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SUPREME COURT  
STATE OF WASHINGTON  
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BY SUSAN L. CARLSON  
CLERK

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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SHYANNE COLVIN, SHANELL DUNCAN, TERRY KILL, LEONDIS  
BERRY, and THEODORE ROOSEVELT RHONE,

*Petitioners,*

v.

JAY INSLEE, Governor of the State of Washington, and STEPHEN  
SINCLAIR, Secretary of the Washington State Department of Corrections,

*Respondents.*

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**DECLARATION OF DAN PACHOLKE**

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I, Dan Pacholke, declare as follows:

1. I am over the age of 18, have personal knowledge of the facts set forth herein, and, if called as a witness, I could and would testify competently as set forth below.

2. I have more than 37 years of experience, training, and education in the field of adult institutional corrections. This experience includes over three decades as an employee of the Washington State Department of Corrections (DOC), beginning as a correctional officer and retiring as Secretary. In that time, I served as Chief of Emergency Operations; Superintendent of three DOC facilities (Cedar Creek Corrections Center, Stafford Creek Corrections Center, and Monroe Correctional Complex); Deputy Director; Director of Prisons; and Deputy Secretary. In October 2015, Governor Inslee appointed me to serve as Secretary of Corrections, a position I held until March 2016. As a DOC employee in administration and leadership positions, I was one of the individuals responsible for the development and implementation of DOC policies, practices, and procedures.

3. My experience also includes work as a consultant for the National Institute of Corrections, a federal agency with a legislative mandate to provide specialized services to corrections from a national perspective, and as a Senior Research Scholar with New York University

Marron Institute of Urban Management. Currently, I am a principal at Dan Pacholke Consulting, LLC and frequently consult with and collaborate with correctional systems, researchers, and policymakers on strategies to create safer correctional institutions. Attached as Exhibit 1 is a copy of my curriculum vitae.

4. As a result of my many years of experience in corrections in Washington State, I have extensive knowledge of DOC policies as well as with Washington laws relating to the operation of prisons, including the standards regarding when and how individuals are released from DOC custody, and, how and when DOC can exercise its discretion to take immediate affirmative actions to address issues impacting the health and safety of people in DOC custody into account.

5. In my opinion, the COVID-19 virus represents a serious and unprecedented risk to the health and safety of people in DOC custody and DOC staff. This risk makes it imperative that DOC immediately take steps to proactively respond to the virus to protect those individuals. Among those steps is considering how DOC can exercise its authority and discretion to reduce the prison population. This includes releasing people from custody, which allows individuals to maintain social distancing and have better access to testing and treatment. This will also help mitigate the impact of staff shortages and lessens the burden on prison medical

services. Reducing the population will improve the health and safety of people in custody who are currently symptomatic and/or test positive as well as individuals who have been exposed to COVID-19 but are not yet showing symptoms and have not yet been tested. As in the community outside DOC facilities, the numbers of individuals in both categories will increase exponentially.

6. Current DOC policies and Washington State laws provide DOC with several different ways in which DOC could exercise its discretion to quickly and efficiently release people from DOC facilities to help mitigate the effects of COVID-19.

7. First, DOC has broad authority under the furlough statute, RCW chapter 72.66, to provide for authorized leave for people confined in state correctional institutions or state-approved work release facilities. Among the grounds for granting furlough is to enable incarcerated people to obtain medical care unavailable in the prison or work release facility. Ordinarily, furloughs granted to a prisoner may not exceed thirty consecutive days or a total of sixty days in a calendar year, but this excludes furloughs for medical care. Further, the furlough statute allows the Secretary of DOC to waive time-served requirements and other furlough prerequisites when an emergency furlough is at issue.

8. The Graduated Reentry Program, outlined in RCW 9.94A.733 and RCW 9.94A.734, also provides DOC with authority to release people who are within six months of their estimated release date to community supervision, if those individuals have served at least twelve months in total confinement. This law was designed to provide broad parameters to allow placement of people in the community, whose charges and convictions do not otherwise disqualify, to be released to home detention if medical or health-related conditions, concerns, or treatment would be better addressed under the home detention program, or in situations where the health and welfare of the individual, other prisoners, or staff would be jeopardized by the individual's incarceration.

9. DOC also has authority under RCW 9.94A.728 to allow for Extraordinary Medical Placement (EMP) of prisoners with serious medical conditions in an alternative care setting, in lieu of total or partial confinement. The Secretary of DOC has discretion to exercise that authority.

10. Finally, for individuals who qualify, DOC's Community Parenting Alternative (CPA) allows the Secretary to transfer an individual from prison to home detention for the final twelve months of his or her sentence, if the CPA is determined to be in the best interest of the prisoner's minor children. DOC has a policy and established guidelines in

place for the CPA and it would also provide a way for DOC to release prisoners to a home environment where they would both have better access to medical care for COVID-19 and also be able to care for their children.

11. Shortly after I was appointed Secretary of DOC, I was faced with a crisis that, though different from the current COVID-19 emergency, was similar in that it required immediate and decisive action. In December of 2015, it was brought to my attention that DOC had, for thirteen years, miscalculated certain sentences, resulting in approximately 3,600 inmates being released from prison early an average of approximately 60 days. We employed a number of strategies to resolve this error, one of which was the use of the furlough statute. This was used when it was determined that an offender released early had: (1) performed and continued to perform appropriately on community supervision; (2) had an appropriate residence; and (3) had not absconded while on supervision or committed additional felony offenses. If these conditions were met, I authorized a furlough for 30 days, completed a follow-up check-in, and subsequently extended the furlough for an additional 30 days. This helped the impacted individuals maintain their job, living arrangement, and family responsibilities.

12. If faced with the current COVID-19 crisis, to reduce the prison population for the benefit of inmates and staff, I would determine who, within prisons and work release, is within 60 days of release and establish objective criteria, such as having an appropriate release address, to establish who could safely be released into the community under furlough authority. I would also develop criteria to greatly increase releases under CPA and EMP authority. Concurrently, I would direct that all eligible inmates be assessed for release under the Graduated Reentry statute, a tool that did not exist in 2015. The timely implementation of measures to reduce the prison population will decrease the density and slow the spread of this virus in our state prisons and work releases. It also returns those individuals, who would otherwise be releasing within the next year, to their homes now, where they can self-isolate with their families, provide child and elder care, and receive testing and treatment as needed. The staff and the people who live in prisons and work releases are placed at greater risk for the spread of diseases. It is imperative that DOC do everything in its power to “flatten the curve” in these facilities during this crisis to protect the health and safety of its staff and the people in its custody. The best way to do this is to quickly implement strategies to reduce the population, in a way that supports public health and safety, to

reduce the spread of this virus and maintain increasingly limited staff and medical resources.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: March 21, 2020

A handwritten signature in black ink, appearing to read "Dan Pacholke", is written on a light yellow rectangular background.

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Dan Pacholke

## **DAN PACHOLKE**

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### **PROFILE**

Served the Washington State Department of Corrections for 33 years, starting as a Correctional Officer and retiring as Secretary. Leader in segregation reform and violence reduction in prisons. Extensive experience in program development and implementation, facility management, and marshaling and allocating resources. Proven ability to make change. Led efforts resulting in a 30% reduction in violence and a 52% reduction in use of segregation in Washington State Prisons. Co-founder of Sustainability in Prisons Project. Champion of humanity, hope and legitimacy in corrections.

### **EMPLOYMENT HISTORY**

#### **Principal, Dan Pacholke Consulting, LLC. 2018 to Present**

Offering a full range of consulting services in the field of corrections.

#### **New York University, Litmus at Marron Institute of Urban Management**

##### **Associate Director 2016-2017**

Collaborate with researchers and practitioners to develop alternatives to segregation and transform corrections management. Advance stakeholder-led research and innovation by soliciting, supporting, and disseminating the best new strategies to create safer, more rehabilitative corrections environments.

#### **Washington State Department of Corrections**

##### **Secretary 2015-2016**

Governor appointee providing executive oversight of the agency with a yearly operating budget of 850 million and 8,200 full time employees. Reorganized agency to allow for greater emphasis on effective reentry. Led department through response and recovery from a crisis resulting from the discovery of a sentencing calculation error that had occurred for over 13 years.

##### **Deputy Secretary 2014-2015**

Oversight over operations divisions: Offender Change; Correctional Industries; Community Corrections (16 Work Releases and 150 field offices); Prisons (15 facilities); and Health Services. These combined operations had a yearly operating budget of 700 million and 7,166 full time employees. Emphasis on core correctional operations, violence reduction, and performance management leadership to affect positive and sustainable system wide change.

##### **Director, Prisons Division 2011-2014**

Oversight over 15 institutions and contract relationships with jails and out of state institutions incarcerating approximately 18,000 offenders. Also responsible for providing emergency response and readiness oversight to all facilities and field offices of all divisions. Advanced multi-faceted violence reduction strategy to include the development and implementation of the "Operation Ceasefire" group violence reduction strategy for application in close custody units in prisons. Expanded Sustainability in Prisons Project programs to all prison facilities. Implemented classroom-setting congregant programming in intensive management units.

##### **Deputy Director, Prisons Division 2008-2011**

## Attachment 1

Administrator over 6 major facility prisons, multi-custody level for adult male offenders with a biennial budget of 290 million. Provided leadership and appointing authority decision making to six facility Superintendents. Through Great Recession implemented staffing reductions, offender movement alterations and cost savings initiatives while maintaining safety and security. Represented the Department in legal issues, labor relations, media, staff discipline hearings, union relations and bargaining. Oversaw statewide operations of Emergency Preparedness and Response, Intelligence & Investigations, Intensive Management Units, Offender Grievance Program, Offender Disciplinary Program, Food Service, Sustainability and Close Custody Operations. Implemented statewide system of security advisory councils and security forums to improve staff safety.

### **Monroe Correctional Complex Interim Superintendent 2008**

Led a 2,486-bed, multi-custody facility for adult male offenders.

### **Stafford Creek Corrections Center Superintendent 2007-2008**

Led a 2,000-bed, multi-custody facility for adult male offenders with a biennial budget of 39 million. Implemented Sustainability in Prisons Project initiatives to include large scale composting to include zero-waste garbage sorting. Initiated first dog training programs for male offenders.

### **Cedar Creek Corrections Center Superintendent 2003-2007**

Led a 400-bed, minimum-security adult male correctional facility, with a biennial budget of 7.3 million. Directed operational and related program activities to include security and custody programs, medical services, plant maintenance, education, and food service. Co-founded the Sustainability in Prisons Project with Nalini Nadkarni, PhD.

### **Monroe Correctional Complex Special Assignment Deputy Superintendent 2002**

Formulated new strategic direction in order to enhance operations and security at the Complex, which consists of four separate units and houses approximately 2,300 adult male felons. Managed unit operations and security. Supervised the Intelligence Investigative Unit and Offender Grievance System. Developed and implemented capital construction initiatives at the Special Offender Unit and the Washington Reformatory Unit to enhance security of these Units.

### **Headquarters Performance System Administrator 1999-2002**

Led the development and implementation shift from staff training department to an organizational performance system. Administered staff performance academies, supervised five regional teams, four Program Managers and provided leadership for policy development to support this department wide program. Administered the Department's Emergency Response Plan, Emergency Operations, Officer Safety Program and Firearms Training Unit.

### **Headquarters Emergency Response Manager 1995-1999**

Developed and implemented statewide emergency response system. Directed the development of departmental policy, emergency response team academies and

Attachment 1

response protocols. Managed emergencies and security events. Directed Critical Incident Review Teams in the post incident analysis of critical incidents department wide. Led development of security plans for the management of high-risk operations to include 400 offenders out of state, Y2K, and execution security.

**Clallam Bay Corrections Center**

**Correctional Captain 1989-1995**

Responsible for the security management of a maximum, close, and medium custody male facility. Oversaw facility mission changes including: close custody conversion; implementation of blind feeding; facility double bunking; opening of an intensive management unit; opening of first direct supervision unit; and developed the facility's Emergency Response Plan.

**Clallam Bay Corrections Center**

**Correctional Lieutenant 1986 -1989**

**Washington Corrections Center**

**Correctional Sergeant 1985-1986**

**McNeil Island Corrections Center**

**Correctional Officer 1982-1985**

**PUBLICATIONS**

Useem, Bert, Dan Pacholke, and Sandy Felkey Mullins. "Case Study–The Making of an Institutional Crisis: The Mass Release of Inmates by a Correctional Agency." *Journal of Contingencies and Crisis Management* (2016)

Pacholke, Dan (2016, July 27). Change is relative to where you begin. Vera Institute of Justice. Think Justice Blog. <https://www.vera.org/blog/addressing-the-overuse-of-segregation-in-u-s-prisons-and-jails/change-is-relative-to-where-you-begin>

Pacholke, Dan and Sandy Felkey Mullins. *More Than Emptying Beds: A Systems Approach to Segregation Reform*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2016. NCJ 249858.

Pacholke, D. (2014, March). Dan Pacholke: How prisons can help inmates lead meaningful lives [Video file]. Retrieved from [https://www.ted.com/talks/dan\\_pacholke\\_how\\_prisons\\_can\\_help\\_inmates\\_live\\_meaningful\\_lives?language=en](https://www.ted.com/talks/dan_pacholke_how_prisons_can_help_inmates_live_meaningful_lives?language=en)

Young, C., Dan Pacholke, Devon Schrum, and Philip Young. *Keeping Prisons Safe: Transforming the Corrections Workplace*. 2014.

Aubrey, D., LeRoy, C. J., Nadkarni, N., Pacholke, D. J., & Bush, K. Rearing endangered butterflies in prison: Incarcerated women as collaborating conservation partners. 2012.

**AWARDS**

Olympia Rotary Club, Environmental Protection Award, 2013

Governor's Distinguished Managers Award, 2012

Secretary of State, Extra Mile Award, 2007

Governor's Sustaining Leadership Award, 2003

## **CONSULTING**

Sustainability in Prisons Project, Co-Director  
2004-2015

Nebraska Department of Correctional Services  
2015

With Bert Useem, PhD, provided system assessment following May 2015 disturbance at Tecumseh State Correctional Institution in which two inmates were killed. Identified underlying causal factors and provided recommendations.

National Institute of Corrections  
1998 to 2002

Provided training and consultation services to state, territory and federal correctional systems. Responsible for delivering of training to include: Management of Security, Entry Level Supervision, Emergency Preparedness Assessment, Disturbance Management and Basic Security.

Defensive Technology Corporation  
Senior Instructor  
1995 to 1998

Provided tactical and specialty munitions training to correctional and law enforcement personnel throughout the U.S.

Security Auditing & Critical Incident Reviews  
Lead Auditor

Completed security audits and critical incident fact finding reviews in facilities throughout the Washington State Department of Corrections and two correctional jurisdictions in other states, one of which involved multi-jurisdictional entities.

## **EDUCATION:**

The Evergreen State College, BA, Olympia, Washington

## Career Highlights

- Reduced violence in Washington State prison system by over 30% while also reducing the number of people held in long-term administrative segregation by over 50%.
- Designed and implemented congregate group programming in the intensive management units (IMU's). The programs offered included evidence based programs and other complimentary offerings. Today all IMU's in Washington State prisons offer congregate programming.
- Designed and implemented the first prison Ceasefire model. This deterrence-based model reduced serious violent incidents (assault against staff, use of a weapon and multi on single man fights) by 50% and continues to be utilized in Washington State close custody (Level IV) prison to reduce serious violence.
- Co-authored a protocol for in-custody Swift, Certain and Fair sanctioning. This deterrence-based model offers a strategy for the reduction of low-level in-custody violations.
- Implemented the Correctional Officer Pre-Service training model at Clallam Bay Corrections Center. This 10-week program offered half-time course work and half-time OJT in order to certify newly hired correctional officers. This program was implemented state wide as the CORE Program, a six-week standardized training required of all staff that work in prisons.
- Served as a lead design team member on the creation and implementation of the Correctional Officer Achievement Program (COACH), a yearlong, on-the-job training program accredited by the WA State Board for Technical and Community Colleges.
- Led the design and development of a comprehensive agency-wide Emergency Response Plan and complimentary learning academies: Emergency Response Instructor (40 hrs.); Emergency Response Team (40 hrs.); Special Emergency Response Team (40 hrs.); Crisis Negotiator (40 hrs.); Joint Operations (24 hrs.); and the Designated Incident Management Team (multiple ICS certifications).
- Co-Authored, *Keeping Prisons Safe, Transforming the Corrections Workplace* and accompanying field guide which are used in CORE and Annual In-Service Training at WA DOC.
- Co-founder and past co-director of the Sustainability In Prisons Project; this program brings nature into prison and features science education. It is recognized internationally and features programs to restore endangered species e.g., Oregon Spotted Frog, Taylor Checker spot Butterfly, Indigenous Box Turtles and over fifty different rare and endangered native prairie plants. <http://sustainabilityinprisons.org>.
- Offered two TEDx events in prison. These events featured inmates, staff and volunteers as TEDx speakers.
- Implemented Dog retraining programs in all Washington State Prisons.

# COLUMBIA LEGAL SERVICES, INSTITUTIONS PROJECT

March 24, 2020 - 7:14 PM

## Transmittal Information

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**Appellate Court Case Number:** 98317-8  
**Appellate Court Case Title:** Shyanne Colvin et al. v. Jay Inslee et al.

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### Comments:

Declaration in Support of Petition for Mandamus

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Sender Name: Maureen Janega - Email: maureen.janega@columbialegal.org

**Filing on Behalf of:** Nicholas Brian Allen - Email: nick.allen@columbialegal.org (Alternate Email: nick.allen@columbialegal.org)

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