intelligence can discern between materials depicting sexual exploitation and "'[c]ountless works of art, literature, film, and music.'" *Nguyen*, 191 Wn.2d at 680 (alteration in original). The majority's insistence on an explicit cross-reference to statutes that define sexual exploitation is unsupported by our precedent and results

in invalidating a provision that plainly addresses a crime-related risk posed by Jeffries-Porter.

CONCLUSION

The majority concludes that a person convicted of first-degree child molestation cannot understand what a prohibition on "sexually exploitive materials" forbids. It reaches that result by demanding an explicit cross-reference our cases have never required and by allowing overbreadth concerns to distort a distinct vagueness inquiry. Our vagueness analysis has never demanded perfection in drafting. It requires fair notice and ascertainable standards, judged in context, including the nature of the conviction, related statutes, and ordinary dictionary meanings. A person in Jeffries-Porter's position, reading the prohibition against the backdrop of his convictions and related statutes, understands what it forbids: materials depicting the sexual exploitation of a minor. Due process requires nothing more.

Accordingly, I respectfully dissent.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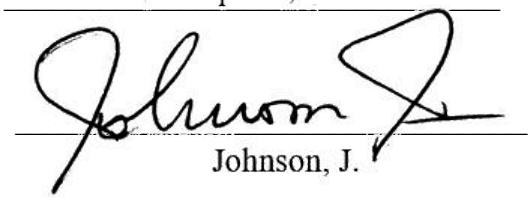
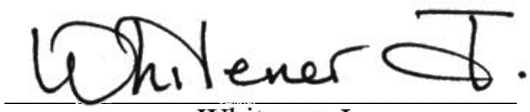

Johnson, J.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