

EXPEDITE
 Hearing set for:
Date: Friday, April 23, 2021
Time: 9:00 a.m.
Judge/Calendar: Judge James Dixon

**SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY**

CANDIS RUSH, JUSTIN AUTREY,
GREGORY STEEN, THEODORE RHONE, and
MICHAEL LANIER, on behalf of themselves
and all others similarly situated,

Plaintiffs/Petitioners,

VS.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS, a state agency; STEPHEN SINCLAIR, Secretary of the Washington State Department of Corrections; WASHINGTON STATE DEPARTMENT OF HEALTH, a state agency; and DR. UMAIR SHAH, Secretary for the Washington State Department of Health;

Defendants/Respondents.

CLASS ACTION

No. 21-2-00491-34

DECLARATION OF DAN PACHOLKE

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

1 retiring as Secretary. In that time, I served as Chief of Emergency Operations; Superintendent of
2 three DOC facilities (Cedar Creek Corrections Center, Stafford Creek Corrections Center, and
3 Monroe Correctional Complex); Deputy Director of Prisons; and Deputy Secretary. In October
4 2015, Governor Inslee appointed me to serve as Secretary of Corrections, a position I held until
5 March 2016. I was one of the individuals responsible for the development and implementation of
6 DOC policies, practices, and procedures.

7 3. My experience also includes work as a consultant for the National Institute of
8 Corrections, a federal agency with a legislative mandate to provide specialized services to
9 corrections from a national perspective, and as a Senior Research Scholar with New York
10 University Maron Institute of Urban Management. Currently, I am a principal at Dan Pacholke
11 Consulting, LLC and frequently consult with and collaborate with correctional systems,
12 researchers, and policymakers on strategies to create safer correctional institutions. Attached as
13 Exhibit 1 is a copy of my curriculum vitae.

14 4. As a result of my many years of experience in corrections in Washington State, I
15 have extensive knowledge of DOC policies as well as with Washington laws relating to the
16 operations of prisons, including how and when DOC can exercise discretion to take immediate
17 affirmative actions to address issues impacting the health and safety of people in DOC custody
18 into account.

19 5. The COVID-19 virus continues to represent a serious and unprecedented risk to
20 the health and safety of people in DOC custody and staff, as well as the community in general.
21 This risk makes it imperative that DOC immediately take all steps necessary to prevent
22 continued transmission of the virus into and throughout DOC facilities.

1 6. Foremost among the steps that DOC should be taking to protect the health and
2 safety of people in DOC custody is to immediately make available COVID-19 vaccines to all
3 prisoners. Absent mass vaccination of the prison population, it will be nearly impossible to
4 reduce the risk of transmission of COVID-19 within the prisons and people in the prison will
5 continue to face the risk of serious illness or death from contracting the virus.¹ Prisons are highly
6 dense, congregate living environments, and are designed in a way that makes it extremely
7 difficult to implement the level of social distancing necessary to protect against spread of the
8 virus. The current COVID-19 data published by DOC bears this out. Despite efforts by DOC to
9 increase social distancing and establish policies such as a mask mandate, 6,189 DOC prisoners
10 have been infected with COVID-19 since the start of the pandemic and 14 of these people have
11 died.² That means approximately 40% of the prison population has tested positive for COVID-
12 19,³ which is approximately 8.5 times higher than the infection rate for COVID-19 in
13 Washington generally.⁴ In addition, the Washington DOC ranks in roughly the top 1/3 nationally
14 of total confirmed cases among prisoners.⁵

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17 ¹ See “Denied Vaccines, People Incarcerated in Alabama Prisons Are Dying of Covid,” Equal Justice Initiative
18 (March 24, 2021), available at <https://eji.org/news/denied-vaccines-people-in-alabama-prisons-are-dying-of-covid/>

19 ² Department of Corrections website, COVID-19 Data, available at <https://www.doc.wa.gov/corrections/covid-19/data.htm#confirmed>.

20 ³ Department of Corrections website, COVID-19 Comparative Jurisdictions, available at:
<https://www.doc.wa.gov/corrections/covid-19/data-comparative-jurisdictions.htm>

21 ⁴ See COVID-19 Data Dashboard, Washington State Department of Health,
<https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard> (last visited Mar. 28, 2021) (361,115 total case in
Washington); Total Population and Percent Change, Washington State Office of Financial Management,
<https://www.ofm.wa.gov/washington-data-research/statewide-data/washington-trends/population-changes/total-population-and-percent-change> (last visited Mar. 27, 2021) (According to OFM, the total population of Washington
State as of April 2020 is 7,656,200).

22 ⁵ *Id.*

1 7. DOC staff have also been significantly impacted by COVID-19. As of March 26,
2 2021, DOC reported 1,149 confirmed cases of COVID-19 among staff, with 2 deaths.⁶

3 8. Staff are the primary carriers of the virus into the prisons. However, staff vaccine
4 acceptance rates are generally very low, both nationally and in Washington.⁷ This, in my
5 experience, is not uncommon. Therefore, it is my opinion that efforts to address transmission of
6 COVID-19 within DOC by prioritizing and relying upon mass vaccination of staff will not be
7 effective at keeping COVID-19 out of the prisons and protecting the prison population.

8 9. In my opinion, vaccination of the entire prison population – to people who chose
9 to accept it – can be done efficiently once it is made available. DOC already offers and provides
10 annual flu vaccinations to the prison population; therefore, it already has the infrastructure and
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12 ⁶ *supra*, note 1.

13 ⁷ See Nicole Lewis of the Marshall Project and Michael R. Sisak of the Associated Press, “Hell No”: Correctional
14 Officers Are Declining The Coronavirus Vaccine En Masse, The Marshall Project, Mar. 15, 2021. Available at:
15 <https://www.themarshallproject.org/2021/03/15/hell-no-correctional-officers-are-declining-the-coronavirus-vaccine-en-masse>; Liz Collin, “Resistance To Getting COVID Vaccine Among MN Corrections Officers, CBS Minnesota,
16 Mar. 19, 2021 (recent statewide survey found that only half of Minnesota’s corrections officers want the vaccine),
available at: <https://minnesota.cbslocal.com/2021/03/19/resistance-to-getting-covid-vaccine-among-mn-corrections-officers/>; Patrick Smith, “Illinois Prisons Are COVID-19 Hotspots. So Why Have Only 27% Of Workers Taken the
Vaccine?” WBEZ Chicago, Mar. 26, 2021, available at: <https://www.wbez.org/stories/illinois-prisons-are-covid-19-hotspots-so-why-have-only-27-of-workers-taken-the-vaccine/406da0cd-dbe5-4851-a42f-73e2932b9e58>; Angie
17 Jackson, “One-third of Michigan prisoners are vaccinated, but staff numbers don’t tell the whole story,” Detroit Free
Press, Mar. 22, 2021 (only about 54% of Michigan Department of Corrections survey respondents said they would
likely take the vaccine), Available at: <https://www.freep.com/story/news/local/michigan/2021/03/20/michigan-prisoners-corrections-officers-vaccines-covid-19-coronavirus/4736483001/>; Matt Stout and Robert Weisman, “As
many workers resist COVID-19 vaccines, calls grow for state to make shots mandatory, Mar. 25, 2021 (more than
half of correctional officers in Massachusetts have refused state’s offer to get the COVID-19 vaccine at work),
available at: <https://www.bostonglobe.com/2021/03/25.metro/many-workers-resist-covid-19-vaccines-calls-grow-state-make-shots-mandatory/>; Nicole Ogrysko, “Lawmakers alarmed by high COVID-19 vaccine refusal rate at BOP
workforce,” Federal News Network, Mar. 22, 2021 (The Federal Bureau of Prisons has extended the COVID-19
vaccine to every employee, but just 49% of the workforce has accepted the offer), available at:
18 <https://federalnewsnetwork.com/workforce/2021/03/lawmakers-alarmed-by-high-covid-19-vaccine-refusal-rate-at-bop-workforce/>; Keaton Ross, “Vaccine Hesitancy Among Guards and Inmates Could Threaten State Prisons,”
Oklahoma Watch, Mar. 23, 2021 (About 2/3 of Oklahoma prison workers opted not to receive the COVID-19
vaccine from the state DOC); Hannah Critchfield, “Only 35% of NC prison staff willing to take vaccine,” North
Carolina Health News, Feb. 22, 2021, available at: <https://www.northcarolinahealthnews.org/2021/02/22/only-35-of-nc-prison-staff-willing-to-take-vaccine/>; Tess Riski, “State Officials Expect 45% of Oregon Prison Staff to
Refuse a COVID-19 Vaccine,” Willamette Week, Feb. 10, 2021.

1 policies in place to receive and timely administer mass vaccinations. These vaccinations are done
2 routinely through the sick call process or in the housing units. While the process for storing the
3 COVID-19 vaccine is unique in that deep cold storage is required, it is my understanding that
4 DOC has already offered the vaccine at most if not all prison facilities to staff and some high-
5 risk inmates. Therefore, DOC has identified a way to address this logistical issue, making
6 widespread timely administration of the COVID-19 vaccination possible.

7 10. DOC already has the infrastructure in place to receive, store, and timely
8 administer mass vaccinations. It already does so annually through the administration of the flu
9 vaccine.

10 11. In addition to the Department of Health (DOH) needing to make the vaccine
11 immediately available to the prison population to ensure their health and safety, DOC must also
12 take steps to ensure the prison population's health and safety by restricting or prohibiting
13 unvaccinated persons' contact with people in the prisons. With the introduction of COVID-19
14 vaccines, DOC can significantly decrease the likelihood that people who are infected, including
15 staff, will bring COVID-19 into the prisons. However, for this to happen, DOC will need to
16 implement agency-wide vaccine policies that restrict unvaccinated people from being in
17 proximity to the prison population. It is essential to adopt such policies because DOC, as a
18 correctional agency, has a duty to ensure the health and safety of a population that is unable to
19 leave or make alternative arrangements for their healthcare beyond what is provided by DOC.
20 Thus, DOC is required to provide a higher standard of care to the people in its custody than what
21 is owed to the general public.

22 12. There are several policies DOC could enact to help ensure that people who are at
23 a higher risk to spread COVID-19 within the prisons are limited or restricted from interacting

1 with people in the prison. For example, the Secretary of DOC could require that anyone planning
2 to enter a DOC facility, including correctional officers, administrators, health staff, and
3 volunteers, provide evidence of full vaccination to DOC as a condition of admission. Anyone
4 who failed to do so would not be permitted into a DOC facility. If necessary, adjustments could
5 be made to this policy so that it would only apply to people whose presence in the facilities
6 requires them to be in contact with the prison population.

7 13. The Secretary of DOC could also enact a policy that prohibits anyone who is
8 unvaccinated from being around people in prison who are medically fragile, either due to age or
9 other vulnerabilities, or both, and continue to develop protocols to ensure that unvaccinated
10 persons are not in contact with other populations identified as high-risk.

11 14. DOC also needs to develop appropriate vaccine education to staff so that
12 employees are making informed decisions. These education efforts should also inform
13 employees about the universal impact of vaccination, rather than just their impact within the
14 prison system. For instance, staff should be reminded that high staff and prisoner vaccination
15 rates will not only help serve as an effective safeguard against spread of COVID-19 among the
16 people who work and live in DOC facilities, but vaccinations will also reduce spread in
17 communities they return to from the prisons each day, which will result in protection of the
18 health and safety of their families and others they care for on the outside.

19 15. In addition, successful vaccination efforts will require that DOC provide
20 meaningful and appropriate vaccine education to the prison population. Oftentimes, people in the
21 prison are skeptical of any medical care provided by DOC and will refuse treatment, even when
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1 it is in their best interest to receive it.⁸ Therefore, appropriate vaccine education efforts need to
2 be developed for the prison population so that prisoners can make informed decisions about their
3 health care. As part of these efforts, it will not only be important that DOC bring in health care
4 experts and public health officials offices to provide accurate information about COVID-19 and
5 the vaccine to the prison population, but that the dissemination of that information is also done
6 through credible messengers, including trusted members of the prison population and outside
7 groups and individuals that are members of the different racial, ethnic, religious, and other
8 communities represented in the prisons, and family councils.

9 16. To effectuate this plan, DOC could bring into the prison either in person or via
10 video, health care experts, in tandem with local infectious disease nurses, to do “train the trainer”
11 sessions for staff on COVID-19 and the vaccine. DOC could then create vaccine teams that
12 would be paired with prisoner trainers to educate the broader prison population. When I was at
13 DOC, it used a similar model during the early days of HIV to educate people in prison about that
14 virus. These efforts could be done at reasonable cost to DOC.

15 17. DOC has never encountered a threat of this magnitude within its system – a
16 highly contagious and deadly airborne disease that thrives in congregate environments like
17 prisons. DOC facilities will remain a petri dish for spread and transmission of the virus unless it,
18 in coordination with the Department of Health, institute measures to make the vaccine

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20 8 See e.g., Eric Berger, “Inmate Distrust of Prison Healthcare Fuels Distrust of COVID Vaccines,” Kaiser Health
21 News (Mar. 25, 2021), available at <https://khn.org/news/article/inmates-distrust-of-prison-health-care-fuels-distrust-of-covid-vaccines/>; Christopher Blackwell, “Prisoners are highly skeptical of the COVID vaccines because of
22 decades of mistreatment. It’s up to the government to reassure them,” Business Insider, (Feb. 20, 2021) (Washington
23 state prisoner opinion piece), available at <https://www.businessinsider.com/prisoners-dont-trust-covid-19-vaccine-government-pandemic-corrections-2021-2>; Nicole Lewis, “How Prisoners Feel About Getting Vaccinated,” Slate
(Mar. 1, 2021) (noting widespread interest in the COVID-19 vaccine among people in prison, while expressing
distrust of the prison medical system), available at: <https://slate.com/news-and-politics/2021/03/prison-vaccines-survey.html>.

1 immediately available to the prison population and substantially or entirely restrict unvaccinated
2 people from having contact with the prison population.

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

5 DATED: March 28th, 2021 in Olympia, Washington.

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9 DAN PACHOLKE
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DAN PACHOLKE

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

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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

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.

Attachment 2

- Implemented Dog retraining programs in all Washington State Prisons.