IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

STATE OF WASHINGON,	)	
	)	No. [redacted]
Respondent,	)	
	)	RENEWED MOTION
v.	)	FOR STAY OF
	)	SENTENCE PENDING
[redacted]	)	APPEAL FOLLOWING
	)	REMAND AND TRIAL
Appellant.	)	COURT'S RULING
	)	DENYING A STAY

I. IDENTITY OF PARTY AND RELIEF SOUGHT

[redacted] renews his request that this Court order his sentence stayed pending resolution of his appeal and set conditions of release or bond. Alternatively, because the trial court refused to abide by this Court's order remanding for a new hearing on the issue, this Court should again remand for new hearing.

II. FACTUAL BACKGROUND

a. *After the trial court denied* [redacted] *request for conditional release pending resolution of his appeal, this Court remanded for a new hearing.*

The facts of [redacted] appeal are outlined in detail in his opening brief, filed on September 16, 2020. Br. of App. at 8-16. In short, [redacted] was convicted of three counts of "theft" based on funds that Melvin Mesick freely paid, loaned, or gave [redacted] Based on

aggravating factors, the court imposed an exceptional sentence upward of 10 years' confinement.

In April 2020, appellate counsel filed a motion in the trial court seeking a stay and conditional release pending resolution of the appeal. [redacted] argued this was appropriate primarily for three reasons. First, [redacted] was not a danger to the community. He is appealing convictions for theft, a non-violent offense, and his criminal history consists of non-violent offenses. Second, [redacted] who is incarcerated at the Monroe Correctional Complex, is at an increased risk of death or serious illness from COVID-19 due to his health, age, and status as an African-American male. Inmates and staff at the facility have tested positive for COVID-19. Third, [redacted] has a home to reside at and a supportive wife, where he could stay safe.

The prosecution opposed [redacted] request.

On May 1, 2020, the trial court denied [redacted] request. App. at 1-2. The Court found that a stay was inappropriate, concluding that (1) [redacted] posed a serious risk to the safety of members of the community if he were released; and (2) a stay of the sentence would create significant delay and this delay will unduly diminish the deterrent effect of the punishment. App. at 1-2. As for [redacted] argument that a stay was appropriate given the unique circumstances created by the pandemic to

[redacted] health, the trial court concluded this did not matter. App. at 3. Recharacterizing [redacted] argument as being that his confinement violated the state and federal constitutions, the court concluded that [redacted] had not proved that Washington State was failing in its constitutional duty to provide for [redacted] safety and welfare. App. at 3

[redacted] filed emergency motion in this Court seeking to stay the judgment and for review of the trial court's decision pursuant to RAP 8.2(b). The State opposed [redacted] request. On June 8, 2020, a commissioner denied [redacted] motion. App. at 4. [redacted] filed a motion to modify.

On August 13, 2020, this Court issued an order granting [redacted] motion to modify commissioner's ruling and remanding to the Superior Court:

> This matter having come on regularly before this court upon the appellant's motion to modify the commissioner's ruing denying bail. After consideration, it is hereby
>
> ORDERED that the motion to modify is granted. In addition, we remand to the Pierce County Superior Court to hold a hearing to determine whether bail and conditional release should be set pursuant to RCW 9.94A.585(3), RCW 9.95.02, RCW 10.73.040, and other applicable rules and statutes pending the resolution of the appeal.

> The hearing shall occur within 14 days of this order, unless, upon motion of a party, the Superior Court finds good cause to continue the hearing. The bases for continuing the hearing shall be articulated on the record. In no event shall the hearing be continued longer than 28 days unless excused by order of this court or the Washington State Supreme Court.

App. at 5.

b. The Superior Court refuses to comply with this Court's order, ruling it had "no legal authority" to "overrule" its previous order.

Appellate counsel quickly arranged for a hearing in the superior court. Judge Jerry Costello, who had presided over [redacted] trial and heard the previous motion, was out on recess and would not return within the two-week period. For this reason, the matter was set for a hearing before Judge Gerald Johnson on August 26, 2020.

Judge Johnson immediately expressed confusion on why this matter was being remanded, sending an email to this Court. App. at 8 (FF 7), 13. Appellate counsel emailed Judge Johnson a copy of [redacted] motion to modify, which this Court had granted, to provide clarification. App. at 81.

On August 18, 2020, [redacted] filed a memorandum in support of his request. Supp. CP __. The memo recounted the history of case, provided argument on why the trial court should grant conditional release, and proposed conditions of release. [redacted] submitted evidence in

support. This included a signed declaration from [redacted] wife, who agreed that [redacted] could stay with her at home. App. at 18-20. It also included a copy of a report from the Office of the Corrections Ombuds regarding COVID-19 in the prisons. App. at 57-67.

On August 24, 2020, the State filed a supplemental memorandum opposing [redacted] request. Supp. CP __. The State contended that this Court had remanded the case because the trial court had not held a "hearing" on [redacted] initial motion. [redacted] however, had not made this argument to this Court. The State invited the trial court to defer to Judge Costello's order denying [redacted] request, arguing that the purpose of the hearing was to review Judge Costello's order, rather than hold a new hearing. Supp. CP __.

Counsel for both sides, along with [redacted] himself, appeared remotely by Zoom on August 26, 2020. RP 4.[1]

Counsel for [redacted] began by stating that Judge Johnson was presiding over "a new hearing." RP 4. He recounted "that the Court of Appeals overturned" the trial court's "previous ruling denying [redacted] motion for release, and that there should be no deference owed towards" the trial court's "ruling issued by Judge Costello." RP 4.

[1] The transcript from the August 26, 2020 hearing will be cited as "RP."

Judge Johnson disagreed. RP 5-9. Counsel explained the procedural history of the case, but Judge Johnson remained unconvinced. RP 6-9. Although standards of appellate review ordinarily are not applied by trial courts,[2] Judge Johnson reasoned that if the Court of Appeals had wanted a de novo hearing, "[i]t would say that, if that's what they mean. The words 'de novo' are not mysteries to the Court of Appeals." RP 9. Judge Johnson stated it did not have "authority to overrule another Superior Court judge." RP 9. The Court asked, "What is it I'm supposed to do here." 9.

Counsel explained that Judge Johnson would not be overruling another trial court judge, rather he would simply be complying "with a Court of Appeals order." RP 10. He reiterated [redacted] position that this was a new hearing and that the court was obliged to comply with the Court of Appeals order. RP 10.

After hearing from the State, Judge Johnson expressed more confusion. RP 14. He noted that that it was especially confusing because "the Court of Appeals has full authority to [grant conditional release] themselves. They don't need a Superior Court to do this." RP 14.

[2] See State v. Sinrud, 200 Wn. App. 643, 651, 403 P.3d 96 (2017) ("fashioning a jury instruction based on an appellate court's sufficiency holding effectively replaces the jury standard with the lesser appellate standard").

Judge Johnson then stated it was precluded from considering additional evidence, reasoning the case had already been decided:

> The case has been decided. There's no motion for reconsideration, and now you're supplying additional evidence. What authority do you have to supply additional evidence now -- go back to defense counsel -- after the case has been decided, the order has not been reversed, there's no motion for reconsideration before me. Point me to a law, a rule anywhere that allows you to provide additional evidence at this stage.

RP 15. Counsel reiterated [redacted] position that the remand was for a new hearing and that all evidence should be considered, not merely the evidence from months earlier:

> MR. LECHICH: Your Honor, the Court of Appeals does not remand for a fruitless endeavor. We are not here for no reason.
>
> I would submit that this is an order overturning Judge Costello's order. And I believe -- I don't know how else we can read this order or what the Court of Appeals is doing by remanding this case, if not for a de novo hearing based on the evidence here.
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> COVID [presents] changing circumstances. The circumstances change from day to day. The Court of Appeals is generally a court of review, not a [court of] first view, so they reasonably could have wanted this Court to weigh in.

RP 15.

The prosecutor disagreed: "I don't agree that this is a new hearing and that we're starting over again," and contended that "Judge Costello's order stands." RP 18.

Notwithstanding its position that it lacked authority to grant [redacted] request, Judge Johnson ultimately heard substantive argument from [redacted] on why conditional release was appropriate. RP 18-24, 33-63. The trial court also heard from the State. RP 24-32.

Judge Johnson denied [redacted] request, ruling that it lacked authority grant the request:

> [T]his Court does not have authority to overrule Judge Costello. He was not reversed. There was no motion to reconsider. There's a substantial amount of new evidence now that has been presented that was never presented to him. There's been no motion to include additional evidence. There's no Rule 60 motion being made at all here. So the procedural issue of this case is a bit of a quagmire, to say the least.

RP 38. The court further ruled the "additional evidence should not be allowed and should be stricken. That is the ruling of this Court as well." RP 39.

Still, the court went on to rule in the alternative that [redacted] motion should be denied on the substance. RP 39-42. Notwithstanding that [redacted] offense was nonviolent and that his criminal history consists

of nonviolent offenses, Judge Johnson concluded that [redacted] presented an intolerable "safety risk." RP 39-40. Judge Johnson reasoned there was a "real serious concern" of "vigilantism" by the people and they might "take care of the resolution in this cases [sic] by violence" against [redacted]

> I do find that this defendant does pose a safety risk to the public.
>
> Let me give you some context about that. You do the kinds of things that this person has been convicted of repeatedly over and over again with vulnerable people, sooner or later a family is going to get doggone angry and something very serious is going to happen.
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> Now, he may not be the one that causes necessarily directly the violent reaction, but somewhere, some way along the line there is a safety risk because, indeed, people have had enough and they will not tolerate any further.
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> It also poses a safety risk in the sense that if this Court is not going to be a court that stands up and says that's enough, then vigilantism is going to be a real serious concern, particularly in times of a pandemic. If there's no court that's going to take responsibility, then who is, is kind of the point. And that's going to be the public. And people will take care of the violence -- take care of the resolution in this cases by violence. So he does pose a danger to the safety of the person and the community if the judgement is stayed. I'd certainly agree with that analysis.

RP 39-40 (emphasis added).

On August 28, 2020, the trial court entered written findings of fact and conclusions of law that conformed to its oral rulings. App. at 6-16. Following completion of the transcription of the hearing on September 24,

2020, [redacted] now seeks this Court's review and renews his request for conditional release pending resolution of his appeal.

III. ARGUMENT

[redacted] renews his request that this Court exercise its authority under RCW 9.94A.585(3) and order a stay of his sentence pending appeal. Alternatively, reversal and the granting of [redacted] request is appropriate under RAP 8.2(b).

If not, because the trial court failed to abide by this Court's ruling and fairly consider [redacted] request on the merits, this Court should remand for a new hearing.

1. *As a 53-year-old African-American male with high blood pressure and other health conditions,* [redacted] *is at a high risk of death or serious illness from COVID-19.* [redacted] *incarceration at the Monroe Correctional Complex creates a significant risk to his wellbeing that can be substantially mitigated by his release.*

Washington remains in the throes of a pandemic from COVID-19. As of October 2, 2020, in the United States there have been over 7.3 million cases and over 207,000 deaths caused by the disease.[3] In Washington, there have been over 92,000 cases and over 3,500 deaths.[4]

[3] https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#states (last accessed October 2, 2020).

[4] Id.

The virus has not disappeared and is unlikely to in near future. Even the President has contracted the virus.[5]

Should [redacted] contract COVID-19, he may become seriously ill or even die. [redacted] recently turned 54. App. at 17. According to the Department of Corrections' guide, those who are "[a]ged 50 years or older" "should be considered at high risk." App. at 36. The guide notes that the "National Institute of Corrections recognizes that incarcerated population ages 50 and above are considered elderly." App. at 36 n.**; accord Colvin v. Inslee, No. 98317-8, 2020 WL 4211571, at *1 (Wash. July 23, 2020) ("The current widely reported medical evidence suggests that the COVID-19 risks of serious complications or death are highest for offenders over age 50 and those with certain preexisting medical conditions, but it can also be serious for younger people and those in good health.").

Consistent with the Department of Corrections' guide, healthcare staff from the Department have identified [redacted] as being at an increased risk from COVID-19. App. at 17, 21-22. In addition to his age, he suffers from high blood pressure and takes medications to address this

[5] https://twitter.com/realDonaldTrump/status/1311892190680014849 (last accessed October 2, 2020).

condition. App. at 17. Having high blood pressure increases the odds of having worse symptoms or dying from COVID-19.[6] [redacted] has medical complications from past injuries and suffers from joint pain and severe foot problems. App. at 17. He has extensive dental care and eye-care needs. App. at 17. Among other medications, he takes pain medications. App. at 17. [redacted] is also an African-American male. App. at 17. African-Americans have suffered disproportionately from COVID-19.[7]

In sum, [redacted] health, age, and status as an African-American male place him at a high risk from COVID-19.

[redacted] is incarcerated at the Monroe Correction Complex-WA State Reformatory. Due to his incarceration, [redacted] risk of contracting COVID-19 is substantially increased. As of submission, 63 incarcerated individuals and 20 staff members at the Monroe Correctional Complex have tested positive for COVID-19. App. at 25-27.[8] Tragically, a

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[6] https://www.webmd.com/lung/coronavirus-high-blood-pressure#1 (last accessed October 2, 2020)

[7] https://www.npr.org/sections/health-shots/2020/04/18/835563340/whos-hit-hardest-by-covid-19-why-obesity-stress-and-race-all-matter (last accessed October 2, 2020)

[8] For updated data, see https://www.doc.wa.gov/corrections/covid-19/data.htm#confirmed (last accessed October 2, 2020)

corrections officer at the Monroe Correctional Complex died from COVID-19.[9]

The outbreaks of COVID-19 at Coyote Ridge Corrections Center and Washington State Penitentiary are a stark reminders that the danger from COVID-19 has not passed. Due to an outbreak, there have been 233 confirmed cases for inmates along with two tragic deaths at Coyote Ridge. App. 25. There have also been 79 confirmed cases among the staff at Coyote Ridge. App. at 27. Due to that outbreak, conditions at the facility deteriorated, resulting in "a petri dish of inhumane conditions" according to a nurse who worked at the facility. App. 73-80.[10] As for Washington State Penitentiary, there was an outbreak there resulting in 151 cases for inmates and 16 cases for staff. App. at 25-27.

Recognizing the dire situation at Coyote Ridge, the Court of Appeals, Division Three, issued an order granting release pending appeal and setting conditions in State v. Almaguer, No. 36995-1-III. App. at 68-72. Julian Almaguer was serving a sentence of 26 months for forgery.

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[9] https://www.kiro7.com/news/local/department-corrections-officer-dies-covid-19/S62PL3YXURERRL4XUIVZU3473Q/ (last accessed October 2, 2020).

[10] Maggie Quinlan, "Nurse at Coyote Ridge prison describes 'petri dish' of 'inhumane conditions,'" Spokesman Review (Aug. 15, 2020), available at: https://www.spokesman.com/stories/2020/aug/14/nurse-at-coyote-ridge-prison-describes-petri-dish-/ (last accessed October 2, 2020).

App. at 69. In granting Mr. Almaguer's request for release over the State's opposition, this Court recognized the danger posed by COVID-19 to Mr. Almaguer while in prison:

> In March 2020, the Governor Jay Inslee began issuing emergency proclamations designed to limit the spread of COVID-19. Mr. Almaguer is 45-years-old and a diabetic. As such, he is at increased risk of harm from COVID-19. The realities of the prison environment make preventing the transmission of COVID-19 difficult. The facility at which Mr. Almaguer has been housed has had an outbreak of COVID-19 among its inmates and staff members. It does not appear Mr. Almaguer has been exposed to COVID-19, but an individual adjacent to his cell has been quarantined due to possible exposure.

App. at 70.

Here, the evidence likewise establishes that [redacted] conditions of confinement increase the risk of him contracting COVID-19. App. at 17. It is overcrowded and there is virtually no social distancing. App. at 17. Consistent with [redacted] declaration, the Washington Supreme Court has recognized that concerns about conditions in prison and COVID-19 "are legitimate and well founded." Colvin, 195 Wn.2d at 885. "Prisons are not designed to easily accommodate social distancing." Id. at 886. Likewise, a report from the Corrections Ombuds recounts, "COVID-19 poses a particular risk to people incarcerated within correctional facilities due to confined living spaces, overcrowded populations, and group movements." App. at 58.

Similar to Mr. Almaguer, [redacted] is at an increased risk of seriousness illness or death from COVID-19 due his age, health, and status as an African-American male.

[redacted] is married and has a supportive wife. [redacted] can live with his wife during the pendency of the appeal. App. at 17, 19. In Almaguer, the Court of Appeals found the fact of having a spouse and a place to stay weighed in favor of granting release pending appeal. App. at 70.

2. This Court should exercise its authority under RCW 9.94A.585(3) and order that a stay be granted while [redacted] appeal is pending.

"Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond." RCW 9.94A.585(3) (emphasis added). By its plain language, this provision grants this Court authority to order [redacted] release pending review. State v. Portomene, No. 81264-5-I, 2020 WL 2114633, at *3 (Wash. Ct. App. Apr. 29, 2020) (unpublished)[11]; see RAP 8.2(a) ("The conditions under which a defendant in a criminal case or a juvenile in a juvenile offense proceeding may be released pending review, or may obtain a stay of execution of sentence, are set forth in the

[11] Cited for persuasive authority. GR 14.1.

criminal rules, juvenile court rules, and in statutes.") (emphasis added). In fact, this Court in Almaguer granted conditional release "[p]urasuant to RCW 9.94A.585(3)." App. at 71.

As the Court of Appeals did in Almaguer, it is appropriate take into account the risk to [redacted] from COVID-19 in consideration of a stay. App. at 70. Similarly, as the Massachusetts Supreme Court has reasoned, "[i]n these extraordinary times, a judge deciding whether to grant a stay should consider not only the risk to others if the defendant were to be released and reoffend, but also the health risk to the defendant if the defendant were to remain in custody." Christie v. Commonwealth, 484 Mass. 397, 401, 142 N.E.3d 55 (2020). "In evaluating this risk, a judge should consider both the general risk associated with preventing COVID-19 transmission and minimizing its spread in correctional institutions to inmates and prison staff and the specific risk to the defendant, in view of his or her age and existing medical conditions, that would heighten the chance of death or serious illness if the defendant were to contract the virus." Id. at 401-02.

Here, [redacted] is at high risk of serious illness or death from COVID-19. COVID-19 has infected staff members and inmates at the Monroe Correctional Complex. A serious outbreak is possible, like the one that occurred at Coyote Ridge. Contrary to the trial court's ruling, Mr.

[redacted] is not a danger to anyone's safety. As Mr. Mesick, the purported victim of the "thefts" testified at trial, [redacted] "obviously is not a dangerous person. He's never been threatening, physically or anything to me." 11/6/19 RP 488-89 (emphasis added). Consistent with Mr. Mesick's opinion, [redacted] criminal history concerns non-violent offenses. CP 265-278. And [redacted] has a place to stay with his wife in Pierce County. If he disobeys a condition of release, he would again be confined. Granting [redacted] release will significantly reduce the risk from COVID-19 to his health.

It is also in the public interest because the more people that are incarcerated in a facility, the greater the risk of spreading COVID-19, which results in more cases and deaths. The more people in a facility, the more likely an inmate or staff member is likely to contract or transfer COVID-19. This increases the risk that a staff member may become infected and transfer the virus to the public. This is part of the reason why the governor and the Department took action to reduce the inmate population in Washington prisons by ordering early release for several groups of inmates. See In re Pers. Restraint of Pauley, 13 Wn. App. 2d 292, 304-05, 466 P.3d 245 (2020).

Further, [redacted] arguments on appeal weigh heavily in favor of granting him conditional release. In support of reversal of the

convictions, [redacted] contends in his opening brief that (1) the evidence was insufficient to convict [redacted] of either a theft by "taking" or a theft by "deception"; (2) insufficient evidence on just one of these alternative means requires reversal of all of three convictions because it results in a violation of [redacted] right to jury unanimity; (3) insufficient evidence supports the valuation element on the first degree theft conviction (count one); (4) the information was constitutionally deficient for failure to include the essential element of common plan or scheme; and (5) the to-convict instructions omitted the essential element of common scheme or plan, also constitutional error. [redacted] further argues (6) the three convictions violate the prohibition against double jeopardy and that one only one conviction is permissible.

As argued in the brief, [redacted] argument on the second point is especially strong. The money that [redacted] purportedly "wrongfully obtained" was freely paid, loaned, or given to [redacted] The State's theory that a theft by taking occurs if a person violates some ancillary law, such as a community custody condition forbidding [redacted] from engaging in landscaping work, has no basis in law. Br. of App. at 19-21. The State's theory means that a person who does labor in violation of some ancillary law, like a child who sells lemonade, is guilty of theft. Br. of App. at 20. Even assuming there is sufficient evidence to support a theft

by deception theory, insufficient evidence on the theft by taking theory will require reversal because it results in a violation of [redacted] right to jury unanimity. Br. of App. at 26-27; State v. Woodlyn, 188 Wn.2d 157, 162, 392 P.3d 1062 (2017).

In the alternative to reversal of his convictions, [redacted] presents several strong arguments on why the exceptional sentence cannot stand. This includes (1) the trial court failed to enter written findings of fact and conclusions of law; (2) the evidence was insufficient to support the particular vulnerability aggravator; (3) the major economic offense aggravator finding must be overturned because of a unanimity violation; (4) the major economic aggravator cannot be used to support the exceptional sentence because it is redundant with a conviction for an aggregated theft, as here; (5) one of grounds found by the court requires a jury finding that is absent; and (6) one the grounds found by the court is inapplicable because it requires multiple current convictions and under double jeopardy principles there is only properly one conviction.

In sum, [redacted] arguments on appeal weigh in favor of granting a stay and conditional release because there is good chance of success on appeal. Like this Court did in Almaguer, this Court should exercise its authority under RCW 9.94A.585(3) and order [redacted] conditional release.

3. Bail and proposed conditions.

Given the circumstances regarding the pandemic and the specific facts of this case, no bail or bond should be required to secure release. If the court believes some amount is appropriate, it should be not exceed $150,000, which was the bail amount ordered prior to trial.

Appropriate conditions of release would include: that [redacted] (1) telephonically check in with Pierce County Office of Pre-Trial Services on a weekly basis unless otherwise directed by that office or the court; (2) have no new criminal law violations; (3) maintain residence at [redacted]; (4) appear at all court hearings requiring the appearance of [redacted] If a ruling or decision by the appellate court affirms the conviction and sentence or dismisses the appeal, and no further court dates are issued, [redacted] shall report to serve the remainder of his term of incarceration within 30 days of issuance of the appellate mandate, as directed by the State, the court or the Department of Corrections; (5) no contact with Mr. Mesick; and (6) comply with all COVID-19 directives issued by the state or local authorities applicable to the county of residence. See App. at 71-72 (setting out these conditions in releasing Mr. Almaguer).

4. Alternatively, this Court should reverse the trial court's order refusing to stay the sentence, and remand for a new hearing.

A trial court has authority to stay a sentence, including granting an appeal bond. RAP 7.2(f); CrR 3.2(h). Whether to grant a stay is discretionary. State v. Johnson, 105 Wn.2d 92, 96, 711 P.2d 1017 (1986).

In this case, this Court remanded to the Superior Court to hold a hearing to determine whether bail and conditional release should be set pursuant to the various statutes and court rules. Inexplicably, both the State and the trial court took the position that this was not a remand for a "new" hearing. The trial court further concluded that it lacked authority to "overrule" its previous decision entered by Judge Costello. And notwithstanding the passage of time, the court reasoned it could not consider additional evidence and struck [redacted] submitted evidence.

The trial court's reading of this Court's order was fundamentally unsound and contrary to precedent. When an appellate court remands for further proceedings, the trial court must follow the court's specific holdings and directions. Bank of Am., N.A. v. Owens, 177 Wn. App. 181, 189, 311 P.3d 594 (2013). This is the law of the case doctrine. Under this doctrine, "once there is an appellate holding enunciating a principle of law, that holding will be followed in later stages of the same litigation." Id.

That this Court did not expressly remand for a "new" hearing does not mean one was not ordered. For example, when an appellate court does not expressly state that a new trial is required on remand, that does not mean one is not required. Elliott v. Peterson, 92 Wn.2d 586, 588, 599 P.2d 1282 (1979) ("While the opinion of this court . . . did not expressly order a new trial, this was its intent and import."). Indeed, when an appellate court "reverses a judgment and makes no final disposition of the case, the usual procedure contemplated is a new trial." State v. Jones, 148 Wn.2d 719, 722, 62 P.3d 887 (2003) (quoting Elliott, 92 Wn.2d at 588). "This is true when it is fairly apparent from the court's discussion of the case that the cause is remanded with that object in view." Id.

Likewise, the only reasonable interpretation of this Court's remand order is that the trial court would give fresh consideration to [redacted] request of conditional release. The procedural history makes that eminently clear. The trial court denied [redacted] initial request for conditional release. [redacted] sought this Court's review and reversal. After Commissioner Schmidt denied [redacted] motion, a panel of judges modified that ruling and ordered remand. With all due respect to the trial court, the idea that this Court's order was completely ineffectual is unreasonable. This Court remanded for a reason. Otherwise, this Court would not have modified Commissioner Schmidt's ruling. The reasonable

reading of this Court's order is that it remanded for a new hearing on the issue of conditional release. Consequently, the trial court's failure to hold a new hearing on the issue of conditional release pending appeal was error. Owens, 177 Wn. App. at 189-90. Remand for a new hearing is required. Lest there be any further confusion, the Court should explicitly instruct that the hearing is a new hearing and that the evidentiary record is open to new evidence.

Notwithstanding its ruling that it lacked authority to grant [redacted] request or to consider his evidence, the trial court reasoned that it would have rejected [redacted] request on the merits. The court's ruling misapplied the law and is not supported by the evidence.

The court ruled that RCW 9.95.062(1) precluded release. This statute reads:

> Notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant in a criminal action shall not stay the execution of the judgment of conviction, if the court determines by a preponderance of the evidence that:
>
> (a) The defendant is likely to flee or to pose a danger to the safety of any other person or the community if the judgment is stayed; or
>
> (b) The delay resulting from the stay will unduly diminish the deterrent effect of the punishment; or
>
> (c) A stay of the judgment will cause unreasonable trauma to the victims of the crime or their families; or

> (d) The defendant has not undertaken to the extent of the defendant's financial ability to pay the financial obligations under the judgment or has not posted an adequate performance bond to assure payment.

RCW 9.95.062(1). The court ruled that prongs (a), (b), and (c) were established by a preponderance of the evidence.

On prong (a), the trial court did not state that the evidence showed that [redacted] would likely flee. To the contrary, [redacted] life is grounded in Pierce County. He has a home and wife who live there. He is not a danger to anyone. As Mr. Mesick testified at trial, [redacted] "obviously is not a dangerous person." 11/6/19 RP 488-89.

Rather, the court reasoned [redacted] posed a danger to the safety of the community if he was released because there was a risk of that the public would perpetrate violence against [redacted] in the form of vigilante justice. RP 39-40. The idea that the people of Washington are going to lynch [redacted] an African-American, for the crime of theft (let alone any crime!) is patently offensive and beneath the dignity of the Superior Court. Setting aside the shocking nature of the theory, it is unsupported by the evidence. And, in any event, prong (a) is concerned with the risk that the defendant poses to the community, not the risk that the public poses to the defendant. Were it otherwise, mob rule would the law. The law does not tolerate this notion. See Brown v. State of La., 383

U.S. 131, 133 n.1, 86 S. Ct. 719, 719, 15 L. Ed. 2d 637 (1966) ("Participants in an orderly demonstration in a public place are not chargeable with the danger, unprovoked except by the fact of the constitutionally protected demonstration itself, that their critics might react with disorder or violence.").

Concerning prong (b), the court reasoned a stay was unwarranted not merely because it would unduly diminish the deterrent effect of the punishment on [redacted] but that it would unduly diminish the deterrent effect that the punishment has *on others*:

> And it's not just to diminish the effect of deterrent on this particular defendant. It's on the public as a whole, on people generally. If we constantly say well, you know, he's been convicted. But goodness sake, you know, we'll give him a break here for a while until we figure this thing out a little bit more. That does undermine the deterrent effect of the punishment. And not only to him, personally, but to the public as a whole. The purpose of punishment is not just for the defendant, but it's for the public to understand that we take crime very, very seriously as a court system, a judicial system. Justice takes it very, very seriously.

RP 40-41. The trial court's theory finds no basis in the language of RCW 9.95.062(1)(b). This misinterpretation of the law is an abuse of discretion. State v. Quismundo, 164 Wn.2d 499, 504, 192 P.3d 342, 344 (2008) ("the trial court based its ruling on an erroneous view of the law and therefore abused its discretion.").

Setting aside the trial court misreading of the law, the evidence did not support a finding that the deterrent effect would be "unduly" diminished by granting release.

This standard requires that the deterrent effect be "unduly" (i.e. excessively) diminished by a stay. RCW 9.95.062(1)(b). Indeed, a conditional release would have a deterrent effect against unlawful behavior because if [redacted] violates the conditions of release, the stay may be revoked. Moreover, [redacted] is not a young man for whom punishment might ordinarily need to be immediately imposed for it to have a deterrent effect. [redacted] has already served part of his sentence. This punishment has a deterrent effect even if the appeal delays him from serving the full sentence (assuming he is unsuccessful in his appeal).

As for prong (c), the evidence did not prove that a stay would cause "unreasonable trauma to the victims of the crime or their families." The prosecution did not even argue this prong. And for good reason, there was no evidence about trauma to Mr. Mesick or his family if the judgment were stayed, let alone unreasonable trauma. The trial court's ruling was speculative and is not supported by the evidence.

For all of these reasons, the trial court's order should be reversed. If this Court declines to exercise its own authority and to order conditional

release pending appeal, then this Court remand for a new and fair hearing on [redacted] request.

IV. CONCLUSION

[redacted] respectfully requests this grant conditional release or bond and order the trial court's sentence stayed pending resolution of the appeal. Alternatively, he requests remand for a new hearing in the trial court on the issue.

Respectfully submitted this 2nd day of October, 2020.

Richard W. Lechich – WSBA #43296
Washington Appellate Project – #91052
Attorney for Appellant

Appendix

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. [redacted] Defendant.	Cause No: [redacted] **ORDER DENYING MOTION FOR A STAY OF SENTENCE AND FOR RELEASE**

The Court has considered Defendant's motion, the State's response and Defendant's reply and all attachments to these documents. The Court has considered all authorities submitted, including Defendant's additional authority, State v. Portomene. The Court has also considered the evidence presented at trial and at Defendant's sentencing hearing.

The undersigned Judge has been ordered by the Presiding Judge of Pierce County Superior Court to remain away from the Courthouse and to only work remotely, in an effort to ensure availability of judicial officers who are free of infection from COVID 19 in the event that any judicial officers working at the courthouse become infected. For this reason, and because the Court considers itself fully advised by the thorough briefing of the parties, the Court now waives oral argument on Defendant's motion under PCLR 7(a)(10).

The Court has focused on RCW 9.95.062(1), as urged by both parties. After considering the evidence described above, the Court now FINDS by a preponderance of the evidence:

1. Defendant poses a serious risk to the safety of members of the community within the meaning of RCW 9.95.062(1)(a) if he were to be released on bond or on his own recognizance.

Defendant committed felonies that caused demonstrable and substantial financial and emotional harm in the present case, despite specific and direct orders from his supervising Community Corrections Officer that he stay away from any landscaping "work." Defendant made concerted efforts to hide his activities from his Community Corrections Officer.

For many years Defendant has repeatedly ignored court orders and directives of Department of Corrections authorities when he is not physically incarcerated.

The Court has no confidence whatsoever that Defendant would follow and obey conditions of a sentencing stay and conditions of release. The Court has ample grounds to believe and does believe that Defendant would, at his earliest opportunity, again prey upon an elderly and vulnerable member of the community. Defendant has repeatedly shown that if he is not physically incapacitated, he is pursuing criminal schemes and designs.

2. A Stay of sentence will create significant delay and this delay will unduly diminish the deterrent effect of the punishment, within the meaning of RCW 9.95.062(1)(b).

The evidence before the Court demonstrates that the only way to deter Defendant from committing crimes is physical incarceration. Staying Defendant's sentence would deliver a message to Defendant exactly opposite of what this Court intended by its judgment and sentence. An order releasing Defendant would be perceived by Defendant as an acknowledgement that his convictions at trial were probably without due process of law and/or his crimes were less serious than this Court tried to express by its judgment and sentence.

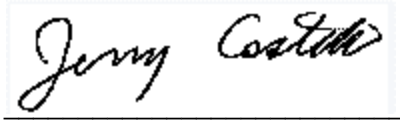
Incarceration specifically deters this Defendant from continuing his criminal career. Restoring Defendant's freedom, for whatever reason, will only serve to embolden Defendant to believe that he is free to resume the criminal lifestyle he has continuously pursued except when he is incarcerated. Simply put, Defendant has no respect for the law and for the rights of others.

The Court further FINDS:

3. Defendant has failed to prove by a preponderance of the evidence that the State of Washington has failed in its constitutional duty to appropriately provide for Defendant's safety and welfare. This Court is satisfied that the Department of Corrections is continuing to use all appropriate and reasonable means to protect all persons committed to its custody and care. The Defendant has not proved otherwise and is not entitled to any remedy.

Accordingly, because Defendant has failed in his proof and because of the findings made under RCW 9.95.062(1), the Court now DENIES Defendant's motion. IT IS SO ORDERED.

Dated this 1st day of May, 2020.



Judge Jerry Costello

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts **OFFICE HOURS**: 9-12, 1-4.

June 8, 2020

Richard Wayne Lechich
Washington Appellate Project
1511 3rd Ave Ste 610
Seattle, WA 98101-1683
richard@washapp.org

Kristie Barham
Pierce County Prosecuting Attorney's Of
930 Tacoma Ave S Rm 946
Tacoma, WA 98402-2171
kristie.barham@piercecountywa.gov

CASE #: [redacted]
State of Washington, Respondent v. [redacted] Appellant

Counsel:

On the above date, this court entered the following notation ruling:

A RULING BY COMMISSIONER SCHMIDT:

The motion to stay sentence or for conditional release pending appeal is denied. Given the Appellant's extensive criminal history, the delay resulting from the stay would reduce the deterrent effect of the sentence. RCW 9.95.062(1)(b). His physical condition does not place him at such increased risk of Covid-19 infection as to warrant release pending appeal.

Appellant is granted an extension of time to and including July 1, 2020, to file the Appellant's Opening Brief.

Very truly yours,

Derek M. Byrne
Court Clerk

Filed
Washington State
Court of Appeals
Division Two

August 13, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. [redacted] Appellant.	No. [redacted] ORDER GRANTING MOTION TO MODIFY COMMISSIONER'S RULING AND REMANDING TO THE SUPERIOR COURT

This matter having come on regularly before this court upon the appellant's motion to modify the commissioner's ruing denying bail. After consideration, it is hereby

ORDERED that the motion to modify is granted. In addition, we remand to the Pierce County Superior Court to hold a hearing to determine whether bail and conditional release should be set pursuant to RCW 9.94A.585(3), RCW 9.95.02, RCW 10.73.040, and other applicable rules and statutes pending the resolution of the appeal.

The hearing shall occur within 14 days of this order, unless, upon motion of a party, the Superior Court finds good cause to continue the hearing. The bases for continuing the hearing shall be articulated on the record. In no event shall the hearing be continued longer than 28 days unless excused by order of this court or the Washington State Supreme Court.

IT IS SO ORDERED.

Panel: Jj. Melnick, Sutton, Cruser

FOR THE COURT:

Melnick, J.

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

[redacted]

Defendant.

CAUSE NO. [redacted]
(COA No. [redacted])

FINDINGS AND ORDER DENYING MOTION TO STAY SENTENCE PENDING APPEAL

THIS MATTER having come on for a hearing before the Honorable Garold E. Johnson, presiding, on August 26, 2020 based on the Court of Appeals' Order Granting the Motion to Modify the Commissioner's Ruling and Remanding to the Superior Court. On August 13, 2020, the Court of Appeals remanded this matter to the Pierce County Superior Court "to hold a hearing to determine whether bail and conditional release should be set pursuant to RCW 9.94A.585(3), RCW 9.95.02, RCW 10.73.040, and other applicable rules and statutes pending the resolution of the appeal." The remand ordered that the hearing occur within 14 days.

The State of Washington was represented by Deputy Prosecuting Attorney Kristie Barham. The defendant was represented by his attorney, Richard Lechich. All parties, including the defendant, appeared in court via Zoom video conferencing. The defendant waived his presence to appear before the court in person. The court considered the pleadings

filed in this matter, including all pleadings and materials submitted by the parties prior to Judge Costello's May 1, 2020 order, as well as the argument from counsel at the August 26th hearing. Being fully advised in this matter, the court sets forth the following findings and order:

FINDINGS

1. Judge Jerry Costello presided over the defendant's trial and sentencing in this case.

2. Judge Costello previously considered all briefing filed by both parties regarding the defendant's motion to stay his sentence pending appeal and considered the evidence presented at trial and sentencing before issuing its May 1, 2020 order denying the defendant's motion to stay his sentence pending appeal.

3. On June 8, 2020, Court Commissioner Schmidt with Division II of the Court of Appeals denied the defendant's motion to stay the sentence or for conditional release pending appeal.

4. On August 13, 2020, the Court of Appeals entered an order granting the defendant's motion to modify the Commissioner's ruling and remanded the case "to the Pierce County Superior Court to hold a hearing to determine whether bail and conditional release should be set pursuant to RCW 9.94A.585(3), RCW 9.95.02,[1] RCW 10.73.040, and other applicable rules and statutes pending the resolution of the appeal." The Court ordered that the hearing "shall occur within 14 days of this order, unless, upon motion of a party, the Superior Court finds good cause to continue the hearing." The Court further ordered that the hearing shall not be continued longer than 28 days without approval from an appellate court.

5. Judge Costello has been on recess and is not available for a hearing that would comply with the Court's order to hold a hearing within 14 days.

[1] The court presumes that the reference to this statutory provision is a typographical error and that the Court intended to refer to RCW 9.95.062.

6. The hearing was scheduled for August 26, 2020 in the presiding judge's courtroom, Judge Johnson, in order to comply with the deadline imposed by the Court.

7. On August 18, 2020, this court sent an email to the case manager for the Court of Appeals asking for clarification of its order. Appendix 1 (Aug. 18, 2020 email from Judge Johnson). This court was confused by the remand in light of the history of the case, noting that Pierce County Superior Court Judge Jerry Costello presided over Mr. Baugh's trial and gave a detailed analysis of the facts and law in its May 1, 2020 order denying the motion to stay the sentence, which addressed the same issues in the Court's remand. *See id.* This court also noted that the time for a motion for reconsideration of Judge Costello's order has long passed and that it does not appear that the order was appealed. *Id.* This court indicated that it will proceed in any manner required but requested clarification of the remand. On August 19, 2020, the Court Clerk sent a letter to the parties inviting them to file a motion if they required additional clarification of the Court's order.

8. On May 1, 2020, Judge Costello entered an order denying the defendant's motion to stay his sentence pending appeal. This order contained a detailed analysis explaining the reasons for the order.

9. This court finds no legal basis before it that would provide legal authority for this court to overrule Judge Costello's order. And no legal authority has been presented to this court indicating that it has the authority to overrule Judge Costello's order. The defendant never filed a motion to reconsider the order. And the remand from the Court of Appeals does not reverse the previous order entered by Judge Costello. The court finds that Judge Costello's order remains in effect.

10. The court finds that new evidence has been submitted to the trial court since Judge Costello's ruling. The court further finds that this new evidence should be stricken and not considered by this court. A ruling has previously been issued on this matter, and the defendant did not file any motion with the court that would place any new evidence or materials properly before the court.

11. The court finds that even if the court must consider the new evidence and materials submitted after Judge Costello's May 1, 2020 order, it would deny the defendant's motion to stay his sentence pending appeal.

12. The court finds that RCW 9.95.062(1) is dispositive in this case.

13. The court finds that the defendant has repeatedly endangered the safety of the community based on his extensive criminal history and that he has a pattern of victimizing vulnerable members of the community.

14. Pursuant to RCW 9.95.062(1)(a), the court finds by a preponderance of the evidence that the defendant is likely to pose a danger to the safety of the community if his sentence is stayed. This finding requires that the court "shall not stay" the defendant's sentence pending appeal. RCW 9.95.062(1).

15. Pursuant to RCW 9.95.062(1)(b), the court finds by a preponderance of the evidence that the delay resulting from the stay will unduly diminish the deterrent effect of the punishment. This finding requires that the court "shall not stay" the defendant's sentence pending appeal. RCW 9.95.062(1).

16. Pursuant to RCW 9.95.062(1)(c), the court finds by a preponderance of the evidence that a stay of the judgment will cause unreasonable harm to the victims of the crime or their families. This finding requires that the court "shall not stay" the defendant's sentence pending appeal. RCW 9.95.062(1).

17. The court finds that RCW 9.95.062(1)(a), (1)(b), and (1)(c) each exist independently of one another, and each provision provides an independent basis for the requirement that the court "shall not stay" the defendant's sentence pending appeal. *See State v. Cole*, 90 Wn. App. 445, 447, 949 P.2d 841 (1998) (the statute *precludes* release if any of the RCW 9.95.062 factors are found by the trial court).

18. The court enters its findings pursuant to RCW 9.95.062(1) independent of Judge Costello's ruling. But this court also finds the reasoning in Judge Costello's order persuasive. Judge Costello presided over the defendant's trial and sentencing and is familiar with the history of the defendant's case.

19. The court finds that because RCW 9.95.062(1) is dispositive in this matter and requires that the court "shall not stay" the matter, a more detailed analysis of RCW 9.94.585(3) and RCW 10.73.040 is not necessary.

20. But even if the court were to consider the defendant's motion solely under RCW 9.94.585(3) and RCW 10.73.040, it would deny the defendant's motion for release.

21. RCW 9.94.585(3) and RCW 10.73.040[2] give the trial court discretion to grant or deny release pending appeal. Even if this court considers COVID-19 and its impact on the defendant at Monroe Correctional Complex, the court finds that this does not present sufficient grounds for release. The court finds that the Department of Corrections is taking all reasonable steps to protect incarcerated individuals within its custody and care.

[2] RCW 10.73.040 has been superseded by CrR 3.2(h), which grants the court discretion to deny bail after conviction. *See State v. Smith*, 84 Wn.2d 498, 500-03, 527 P.2d 674 (1974).

ORDER

Based on the above findings, it is hereby ordered that the defendant's motion for release and a stay of his sentence pending appeal is DENIED.

DATED this 28th day of August, 2020.

JUDGE GAROLD E. JOHNSON

FILED
DEPT 10
IN OPEN COURT
AUG 28 2020
PIERCE COUNTY, Clerk
By DEPUTY

Notice of Presentation Waived:
Presented by:

s/ Kristie Barham
KRISTIE BARHAM
Deputy Prosecuting Attorney
WSB #32764 / OID #91121
Pierce County Prosecutor's Office
930 Tacoma Ave. S., Rm 946
Tacoma, WA 98402-2171
(253) 798-6746
kristie.barham@piercecountywa.gov

Approved as to Form by:

RICHARD W. LECHICH
Washington Appellate Project
WSB #43296 / OID #91052
Attorney for defendant/appellant

APPENDIX 1

From: Gary Johnson
To: Amanda.Piccoli@courts.wa.gov; Kristie Barham; richard@washapp.org; PCpatcecf
Cc: Michelle Prichard; Linda Schramm; Chris Gaddis
Subject: RE: D2 [redacted]--STATE OF WASHINGTON, RESPONDENT V. [redacted]APPELLANT--Order
Date: Tuesday, August 18, 2020 11:40:05 AM
Attachments: [redacted]
STATE OF WASHINGTON, RESPONDENT V. [redacted]APPELLANT.pdf

MS. Piccoli,

I have reviewed the attached Order Granting Motion to Modify Commissioner's Ruling and Remanding to the Superior Court. This is Judge Melnick's Order. His Order requires our court to "…hold a hearing to determine whether bail and conditional release should be set pursuant to RCW 94A.585.30, RCW 9.95.02, RCW 10.73.040, and other applicable rules and statutes pending the resolution of the appeal." In the context of the history of this case the Order is confusing.

Here is the context.

On May 1, 2020 Pierce County Superior Court Judge Jerry Costello issued an Order Denying Motion for Stay of Sentence and for Release. Judge Costello presided over the jury trial that is now on appeal. A copy of that order is attached hereto. That order contains detailed analysis regarding the facts and applicable law that addresses the same issues that the Order Granting Motion to Modify Commissioner's Ruling and Remanding to the Superior Court requires our court to address. The time for a motion for reconsideration of Judge Costello's order has long passed. It does not appear that the defendant appealed his order.

Thus the confusion.

It may be that the Court of Appeals is not aware that Judge Costello had previously gone to considerable length to address bail and conditional release of the defendant pending appeal in a written order. Notably, it does not appear Judge Costello's subject order was included in the Designation of Clerk's Papers (a copy is attached hereto).

In any event given the, I think, understandable confusion for the parties and the trial court, this matter needs clarification from Judge Melnick. We will certainly proceed in any manner required.

Please note that time is of the essence here as Judge Melnick's Order requires that the commanded Superior Court hearing be held within 14 days of August 13, 2020.

Judge Costello is on recess. As the Presiding Judge of the Pierce County Superior Court I am sending this request for clarification in his place.

Garold E. Johnson
Presiding Judge
Pierce County Superior Court

From: Linda Schramm <linda.schramm@piercecountywa.gov>
Sent: Tuesday, August 18, 2020 10:10 AM
To: Gary Johnson <gjohns2@piercecountywa.gov>
Subject: FW: D2 [redacted]--STATE OF WASHINGTON, RESPONDENT V. [redacted] APPELLANT--Order
Importance: High

From: Richard Lechich <richard@washapp.org>
Sent: Friday, August 14, 2020 10:52 AM
To: Linda Schramm <linda.schramm@piercecountywa.gov>
Cc: Kristie Barham <kristie.barham@piercecountywa.gov>
Subject: FW: D2 [redacted]--STATE OF WASHINGTON, RESPONDENT V. [redacted] APPELLANT--Order
Importance: High

From: Richard Lechich
Sent: Friday, August 14, 2020 10:47 AM
To: 'linda.schramm@piercecounty.wa.gov' <linda.schramm@piercecounty.wa.gov>
Cc: 'Kristie Barham' <kristie.barham@piercecountywa.gov>
Subject: FW: D2 [redacted]--STATE OF WASHINGTON, RESPONDENT V. [redacted] APPELLANT--Order
Importance: High

Good morning,

I was informed that Judge Costello is on recess, and after contacting the court administration, I was informed to contact you. Below is the information and order from the Court of Appeals instructing that a hearing occur on conditional release and bond for Mr. [redacted] pending appeal.

Respectfully,

Richard Lechich
Washington Appellate Project
206-587-2711

From: Richard Lechich
Sent: Friday, August 14, 2020 9:37 AM
To: supcrtdept7@piercecountywa.gov; michelle.prichard@piercecountywa.gov
Cc: kristie.barham@piercecountywa.gov; pcpatcecf@co.pierce.wa.us
Subject: Fw: D2 [redacted]--STATE OF WASHINGTON, RESPONDENT V. [redacted] APPELLANT--Order

Importance: High

Good morning,

Please find attached the order issued by the Court of Appeals yesterday remanding this matter to this Court for a hearing on Mr. [redacted]'s request for conditional release and stay of the judgment pending appeal. The Court of Appeals ordered a hearing to occur within 14 days (by August 27, 2020), or upon motion of a party, within 28 days if there is good cause for a continuance.

I intend to file a supplemental memorandum in support of release. I believe the order contemplates a live hearing and I hope to be able to arrange Mr. [redacted]s presence by phone.

Respectfully,

Richard Lechich

Washington Appellate Project

206-587-2711

From: Piccoli, Amanda <Amanda.Piccoli@courts.wa.gov>
Sent: Thursday, August 13, 2020 11:27 AM
To: Richard Lechich; wapofficemail; Kristie Barham; 'PCpatcecf'; pcpatcecf@co.pierce.wa.us
Subject: D2 [redacted]--STATE OF WASHINGTON, RESPONDENT V. [redacted]APPELLANT--Order

To Counsel and Interested Parties:

Attached is an Order filed today, 8/13/2020.

This will be the only notice you will receive from the court.

The court requests that motions and other correspondence be sent via the Washington State

Appellate Courts' Portal. In order to use the portal to file with the courts, you will first need to register and set up a free account at https://ac.courts.wa.gov. If you have difficulty accessing the new portal, please contact the Administrative Office for the Courts at 800-442-2169. When filing electronically, please do NOT follow up with a paper copy.

Please contact the court at (253) 593-2970 or coa2@courts.wa.gov if you have any questions or comments.

Thank you.

Amanda E. Piccoli
Case Manager

STATE OF WASHINGON,	)	
	)	Trial No. [redacted]
Plaintiff/Respondent,	)	CoA No.
	)	
v.	)	Declaration of
	)	[redacted]
[redacted]	)	
	)	
Defendant/Appellant.	)	

[redacted] declares the following and that if called as a witness he would testify that:

1. I am a 53-year-old African American male. My date of birth is [redacted]

2. I am incarcerated at the Monroe Correctional Complex-WA State Reformatory. I am appealing my convictions.

3. Among my health conditions, I suffer from high blood pressure and take medication to address this condition.

4. I also have medical complications from past injuries and currently suffer joint pain and severe foot problems. I have extensive dental-care and eye-care needs. Among other medications, I take pain medications.

5. Healthcare staff from the Department of Corrections have identified me as being at an increased risk from COVID-19.

6. My conditions of confinement increase my risk. It is overcrowded and there is virtually no social distancing.

7. If granted an appeal bond, I would abide by any conditions of release during the pendency of my appeal.

8. I am married and have a supportive wife who lives in Pierce County. If released, I would reside with her.

The foregoing is true and correct to the best of my knowledge

DATED this 27 day of May, 2020

[redacted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

State of Washington, Respondent, v. [redacted] Appellant.	)))))))))	No. [redacted] DECLARATION FROM [redacted]

In support of his request for conditional release or bond pending appeal, [redacted] submits the attached signed declaration from [redacted]

Respectfully submitted this 24th day of August, 2020.

Richard W. Lechich – WSBA #43296
Washington Appellate Project – #91052
Attorney for Defendant

STATE OF WASHINGON, Plaintiff/Respondent, v. [redacted] Defendant/Appellant.	))))))))))	Trial No. CoA No. [redacted] Declaration of [redacted]

[redacted] declares the following and that if called as a witness she would testify that:

1. I am married to [redacted]
2. I am in support of my husband's request for bond or conditional release pending resolution of his appeal.
3. I live at [redacted]
4. If Mr. [redacted] is released, he can reside at the above address.

The foregoing is true and correct to the best of my knowledge

DATED this 20th day of August, 2020

[redacted]

[redacted]

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WA 983
19 AUG '20

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$ 00.50
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RWL

WAP | WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, Washington 98101

APP 20

98101-168360

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

STATE OF WASHINGON,	)	
	)	No. [redacted]
Plaintiff/Respondent,	)	(CoA No. [redacted]
	)	
v.	)	EVIDENCE IN SUPPORT
	)	OF MOTION FOR APPEAL
[redacted]	)	BOND
	)	
Defendant/Appellant.	)	
	)	

As represented in his reply in support of setting an appeal bond, attached is a copy of the document from the Department of Corrections, dated April 4, 2020, showing that [redacted] has "been identified as someone at increased risk for getting Covid 19."

Respectfully submitted this 28th day of April, 2020.

Richard W. Lechich – WSBA #43296
Washington Appellate Project – #91052
Attorney for [redacted]

Attn: Rich Lechich
Thanks for working on my situation. You are appreciated.
Stay safe and healthy.

Department of Corrections
WASHINGTON STATE

HEALTH SERVICES KITE

This fill and print form is for healthcare staff to initiate communication with patients.
Patient offenders are to use the 3-part NCR form to communicate with staff.

LAST NAME [redacted]		FIRST NAME [redacted]	
DOC NU [redacted]	FACILITY MCC-WSR	[redacted]	

HEALTH SERVICES RESPONSE/ENCOUNTER

This form must be filed if any information is entered below except for: simple prescription refills, finance, non-medical work/bunk change, religious diets, shoes, classification, non-health services issues

TYPE OF RESPONSE

☒ MEDICAL ☐ DENTAL ☐ MENTAL HEALTH
☐ OPTOMETRY ☐ OTHER: _____

☐ Schedule within _____ days/weeks/months ☐ Next available sick call ☐ No visit required

★ You have been identified as someone at increased risk for getting Covid 19. It is recommended that you consider the following:

A) Encourage self-quarantine in cell
B) Wear a surgical mask if leaving cell
C) Perform frequent hand hygiene
D) Perform frequent cleaning of cell throughout the day
☐☐highly discourage the use of bleach as this can exacerbate conditions for those patients with underlying lung disease

E) Avoid contact of high-touch surfaces
F) Limit movement in the facility
G) Social distancing (stay at least 6 feet from others) should be maintained during Day Room, Yard, Gym, Dining Halls, Religious Services, Pill Line, and other areas where the incarcerated population congregates.

Medical only has enough masks to issue to EXTREMELY high risk patient at this time. You are not one of those patients. If medical gets more masks, they will be distributed with an HSR, as supply allows.

Please kite me, if you have any further questions.

RESPONDER typed name and signature	DATE
Jennifer Ross PA-C	04/09/2020

PRESCRIPTIONS MUST BE WRITTEN ON DOC 13-435 PRIMARY ENCOUNTER REPORT (PER) OR IN CIPS

Distribution: **ORIGINAL** – Health Record, **COPY** – Offender

State law (RCW 70.02) and/or federal regulations (42 CFR Part 2) prohibit disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached was filed in the **Pierce County Superior Court Clerk's Office**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Kristie Barham, Pierce County Prosecuting Attorney [PCpatcecf@co.pierce.wa.us]

☐ appellant

☐ other party

MARIA ANA ARRANZA RILEY, Legal Assistant Date: April 28, 2020

Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, Washington 98101
Phone (206) 587-2711
Fax (206) 587-2710

Maria Riley

From: SUPERIOR COURT <PCCLKLINX@piercecountywa.gov>
Sent: Tuesday, April 28, 2020 4:16 PM
To: Maria Riley; SUPERIOR COURT
Subject: Filing Notification

Thank you. Your documents have been submitted to the Pierce County Clerks Office.

Case: [redacted]
STATE OF WASHINGTON vs [redacted]

The date and time of this submission was 04/28/2020 4:15 PM

The following Filing(s) were successfully submitted:

[redacted] - Motion

COVID-19 Data

Confirmed Cases

Current as of Thursday, October 1, 2020. Numbers are updated Monday-Friday, except for holidays.

Incarcerated Population COVID-19 Confirmed Cases by Location

A confirmed case is counted at the facility/location where the case was confirmed. After confirmation, an individual may be transported to another correctional facility/location to receive appropriate level of care.

Location	Number Confirmed Cases	Number of Deaths
Prisons		
Airway Heights Corrections Center	2	0
Cedar Creek Corrections Center	0	0
Clallam Bay Corrections Center	0	0
Coyote Ridge Corrections Center	233	2
Larch Corrections Center	0	0
Mission Creek Corrections Center for Women	0	0
Monroe Correctional Complex	63	0
Olympic Corrections Center	0	0
Stafford Creek Corrections Center	0	0
Washington Corrections Center	11	0
Washington Corrections Center for Women	2	0
Washington State Penitentiary	151	0
Work Release		
Ahtanum View Work Release	0	0
Bellingham Work Release	0	0
Bishop Lewis Work Release	0	0

Location	Number Confirmed Cases	Number of Deaths
Brownstone Work Release	0	0
Eleanor Chase House Work Release	0	0
Helen B. Ratcliff Work Release	0	0
Longview Work Release	0	0
Olympia Work Release	0	0
Peninsula Work Release	0	0
Progress House Work Release	13	0
Reynolds Work Release	7	0
Tri-Cities Work Release	1	0
Other		
Community Medical Center	1	0

Incarcerated Population COVID-19 Confirmed Case Totals

Confirmed Cases	Active Cases	Recovered Cases	Deaths
484	28	454	2

Staff COVID-19 Confirmed Cases

Staff includes department employees and contracted staff. All staff confirmed cases are self-reported.

Location	Number Confirmed Cases	Number of Deaths
Business & Training Offices		
Olympia Area Offices	4	0
Mill Creek Regional Performance Center	8	0
Prisons		
Airway Heights Corrections Center	11	0
Cedar Creek Corrections Center	0	0

Location	Number Confirmed Cases	Number of Deaths
Clallam Bay Corrections Center	2	0
Coyote Ridge Corrections Center	79	0
Larch Corrections Center	1	0
Mission Creek Corrections Center for Women	0	0
Monroe Correctional Complex	20	1
Olympic Corrections Center	0	0
Stafford Creek Corrections Center	1	0
Washington Corrections Center	6	0
Washington Corrections Center for Women	5	0
Washington State Penitentiary	16	0
Work Release		
Ahtanum View Work Release	4	0
Bellingham Work Release	0	0
Bishop Lewis Work Release	0	0
Brownstone Work Release	0	0
Eleanor Chase House Work Release	2	0
Helen B. Ratcliff Work Release	0	0
Longview Work Release	0	0
Olympia Work Release	0	0
Peninsula Work Release	2	0
Progress House Work Release	1	0
Reynolds Work Release	2	0
Tri-Cities Work Release	0	0
Community Corrections (See Community Facilities Map for section designations)		
Community Corrections Section 1	3	0
Community Corrections Section 2	4	0
Community Corrections Section 3	0	0
Community Corrections Section 4	1	0
Community Corrections Section 5	0	0

Location	Number Confirmed Cases	Number of Deaths
Community Corrections Section 6	6	0
Community Corrections Section 7	0	0
Other		
Community Medical Center	0	0
Totals		
All Locations	178	1

Demographics

The below tables represent the demographic information for confirmed cases of COVID-19 in the incarcerated population. See the Agency Fact Card for more information about the demographics of the total incarcerated population. Other statistical reports are available at Data Analytics page.

Current as of Friday, September 25, 2020. Numbers are updated on the last business day of the week, excluding holidays.

Age of Confirmed COVID-19 Cases in the Incarcerated Population

Age Range	Number of Individuals	Percentage of Confirmed Cases	Percentage of Total Incarcerated in Age Range
Under 22	3	0.7%	2.6%
22-25	24	5.2%	7.5%
26-30	54	12.0%	17.5%
31-35	54	12.0%	17.5%
36-40	69	15.0%	16.2%
41-45	53	11.5%	11.6%
46-50	50	10.9%	9.3%
51-55	52	11.3%	7.8%
56-60	46	10.0%	5.7%
61-65	30	6.5%	3.6%
66-70	10	2.2%	1.8%
Over 70	13	2.8%	1.7%

Race of Confirmed COVID-19 Cases in the Incarcerated Population

Race	Number of Individuals	Percentage of Confirmed Cases	Percentage of Total Incarcerated by Race
White	325	70.96%	69.5%
Black	68	14.85%	17.8%
American Indian/Alaska Native	34	7.42%	5.9%
Asian/Pacific Islander	16	3.49%	4.3%
Other	8	1.75%	1.6%
Unknown	7	1.53%	0.9%

Ethnicity of Confirmed COVID-19 Cases in the Incarcerated Population

Hispanic Origin	Number of Individuals	Percentage of Confirmed Cases	Percentage of Total Incarcerated by Hispanic Origin
No	387	84.5%	85.4%
Yes	71	15.5%	14.6%

Regional Care Facilities

The Washington Department of Corrections (DOC) is taking deliberate steps to continue to mitigate the spread of infection to the incarcerated population, staff and general public.

Suitable locations, referred to as a Regional Care Facility (RCF), were previously identified by department leaders and key stakeholders, including local facility subject matter experts. These RCF's would safely and comfortably house incarcerated individuals who have tested positive for COVID-19 and may require more comprehensive medical attention and physical isolation from healthy

populations, but do not require hospitalization. Should an infected individual's medical conditions or needs become severe, the department and agency medical personnel will work collaboratively with hospital partners to provide the necessary medical care.

(Current as of Thursday, October 1, 2020. Numbers are updated Monday-Friday, except for holidays)

Incarcerated individuals from the Confirmed Cases chart are transported, when necessary, to one of the regional care facilities listed below.

Regional Care Facility	Incarcerated Individuals Housed
Airway Heights Corrections Center	0
Washington Corrections Center (Shelton)	0
Washington Corrections Center for Women (Gig Harbor)	0

Testing, Isolation & Quarantine

Current as of Thursday, October 1, 2020. Numbers are updated Monday-Friday, except for holidays.

Testing Among Incarcerated Housed in Prison & Work Release Facilities

Screening and testing is conducted based on the guidance of the WA State DOC COVID-19 Screening, Testing, and Infection Control Guideline

Individuals Tested	Tests Completed	Negative Results	Positive Results	Pending Lab Results
4,934	5,356	4,830	484	42

Isolation and Quarantine Among Incarcerated Population

Isolation: separating a symptomatic patient with a concern for a communicable disease from other patients.

Quarantine: separating from other individuals those who are not showing symptoms yet have been exposed to an individual with a contagious disease.

Federal quarantine and isolation currently apply to the following diseases: cholera; diphtheria; infectious tuberculosis; plague; smallpox; yellow fever; viral hemorrhagic fevers; influenza caused by new or re-emergent flu viruses that are causing, or have the potential to cause, a pandemic; and severe acute respiratory syndromes (which may include COVID-19).

Incarcerated Individuals in Isolation	Incarcerated Individuals in Quarantine
57	502

WA State DOC COVID-19 Screening, Testing, and Infection Control Guideline

Version 21

The purpose of this guidance document is to allow the Washington State Department of Corrections (DOC) to better respond to the emerging COVID-19 outbreak. This document covers screening, assessment, testing and infection control of patients housed in Washington DOC facilities.

View Guideline Updates

Contents

Screening

1) **Patients presenting with symptoms prior to Health Services contact**: Direct the patient to immediately don a surgical mask, place them in an isolated area and contact Health Services.
2) **Intersystem intakes (Patient arriving from other than a DOC facility)**: All intersystem intakes coming into DOC facilities will have a temperature taken and will be asked the two screening questions listed below as a. and b. If any of the three screening items are positive, the patient should immediately don a surgical mask and be place in an isolated area.
3) Intersystem intakes originating from the community, such as patients from community custody field offices, work release, or community custody violators in jails will be screened prior to transport. If the patient screens positive they should be transported by staff in PPE including an N95 mask per the **Transportation of patients with suspected or confirmed COVID-19 disease** section below.
4) **Patients presenting with symptoms in Health Services:** Patients with symptoms concerning for COVID-19 should immediately don a surgical mask and be placed in an isolated area.
5) **Intrasystem intakes (Patients transferring to another DOC facility):** All intrasystem intakes should have a temperature taken prior to boarding and upon exiting the transport bus. If the patient has temperature greater than 100.4F immediately direct the patient to don a surgical mask, place them in an isolated area, and contact health services.
6) **Active screening of staff:** All staff entering DOC facilities will be screened for signs and symptoms of COVID-19 with questions and a temperature check. Staff screening positive will not be allowed entry to the facility and will have follow up through the secondary staff screening process.
7) **Active screening of patients prior to entering Health Services**: All patients entering Health Services areas for scheduled or unscheduled care will be screened for signs and symptoms of COVID-19 with questions and a temperature check. Patients screening positive will immediately don a surgical mask and be placed in an isolated area for evaluation, according to the Health Services Evaluation section below.

Health Services Evaluation

1) Any health care provider making contact with patients referred from the screening section above should don personal protective equipment listed below *before* the evaluation:
    a. Fit-tested N95 mask
    b. Gloves
    c. Eye protection defined as goggles or face shield
    d. Gown
    e. If not fit tested use PAPR instead of N95
2) For instructions on proper donning and doffing of PPE see the following video and/or document. The purpose of this video is to demonstrate proper donning and doffing of PPE. For detailed guidance regarding appropriate PPE for each clinical situation, see the PPE matrix or the Infection Control and Prevention section of this document.
3) Nurse performs a clinical assessment, including temperature check, and asks the following 2 screening questions:
    a. Do you have a fever **OR** any new cough, shortness of breath, sore throat, diarrhea, or loss of taste/smell?
    b. Did you have contact with someone with possible COVID-19 in the previous 14 days?
4) If the answer to either screening questions is yes, or temperature is greater than 100.4F, notify a healthcare practitioner for further assessment:

a. If a practitioner is available onsite, they will assess the patient clinically and decide whether symptoms are compatible with COVID-19 disease. If yes, proceed to step C.

b. If no practitioner is onsite, the nurse will discuss the patient's case with the practitioner.

c. All patients screening positive for symptoms or fever who are placed in isolation should be tested for COVID-19 disease as described in the Testing Procedure section below.

d. The practitioner will determine the following:

i. Level of care based on acuity

1. To emergency department for severely ill patients

2. To a negative pressure room for any non-severely ill patient if one is available and the patient requires IPU level care, under airborne medical isolation precautions. Facilities may establish alternative isolation units with 24-hour nursing coverage, which are acceptable alternatives for patients requiring this level of medical care.

3. Living unit medical isolation with contact and droplet precautions for patients with mild illness.

a. Patients isolated in a living unit with suspected or confirmed COVID-19 will have nursing assessments and vital signs at least every shift

ii. Patients remaining in the facility will have the following diagnostic workup:

1. During influenza season (September through the end of March) perform rapid influenza testing

2. Perform COVID-19 testing according to the Testing Procedure section below

a. If the initial COVID-19 test is negative AND it is influenza season (September through the end of March) send a viral respiratory panel (Interpath # 2910) along with the second COVID-19 test

3. Consider other diagnostic testing as clinically appropriate, i.e. chest x ray for community acquired pneumonia

iii. In the event that the patient is unable to be tested but for whom clinical suspicion remains, the patient should be isolated for presumptive COVID-19 disease.

iv. For further guidance on clinical care of patients with COVID-19 see National Institutes of Health COVID-19 Treatment Guidelines.

5) **For questions or consultation regarding evaluation or management of patients with suspected or confirmed COVID-19 call the DOC COVID medical duty officer phone: 564-999-1845**

Testing Procedure

1) Sample collection and testing:

a) Upper respiratory samples appropriate for COVID-19 testing can include any of the following. Patient collected nasal anterior and mid-turbinate samples should be preferred in settings where N95 masks are in short supply. All sampling techniques require synthetic tipped swabs, such as dacron, nylon, or polyester, without wooden handles:

i) Nasopharyngeal (NP) swab:

(1) NP swab sample collection is considered an aerosol generating procedure that requires the clinician to wear full PPE including an N95 mask.

(2) Perform NP swab on both sides of the nasopharynx, with either one swab or two depending on composition of testing kit and swab availability

(3) Please review the following nasopharyngeal swab sample collection guidance:

(a) NP swab is clinician collected only

(b) NP swab guidance document

(c) NP swab demonstration video

ii) Nasal mid-turbinate swab:

(1) Nasal mid-turbinate swab can be clinician or patient collected.

(2) Use a flocked tapered swab. Tilt patient's head back 70 degrees. While gently rotating the swab, insert swab less than one inch (about 2 cm) into nostril (until resistance is met at turbinates). Rotate the swab several times against nasal wall and repeat in other nostril using the same swab.

iii) Anterior nares specimen swab:

(1) Anterior nares specimen swab can be clinician or patient collected.

(2) Using a flocked or spun polyester swab, insert the swab at least 1 cm (0.5 inch) inside the nares and firmly sample the nasal membrane by rotating the swab and leaving in place for 10 to 15 seconds. Sample both nares with same swab.

b) There are currently four options for COVID-19 testing:

i) **Washington State DOH/public health laboratory**:

(1) Refer to Washington DOH COVID-19 Specimen Collection and Submission Instructions for guidance on collecting, submitting, and shipping of test samples.

(2) When the decision is made to test patients for COVID-19 use the following lab testing equipment:

(a) Nasal swab (any of the three described above) in viral transport media testing tube is the preferred testing sample in all patients. Use only synthetic sterile swabs.

(b) Test sputum **if easily available** using a sterile specimen cup. Do not induce sputum in patients who are not producing sputum.

(3) Use the Washington State DOH Sample Submission Form to submit test samples to the state DOH lab.

(4) Write the provided PUI# on the submitter section of the submission form.

(5) Send samples via Federal Express pickup using supplied packaging that complies with the IATA/DOT regulations for shipping category B biological substances. Laboratory personnel can review the following guidance for more shipping information about shipping samples through Federal Express. Shipping labels will be provided for both testing laboratories.

ii) **Interpath Laboratory**:

(1) Testing through Interpath does not require specialized supplies for packaging and shipping as samples are picked up through the established Interpath lab courier.

(2) Collect COVID-19 specimen per Interpath Laboratories test collection guidance.

iii) **University of Washington Virology Lab**:

(1) Use the following testing instructions and the linked UW Virology COVID-19 test requisition.

(2) Send samples via Federal Express pickup using supplied packaging that complies with the IATA/DOT regulations for shipping category B biological substances. Laboratory personnel can review the following guidance for more shipping information about shipping samples through Federal Express. Shipping labels will be provided for both testing laboratories.

iv) **Northwest Pathology**:

(1) Enter the Northwest Pathology online portal, TestDirectly, to enter a testing order.
   (a) Health Services staff must have pre-authorization to access this site. Contact Greg Miller to request site access.
   (b) Fill out the online requisition form for patient testing.
(2) Collect COVID-19 specimen per Northwest Pathology test collection guidance.
(3) Ship test sample via FedEx. Pre-paid label, shipping containers and ice packs can be ordered in advance from the Washington Department of Health or by placing an order for shipping materials through the facility Logistics Section Chief. COVID-19 viral test kits should be ordered through the facility Logistics Section Chief.
(4) Test results are available through the Northwest Pathology online portal.

Patients at High Risk for Severe COVID-19

1) Patients with underlying conditions and those with advanced age are at higher risk for severe disease and complications if they acquire COVID-19. Patients with the following conditions should be considered at high risk:
   a) Aged 50 years or older**
   b) COPD or moderate to severe asthma
   c) Cardiovascular disease including hypertension
   d) Patients who are immunosuppressed based on diagnosis or due to medication
   e) Cancer
   f) Morbid obesity (BMI >40)
   g) Diabetes, particularly if poorly controlled
   h) Chronic kidney disease including those with ESRD on dialysis
   i) Hepatic cirrhosis
   j) Pregnancy or the immediate post-partum period
2) The following recommendations should be made for patients identified as high risk :
   a) Wear issued face covering when out of cell or when within 6 feet of others
   b) Perform frequent hand hygiene
   c) Perform frequent cleaning of cell throughout the day
      i) Highly discourage the use of bleach as this can exacerbate conditions for those patients with underlying lung disease
   d) Avoid contact of high-touch surfaces
   e) Limit movement in the facility
   f) Social distancing (staying at least 6 feet from others) should be maintained during Day Room, Yard, Gym, Dining Halls, Religious Services, Pill Line, and other areas where the incarcerated population congregates.

**National Institute of Corrections recognizes that incarcerated population ages 50 and above are considered elderly

For questions or consultation regarding management of patients with suspected or confirmed COVID-19 call the DOC COVID medical duty officer phone: 564-999-1845

Infection control and prevention principles:

1) Definitions:
   a) **Medical isolation**: Separating a symptomatic patient with a concern for a communicable disease from other patients. Medical isolation status also applies to asymptomatic patients testing positive for COVID-19.
   b) **Quarantine**: Separating asymptomatic patients who have been exposed to a communicable disease from other patients through close contact.
   c) **Cohort**: Grouping patients infected with or exposed to the same agent together. Isolated and quarantined patients should NOT cohort together.
2) All incarcerated individuals in facilities, including work releases, will wear DOC provided mandatory routine face coverings.
3) PPE must be changed between EVERY patient in isolation or quarantine any time there is close contact except in the following situations:
   a) Regional Care Facilities and tiers, units or pods of isolation units where ALL patients have a confirmed positive result for COVID-19:
      i) It is not necessary to change eye protection, mask/respirator, and gown between each patient.
      ii) Hand hygiene and new gloves are still needed between each patient. This can be achieved by double gloving, removing the outer gloves, disinfecting the inner gloves, and putting on new outer gloves between patients.
      iii) All PPE should be changed if visibly soiled.
4) **Facility management of isolated/quarantined patients:**
   a) If possible, cluster cases in medical isolation within in a single location/wing within the facility to help streamline ongoing assessments and delivery of services to the affected population
   b) If possible, medical isolation areas should not be located in units housing quarantined patients or general population individuals unless it has been confirmed by environmental analysis that isolation cells are under negative pressure and air is ventilated into the outdoors.
   c) If patients need to be isolated/quarantined in a living unit, allowances will be made to accommodate patients in this location:
      i) Television, playing cards and/or other recreational activities will be provided
      ii) There will be no cost to the patient for the duration of their stay
      iii) All patients placed in medical isolation/quarantine will be issued hygiene kits and new clothing as needed
   d) Provision of health care
      i) Routine health care will be provided at cell front.
      ii) Medications will be given at cell front
      iii) Insulin and other diabetic services will be given at cell front
      iv) Routine mental health services will be provided at cell front
      v) Emergency medical needs will be assessed immediately by medical personnel, as required. Patient will be transported as deemed necessary if a higher level of medical care than can be delivered in the unit is

required. There is not a medical indication for restraints during transport. Patient will don a surgical mask if it is not contraindicated.

e) Meals will be provided by Food Services and delivered to the cell.

i) The Unit staff will notify Food Services at the beginning of each shift the number of meals that are needed.

ii) **Gloves** will be worn when picking up used trays.

f) Education programs will be suspended.

g) Phone Use in Medical Isolation and Quarantine:

(1) Phone Use in Medical Isolation and Quarantine for Areas WITH In-Cell Phone Use:

(2) Staff shall don appropriate PPE:

(a) Symptomatic patients with presumed or confirmed COVID-19: **N95 respirator, eye protection, gown, and gloves**

(b) Asymptomatic patients with presumed or confirmed COVID-19: **surgical mask, eye protection, gown and gloves**

(3) Staff shall cover the phone handset with a plastic sleeve and use tape/bands to cinch both ends to enclose the entire handset

(4) Patient will wear a surgical mask, if they are medically able to do so

(5) Staff shall pass the handset of the phone to the patient via the cuff port or an opening of the door if necessary

(6) Staff shall have the patient wash his/her hands immediately after using the phone

(7) Staff shall carefully remove the plastic sleeve from the phone and dispose of it in the garbage container

(8) Staff shall remove PPE appropriately and then sanitize or wash hands as per protocol

(9) Staff shall spray disinfectant over the entire phone, let it sit for 10 min., and put on new gloves before wiping it off

ii) Phone Use in Medical Isolation and Quarantine for Areas WITHOUT In-Cell Phone Use:

(1) Facility will designate staff member to make weekly status update phone calls to person identified by patient

(2) When a patient is placed into medical isolation, he/she shall be asked to provide the name and telephone number of a person for a weekly phone call, which will be provided to the designated staff person making the call

(3) Designated staff will verify no current restrictions on contact exist prior to making call

(4) Designated staff will make call to identified person to notify of placement into medical isolation, as well as a weekly call to update on status

(5) Designated staff will note the call by placing a chrono in OMNI

h) **Showers in Medical Isolation and Quarantine**:

i) Patients in Medical Isolation and Quarantine will be allowed to maintain personal hygiene including showers according to the following:

(1) Patients should be offered showers starting after day 7 in medical isolation. For patients in quarantine, showers should be offered per custody unit schedule.

(2) These patients can be rotated, and must remain at least 6 feet apart.

(3) The patients must wear a **surgical mask** at all times while out of their cell.

(4) PPE for unit staff having close contact with patients:

(i) N95 mask, disposable gown, gloves, and eye protection

(5) The showers will need to be disinfected according to the manufacture's guidelines after each shower.

(6) Showers should not be vigorously scrubbed, deep cleaned, or power washed due to concern that these methods could cause virus to be aerosolized.

(7) PPE for staff or incarcerated individuals cleaning showers used by patients in Medical Isolation:

(a) surgical mask, disposable gown, gloves and eye protection

Infection Prevention and Control Categories:

Medical isolation:

1) Medical isolation status is indicated for patients in the following clinical situations:
   a) Patients identified as having an influenza-like illness or other symptoms potentially caused by COVID-19.
   b) Asymptomatic patients testing positive for COVID-19.
2) All patients placed into medical isolation for influenza-like illness will be tested for COVID-19
3) As soon as staff become aware that a symptomatic patient is suspected or confirmed as a COVID-19 case, staff should direct the patient to put on a surgical mask until the patient can be isolated.
   a) Each housing unit and Shift Commander's office will maintain a supply of surgical masks
   b) Surgical masks will be made available in clinic waiting rooms
   c) Staff will work to isolate the patient and notify medical if they are identified outside the clinic
4) If the patient is off the living unit at the time COVID-19 symptoms are noted, staff working with the patient will notify the applicable housing unit that they are sending the patient back for single cell confinement until the patient can be assessed by medical
   a) If a single room is not immediately available, confine the patient at least 6 feet away from others until they have been evaluated by medical
   b) If the patient is already in the living unit, isolate the patient in their cell and notify medical
5) Droplet precautions will be initiated:
   a) Droplet Precaution Medical isolation signs will be hung outside the room at cell front
   b) Proper PPE will be available outside the medical isolation cell or somewhere easily accessible
6) All staff must wash hands with soap and water or with alcohol sanitizer prior to entering a patient's cell and removing gloves.
7) All patients requiring medical isolation under this protocol who require ongoing use of aerosol generating medical treatments such as continuous positive airway pressure or nebulized bronchodilator treatment should be housed in negative pressure isolation rooms, if available, until release criteria have been met as described in Clinical Management of Medical Isolation Patients #3b below. If a negative pressure isolation room is not available, consult the COVID medical duty officer to discuss placement.

PPE for medical isolation:

1) In the following situations, PPE will be comprised of an **N95 mask, eye protection, gown, and gloves:**
   a) Patients with suspected or lab confirmed COVID-19 while symptomatic with cough or sneezing.
   b) While performing diagnostic nasopharyngeal swab sample collection or any other potentially aerosol generating procedures.
2) In the following situations, PPE will be comprised of a **surgical mask, eye protection, gown, and gloves:**
   a) When speaking with a symptomatic patient from outside of a medical isolation cell with an open door. Speaking to a patient from outside a medical isolation cell with the door closed does not require PPE other than general use face covering.
   b) Any patient who has tested negative for COVID-19 but remains in medical isolation and continues to be symptomatic
   c) Patients with suspected or lab confirmed COVID-19 without cough or sneezing.
   d) Asymptomatic patients who have tested positive for COVID-19.
3) All staff must wash hands with soap and water or with alcohol sanitizer after leaving a patient's cell and removing gloves.
4) A trash bin and bag, hand sanitizer, and gloves should be available immediately outside the cell or unit to assist staff in proper doffing of PPE.

Nursing and Unit Management of Patients on Medical Isolation Status:

1) Custody will work with medical staff to determine the best location to house patients on medical isolation status.
2) If single cell is not available, it is acceptable to cohort patients with COVID-19 together if they both/all have lab confirmed disease and are not thought to have other communicable diseases concurrently (i.e. influenza or another viral respiratory disease).
3) Symptomatic isolated patients and asymptomatic COVID positive patients must be housed separately from asymptomatic exposed patients (quarantined).
4) If possible, avoid isolating patients with suspected or confirmed COVID-19 in cells with open bars.
5) As a general rule, isolated patients will not be allowed out of the cell unless security or medical needs require it
6) If an isolated patient needs to be out of their cell, they will don a surgical mask during the necessary movement
7) Staff will ensure that the patient goes where directed by communication between the sending and receiving area staff
8) Any pill line medications will be delivered by medical staff unless medical staff determines the need for a different protocol

Clinical management of medical isolation patients:

1) Patients isolated in a living unit with suspected or confirmed COVID-19 will have nursing assessments and vital signs at least every shift, with referral to a practitioner as clinically indicated.
2) Medical practitioners should document an assessment on patients in medical isolation for confirmed or suspected COVID-19 each business day until they are asymptomatic for 24 hours.
3) Patients with laboratory confirmed COVID-19 will remain in medical isolation until they have been asymptomatic for 14 days with the following exceptions:
   a) Patients with confirmed COVID-19 who are significantly immunocompromised may continue to shed contagious virus after the isolation period is complete. To prevent potential spread of COVID-19 disease from these patients additional time in medical isolation may be required.

i) Any patient with significant immunocompromise by diagnosis or medication as determined by a medical practitioner will be discussed with the COVID medical group by calling the COVID medical duty officer phone prior to release from isolation in order to determine a strategy to ensure safe release from medical isolation.

b) Patient with confirmed COVID-19 who require ongoing use of medical treatments that may aerosolize virus, such as nebulized bronchodilators and continuous positive airway pressure (CPAP) will require negative COVID testing prior to release from the negative pressure isolation room.
   i) Perform the first test on day 15 of medical isolation
   ii) The patient will remain in a negative pressure isolation room until they have tested negative for COVID-19 on two consecutive tests 48 hours apart. If the patient tests positive for COVID-19 retain in negative pressure isolation and repeat the test in 7 days.

4) Patients who tested negative for COVID-19 will remain in medical isolation until:
   a) they have been asymptomatic for 14 days, unless they have a documented or confirmed alternative diagnosis that explains their symptoms, such as in the following examples:
      i) Mild respiratory illness with a positive influenza test
      ii) Fever explained by infection at another site, such as UTI or cellulitis
   b) **OR**
   c) they have been asymptomatic for at least 72 hours and have tested negative for COVID-19 twice with at least 48 hours between tests
5) Patients with symptoms isolated for suspected or confirmed COVID-19 disease who become asymptomatic:
   a) After an isolated patient is asymptomatic for 24 hours, the intensity of monitoring can be decreased to once daily temperature and symptom checks at cell front. Patients with recurrence of symptoms should be evaluated by a medical practitioner.
   b) Recommended PPE for these asymptomatic medical isolation nursing checks will include **surgical mask, eye protection, gown, and gloves**.
   c) Unless transfer to a setting for a higher level of medical care is required, all medical care should be delivered in the patient's medical isolation cell.
6) Asymptomatic patients testing positive for COVID-19:
   a) Place in medical isolation for 14 days from the date of the positive test if the patient remains asymptomatic
   b) If the patient subsequently becomes symptomatic, follow the isolation criteria in Medical Isolation section below

Quarantine:

Patients who are asymptomatic but have been in close contact with confirmed or suspected COVID-19 patients should be placed on quarantine status.

PPE for staff interacting with quarantined patients:

1) Staff performing tier checks in open dorm style housing units should remain 6 feet away and have patients sit on their beds. PPE worn during these tier checks includes **gloves.**
2) Staff performing nursing or medical assessments on quarantined patients requiring close contact including in open dorm style housing units, should don the following PPE: **surgical mask, gown, eye protection and gloves.**
3) Staff interacting with quarantined patients in units with barred cells WITHOUT contact and staying at least 6 feet away do not require PPE other than a **routine face covering**.

4) Staff performing a temperature check through a closed cell door with an open cuff port should don the following PPE: **surgical mask, eye protection, and gloves**.

Nursing and Unit Management of Patients on Quarantine Status:

1) Quarantined patients can be housed alone or cohorted with other quarantined patients from the same exposure.
2) If the patient develops symptoms or fever, a full assessment should be done by entering the cell in PPE appropriate for symptomatic patients including full PPE with N95 mask.
3) Patients in quarantine should don a **surgical mask** anytime they leave their cell.
4) Any pill line medications will be delivered to the quarantined patient by medical staff unless medical staff determines the need for different protocol.
5) A trash bin and bag, hand sanitizer, and gloves should be available immediately outside the cell or unit to assist staff in proper doffing of PPE.
6) Unless transfer to a setting for a higher level of medical care is required, all medical care should be delivered in the patient's quarantine cell.
7) Signage indicating that the quarantine cells are under droplet precautions will be hung at the unit or tier level.

Clinical Management of Patients on Quarantine Status:

1) Asymptomatic patients are placed on quarantine status after being identified as a close contact of a symptomatic suspected or confirmed COVID-19 case, or an asymptomatic confirmed COVID-19 case.
2) Patients placed into quarantine status who are close contacts of confirmed (by a positive COVID test) cases will be tested for COVID-19 with a viral PCR test within 24 hours of confirmation of the positive test result.
    a) Quarantine patients testing positive for COVID-19 or who become symptomatic will be transferred to medical isolation. Further management of these patients is described in the Asymptomatic Patients Testing Positive for COVID-19 section.
    b) Patients testing negative for COVID-19 will remain on quarantine status. They will be retested for COVID-19 on quarantine day #7.
        i) Patients testing negative for COVID-19 will remain on quarantine status until 14 days from the time of last contact with the index case has elapsed.
        ii) Patients who test positive for COVID-19 or become symptomatic will be transferred to medical isolation. Further management of these patients is described in the Asymptomatic Patients Testing Positive for COVID-19 section.
3) Close contacts of patients who test negative for COVID-19 may only be released from quarantine if the associated symptomatic patient tests negative for COVID-19 on two tests at least 48 hours apart:
    a) If repeat testing is not available, close contacts of patients testing negative once for COVID-19 may be released from quarantine 14 days after their last contact with the symptomatic patient per the Medical Isolation section above.
4) At a minimum patients in quarantine will be assessed twice daily by nursing staff. The assessment will include a temperature check, oxygen saturation, and monitoring for development of any symptoms at a minimum. If the patient develops symptoms, fever, or oxygen desaturation while in quarantine, they will be assessed by a medical practitioner per Health Services Evaluation section step #3.
    a) For stand-alone camps, Health Services staff will determine scheduling to accommodate assessment of quarantined patients 7 days per week.

b) If a quarantined patient develops symptoms of COVID-19, they will be immediately removed from quarantine, if they were housed with other asymptomatic patients, and placed into medical isolation. If cohorted with other asymptomatic patients, the quarantine period for those patients will be reset to day 0 of 14.
c) If the symptomatic patient lived in dormitory-style housing, consider quarantining an entire dorm or wing of a housing unit, especially if multiple cases occur.
d) Staff performing nursing assessments of patients in quarantine should do so by discussing development of symptoms and perform temperature check at the cell front after donning PPE outlined above.
    i) Disposable thermometers should be used by patients if available. If multi-use thermometers must be used, they should be disinfected in between patients.

5) Close contacts of patients who test positive for COVID-19 will remain in quarantine 14 days after the last exposure to the patient.

Routine Pre-procedure COVID-19 Testing:

1) Community health care providers may require routine COVID-19 testing of asymptomatic patients prior to surgical or other procedures.
    a) Patients may be housed in their usual housing units without special quarantine or isolation procedures while awaiting test results.
    b) Staff interacting with these patients may do so without additional PPE other than a **routine face covering.**
    c) Patients testing positive should follow guidance above regarding asymptomatic COVID positive patients.

Intersystem Transfer Separation:

Intersystem transfer separation can include individuals entering or exiting DOC custody that require separation from the general population to reduce the potential risk of COVID spread

Intake separation:

1) This section applies to all intersystem intakes into DOC facilities, including:
    a) Community custody violators
    b) Patients arriving from county jails or other detention facilities
    c) Work release, GRE, or rapid reentry returns
2) Patients will be cohorted together based on day of arrival:
    a) After testing is initiated no new patients should be added to the cohort. The cohort should have no contact with other incarcerated individuals or other cohorts until the testing process is complete.
    b) If patients are added to arrival cohorts after the day of arrival the intake separation period resets to day 1 after the last addition to the cohort
3) Patients in these categories will be housed separate from the general population as a cohort after intake to the receiving facility
    a) Within 24 hours of arrival patients in intake separation will be tested for COVID-19
        i) If the COVID-19 test is negative and the patient is asymptomatic, the patient remains in intake separation and is re-tested on day 7 after intake. If the second test is negative, the patient can be released to the general population on day 10 post intake.
        ii) Patients becoming symptomatic or testing positive at either point will be transferred to medical isolation and managed according to protocol.
        iii) If a patient in an intake separation cohort tests positive for COVID-19, all patients testing negative from that cohort will be placed on quarantine status.

4) Additional PPE, other than a **routine face covering**, is not needed when interacting with asymptomatic patients in intake separation status.
5) If a patient in routine intake separation becomes symptomatic, they should enter medical isolation status and the remaining intake cohort should be placed in quarantine for 14 days.

Protective Separation

1) Housing units with a high concentration of individuals at high risk for severe COVID-19 may be placed on protective separation status in order to reduce the risk of introduction and transmission of virus.
    a) At the current time, the following units are on protective separation status:
        i) CRCC-Sage
        ii) AHCC K unit
        iii) All DOC facility inpatient units
        iv) Other facilities or units if designated by Prisons Health Services Unified Command
2) Special direction to staff working on protective separation units:
    a) Only necessary and assigned staff should have access to this unit
    b) Staff must wash hands before entering and exiting the unit
    c) Staff will remove and store their routine face covering and don a new surgical mask prior to entering the unit.
    d) No staff interacting with quarantined and isolated individuals should be entering these units during their assigned shift
    e) Staff will wear a face shield over their surgical mask when in protective separation units
3) Special direction to incarcerated individuals living on special units:
    a) Individuals are restricted to their living unit
    b) Patients are provided a routine face covering for use at all times
    c) Patients are restricted from eating in main chow halls and meals are delivered to the living unit
    d) Individuals shall be given pill line at their cells
    e) Individuals should be allowed to self-quarantine if they choose
4) All incarcerated individuals transferring into protective separation units, *excluding facility inpatient units*, will have 2 negative COVID-19 test results. The second test should be collected 7 days after the first. The transfer should occur as soon as possible after the second test result is received. Incarcerated individuals should be screened the day of transfer utilizing the screening questions and temperature checks per protocol for intrasystem transfers.
    a) Patients transferring into *facility inpatient units* do not require testing prior to transfer:
        i) At arrival place transferring inpatients into single rooms if possible
        ii) After arrival patients should not have access to inpatient unit day rooms until they have had two negative COVID test results one week apart

PPE Requirements for Prisons and Work Release Staff:

- **Tyvek suites** are not considered appropriate PPE for the purpose of this guideline and should not be used when contacting patients with suspected or confirmed COVID-19 or those on quarantine.
- Contact with asymptomatic individuals who are not on medical isolation or quarantine:
    a) **Gloves**
        i) Follow standard universal precautions

b) **Routine face covering**

- Contact with individuals on medical isolation status:
  a) In the following situations **N95 mask, eye protection, gown, and gloves** should be worn:
     i) Contact with incarcerated individuals with suspected or lab confirmed COVID-19 while symptomatic with cough or sneezing
  b) In the following situations **surgical mask, eye protection, gown, and gloves** should be worn:
     i) When speaking with a symptomatic patient from outside of an medical isolation cell
     ii) Any contact with a patient who has tested negative for COVID-19 but remains on medical isolation
     iii) Any contact with incarcerated individuals with suspected or lab confirmed COVID-19 without cough or sneezing.
     iv) Any contact with incarcerated individuals who are asymptomatic but have tested positive for COVID-19.
  c) In the following situations PPE will be comprised of **gloves**:
     i) Passing items through a closed door cuff port and NO face to face contact
     ii) If possible, avoid medical isolation in cells with open bars
- Contact with individuals on quarantine status:
  a) Open bay units:
     i) Close contact (ex. Temp check): **surgical mask, gown, gloves, eye protection**
     ii) No close contact (example walking through unit): **gloves**
  b) Dayroom/or other close quarters:
     i) Close contact (within 6 feet): **surgical mask, gown, gloves, eye protection**
     ii) No close contact (example walking through unit): **gloves**
  c) Pat searches:
     i) **Surgical mask, gown, gloves** (for every person pat searched), **eye protection**
  d) Closed door cells with *cuff port*:
     i) Passing items through cuff port and NO face to face contact: **gloves** only
     ii) No contact at all (talking through the door): **No PPE required**
     iii) Close contact: **surgical mask, gloves, eye protection**
  e) Bar cells:
     i) Close contact (ex. temp check): **surgical mask, gown, gloves, and eye protection**
- Staff active screening of patients or staff at entry into facilities, health services, or other :
  a) **Active screening without use of a protective barrier:**
     i) **Surgical mask, gown, gloves and eye protection**
     ii) **When an active screener should change PPE:** If a facility active screener comes within 6 feet of a staff member or patient that screens positive PPE should be removed and discarded, hand hygiene should be performed, and new PPE should be donned prior to resuming screening.
  b) **Active screening while using protective barrier:**
     i) PPE should consist of **gloves and routine face covering**
     ii) The screener should stand behind the protective barrier. Temperature should be taken by reaching around the barrier. The screener should ensure they are positioned so that the barrier blocks any potential respiratory droplets from the screened individual. If no contact was made between the screener and the screened individual, gloves do not need to be changed between screenings, unless they are visibly soiled or torn.
- All staff working in DOC locations must wear an approved face covering while on duty.

- Staff in protective separation units will wear a face shield over their surgical mask.
- Recommended personal protective equipment for both Health Services and Prisons/Work Release staff is summarized in the linked PPE matrix.

Environmental Cleaning

1) Enhanced frequency of cleaning and disinfection procedures of high touch surfaces is recommended for COVID-19 in healthcare settings, including those patient-care areas in which aerosol-generating procedures are performed.
2) Disinfectant must be:
   a) EPA-approved as a hospital/healthcare or broad spectrum disinfectant
   b) Contain quaternary ammonium
3) Management of laundry:
   a) Laundry from medical isolation or quarantine patients and cells will be placed in rice bags and transported in yellow bags. Contents should be washed/treated as infectious laundry.
4) Food service management:
   a) Meals for isolated and quarantined patients should be served in disposable clamshells. If trays are used, staff should wear gloves and wash hands before and after handling.
5) Medical waste from medical isolation and quarantined cells can be discarded using the regular waste disposal process.
6) Any individuals involved in cleaning rooms occupied by isolated suspected or confirmed COVID-19 cases, including DOC staff and employed incarcerated individuals, should wear the following PPE: **surgical mask, gown, eye protection and gloves**.
7) Any individuals involved in handling laundry and food services items of patients in medical isolation or quarantine, without entering the cell, should wear the following PPE:
   a) **Gown and gloves**
8) Rooms occupied by quarantined patients, who are moved prior to the complete 14-day period, should be similarly cleaned only by individuals wearing the following PPE: **surgical mask, gown, eye protection and gloves**.
9) Areas with potential COVID-19 exposure should not be scrubbed, deep cleaned, or power washed due to concern that these methods could cause virus to be aerosolized.
10) Areas with potential COVID-19 exposure should not be vacuumed due to the potential for vacuuming to aerosolize virus.

Outbreak Testing and Management:

This guidance describes management of COVID outbreaks in DOC facilities, including recommendations for mass testing and safe unit operation.

1) **Outbreak definition:** An outbreak within a DOC facility is defined as:

   a. Two or more confirmed cases of COVID in incarcerated individuals occurring within 14 days who reside in the same living area

   OR

b. One or more confirmed cases of COVID in an incarcerated individual AND one or more confirmed cases of COVID in DOC staff working in proximity to the incarcerated individual case/cases occurring within 14 days

c. Incarcerated individual COVID cases occurring in intake separation areas are not included in (a) above. Management of multiple cases in intake separation areas will be discussed with Prisons/Health Services Unified Command on a case by case basis.

2) **Contact tracing, quarantine, and testing:** Once an outbreak has been identified the Infection Prevention Nurse (IPN), in cooperation with the Occupational Nurse Consultant (ONC), if staff cases are involved, will perform contact tracing of suspected and confirmed COVID cases in order to identify close contacts and determine a recommendation for quarantining of individuals and living areas.
    a. This will be determined on a case-by-case basis considering environmental, clinical, and operational aspects of the scenario in coordination with Prisons/Health Services Unified Command.
    b. When contact tracing is complete the identified individuals and living areas will be placed on quarantine as indicated. This may occur at the unit level, multi-unit level or facility level, based on details of the contact tracing and potential for wider exposures throughout the facility.
    c. Patients testing positive for COVID will be moved to isolation or a Regional Care Facility (RCF) based on level of medical care needed.
    d. Testing of DOC staff should occur simultaneously with incarcerated individual testing in an outbreak setting to limit risk for re-introduction of COVID in populations that have tested negative.
    e. Staff working in outbreak areas will wear surgical mask and face shield at all times, unless the situation requires other PPE as directed elsewhere in this protocol, for example an N95 respirator replacing the surgical mask during close contact with a symptomatic patient.
    f. Patients in quarantined living areas will have symptom screening, temperature and oxygen saturation checks two times daily, and will be moved to isolation areas if they screen positive or become symptomatic.
    g. When symptomatic or COVID positive patients are moved to isolation from a quarantined unit, the remaining cohort will have its quarantine period reset to day 1.

3) **Unit operation and cohorting:** Incarcerated individuals in living areas on quarantine during an outbreak situation should be placed into distinct contact cohorts at the beginning of the quarantine period:
    a. Cohorts will be comprised of the smallest number of incarcerated individuals as is operationally feasible.
    b. Patients should not change cohorts through the duration of the quarantine period.
    c. Unit operations should be managed so that cohorts do not have contact with other cohorts in the quarantined unit or with any incarcerated individuals outside of the quarantined unit.
    d. If essential workers, such as porters, kitchen workers, or laundry workers from the quarantined unit/facility are needed to maintain prison operations the facility Incident Command Post (ICP) will discuss the situation with Prisons/Health Service Unified Command at the start of the quarantine to explore solutions for providing unit services while mitigating risk of transmission.
    e. Continuation of court-ordered programming, religious services and other prison movements outside of the quarantined area should be discussed with Prisons/Health Service Unified Command.
    f. No transfers should occur in or out of areas on quarantine during an outbreak.

4) **Serial Testing and Outbreak resolution:** In quarantined areas where COVID positive incarcerated individuals are identified from initial testing:
    - **a.** Those testing negative initially will be re-tested as soon as initial test results are available, ideally within 48 hours.
    - **b.** Subsequent serial testing will be repeated every seven days until all incarcerated individuals in the quarantined area have two consecutive negative results.
    - **c.** Once serial testing results show that all incarcerated individuals in the living area have two negative tests AND they have been on quarantine status at least 14 days from their last contact with COVID positive or symptomatic patients, the living area can be removed from quarantine.
    - d. Prior to moving patients back into a quarantined living area during an outbreak situation, discuss with Prisons/Health Services Unified Command

Reuse of N95 Respirators:

Supplies of N95 respirators are in increased demand creating critical shortages during infectious diseases outbreaks. Existing CDC guidelines recommend a combination of approaches to conserve supplies while safeguarding health care workers in such circumstances. In these situations, existing guidelines recommend:

- Minimizing the number of individuals who need to use respiratory protection
- Using alternatives to N95 respirators where feasible
- Implementing practices allowing reuse of N95 respirators when acceptable during encounters with multiple patients

Reuse of N95 respirators:

1) Re-use can occur under the following conditions:
    a) N95 respirators must only be used by a single individual and should never be shared
    b) Use a full-face shield that covers entire extent of N95 respirator and/or surgical mask over an N95 to reduce surface contamination of the respirator. For aerosol generating procedures, both a face shield and surgical mask are necessary for re-use.
    c) Keep used respirator in a clean dry paper bag between uses
    d) Write your name on the bag and elastic straps of the N95 so that the owner is clearly identified (Do not write on the actual mask)
    e) Use a new paper bag each time the respirator is removed
2) Always use clean gloves when donning a used N95 respirator and performing a user seal check.
3) Perform hand hygiene over gloves before touching or adjusting the respirator as necessary
4) Discard gloved after the N95 is donned and any adjustments are made to ensure the respirator is sitting comfortably on your face with a good seal.
5) Perform hand hygiene. Anytime one touches the N95, perform hand hygiene again.

Do NOT reuse and DISCARD N95 respirators if:

1) The N95 respirator becomes visibly soiled with blood, respiratory or nasal secretions, or other bodily fluids
2) The N95 respirator becomes visibly damaged or difficult to breathe through
3) The straps are stretched out so they no longer provide enough tension for the respirator to seal to the face
4) The nosepiece or other fit enhancements are broken
5) If the inside of the respirator is touched inadvertently
6) The respirator was used during an aerosol generating procedure, except when the respirator is protected by a surgical mask as described below.

Donning and Doffing of N95 respirator:

Donning a NEW N95 respirator:

1) Perform hand hygiene
2) Remove routine face covering
3) Perform hand hygiene
4) Don gown
5) Don gloves
6) Don a new, fit-tested N95 respirator and adjust as necessary
7) Don a full face shield ensuring it fully covers both eyes and respirator
8) Perform patient care activities

Donning a USED N95 respirator:

1) Perform hand hygiene
2) Remove routine face covering
3) Perform hand hygiene
4) Don gloves
5) Remove the used N95 respirator from the paper bag by the straps
6) Don the respirator without touching the front of the mask
7) Sanitize gloves and adjust the mask for comfort and to ensure a good face seal
8) Remove gloves and perform hand hygiene
9) Don gown, new gloves, and full face shield

Doffing an N95 respirator:

1) When finished with patient care prior to leaving isolation area, remove gown and gloves and discard
2) Perform hand hygiene
3) Don new gloves
4) Leave isolation area
5) Immediately outside isolation area, remove gloves
6) Perform hand hygiene
7) Put on new gloves
8) Remove face mask by touching only the ear pieces
9) Remove respirator touching only the straps
10) Place respirator in a new, clean paper bag labeled with the user's name
11) Remove gloves
12) Perform hand hygiene
13) Put back on routine use mask

Release of Patients into the Community

1) Patients in medical isolation: For any patient with suspected or confirmed COVID-19 disease in medical isolation who is releasing from a DOC facility, the Health Services Manager, Infection Prevention Nurse and Facility Medical Director will have a conference call with the COVID-19 medical duty officer (**564-999-1845)** prior to release for discussion of release planning.

2) Patients in quarantine: Upon release from DOC custody while on quarantine status, patients will be provided a surgical mask and will be directed to self-quarantine in their place of residence until the remainder of their 14-day quarantine period. Direction should be given that they should immediately report to their CCO via phone to arrange future reporting requirements.

Transportation of Patients with Suspected or Confirmed COVID-19 Disease

1) This section refers to transportation of patients under Washington DOC jurisdiction to or between DOC facilities who are confirmed or suspected (by a licensed medical provider) to have COVID-19 disease. This includes community custody violators, work release/GRE returns, and patients currently housed in DOC facilities.
2) No patient with confirmed COVID-19 disease will be transported into or between DOC facilities without approval of the CMO in consultation with the COVID-19 EOC.
3) When a unit or facility experiences an outbreak, transfers in and out of that unit will be suspended and the situation discussed with Prisons/Health Services Unified Command.
4) For any patients with confirmed or suspected (by a licensed medical provider) COVID-19 disease being transported into or between DOC facilities, custody officers, community custody officers, or other DOC staff in close contact with the patient will don the following personal protective equipment:
    a) A pair of disposable examination gloves
    b) Disposable medical isolation gown
    c) Any NIOSH-approved particulate respirator (i.e., N-95 or higher-level respirator)
    d) Eye protection
    e) If unable to wear a disposable gown or coveralls because it limits access to duty belt and gear, ensure duty belt and gear are disinfected after contact with individual.
5) Transportation staff should adhere to the following procedure when doffing PPE after transport of a patient with suspected or confirmed COVID-19:
    a) Transfer patient to custody of facility staff
    b) Doff PPE per protocol into nearest garbage can except for mask and sanitize hands
    c) Return to vehicle and don clean gloves
    d) Sanitize vehicle
    e) Doff PPE and sanitize hands
    f) Don routine face covering
6) The transport vehicle will be cleaned and disinfected after use.
7) For any patients on quarantine for contact with a suspected or confirmed COVID-19 case, DOC staff will don the following PPE:
    a) A pair of disposable examination gloves
    b) Disposable medical isolation gown
    c) Surgical mask

Contact Tracing and Case Reporting

1) Cases of suspected and confirmed COVID-19 will be thoroughly investigated by the Infection Prevention Nurse (IPN):

a) Review the patient's cell and living unit location, job, classes, etc. to determine who could have been exposed and needs to be quarantined.

b) If in the course of the contact tracing it is apparent that DOC staff may have had close contact with the confirmed or suspected COVID-19 case, the IPN will send an email with case details to the following Occupational Health email address: DOCoccupationalhealthandwellness@DOC1.WA.GOV

c) The decision to classify a contact as close or high risk and requiring quarantine will be a clinical decision by the IPN taking into consideration the guidance described here. IPNs should strongly consider consultation with a DOC Infectious Disease physician or local/state public health departments if any uncertainty exists regarding how to classify a contact with a suspected or confirmed COVID-19 case.

d) A close, or high-risk, contact with potential COVID-19 cases will be defined as follows for the purpose of this guideline:

   i) Being within approximately 6 feet of a person with confirmed or suspected COVID-19 for a prolonged period of time, defined as at least several minutes. Examples include caring for or visiting the patient or sitting within 6 feet of the patient in a healthcare waiting room.

   ii) Having unprotected direct contact with infectious secretions or excretions of the patient (e.g., being coughed on, touching used tissues with a bare hand).

e) Contact not considered close or high risk include briefly entering the patient room without having direct contact with the patient or their secretions/excretions, brief conversation with a patient who was not wearing a facemask.

f) Mitigating and exacerbating factors should be considered in determination of contact risk. For example, a suspected or confirmed COVID-19 case will be more likely to transmit disease if they are actively coughing during the contact, and less likely if they are wearing a facemask.

g) Report the need to isolate a patient and the need to quarantine other patient/s as indicated to the Health Care Manager or designee who will then notify the Superintendent at the facility, Facility Medical Director, and Headquarters EOC.

h) Enter the information about the case of suspected/confirmed COVID-19 and the information about the exposed patients on the Influenza like illness log.

i) The results of contact investigations will be communicated to the Facility Medical Director, HSM, and facility Human Resources who will help ensure that people who have been exposed are identified, notified, and all appropriate infection control measures are put in place to reduce transmission (masking, quarantine, cohorting etc.)

2) All COVID-19 test results for DOC patients should be reported via phone to the COVID medical duty officer (phone **564-999-1845**), FMD, IPN, and facility COVID incident command post immediately upon receipt from the testing lab.

   a) Notification of positive COVID tests should also be sent to the following email address: doccovid19cases@doc1.wa.gov.

   b) The IPN will update the contact investigation and review medical isolation/quarantine status of the tested and exposed patients after receipt of test results.

   c) The IPN will report positive COVID cases to their local public health jurisdiction. If the patient was transferred to a second facility for medical isolation or care, the case should be reported to the local public health jurisdiction of the patient's original location.

   d) Occupational Nurse Consultants will, in communication with the IPN, review the case for potential close contacts among DOC staff.

Guideline Update Log

03/06/2020

- Under Heath Services Evaluation, section 3.iii, added subsection 3 to include criteria for isolating patients who are suspected COVID-19 who cannot be tested.
- Under Infection control and Prevention section C.5, d. “COVID-19 patients will not be isolated in an IPU, unless they require IPU level of medical care.” was deleted.
- Under Infection control and Prevention section C.9 added.
- Section Transportation of patients with suspected or confirmed COVID-19 disease added.

03/09/2020

- Section Contact Tracking and Case Reporting added
- Section Health Services Evaluation 3.3.2 changed to reflect updated DOH and CDC testing guidance

03/11/2020

- Section Health Services Evaluation part 2 added instruction for donning and doffing PPE.
- Section Contact Tracking and Case Reporting added guidance and definitions for determining risk of contact with suspected or confirmed COVID 19 cases.
- Section Contact Tracking and Case Reporting changed COVID-19 log to Influenza-like illness log.

03/12/2020

- Section Health Services Evaluation part 5 Testing Procedure updated

03/13/2020

- Section Testing Procedure information regarding testing through Interpath labs

03/17/2020

- Section Screening Intrasystem Intakes changed to require temperature screening at both boarding and exiting the transport bus.
- Section Health Services Evaluation 3A (screening question #1) changed from AND to OR
- Section Infection Control and Prevention changed to reflect updated PPE requirements for staff evaluating quarantined patients

03/18/2020

- Section Infection Control and Prevention changed the duration of medical isolation recommended
- Section Testing Procedure, deleted #3 regarding Interpath Labs, as they are no longer performing COVID testing
- Section Health Services Evaluation added information regarding when to order COVID testing in the context of influenza test results

03/19/2020

- Section Infection Control and Prevention, changed criteria for use of N95 mask when in contact with isolated patients.

03/20/2020

- Section Infection Control and Prevention, changed monitoring of isolated patients after they become asymptomatic to once daily at cell front

03/25/2020

- Section Patients at High Risk for Severe COVID-19 added
- Section Infection Control and Prevention added statement regarding release from quarantine requirements
- Section Health Services Evaluation added pharyngitis to screening questions
- Section Infection Control and Prevention, added PPE Requirements for Prisons and Work Release Staff

03/27/2020

- Section Testing Procedure- deleted reference to need for PUI number and approval prior to sending COVID tests to the Washington DOH public health lab
- Section Release of Patients into the Community added direction for patients on quarantine status at the time of release

04/03/2020

- Section Testing Procedure added NP swab demonstration video
- Section Infection Control and Prevention added eye protection to PPE needed for evaluation of quarantined patients
- Section Infection Control and Prevention, PPE for Work Release and Prisons Staff, added criteria for changing PPE for screeners

04/07/2020

- Section Clinical Care of Patients with Suspected or Confirmed COVID-19 added
- Section Screening added statements about active screening of staff and patients
- Section Infection Control and Prevention changed waste disposal from biohazard red bag/bin to regular trash bins.

04/15/2020

- All sections changed ‘isolation’ to ‘medical isolation’
- Section Clinical Care of Patients with Suspected or Confirmed COVID-19 added recommendation to use metered dose inhalers instead of nebulizers for administration of bronchodilators.
- Section Infection Control and Prevention added link to recommended PPE matrix.
- Section Release of Patients in the Community changed notification for patients releasing who are on medical isolation
- Section Clinical Care of Patients with Suspected or Confirmed COVID-19 changed criteria for starting supplemental oxygen to less than 96% on room air
- Section Testing Procedure added back Interpath Laboratory as they have resumed COVID-19 testing
- Section Testing Procedure added statement to perform NP swabs of both sides of the nasopharynx

04/21/2020

- Section Infection Control and Prevention added statement that Tyvek suites are not appropriate PPE for this purpose and should not be used.
- Section Infection Control and Prevention added statement that quarantined patients must don a surgical mask anytime they leave their cells.
- Section Infection Control and Prevention added statement regarding all staff wearing approved face coverings while on duty.
- Section Patients at High Risk for Severe Covid-19 changed interventions for high risk and very high risk patients
- Section Contact Tracing and Case Reporting changed positive COVID test result reporting to include COVID medical duty officer and COVID cases email box.
- Section Health Services Evaluation added diarrhea and loss of taste/smell to screening questions.
- Section Infection Control and Prevention added statement regarding droplet precaution signs in quarantine units
- Section Infection Control and Prevention added subsections h. and i. regarding phone use in medical isolation

04/24/2020

- Section Infection Control and Prevention subsection PPE requirements for Prisons and Work Release Staff added use instructions and PPE for staff using barriers during active screening
- Section Health Services Evaluation linked PPE video
- Section Testing Procedure added information regarding anterior nasal and nasal mid-turbinate swab sample collection
- Section Health Services Evaluation eliminated influenza testing and added statement regarding testing for influenza during influenza season

05/06/2020

- Section Testing Procedure added statement that patient collected nasal swabs should be preferred if N95 masks are in short supply and removed preference for NP swabs in all testing situations
- Section Infection Prevention and Control added statement regarding mandatory use of routine face coverings by incarcerated individuals.
- Section Health Services Evaluation added statement that all patients entering isolation will be tested for COVID-19.
- Section Infection Control and Prevention added subsection Post-isolation Convalescent Housing
- Section Infection Control and Prevention added two negative tests at least 48 hours apart as new criteria for release from isolation and associated quarantine
- Section Infection Control and Prevention added subsection Routine Pre-procedure COVID-19 Testing
- Section Patients at High Risk for COVID-19 Disease deleted ‘very high risk’ section
- Section Infection Control and Prevention added subsection Asymptomatic Patients Testing Positive for COVID-19
- Section Infection Control and Prevention added subsection Showers in Medical Isolation
- Section Infection Control and Prevention added subsection Routine Intake Separation
- Section Infection Control and Prevention added subsection Protective Isolation Prior to Work Release Transfer

05/15/2020

- Section Infection Control and Prevention added information for each care situation regarding when to change PPE
- Section Infection Control and Prevention added subsection Protective Separation
- Section Reuse of N95 Respirators added
- Section Health Services Evaluation changed testing criteria for viral respiratory panel
- Section Infection Control and Prevention subsections Routine Intake Separation and Separation Prior to Work Release Transfer were combined into Intersystem Transfer Separation and the period of pre-work release separation was changed to 14 days

06/29/2020

- Section Infection Control and Prevention added eye protection to PPE requirement for close contact with asymptomatic confirmed COVID patients
- Section Infection Control and Prevention – Environmental Cleaning corrected placement of laundry to: placed in rice bags and transported in yellow bags.
- Section Contact Tracing and Case Reporting added requirement for reporting confirmed COVID cases to the patient's local public health jurisdiction
- Section Infection Control and Prevention subsection Facility Management of Isolation/Quarantine, added statement that medical isolation and quarantine areas should not be located in the same unit
- Section Infection Control and Prevention subsection Clinical Management of Quarantine Patients revised to require COVID-19 testing of all patients placed on quarantine status who are close contacts of confirmed COVID 19 cases
- Section Infection Control and Prevention added statement recommending against deep cleaning, scrubbing, or power washing due to concerns over aerosolized virus.
- Section Infection Control and Prevention added oxygen saturation monitoring to quarantine nursing assessments

07/20/2020

- Section Infection Control and Prevention Categories, Quarantine, Clinical Management of Patients on Quarantine Status, changed #2 to 'Patients placed into quarantine status who are close contacts of confirmed (by a positive COVID test) cases will be tested for COVID-19 with a viral PCR test within 24 hours.'
- Section Infection Control and Prevention Categories, Medical Isolation- Clinical Management of Medical Isolation Patients- added #3b: Any patient with significant immunocompromise by diagnosis or medication as determined by a medical practitioner will be discussed with the COVID medical group prior to release from isolation.
- Section Transportation of Patients with Suspected or Confirmed COVID-19 Disease #4 added describing procedure for donning and doffing PPE before and after disinfection of the transport vehicle.
- Section Infection Control and Prevention- Environmental Cleaning- added #10 'Areas with potential COVID-19 exposure should not be vacuumed due to the potential for vacuuming to aerosolize virus.'
- Section Infection Control and Prevention Categories- Medical Isolation- added #7 requiring patients on medical isolation who use CPAP or nebulizer treatments to be housed in negative pressure isolation rooms.

- Section Infection Control and Prevention Categories- Medical Isolation- Clinical Management of Medical Isolation Patients- added #3a regarding patients with confirmed COVID-19 using CPAP or nebulizers requiring 2 negative COVID-19 tests 48 hours apart prior to release from isolation.
- Section Infection Control and Prevention Categories- Intake Separation added COVID-19 testing process for intersystem intakes (added to version 19)
- Section Infection Control and Prevention Categories- Post Isolation Convalescent Housing was deleted
- Section Infection Control and Prevention Categories- Quarantine- Intake Separation- changed #3 to 'Patients in these categories should be separated from the general population at the receiving facility for 14 days after arrival if COVID-19 testing is not available or is not feasible due to the patient's length of stay'
- Section Infection Control and Prevention Categories, Separation Prior to Work Release Transfers was deleted
- Section Transportation of Patients with Suspected or Confirmed COVID-19 Disease- added #3 'When two or more cases of confirmed COVID-19 are present within a 30 day time period in a facility's housing unit transfers in and out of that unit will be suspended and the situation discussed with Prisons/Health Services Unified Command.'

09/8/20

- Section Outbreak Testing and Management added
- Section Transportation of Patients with Suspected or Confirmed COVID-19 Disease- changed #3 to 'When the outbreak definition, as defined in the Outbreak Testing and Management section, is met, transfers in and out of that unit will be suspended and the situation discussed with Prisons/Health Services Unified Command.'
- Section Infection Control and Prevention- PPE Requirements for Prisons and Work Release Staff, added #7 'Staff working in or passing through protective separation units will wear a face shield over their face covering.
- Section Infection Control and Prevention- Protective Separation- added 1.a.iii/iv, 2.e, and 4
- Section Infection Control and Prevention- Intake Separation- added #2
- Section Infection Control and Prevention- Intake Separation- deleted #3: Patients in these categories should be separated from the general population at the receiving facility for 14 days after arrival if testing is not available
- Section Clinical Care of Patients with Suspected and Confirmed COVID-19 deleted
- Section Health Services Evaluation- added 4.d.iv: For further guidance on clinical care of patients with COVID-19 see National Institutes of Health COVID-19 Treatment Guidelines.
- Section Testing Procedure 1.b added iv. Northwest Pathology to the list of labs for COVID-9 testing.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

State of Washington, Respondent, v. [redacted] Appellant.	)))))))))	No. [redacted] COVER PAGE

In support of his request for conditional release or bond pending appeal, [redacted] submits the attached report from the Office of the Corrections Ombuds, RE: Recommendations Related to the DOC COVID-19 Response (August 7, 2020).

Respectfully submitted this 24th day of August, 2020.

Richard W. Lechich – WSBA #43296
Washington Appellate Project – #91052
Attorney for Defendant

OFFICE OF THE CORRECTIONS OMBUDS REPORT
RECOMMENDATIONS RELATED TO THE DOC COVID-19 RESPONSE
PREPARED BY
JOANNA CARNS, OCO DIRECTOR
PATRICIA H. DAVID MD MSPH CCHP,
DIRECTOR OF PATIENT SAFETY AND PERFORMANCE REVIEW
August 7, 2020

Introduction

The COVID-19 pandemic is the worst public health crisis to impact the United States in decades. COVID-19 poses a particular risk to people incarcerated within correctional facilities due to confined living spaces, overcrowded populations, and group movements. As has been documented through numerous studies, incarcerated persons tend to have greater underlying health conditions and comorbidities, making them especially susceptible to complications arising from COVID-19. Last, the daily flow of DOC staff in and out of the facilities creates a constant threat of potential infection transmission to the health and safety of both the incarcerated people and the greater communities.

As of August 3, 2020, 319 incarcerated persons and 128 Washington Department of Corrections (DOC) staff have tested positive for COVID-19. At least three persons have died due to COVID-19 – one staff and two incarcerated people. DOC is presently dealing with ongoing outbreaks at several facilities and has experienced at least one mass disturbance by incarcerated persons and several protests by loved ones on the outside – and the pandemic is still far from over.

The impact of COVID-19 on persons incarcerated within DOC has been severe:

- Conditions in medical isolation are often grim, depending on the facility, with symptomatic incarcerated persons allowed a shower and a new change of clothing only once every seven days; one individual reportedly went almost three weeks without a shower. Persons placed in medical isolation are not allowed out of the cell for recreation or fresh air. Individuals at MCC reported unsanitary cell conditions, a lack of meaningful mental occupation as

they sat in a bare cell, and the heavy emotional toll of being disconnected from communication with their loved ones.

- Following an outbreak of COVID at CRCC, facility staff made the difficult decision to significantly restrict movement across multiple housing units to reduce the spread of infection; while understandable in its intention of stopping the spread of the disease, some incarcerated persons reported having to urinate and defecate in their food storage containers due to DOC staff allowing infrequent bathroom trips.

- Transfer restrictions due to COVID have halted individuals' ability to promote to lower security facilities. Community work crews have been halted. Reductions in programming due to social distancing mandates may even impact a person's release from prison; as just one example, an individual in the senior housing unit at AHCC reported that he and others could not access programming required of them by the ISRB and without the programming, he was afraid they would be "flopped" for additional time.

- Many incarcerated persons have had their medical and dental appointments cancelled or postponed due to COVID-19. OCO knows of at least two cases where a patient's chronic abdominal complaints were disregarded until symptoms became so severe that they were sent to the hospital where they were found to require emergency surgery. In another case, a patient who needed tooth extractions for dental abscesses was merely given repeated courses of antibiotics without any exam, despite his complaints of severe pain.

- COVID-19 related restrictions have resulted in the cessation of all in-person visitation, and individuals have reported the mental and emotional anguish of knowing that their loved one is in a prison experiencing an outbreak, but unable to physically see or touch their loved one to know that they are alright. Although video visitation exists, the service is extremely spotty and individuals report many problems in using it.

OCO recognizes that decisions have to be made in real time, in response to a situation that no one expected, by DOC staff who have worked long hours under tremendous stress themselves. However, out of concern for the health and safety of the incarcerated population, the Office of the Corrections Ombuds (OCO) convened a workgroup to analyze DOC's COVID-19 processes and provide insight and advice to OCO on this report. This advisory workgroup included volunteer

community members who had some healthcare background or expertise.[1] Additional valuable insight was gathered from the Stafford Creek chapter of the Black Prisoners Caucus.

The purpose of this report is to provide Governor Inslee and the Washington Legislature with immediate action steps that are necessary to protect both the medical and mental health of the incarcerated persons within DOC custody.

List of Recommendations

- **Full compliance with all of the CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities[2] (CDC guidelines)**. The CDC guidelines represent minimum requirements to protect the health and safety of the population.

Improved Social/Physical Distancing

- **Assessment of capacity requirements at each facility to accurately determine the maximum number of incarcerated persons per facility that permits adequate social/physical distancing.**
    - DOC should provide a facility-by-facility report to the Governor, the legislature, and the OCO by September 1, 2020.
    - Once the report is received, the Governor, the legislature, and DOC should strongly consider taking actions for additional releases[3] in order to meet these numbers, such as those taken by the Federal Bureau of Prisons[4] and the California Department of Corrections and Rehabilitation.[5]

[1] OCO wishes to thank community workgroup members Noreen Light, Portia Hinton, Jacqualine Boles, Stephanie Colunga, Sierra Fabrizio, and Dr. Chuck McQuinn.
[2] OCO is currently in the process of comparing DOC protocols with the current CDC guidelines and plans to publish a comprehensive report by September 1, 2020.
[3] Governor Inslee already authorized the release of approximately 1,000 persons who were convicted of nonviolent offenses and approaching release.
[4] Memorandum from the US Attorney General to the Director of the Bureau of Prisons. https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement.pdf
[5] California Department of Corrections and Rehabilitation. CDCR Announces Additional Actions to Reduce Population and Maximize Space Systemwide to Address COVID-19.

Mental Health Support

- **Sufficient alternative forms of activity to support the mental health of the entire population.** These are critical, given that visitation and group activities must be cancelled to promote social/physical distancing. Suggested activities include:
    - Increased free phone calls with family[6]
    - Ensured JPay access, including improved video visitation
    - Improved access to books from the general library
    - At least two and a half hours of physical activity per week,[7] which includes at least one hour per week outdoors
    - Books, magazines, newspapers, printed articles of interest to the population[8]
    - Materials created/made available by the chaplain
- **Sufficient mental health support for those in medical isolation.** In addition to the items listed in the above section relative to the entire population, OCO recommends the following for those placed in medical isolation:
    - Increased visits from mental health providers
    - Ensured access to personal property, including address book
    - Visualization/mental imagery guides
    - Basic art materials (drawing, painting, clay, beading)

https://www.cdcr.ca.gov/news/2020/07/10/cdcr-announces-additional-actions-to-reduce-population-and-maximize-space-systemwide-to-address-covid-19/

[6] The Stafford Creek Black Prisoners Caucus recommends for consideration that all fees and financial obligations be considered for waiver. These fees are often born by family members of the incarcerated, many of whom are struggling with the economic downturn imposed by COVID-19 in the greater community.

[7] US Department of Health & Human Services, Physical Activity Guidelines for Americans. https://www.hhs.gov/fitness/be-active/physical-activity-guidelines-for-americans/index.html#:~:text=For%20substantial%20health%20benefits%2C%20adults,or%20an%20equivalent%20combination%20of

[8] The Stafford Creek Black Prisoners Caucus also suggests consideration of increasing access to LexisNexis through the current JPAY contract as access to the law library has been reduced.

- Working radio and television
- Food treats (energy bars, popcorn, occasional cookies and other sweets)
- Tennis ball for bouncing against the wall
- Origami and other crafts

- **Reopening to visitation as soon as possible, in light of the many emotional benefits of in-person communication with families.** DOC will need to consider creative means of reopening visitation. Some suggestions include:
  - Outdoor visitation during summer months.
  - Non-contact or socially distanced visitation indoors with expanded screening and PPE requirements for visitors.

More Rigorous Screening and Testing

- **Medical surveillance via daily mass screening of the entire population.** Screening should include a combination of temperature screening and verbal symptom-screening questions. To reduce concerns regarding staff workload, DOC should consider utilizing trained and appropriately paid incarcerated workers whose job it would be to conduct screenings on a daily basis and provide daily reports.
- **Testing of staff when there are increased cases in the community surrounding a facility.** This testing – which is in addition to screening of staff prior to entry into the facility – should be performed serially to reduce the chance of introducing the virus into the facility.
- **Expanded testing once a positive test is identified.**
  - Once an incarcerated person tests positive at a facility, testing should be expanded to include all close contacts, as well as all those in the incarcerated person's unit who fall within the CDC high-risk groups.

- If an indication exists of a larger outbreak (at least one additional positive test), strong consideration should be given to conducting mass testing of all incarcerated people in the unit, and in the larger institution.

- **Implementation of on-site rapid diagnostic (antigen) testing for COVID-19**. Although negative results may still require confirmatory molecular testing in symptomatic cases, rapid receipt of positive test results would allow for immediate isolation to reduce spread of disease.

Improved Infection Prevention

- **Showers daily or at least every other day.** As part of reinforcing the healthy hygiene practices recommended by CDC, those in isolation and quarantine should be allowed to shower daily, or at least every other day[9] with bath basin on alternate days. Although OCO acknowledges that the plan for once weekly showers was made by the Chief Medical Officer and DOC's Infectious Disease specialist, CDC does not recommend restricting the number of times per week that an ill person can shower.[10] Inadequate cleaning allows accumulation of infectious material on the person's body, which is then shed onto surfaces and potentially in the air, resulting in an increased chance of disease transmission to DOC staff as well as other patients.

- **Sufficient number of face coverings for the incarcerated population to comply with Washington Department of Health (DOH) guidance.** The population should receive:

  - Enough face coverings to allow them to comply with DOH's instructions to wash facemasks after each use (in detergent and hot water, dried at a high heat setting or air-dried in direct sunlight), at least once per day.[11]

[9] Harvard Health Blog. https://www.health.harvard.edu/blog/showering-daily-is-it-necessary-2019062617193#:~:text=While%20there%20is%20no%20ideal,armpits%20and%20groin%20may%20suffice.
[10] Per discussion with CDC, 4/24/2020.
[11] Guidance of Cloth Face Coverings from the Washington State Department of Health. https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/ClothFacemasks.pdf

- Greater amounts of PPE – face coverings and gloves at a minimum – upon request, and particularly for those who work in sanitation jobs within the facility.

- Face shields or other alternatives for those whose physical or mental health conditions are exacerbated by wearing a cloth face covering.

- **Sufficient ventilation and clean air.** Poor indoor air quality represents a health risk, particularly in high risk populations, and the potential for COVID-19 inhalation exposure via respiratory microdroplets can increase that risk.[12,13] Facilities should have improved ventilation that supplies clean outdoor air and minimizes air recirculation.

- **Staff compliance with social/physical distancing and face coverings while off-duty.** Staff should understand the importance of preventing infection by complying with social/physical distancing measures and wearing masks even while off work; this is critical in keeping the incarcerated people safe, since staff can inadvertently introduce an infectious organism into the facility. DOC can utilize existing state public awareness campaigns to assist with staff education, and should work with the union to gain compliance for the safety of the entire facility.

Improved Pandemic Response

- **Clear identification of trigger for DOC's response to an outbreak at a facility.** DOC should develop a clear definition of an *outbreak* which, once met, triggers a cascade of events including but not limited to cessation of transfers between units, cessation of transfers between facilities, discontinuation of staff rotations between units, launch of contact tracing efforts, expanded testing, etc. One potential definition is *at least **one** case*

[12] Morawska L, Milton DK. It is Time to Address Airborne Transmission of COVID-19. Oxford University Press for the Infectious Diseases Society of America. https://academic.oup.com/cid/article/doi/10.1093/cid/ciaa939/5867798.
[13] World Health Organization Scientific Brief. Transmission of SARS-CoV-2: implications for infection prevention precautions. https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions.

of laboratory-confirmed COVID-19 in the setting of two or more cases of acute illness compatible with COVID-19 within a 14-day period.[14]

- **Full-time, on-site clinical leadership at all times for the duration of an outbreak**. At the start of a facility outbreak:

    - Clinical leadership should move to 24/7 coverage, with a minimum of on-site presence of the leadership daily. If the Facility Medical Director cannot be physically present, alternate in-person coverage should be provided, such as by the Chief Medical Officer or designee.

    - The Facility Medical Director must be a mandatory member of the facility Incident Command Post (ICP). While the Health Services Managers (HSMs) currently participate in the ICP, many HSMs are former DOC administrative assistants/secretaries who have little to no health care training or expertise.

  OCO's current investigation into the outbreak at Coyote Ridge Corrections Center has identified these factors as having contributed to the errors in outbreak management that occurred.[15]

- **Regional Care Facility (RCF) for each level of security.** A RCF for each level of security would allow DOC to more easily move those needing medical isolation out of the individual facilities, limiting the potential for spread.

- **Risk assessment tool for screening those who will go into high-risk housing.** This would allow for standardized identification of those who are medically vulnerable versus those who are not, so that appropriate placements can be made.

- **Facility planning by patient cohort, prior to the first positive case.** Each facility should develop and publish a working cohort model within every unit before the first symptomatic patient is identified. Once a symptomatic person is identified, the cohort model should immediately be implemented per affected unit(s). In addition, staff should be trained on

[14] Per the California Department of Public Health, https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/OutbreakDefinitionandReportingGuidance.aspx
[15] Investigation under way; report to follow.

cohort modeling so that they understand the importance of strictly maintaining every cohort.

- **Contact tracing by formally trained individuals.** DOC should ensure that those involved in contact tracing activities are provided the proper training to perform this task. Examples of training include those provided by the CDC[16] and WHO.[17]

- **COVID-19 testing of all mortalities.** The Snohomish and King County Medical Examiner's offices have implemented universal COVID-19 testing for all deaths since April.[18] Similarly, DOC should perform testing on all mortalities involving the population, so that there is early identification of positive cases and appropriate contact tracing and other outbreak-related activities can begin.

- **Clear definitions of urgent versus non-urgent appointments, and a firm plan for resuming non-urgent medical visits as soon as possible.** Decisions regarding access to care can only be consistent across facilities when there are clear definitions. In addition, there must be a phased plan for resuming non-urgent on-site and off-site healthcare appointments, so that patients are not kept waiting indefinitely or until their conditions become emergencies.

- **Clear plan for providing ongoing care for chronic conditions during the pandemic.** Patients with chronic conditions still need to receive treatment despite the pandemic. Their access to care for these ongoing conditions should not be hampered.

- **Early requirement for masks and enhanced hygiene measures by staff.** For future pandemics, DOC should require staff to wear masks and initiate enhanced hygiene measures when an increase in communicable disease activity is reported in the surrounding community.

[16] Centers for Disease Control and Prevention. COVID-19 Sample Training Plans for Contact Tracers, Case Investigators, and Supervisors. https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/index.html
[17] World Health Organization. Contact tracing in the context of COVID-19. https://www.who.int/publications/i/item/contact-tracing-in-the-context-of-covid-19
[18] Per phone discussion with Dr. Lacy (medical examiner) and Ms. Oie (operations manager), Snohomish County Medical Examiner's Office, 6/3/2020.

Improved Communication with the Population

- **Formal process for having an individual's COVID-19 related complaints separately addressed, resolved, and acknowledged in writing by DOC leadership.** The concerns of the population related to COVID-19 are currently being blocked at Level 0 of the grievance process and rejected as being non-grievable ("due to the Governor's proclamations"). Although DOC states that it is gathering these non-grievable complaints and elevating any identified "themes" to HQ leadership, the complainants themselves do not receive direct responses to their individual case complaints.

- **Weekly information updates regarding facility COVID-19 status.**

    - DOC should, on a weekly basis, distribute to incarcerated people and staff information such as number of positive cases at their facility, proper personal hygiene, and significance of social distancing. This will promote compliance with necessary precautions.

    - DOC Health Services staff should take a more active role in dispensing information regarding virus transmissibility, symptoms, risk factors, and health risks (e.g. immediate risk of serious illness or death, long term recovery risks, etc.). This will not only remind the population to report to staff at the first sign of illness, but may help build a positive relationship between the population and their providers. Information could include infographics from the World Health Organization,[19] the CDC,[20] and DOH;[21] these materials are designed for lower reading levels and those who are not English proficient.

[19] World Health Organization. Coronavirus disease (COVID-19) advice for the public. https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/when-and-how-to-use-masks
[20] Centers for Disease Control and Prevention. Coronavirus Disease (COVID-19); print resources. https://www.cdc.gov/coronavirus/2019-ncov/communication/print-resources.html?Sort=Date%3A%3Adesc
[21] Washington Department of Health. COVID-19 educational materials – 26+ languages. https://www.doh.wa.gov/Emergencies/NovelCoronavirusOutbreak2020/HealthEducation

Renee S. Townsley
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July 29, 2020

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CASE # 369951
State of Washington v. Julian Almaguer
SPOKANE COUNTY SUPERIOR COURT No. 161025138

Dear Counsel and Mr. Uttecht:

Enclosed is a copy of the Order Granting Release Pending Appeal and Setting Conditions, filed today.

A party may seek discretionary review by the Supreme Court of the Court of Appeals' decision. RAP 13.5(a). A party seeking discretionary review must file a motion for discretionary review in the Supreme Court and a copy in the Court of Appeals within 30 days after this Court's Order. The address for the Washington State Supreme Court is: Temple of Justice, P. O. Box 40929, Olympia, WA 98504-0929.

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST: res

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. JULIAN ALMAGUER, Appellant.	)	No. 36995-1-III ORDER GRANTING RELEASE PENDING APPEAL AND SETTING CONDITIONS

THE COURT has considered appellant Julian Almaguer's motion for stay of sentence pending appeal; the appellant's statement of additional authorities; the record and file herein; and oral argument of the parties.

The motion is based on the following facts, which are not in dispute:

Mr. Almaguer is incarcerated at the Coyote Ridge Correctional Facility in Connell, Washington. He is serving a 26-month sentence for forgery. Mr. Almaguer's offense involved an attempt to cash a $156 fraudulent check at a Money Tree store in Spokane, Washington.

Mr. Almaguer was released from custody pending trial in Spokane County Superior Court and complied with the terms of release. At his sentencing hearing, Mr. Almaguer requested a stay of his term of incarceration pending appeal. The court denied the request. Although the court found Mr. Almaguer did not pose a danger to the

community or risk of flight, it determined that a stay of sentence would diminish the deterrent effect of punishment. Mr. Almaguer began serving his term of incarceration on July 26, 2019.

On August 5, 2019, Mr. Almaguer filed a notice of appeal. Mr. Almaguer appeals both his conviction and sentence. The briefing on appeal is not yet complete and Mr. Almaguer's case has yet to be set for hearing before a panel of this court. The State filed its response brief on July 23, 2020. In its brief, the State concedes that Mr. Almaguer is entitled to resentencing.

In March 2020, the Governor Jay Inslee began issuing emergency proclamations designed to limit the spread of COVID-19. Mr. Almaguer is 45-years-old and a diabetic. As such, he is at increased risk of harm from COVID-19. The realities of the prison environment make preventing the transmission of COVID-19 difficult. The facility at which Mr. Almaguer has been housed has had an outbreak of COVID-19 among its inmates and staff members. It does not appear Mr. Almaguer has been exposed to COVID-19, but an individual adjacent to his cell has been quarantined due to possible exposure.

Mr. Almaguer is married and has a supportive wife who lives in Yakima, Washington. Mr. Almaguer's wife has filed a declaration stating Mr. Almaguer can live with her during the pendency of his appeal.

During a July 28, 2020, telephonic hearing on this motion, counsel for the State affirmed that Mr. Almaguer does not pose a risk of flight or danger to the community. Mr. Almaguer has not engaged in any misconduct during his current term of incarceration that would undermine his claim for release pending appeal.

The State opposes Mr. Almaguer's request for release pending appeal. Nevertheless, should the court grant release, the parties agree on the appropriate conditions.

Based on the foregoing, IT IS HEREBY ORDERED that the appellant's motion for stay of sentence pending appeal is GRANTED.

Pursuant to RCW 9.94A.585(3), Mr. Almaguer is ordered released pending appeal and shall contact the Spokane County Office of Pre-Trial Services (OPTS) by telephone within 24 hours of his release from custody. The OPTS is a designee of the court and will monitor compliance of Mr. Almaguer with the following conditions of release:

1. Telephonically check in with OPTS on a weekly basis unless otherwise directed by OPTS or the court.

2. No new criminal law violations, including no possession of a firearm.

3. Maintain residence at 2502 Fruitvale Blvd., Apt #105, Yakima, Washington.

4. Appear at all court hearings requiring the appearance of Mr. Almaguer. If a ruling or decision by the appellate court affirms the conviction and sentence or dismisses the appeal, and no further court dates are issued, Mr. Almaguer shall report to serve the remainder of his term of incarceration within 30 days of issuance of the appellate mandate, as directed by the State, the court or the Department of Corrections.

5. No contact with any Money Tree branch or similar check cashing institution. This restriction does not apply to any FDIC-insured banking institution.

6. Comply with all COVID-19 directives issued by the state or local authorities applicable to the county of residence.

The OPTS is open from 8:30 a.m. to 12:00 p.m. and 1:00 p.m. to 4:30 p.m., Monday through Friday. The OPTS check-in telephone number is (509) 477-3881.

Counsel for Mr. Almaguer shall ensure Mr. Almaguer and his wife understand the terms of release. Counsel for the State shall make the OPTS aware of the terms of this court's order.

PANEL: Judges Pennell, Siddoway, and Fearing

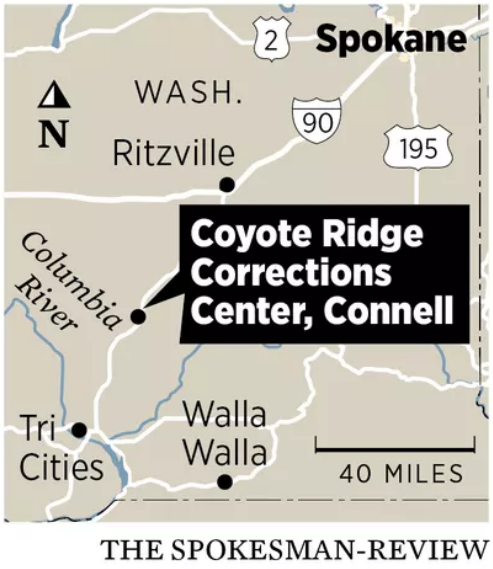
FOR THE COURT:

REBECCA L. PENNELL
Chief Judge

NEWS > WASHINGTON

Nurse at Coyote Ridge prison describes ‘petri dish’ of ‘inhumane conditions’

UPDATED: Sat., Aug. 15, 2020



(Molly Quinn / The Spokesman-Review)

By Maggie Quinlan
maggieq@spokesman.com
(509) 459-5135

As chaotic conditions at an Eastern Washington prison have deteriorated, COVID-19-positive inmates with severely restricted access to bathrooms are refusing to drink water, according to one prison nurse’s account.

With clothing changes only once per week and little privacy in the COVID-19 tents outside, sick inmates fear the “humiliation” of soiling their clothes and sitting in filth for days, the nurse wrote.

These are just two of the many concerns Katrina Pinkerton laid out in a July 28 email to 30 Department of Corrections staff about what she described as the department’s “serious neglect” in managing the coronavirus’s spread at the Coyote Ridge Corrections Center in

Connell.

The DOC confirmed in a statement that Pinkerton worked as a contracted nurse for the prison from late June to mid-July and worked mostly graveyard shifts.

Pinkerton, a Yale School of Nursing graduate, described temporary nurses having no medical information about their patients, staff losing track of where virus-positive inmates were housed, officers using handcuffing maneuvers reserved for punishment to deal with sick inmates and "inhumane conditions" she feared would lead to inmates' "irreversible psychological trauma."

She also praised DOC leaders for working despite fatigue to get resources like masks and water bottles in bulk for the facility, writing "you're doing what you can to deal with an impossible task."

"No one at any given organization is going to get things just 'right,' " she wrote. "And yet all of us are capable of always striving to do better, no matter how hard the circumstance. Especially when our present efforts fail to help, and even cause harm, to thousands of others."

A DOC statement from Communications Director Janelle Guthrie said the department takes the allegations in the email "very seriously" and that the department's health care quality team and other staff plan to meet with the Coyote Ridge health team to review processes and "ensure continuous improvement."

Two inmates have died from coronavirus at Coyote Ridge and 233 others have tested positive. Victor Bueno, the first of two Coyote Ridge inmates to die from the virus, was about three months away from his expected release date .

Coyote Ridge has had more positive cases than any other Washington prison, the DOC statement said.

As of Aug. 7, seven inmates from Coyote Ridge were "considered to have active COVID-19 symptoms," and three of them were housed there on that date.

Pinkerton questioned the case numbers. She cited dozens of inconclusive tests, which she said probably represented a "glaring problem" in the prison's method of sample collection, transport or labeling. She also described harsh conditions for sick inmates that could encourage them to keep quiet about symptoms.

But whether a test is considered inconclusive has "nothing" to do with the quality of the test, according to the DOC. Tests can come back inconclusive when an inmate is developing symptoms or post-symptomatic, the statement said.

The DOC statement said Coyote Ridge had a "very small" number of tests that were compromised in transport from Connell to Seattle, where they were processed, but not the dozens reported by Pinkerton.

Pinkerton wrote that staff often did not know an inmate's most recent test results. Managing the disease's spread was impossible, Pinkerton said, due to "mass confusion" among prison staff and "incredibly haphazard tracking" of inmates.

"From the privilege of my unique temporary position on the ground," Pinkerton wrote, "I was able to clearly see many issues others have been too busy, too physically removed, or too overwhelmed to look at."

In solitary confinement, officers and nurses "had zero access to consistent, reliable, up-to-date information" about who was there for punishment and who was there for quarantine, she wrote.

Guthrie, the DOC communications director, disputed those claims.

While a temporary nurse's tasks include monitoring symptoms, taking vital signs, noting symptoms on a form and sending the information to permanent medical staff at the end of each shift, Guthrie said, "these duties did not require providing her access to incarcerated individuals' medical charts."

Contract nurses also had access to permanent corrections health care staff if they needed specific medical history, the statement from Guthrie said.

After asking health care staff, Pinkerton said her overall impression was that "it was best" if she avoided performing "even basic nursing tasks" such as listening to heart or lung sounds, she wrote.

Given that officers were performing similar functions, including temperature taking and asking preset questions about symptoms, Pinkerton questioned the department's decision to hire registered nurses at "high wages" to perform duties at "the level of unlicensed personnel," such as a nurse's assistant or lay caregiver.

With no medical histories, nurses devised their own means of record-keeping, filling binders with records of daily temperature checks and asking inmates to talk through their medical history, Pinkerton wrote.

The lack of medical information about patients and other barriers often made it impossible for nurses to carry out "even the most basic of health monitoring," she wrote. For inmates with COVID-19, she claimed, it also meant harsh treatment.

She wrote that inmates who test positive reported to her that they were suddenly taken to an isolation room and given few details about why, or for how long they would be alone.

In solitary, inmates said they don't talk to other people or "move their body in the fresh air, for weeks on end," she wrote. Inmates' time outside the cell is limited to one shower per week and one call to friends or family per week.

That routine is only broken by medical assessments that involve sitting handcuffed in a cell's doorway while "disguised" medical personnel in PPE try to check blood pressure and ask questions, Pinkerton wrote.

Inmates have described similar scenes. Janet Gonzalez said her son, who tested positive for the virus at Coyote Ridge, told her via email that he "had to beg" for clean clothes for three weeks. During the same three weeks, he went without medications related to his chronic issues with kidney stones and migraines, she said.

Under quarantine, Gonzalez' son also described getting 30 minutes outside of his cell every two days, she said. He wrote that he hopes his story gets attention because conditions in quarantine are "insane."

The tents weren't much better, according to Gonzalez and the nurse's letter. Pinkerton said a few men in temporary housing tents reported being in severe pain due to their cots and asked to sleep on the concrete floor instead. She described "swarms of insects," and three portable toilets to be shared by 50 sick men.

Gonzalez said when her son was held in a tent, he told her 100 men had access to only a few portable toilets and only "when the guards feel like letting them," she said. Her son described one man there who had turned to urinating in a cup, she said.

The letter and Gonzalez' description echo earlier reports from inmates who hadn't yet tested positive in minimum security at Coyote Ridge. There, men described being held in two-man cells with no toilet for up to 36 hours at a time, defecating in coffee cans and urinating in water bottles.

The DOC statement said all inmates have had ready access to bathrooms while respecting social distancing, "with the exception of a brief period early in the response where some individuals in cells without toilets needed to request permission because their cells were locked."

Coyote Ridge health care professionals worked with Pinkerton throughout her employment to respond to concerns and to address her needs, the statement said.

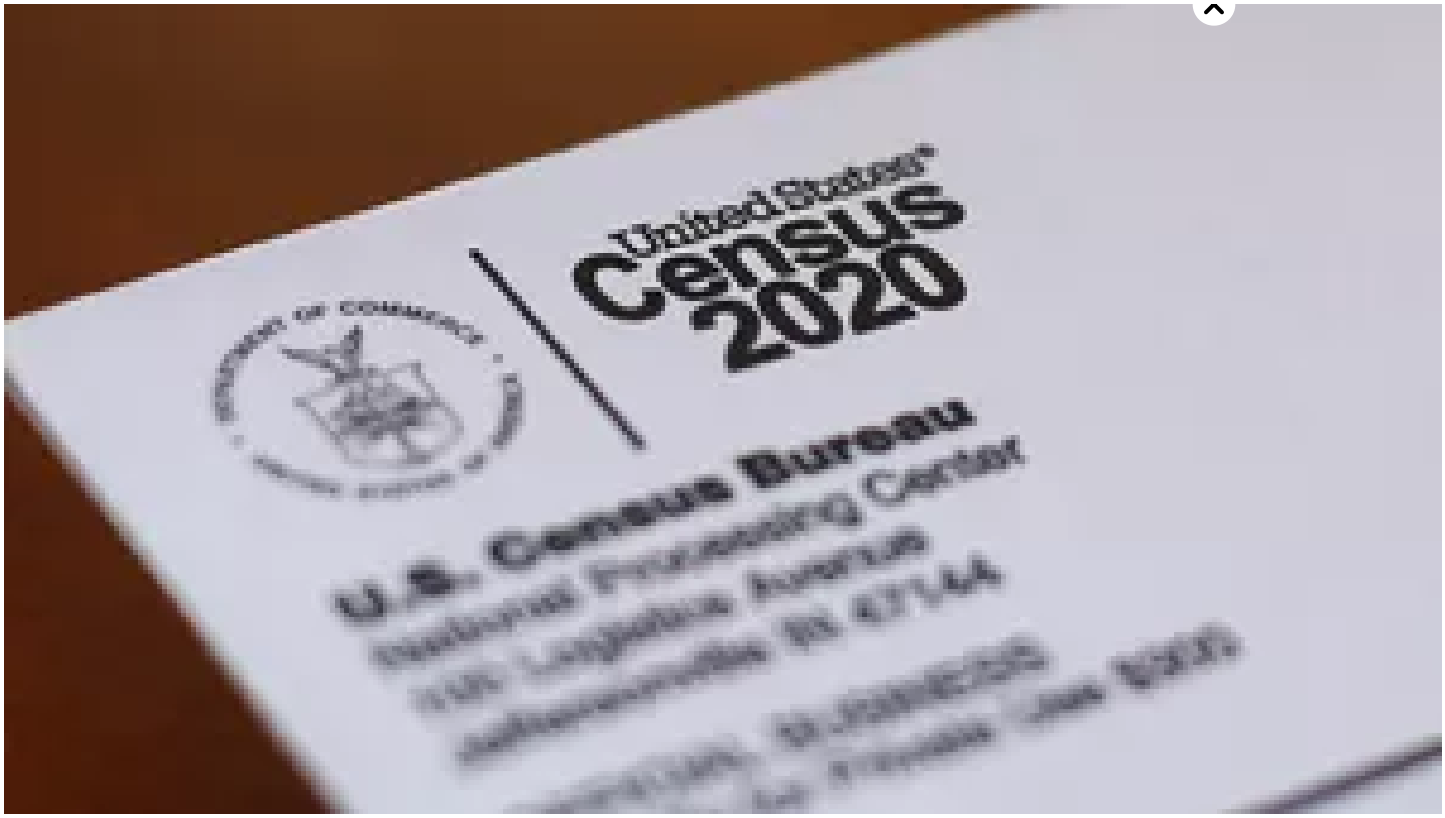
But the nurse wrote that, while she tried to call attention to many of her concerns to DOC and Coyote Ridge officials, she "received no meaningful responses."

Pinkerton wrote that she did not know anyone in a prison system, neither officer nor inmate, prior to her contracted work at Coyote Ridge. But after her experience, she found herself having the "surprising thought" that it would be better to let offenders out, with community officers monitoring them.

"The alternative is keeping everyone at CRCC in a petri dish of severe stress, mass confusion, inhumane conditions and circulating illness which then leaks into the community," Pinkerton wrote.

The Washington Supreme Court in April rejected a lawsuit seeking to force Gov. Jay Inslee to order the release of thousands of people from Washington prisons to protect them from potential exposure to the coronavirus. In a 5-4 decision, a court majority found the emergency petition by Columbia Legal Services had not proved the state is failing in its duties to incarcerated people.

Pinkerton said she recognized that her letter pointed to issues "deeply rooted in a large system" and "lofty ideas" about reducing prison population.



US appeals court blocks Trump from shutting down the census count early

UPDATED: 9:46 p.m.

State health officials warn of 'extreme risk' of COVID-19 activity increasing in Washington …
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“I venture to guess that some of you receiving this email feel overwhelmed and like you don’t have the power to do anything,” she wrote. “But because lack of meaningful action can be as damaging as intentionally hurtful action, I urge you to share these concerns.”

COVID-19 Updates

From: Richard Lechich
To: "Gary Johnson"; Amanda.Piccoli@courts.wa.gov; Kristie Barham; PCpatcecf
Cc: Michelle Prichard; Linda Schramm; Chris Gaddis
Subject: RE: D2 [redacted]--STATE OF WASHINGTON, RESPONDENT V. [redacted]APPELLANT--Order
Date: Tuesday, August 18, 2020 11:56:00 AM
Attachments: [redacted]_Motion_MODIFY-BAIL.pdf

Judge Johnson,

If it would help the Court understand the history of the case, I have attached my motion to modify, which is what the Court of Appeals granted and is the basis of the order. As the motion shows, the Court was aware of the history and Judge Costello's ruling. The motion attached all of the previous relevant rulings in the case. A ruling on bail or conditions of release may be reviewed directly under Rule of Appellate Procedure 8.2(b). No notice of appeal or designation of clerk's papers is required.

I am in the process of completing an updated memorandum on why the Superior Court should grant [redacted] request for conditional release or bond. I should have it filed shortly.

Respectfully,

Richard Lechich
Washington Appellate Project
206-587-2711

From: Gary Johnson <gjohns2@piercecountywa.gov>
Sent: Tuesday, August 18, 2020 11:40 AM
To: Amanda.Piccoli@courts.wa.gov; Kristie Barham <kristie.barham@piercecountywa.gov>; Richard Lechich <richard@washapp.org>; PCpatcecf <pcpatcecf@piercecountywa.gov>
Cc: Michelle Prichard <michelle.prichard@piercecountywa.gov>; Linda Schramm <linda.schramm@piercecountywa.gov>; Chris Gaddis <chris.gaddis@piercecountywa.gov>
Subject: RE: D2 [redacted]--STATE OF WASHINGTON, RESPONDENT V. [redacted]APPELLANT--Order

MS. Piccoli,

I have reviewed the attached Order Granting Motion to Modify Commissioner's Ruling and Remanding to the Superior Court. This is Judge Melnick's Order. His Order requires our court to "…hold a hearing to determine whether bail and conditional release should be set pursuant to RCW 94A.585.30, RCW 9.95.02, RCW 10.73.040, and other applicable rules and statutes pending the resolution of the appeal." In the context of the history of this case the Order is confusing.

Here is the context.

On May 1, 2020 Pierce County Superior Court Judge Jerry Costello issued an Order Denying Motion for Stay of Sentence and for Release. Judge Costello presided over the jury trial that is

now on appeal. A copy of that order is attached hereto. That order contains detailed analysis regarding the facts and applicable law that addresses the same issues that the Order Granting Motion to Modify Commissioner's Ruling and Remanding to the Superior Court requires our court to address. The time for a motion for reconsideration of Judge Costello's order has long passed. It does not appear that the defendant appealed his order.

Thus the confusion.

It may be that the Court of Appeals is not aware that Judge Costello had previously gone to considerable length to address bail and conditional release of the defendant pending appeal in a written order. Notably, it does not appear Judge Costello's subject order was included in the Designation of Clerk's Papers (a copy is attached hereto).

In any event given the, I think, understandable confusion for the parties and the trial court, this matter needs clarification from Judge Melnick. We will certainly proceed in any manner required.

Please note that time is of the essence here as Judge Melnick's Order requires that the commanded Superior Court hearing be held within 14 days of August 13, 2020.

Judge Costello is on recess. As the Presiding Judge of the Pierce County Superior Court I am sending this request for clarification in his place.

Garold E. Johnson
Presiding Judge
Pierce County Superior Court

From: Linda Schramm <linda.schramm@piercecountywa.gov>
Sent: Tuesday, August 18, 2020 10:10 AM
To: Gary Johnson <gjohns2@piercecountywa.gov>
Subject: FW: D2 [redacted] --STATE OF WASHINGTON, RESPONDENT V. [redacted] APPELLANT--Order
Importance: High

From: Richard Lechich <richard@washapp.org>
Sent: Friday, August 14, 2020 10:52 AM
To: Linda Schramm <linda.schramm@piercecountywa.gov>
Cc: Kristie Barham <kristie.barham@piercecountywa.gov>
Subject: FW: D2 [redacted] --STATE OF WASHINGTON, RESPONDENT V. [redacted] APPELLANT--Order
Importance: High

From: Richard Lechich
Sent: Friday, August 14, 2020 10:47 AM
To: 'linda.schramm@piercecounty.wa.gov' <linda.schramm@piercecounty.wa.gov>
Cc: 'Kristie Barham' <kristie.barham@piercecountywa.gov>
Subject: FW: D2 [redacted] --STATE OF WASHINGTON, RESPONDENT V. [redacted] APPELLANT--Order
Importance: High

Good morning,

I was informed that Judge Costello is on recess, and after contacting the court administration, I was informed to contact you. Below is the information and order from the Court of Appeals instructing that a hearing occur on conditional release and bond for [redacted] pending appeal.

Respectfully,

Richard Lechich
Washington Appellate Project
206-587-2711

From: Richard Lechich
Sent: Friday, August 14, 2020 9:37 AM
To: supcrtdept7@piercecountywa.gov; michelle.prichard@piercecountywa.gov
Cc: kristie.barham@piercecountywa.gov; pcpatcecf@co.pierce.wa.us
Subject: Fw: D2 [redacted] --STATE OF WASHINGTON, RESPONDENT V. [redacted] APPELLANT--Order
Importance: High

Good morning,

Please find attached the order issued by the Court of Appeals yesterday remanding this matter to this Court for a hearing on [redacted] request for conditional release and stay of the judgment pending appeal. The Court of Appeals ordered a hearing to occur within 14 days (by August 27, 2020), or upon motion of a party, within 28 days if there is good cause for a continuance.

I intend to file a supplemental memorandum in support of release. I believe the order contemplates a live hearing and I hope to be able to arrange [redacted] presence by phone.

Respectfully,

Richard Lechich

Washington Appellate Project

206-587-2711

From: Piccoli, Amanda <Amanda.Piccoli@courts.wa.gov>
Sent: Thursday, August 13, 2020 11:27 AM
To: Richard Lechich; wapofficemail; Kristie Barham; 'PCpatcecf'; pcpatcecf@co.pierce.wa.us
Subject: D2 [redacted] STATE OF WASHINGTON, RESPONDENT V. [redacted] APPELLANT--Order

To Counsel and Interested Parties:

Attached is an Order filed today, 8/13/2020.

This will be the only notice you will receive from the court.

The court requests that motions and other correspondence be sent via the Washington State Appellate Courts' Portal. In order to use the portal to file with the courts, you will first need to register and set up a free account at https://ac.courts.wa.gov. If you have difficulty accessing the new portal, please contact the Administrative Office for the Courts at 800-442-2169. When filing electronically, please do NOT follow up with a paper copy.

Please contact the court at (253) 593-2970 or coa2@courts.wa.gov if you have any questions or comments.

Thank you.

Amanda E. Piccoli
Case Manager

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division Two** under **Case No.** [redacted] and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered by other court-approved means to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

☒ respondent Anne Egeler, DPA
[anne.egeler@piercecountywa.gov]
[PCpatcecf@co.pierce.wa.us]
Pierce County Prosecutor's Office

☐ Attorney for other party

☐ appellant

MARIA ANA ARRANZA RILEY, Legal Assistant Date: October 2, 2020
Washington Appellate Project

WASHINGTON APPELLATE PROJECT

October 02, 2020 - 4:21 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	[redacted]
Appellate Court Case Title:	State of Washington, Respondent v. [redacted] Appellant
Superior Court Case Number:	[redacted]

The following documents have been uploaded:

- [redacted]_Designation_of_Clerks_Papers_20201002161956D2754904_8501.pdf
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  The Original File Name was washapp.100220-01.pdf
- [redacted]_Motion_20201002161956D2754904_6932.pdf
  This File Contains:
  Motion 1 - Stay
  The Original File Name was washapp.100220-02.pdf

A copy of the uploaded files will be sent to:

- PCpatcecf@piercecountywa.gov
- anne.egeler@piercecountywa.gov

Comments:

***RENEWED MOTION

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Filing on Behalf of: Richard Wayne Lechich - Email: richard@washapp.org (Alternate Email: wapofficemail@washapp.org)

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