

RECALL OF SNOHOMISH COUNTY SHERIFF, ADAM FORTNEY
STATEMENT OF CHARGES

With Supporting Declarations and Exhibits
Pursuant to RCW 29A.56.110, et seq.

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Snohomish County Auditor

Mr. Garth Fell
Snohomish County Auditor
3000 Rockefeller Avenue
Everett, WA 98201

RE: Filing of Statement of Charges for Recall of Adam Fortney, Snohomish County Sheriff

Dear Mr. Fell:

This letter and its attachments constitute the Statement of Charges in support of the Recall of Snohomish County Sheriff, Adam Fortney, pursuant to RCW 29A.56.110 and the Washington State Constitution, article I, sections 33 and 34. Sheriff Adam Fortney has committed acts of malfeasance and misfeasance while in office and has violated his oath of office. This Statement of Charges is verified under oath, states the acts complained of in concise language, gives a detailed description including the approximate date, location and nature of each act complained of, and is signed by the person(s) making the charge.

I. Duties of Snohomish County Sheriff Adam Fortney

Snohomish County is a political subdivision of the State of Washington, established under by the territorial government in 1865, and subsequently made one the original counties of the State of Washington pursuant to article XI, section 1 of the Washington State Constitution. Article XI, section 5 of the Washington State Constitution provides, in relevant part, that:

The legislature, by general and uniform laws, shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys, and other county, township or precinct and district officers, as public convenience may require, and shall prescribe their duties, and fix their terms of office.

RCW 36.28.010 prescribes the Sheriff's general duties:

The sheriff is the chief executive officer and conservator of the peace of the county. In the execution of his or her office, he or she and his or her deputies:

- (1) Shall arrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses;
- (2) Shall defend the county against those who, by riot or otherwise, endanger the public peace or safety;
- (3) Shall execute the process and orders of the courts of justice or judicial officers, when delivered for that purpose, according to law;
- (4) Shall execute all warrants delivered for that purpose by other public officers, according to the provisions of particular statutes;
- (5) Shall attend the sessions of the courts of record held within the county, and obey their lawful orders or directions; [and]
- (6) Shall keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county as they may deem necessary.

RCW 36.28.011 further prescribes the Sheriff's duty to "make complaint of all violations of the criminal law, which shall come to their knowledge, within their respective jurisdictions."

Moreover, RCW 36.28.020 states:

...Persons may also be deputed by the sheriff in writing to do particular acts; including the service of process in civil or criminal cases, and the sheriff shall be responsible on his or her official bond for their default or misconduct.

Adam Fortney was elected as Snohomish County Sheriff on November 5, 2019 with 98,568 votes – 55.38 percent of the 177,973 votes cast for the office.¹ On December 30, 2019, Sheriff Adam Fortney signed and executed his oath of office² which states as follows:

I, Adam Fortney, do solemnly swear (or affirm) that I will support the Constitution and Laws of the United States and the Constitution and Laws of the State of Washington and the provisions of the Charter and Ordinances of Snohomish County, and that I will faithfully and impartially discharge

¹ Snohomish County Elections Office, *Summary Report, Snohomish County, 2019 General, Nov 05, 2019* (Nov. 26, 2019), <https://www.snohomishcountywa.gov/DocumentCenter/View/68947/Summary-Report?bidId=>.

² Oath of Office attached as Exhibit 1.

the duties of the office of Snohomish County Sheriff for a 4-year term according to law to the best of my ability[.]

Adam Fortney commenced duties to the elected position of Snohomish County Sheriff on January 1, 2020.

II. Summary of Charges

Since commencing the duties as sheriff of Snohomish County, Adam Fortney has (1) endangered the peace and safety of the community; (2) failed to defend the county against individuals who endanger the peace and safety of the community; (3) interfered with and obstructed lawful government orders; (4) failed to conduct adequate investigations; and (4) otherwise violated his duties as proscribed by RCW 36.28.010(1), (2) and (6) and RCW 36.28.011.

All the acts committed by Snohomish County Sheriff, Adam Fortney, summarized above and further described below, were performed wrongfully, knowingly, and with intent and constitute malfeasance, misfeasance, and/or a violation of his oath of office.

III. Factual and Legal Sufficiency for Recall of Sheriff Adam Fortney

A. Constitutional Right to Recall

Article 5 of the Snohomish County Charter is entitled “The Powers Reserved by the People.” Section 5.90 is entitled “The Recall” and provides, “The fourth power reserved for the people is the recall as provided in the constitution and the laws of the state of Washington.”

The right to recall elected officials is a fundamental right of the people guaranteed by article I, sections 33 and 34 (amend. 8) of the Washington State Constitution. *Chandler v. Otto*, 103 Wn.2d 268, 270 (1984). Section 33 contains the substantive right of recall and provides “[e]very elective public officer of the State of Washington . . . is subject to recall and discharge by the legal voters of the state. . . .” Section 34 permits the Legislature to “pass the necessary laws” to carry out section 33 “and to facilitate its operation and effect without delay.” Pursuant to this authority, the Legislature adopted Chapter 29.82 RCW, which was enacted “to provide the substantive criteria and procedural framework for the recall process.” *Matter of Pearsall-Stipek*, 136 Wn.2d 255, 262-63, 961 P.2d 343, 347 (1998). RCW 29.82 has since been re-codified as RCW 29A.56. Recall statutes are construed in favor of the voter, not the elected official. *In re Recall of Washam*, 171 Wn.2d 503, 510 (2011).

Elected officials in Washington may be recalled for malfeasance, misfeasance, or violating their oath of office. Const. art. I, § 33; “Courts act as a gateway to ensure that only charges that are factually and legally sufficient are placed before the voters, but [they] do not evaluate the truthfulness of those charges.” *Washam*, 171 Wn.2d at 510 (citing RCW 29A.56.140).

B. The Requirement of Factual Sufficiency

Charges are factually sufficient if “taken as a whole they do state sufficient facts to identify to the electors and to the official being recalled acts or failure to act which without justification would constitute a prima facie showing of misfeasance, malfeasance, or violation of oath of office.” *Chandler*, 103 Wn.2d at 274. “Voters may draw reasonable inference from the facts; the fact that conclusions have been drawn by the petitioner is not fatal to the sufficiency of the allegations.” *In re Recall of West*, 155 Wn.2d 659, 665 (2005).

“A charge is factually sufficient if the facts establish a prima facie case of misfeasance, malfeasance, or violation of the oath of office and are stated in concise language and provide a detailed description in order to enable the electorate and a challenged official to make informed decisions.” *In re Recall of Telford*, 166 Wn.2d 148, 154 (2009) (internal citations omitted, emphasis in original). “In this context, ‘prima facie’ means that, accepting the allegations as true, the charge on its face supports the conclusion that the official committed misfeasance, malfeasance, or violations of the oath of office.” *In re Recall of Wade*, 115 Wn.2d 544, 548 (1990).

RCW 29A.56.110 requires that “the person . . . making the charge . . . have knowledge of the alleged facts upon which the stated grounds for recall are based.” There is no requirement that the petitioner have firsthand knowledge of such facts. Rather he or she must have some knowledge of the facts underlying the charges. *In re Recall of Wasson*, 149 Wn.2d 787, 791 (2003); *In re Recall of Ackerson*, 143 Wn.2d 366, 372 (2001). When the charge is violation of law, the Supreme Court has repeated that the petitioner must have knowledge of facts indicating that the official intended to commit an unlawful act. *Pearsall Stipek*, 136 Wn.2d at 263. The courts may use supplemental materials to determine whether there is a factual basis for the charge. *West*, 155 Wn.2d at 665-66.

C. The Requirement of Legal Sufficiency

Charges must allege substantial conduct amounting to misfeasance, malfeasance, or violation of the oath of office to be legally sufficient. *Washam*, 171 Wn.2d at 514-15. This protects officials from being recalled for simply exercising discretion granted to him or her by law. *Chandler*, 103 Wn.2d at 274. “Officials may not be recalled for their discretionary acts absent manifest abuse of discretion.” *Id.* at 515.

The definition of misfeasance, malfeasance and violations of oath of office are set forth in RCW 29A.56.110, as follows:

For the purposes of this chapter:

- (1) “Misfeasance” or “malfeasance” in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;

(a) Additionally, “misfeasance” in office means the performance of a duty in an improper manner; and

(b) Additionally, “malfeasance” in office means the commission of an unlawful act;

(2) “Violation of the oath of Office” means the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law.

IV. Acts and Omissions Constituting the Statement of Charges

The acts and omissions of Adam Fortney as Snohomish County Sheriff for which this Statement of Charges is brought are divided into the following general factual categories. Together, these charges amount to an indictment against Snohomish County Sheriff, Adam Fortney, that he has conducted himself, while in office, in a manner that constitutes misfeasance, malfeasance and a violation of his oath of office. The charges are summarized as follows:

- A. Adam Fortney endangered the peace and safety of the community and violated his statutory duties under RCW 36.28.010 and RCW 36.28.011 when he refused to enforce Governor Inslee’s lawful “Stay Home – Stay Healthy” order;
- B. Adam Fortney endangered the peace and safety of the community and violated his statutory duties under RCW 36.28.010 and RCW 36.28.011 when he incited members of the public to violate Governor Inslee’s lawful “Stay Home – Stay Healthy” order;
- C. Adam Fortney endangered the peace and safety of the community and violated his statutory duties under RCW 36.28.010 by failing to institute adequate policies and safety measures for the Snohomish County Jail during a public health emergency;
- D. Adam Fortney endangered the peace and safety of the community and violated his statutory duties under RCW 36.28.010 when he rehired deputy sheriffs previously discharged following investigation into their acts of misconduct; and
- E. Adam Fortney violated his statutory duties under RCW 36.28.011 and RCW 36.28.020 when he failed to investigate a deputy sheriff who tackled and injured a black female medical assistant for jaywalking.

V. Substance of Acts and Omissions Constituting the Statement of Charges

- A. Adam Fortney endangered the peace and safety of the community and violated his statutory duties under RCW 36.28.010 and RCW 36.28.011 when

he refused to enforce Governor Inslee's lawful "Stay Home – Stay Healthy" Order.

On February 29, 2020, Governor Jay Inslee issued Proclamation 20-25, which declared a State of Emergency for the State of Washington due to the spread of the deadly and highly contagious coronavirus. There is currently no vaccine for the coronavirus, which causes a respiratory illness called COVID-19.³ Governor Inslee then issued a "stay at home" order for the State of Washington wherein people may only leave their homes to participate in an essential activity or employment in providing essential business services.⁴ Violation of Proclamation 20-25 is punishable under RCW 43.06.220(5) as a gross misdemeanor.

Shortly following the entry of Proclamation 20-25, Sheriff Fortney posted a message on the public Snohomish County Sheriff's Office Facebook page stating, "I have no intention of carrying out enforcement for a stay-at-home directive."⁵ On April 21, 2020, Sheriff Fortney posted on the Snohomish County Sheriff Adam Fortney public Facebook page that Proclamation 20-25 is unconstitutional and would not be enforced.⁶ Sheriff Fortney participated in a recorded press conference the next day that was posted to the Snohomish County Sheriff's Office Facebook page in which he repeatedly reiterated his commitment to not enforcing proclamation 20-25.⁷

Sheriff Fortney refused to enforce a lawful order. The governor's authority to issue this proclamation is well-established under Washington law. RCW 43.06.010(12) authorizes the governor to declare a state of emergency after finding that a public disaster exists within the state that affects life, health, property, or the public peace. Once the governor declares a state of emergency, RCW 43.06.220 empowers the governor to issue orders prohibiting certain activities to help preserve and maintain life, health, property, or the public peace. These powers, and executive action taken therein, have been upheld by our Supreme Court. *Cougar Bus. Owners Ass'n v. State*, 97 Wn.2d 466, (1982), abrogated on other grounds by *Yim v. City of Seattle*, 194 Wn.2d 682 (2019).

Likewise, the restrictions imposed by the Stay Home – Stay Healthy ("SHSH") Order have been upheld by the United States Supreme Court repeatedly for more than 100 years. The Court upheld a public health statute regarding compulsory vaccination in the face of the "epidemics of disease." *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). Three

³ CDC, *What you need to know about coronavirus disease 2019 (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>.

⁴ *Proclamation by the Governor Amending Proclamation 20-05*, March 23, 2020, available at: <https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf>.

⁵ March 23, 2020 statement by Adam Fortney posted on verified Snohomish County Sheriff Adam Fortney Public Facebook page attached as Exhibit 2.

⁶ April 21, 2020 statement by Adam Fortney posted on verified Snohomish County Sheriff Adam Fortney Public Facebook page attached as Exhibit 3.

⁷ April 23, 2020 press conference which can be found at <https://www.facebook.com/SnoCoSheriff/videos/2720739621493414/>

years prior, the Court made clear that the several states maintain authority to protect the safety of its citizens through quarantine.

That from an early day the power of the states to enact and enforce quarantine laws for the safety and the protection of the health of their inhabitants has been recognized by Congress, is beyond question. That until Congress has exercised its power on the subject, such state quarantine laws and state laws for the purpose of preventing, eradicating, or controlling the spread of contagious or infectious diseases, are not repugnant to the Constitution of the United States, although their operation affects interstate or foreign commerce, is not an open question.

Compagnie Francaise de Navigation a Vapeur v. Bd. of Health of State of Louisiana, 186 U.S. 380, 387 (1902).

Accordingly, the SHSH Order is the law of the State of Washington, promulgated duly within the Governor's authority, and consistent with both the State and Federal Constitutions. Governor Inslee issued the SHSH Order to address the COVID-19 pandemic. The order is well within the Governor's emergency police powers under RCW 46.06.220. As such, Sheriff Fortney is required by law and his oath of office to enforce the order, this issue is not one of discretion.

Sheriff Fortney's blatant and unapologetic refusal to enforce a lawful order endangers the peace and safety of Snohomish County. Governor Inslee issued Proclamation 20-25 to limit the spread of this deadly virus. Without a vaccine or adequate testing, public health officials across the country have explained that the only way to limit the spread of the coronavirus is to engage in social distancing measures, including self-isolation and actual quarantine.⁸ To date, Snohomish County has had 2,509 confirmed cases of COVID-19 and 109 deaths as a result.⁹ Snohomish County also borders King County, which has 6,449 confirmed cases and 459 deaths. With over 145,000 Snohomish County residents commuting to King County for work,¹⁰ Sheriff Fortney's refusal to enforce Proclamation 20-25 prevents the only effective means of limiting the spread of the virus and thereby increases the risk that Snohomish County residents will contract the virus and suffer severe health complications.

Sheriff Fortney refused to enforce Proclamation 20-25 in violation of his statutory duties. RCW 36.28.010 charges an elected sheriff with the duty to arrest and commit to prison those persons guilty of public offenses, who break the peace, or who gather unlawfully. Likewise, RCW 36.28.011 places a duty upon an elected sheriff to make complaints of all violations of criminal law that come to their knowledge within their

⁸ *What is 'flatten the curve'? The chart that shows how critical it is for everyone to fight coronavirus spread*, NBCNews, March 11, 2020, available at: <https://www.nbcnews.com/science/science-news/what-flatten-curve-chart-shows-how-critical-it-everyone-fight-n1155636>.

⁹ Washington Department of Health, *2019 Novel Coronavirus Outbreak (COVID-19)*, <https://www.doh.wa.gov/Emergencies/Coronavirus> (last updated May 13, 2020).

¹⁰ Puget Sound Regional Council, *Where the region's workers live* (March 1, 2019), <https://www.psrc.org/whats-happening/blog/where-regions-workers-live>.

jurisdiction. Failure of a sheriff to carry out his duties under RCW 36.28.011 constitutes willful neglect. *See State v. Twitchell*, 61 Wn.2d 403, 408 (1963) (holding that the statute places a mandatory non-discretionary duty on the sheriff to make a complaint of any known violation of criminal law). Contrary to well-settled Washington precedent, Sheriff Fortney has determined his own opinion on the constitutionality of a particular law shall control whether he will enforce it.

As he noted in his Facebook post, “[a]long with other elected Sheriffs around our state, the Snohomish County Sheriff’s Office will not be enforcing an order preventing religious freedoms or constitutional rights.” Even if the sheriff were permitted to decide which laws will and will not be enforced, his general refusal to enforce the SHSH Order extends beyond those acts which could be construed as “religious freedoms” or “constitutional rights.” Sheriff Fortney has stated that the SHSH Order intrudes on the business owners of Snohomish County’s ability to exercise their rights to life, liberty, and the pursuit of happiness and that he will protect constitutional rights. Not only is the SHSH Order lawful under the Revised Code of Washington, generally, but the regulation, limitation, or restraint of business within the state is provided for within the state constitution itself. *See Const. art. XII, § 1.*

Moreover, Sheriff Fortney’s refusal violates his Oath of Office. Sheriff Fortney swore and signed an Oath of Office to support the laws and constitution of the state of Washington. He is willfully violating the law and his oath by repeatedly and unequivocally stating his refusal to enforce the SHSH Order, and is actively inciting and allowing business owners to violate the order.¹¹ A barber in Snohomish opened his shop, “The Stag Barbershop” in late April 2020, specifically citing to Sheriff Fortney’s statement that the order is unconstitutional and that it would not be enforced.¹² The shop is not practicing social distancing and is not taking precautionary measures through use of PPE. A photo taken on or around May 1, 2020 shows a line of roughly 15 people outside the shop waiting for haircuts.¹³ This is a direct result of Sheriff Fortney’s incitement and refusal to enforce the SHSH Order.

Sheriff Fortney’s refusal to enforce Proclamation 20-25 is not only a violation of his oath and statutory duties, but it endangers the health, peace, and safety of citizens of Snohomish County. While the Sheriff enjoys appropriate discretion in enforcing the laws, by the terms and bounds set by our political branches, he is not entitled to usurp the judicial function, declare a law unconstitutional, and refuse to enforce it.

- B. Adam Fortney endangered the peace and safety of the community and violated his statutory duties under RCW 36.28.010 and RCW 36.28.011 when he incited members of the public to violate Governor Inslee’s lawful “Stay Home – Stay Healthy” order.

¹¹ Eric Wilkinson, *Snohomish barber openly defies Washington’s stay-home orders*, King 5 News (May 1, 2020), <https://www.king5.com/article/news/health/coronavirus/snohomish-barber-openly-defies-washingtons-stay-home-orders/281-61bada1a-109d-47bf-867d-ad24a0b5b59d>.

¹² *Id.*

¹³ Photo of Stag Barbershop attached as Exhibit 4.

In a statement released on May 4, 2020, Sheriff Fortney claimed that he “never encouraged defiance of the law,” stating that, rather, he has only encouraged business owners to exercise their rights under the law and contact their elected officials. However, Sheriff Fortney has gone beyond merely declining to enforce Governor Inslee’s order and his public statements made on his official “Snohomish County Sheriff Adam Fortney” Facebook page, and in subsequent media appearances, were designed to, and in fact did, incite members of the public to willfully violate the SHSH Order. Understanding there would be no criminal legal repercussions, business owners in Snohomish County have openly disregarded and defied the SHSH Order. A review of Sheriff Fortney’s own statement is sufficient to establish that reasonable law enforcement officials would believe the Sheriff’s Fortney’s comments would lead to a public’s response that could rightfully be described as a rallying cry of rebellion. On April 21, 2020, Sheriff Fortney posted the following on the Snohomish County Sheriff Adam Fortney public Facebook page:

Snohomish County Residents and Business Owners,

I just watched the Governor’s speech to Washingtonian’s regarding our approach to getting Washington back in business and I am left to wonder if he even has a plan? To be quite honest I wasn’t even sure what he was trying to say half of the time. He has no plan. He has no details. This simply is not good enough in times when we have taken such drastic measures as the suspension of constitutional rights. I wrote most of this about two weeks ago but I decided to wait out of respect for the Governor and my own misguided hope that each day he did a press conference he would say something with some specificity on getting Washington back to work. After what I witnessed tonight I can no longer stay silent as I’m not even sure he knows what he is doing or knows what struggles Washingtonian’s face right now.

...

If this Coronavirus is so lethal and we have shut down our roaring economy to save lives, then it should be all or nothing. The government should not be picking winners or losers when it comes to being able to make an income for your family. If the virus is so lethal it shouldn’t matter whether you are building a school for the government, building a new housing development, restaurant owner, or you happen to be an independent contractor. To the contrary, if the virus is proving to not be as lethal as we thought, maybe it’s time for a balanced and reasonable approach to safely get our economy moving again and allowing small businesses to once again provide an income for their families and save their businesses. This is what I hoped for from the Governor tonight but he is not prepared or ready to make these decisions. If we are going to allow government contractors and pot shops to continue to make a living for their families, then it is time to open up this freedom for other small business owners who are comfortable operating in the current climate. This is the great thing about freedom. If you are worried about getting sick you have the freedom to choose to stay home. If you need

to make a living for your family and are comfortable doing so, you should have the freedom to do so.

As I have previously stated, I have not carried out any enforcement for the current a stay-at-home order. As this order has continued on for well over a month now and a majority of our residents cannot return to work to provide for their families, I have received a lot of outreach from concerned members of our community asking if Governor Inslee's order is a violation of our constitutional rights.

As your Snohomish County Sheriff, yes I believe that preventing business owners to operate their businesses and provide for their families intrudes on our right to life, liberty and the pursuit of happiness. I am greatly concerned for our small business owners and single-income families who have lost their primary source of income needed for survival.

As your elected Sheriff I will always put your constitutional rights above politics or popular opinion. We have the right to peaceably assemble. We have the right to keep and bear arms. We have the right to attend church service of any denomination. The impacts of COVID 19 no longer warrant the suspension of our constitutional rights.

Along with other elected Sheriffs around our state, the Snohomish County Sheriff's Office will not be enforcing an order preventing religious freedoms or constitutional rights.

. . . This is not a time to blindly follow, this is a time to lead the way.

Sheriff Adam Fortney

On April 22, 2020 Sheriff Fortney participated in a press conference that was recorded and posted to the Snohomish County Sheriff's Office public Facebook page in which he continuously reiterates his commitment to not enforcing the SHSH Order throughout the roughly 30 minute long event. Consistent with his Facebook post and other public statements, Sheriff Fortney, and the office he runs, have in fact allowed business owners to violate the order, such as the owner of the Stag Barbershop.

Fortney has urged the public to violate the SHSH Order, risking the health and safety of Snohomish County's citizens. The petitioners echo the words of Snohomish County Prosecutor Adam Cornell when he wrote, on April 28, 2020, he believed that:

[Fortney's] Facebook post of April 21, 2020, can reasonably be read as a call to defy public health officials and a declaration that Governor Inslee's Stay At Home order is unconstitutional. It can also be read as a pronouncement that the medical science and current statistical modeling relied upon by the Governor, and others, is flawed and not to be trusted; that

citizens – particularly those who look to [Fortney] for guidance as our County’s chief law enforcement officer – have [his] permission to disregard orders that intrude on their rights to life, liberty, the pursuit of happiness, the exercise of religious freedom, or other constitutional entitlements, on the promise that [he] will not enforce any violation of those orders. By directly or indirectly encouraging people to disobey data-driven, science-based lawful orders handed down expressly to limit the spread of COVID-19 and to protect our health and well-being during this pandemic emergency, [his] statement is fairly construed to support behavior that puts all citizens at greater risk of harm and death. Put simply, [his] words were akin to yelling ‘fire’ in a crowded theater.¹⁴

Sheriff Fortney is prescribing active rebellion against a legitimate public health order and, in doing so, has abdicated his right to hold the office of Snohomish County Sheriff. His comments are not only gross violations of his oath and statutory duties, but they endanger the health, peace, and safety of the public during a pandemic.

C. Adam Fortney endangered the peace and safety of the community and violated his statutory duties under RCW 36.28.010 by failing to institute adequate policies and safety measures for the Snohomish County Jail during a public health emergency

The Snohomish County Sheriff is responsible for overseeing the Snohomish County Corrections Bureau, which is in charge of “all adult correctional institutions and programs of the county.” SCC 2.15.010-.030. There is one adult correctional institution run by the County, the Snohomish County Jail (“the Jail”).¹⁵ “Washington courts have long recognized a jailer’s special relationship with inmates, particularly the duty to ensure health, welfare, and safety.” *Gregoire v. City of Oak Harbor*, 170 Wn.2d 628, 635 (2010). A sheriff running a county jail owes the direct duty to a prisoner in his custody to keep him in health and free from harm. *Kusah v. McCorkle*, 100 Wn. 318, 325 (1918). Standards of operation are required for all county-run jails and those standards “shall be the minimums necessary to meet federal and state constitutional requirements relating to health, safety, and welfare of inmates and staff, and specific state and federal statutory requirements, and to provide for the public’s health, safety, and welfare.” RCW 70.48.071.

Sheriff Fortney’s leadership of the Jail has been called into question during the COVID-19 Pandemic. While some booking restrictions were imposed in March 2020 in an attempt to limit the exposure through booking traffic, the Jail continued to book non-violent offenders contributing to high “jail churn” and failed to implement proper health procedures. The booking restrictions were lifted in mid-April in an effort to increase the inmate population.

i. *Adam Fortney promulgated COVID-19 protocols in the Jail that exacerbated the crisis and endangered the community.*

¹⁴ Prosecutor Adam Cornell’s letter to Sheriff Fortney is attached as Exhibit 5.

¹⁵ <https://snohomishcountywa.gov/178/Corrections>

While the criminal defense bar was able to draft and argue hundreds of bail review motions working with Snohomish County Prosecutor's Office to drastically reduce the Jail population, Sheriff Fortney's administration fostered policies resulting in high jail churn, failed to follow policies it claimed were in effect, and ignored simple and effective directives from Public health officials. On top of these failures, Sheriff Fortney lifted what limited booking restrictions that had been in place on April 21, 2020 with the express purpose of increasing the jail population while the pandemic raged on.¹⁶

Congregate environments like cruise ships and long-term care facilities have become epicenter of the several outbreaks of COVID-19.¹⁷ Like nursing homes and cruise ships, correctional facilities are also congregate environments, where residents live, eat, and sleep in close contact with one another. Consequently, infectious diseases are more likely to spread rapidly between individuals in this environment.¹⁸ This is particularly true for airborne diseases, such as COVID-19, which makes this virus particularly dangerous in a correctional facility.¹⁹

(1) Adam Fortney's policies created constant jail churn during the COVID-19 pandemic.

Despite the relatively low number of jail beds that were being utilized on any given night in March and April, the jail continued to receive and release a high number of individuals from the community whose exposure to the virus, and infection status, is virtually unknown beyond self-reporting of inmates. For example, during the two-week period of April 2 through April 16, 344 new inmates were booked into the Snohomish County Jail.²⁰ Of those 344, only 39 remained in custody on April 20th.²¹ The remaining 305 individuals were released back into the community.²² For many of these individuals, the risk of exposure due to being booked into the Jail was unnecessary as the Snohomish County Prosecutor had imposed a temporary policy designed to minimize the inmate population and many individuals who were booked into the Jail were released at their very next hearing. In fact, a not insignificant number of inmates were released on agreed orders before ever even being seen by a judge.

This particular needless risk of exposure is mandated by the Sheriff's booking policies during the pandemic. Knowing the Prosecuting Attorney's Office would agree to release of nearly all inmates accused of nonviolent offenses, Sheriff Fortney continued to instruct his deputies to arrest and hold those accused of nonviolent offenses, such as minor

¹⁶ Sheriff Fortney's memorandum re: lifting booking restrictions is attached as Exhibit 6.

¹⁷ Ana Sandoiu, *COVID-19 Quarantine of Cruise Ship May Have Led to More Infections*, Medical News Today (Mar. 3, 2020).

¹⁸ Anne C. Spaulding, *Coronavirus and the Correctional Facility*, Emory Center for the Health of Incarcerated Persons, Emory Rollins School of Public Health, 17 (Mar. 9, 2020).

¹⁹ *Id.*

²⁰ The Jail's self-reported booking/release data is attached as Exhibit 7.

²¹ *Id.*

²² *Id.*

drug possession.²³ For instances where an agreed order on release could not be presented to the court in advance of the hearing, some inmates were required to wait in jail anywhere from 24 to 48 hours, or more, after arrest. One of the confirmed positive cases of COVID-19 came from a man arrested on a warrant for failure to pay court fines stemming from a judgement issued in 2000.²⁴ That man was released 24 hours later after encountering an indeterminate number of staff and inmates.²⁵

It was proposed that the sheriff refuse to book anyone into the jail on warrants issued for failure to pay court fines, but Sheriff Fortney's administration rejected that proposal. At the time of the proposal, it is estimated that there was one new inmate per day who was booked on a "failure to pay" warrant.

The velocity of jail churn accelerated on April 21 when Sheriff Fortney lifted temporary booking restrictions and ordered his deputies to also bring those accused of simple misdemeanor offenses into the jail. With the number of daily releases down and the number of people booked going up, this decision increased the overall jail population starting in late April.²⁶ Sheriff Fortney did this with the express purpose of increasing the inmate population, claiming the jail was ready for the increase.²⁷

(2) Basic public health guidelines were not implemented or enforced in the jail.

Within the medically vulnerable inmate module at the Jail, social distancing was not implemented or enforced, and inmates were not provided appropriate person protective equipment ("PPE"). Inmates housed in the medically vulnerable inmate module have been held in solitary cells, permitted to leave their cells, and congregate in the common area in small groups without PPE and without social distancing protocols being enforced. Despite CDC guidelines inmates were not provided with PPE even if medically vulnerable. Some inmate workers were sporadically supplied with masks and gloves.

Perhaps the most alarming report coming from the Jail is that asthmatic inmates have been required to share inhalers, something that has happened both in the general population and within modules of medically vulnerable inmates. The inhaler is stored in a drawer within the module at the jail and there appears to be no sanitation protocol or system in place to keep distance between the mouthpieces to avoid cross-contamination. Reports of shared inhalers are coming from completely independent areas of the jail.

Additionally, high risk inmates continue to be incarcerated in conditions that do not comply with public health recommendations. Despite the reduced jail population, numerous medically vulnerable people are still among those incarcerated at the Snohomish County Jail. As of May 8, 2020, the jail identified 15 individuals as 'vulnerable.'

²³ The Prosecutor's memorandum re: temporary release standards is attached as Exhibit 8.

²⁴ Chief Kane's daily update and vulnerable inmate email is attached as Exhibit 9.

²⁵ *Id.*

²⁶ Exhibit 7.

²⁷ <https://www.heraldnet.com/news/snohomish-county-sheriff-ready-to-increase-jail-population/>

Unfortunately, the number of inmates that fall into a high-risk category is much larger. The jail has produced criteria to be used to determine whether an inmate is medically vulnerable to COVID-19. In order to be placed on the Jail's "vulnerable inmate list," one must either be: (1) 65 years or older, or (2) have a serious underlying medical condition like heart disease, diabetes, or lung disease.²⁸ This list does not include for example, people under 65 with asthma or hypertension. Inmates with a history of high blood pressure, hypertension, seizures, and other medical symptoms resulting in greater susceptibility to the negative effects of the virus are not listed as vulnerable under the Jail's criteria.

Sheriff Fortney has failed to adopt standards that provide for the public's health, safety, and welfare. Additionally, he has breached his duty of care to the inmates of the Snohomish County Jail. These actions amount to misfeasance, malfeasance, and violation of oath of office, as proscribed by RCW 29A.56.110.

D. Adam Fortney endangered the peace and safety of the community and violated his statutory duties under RCW 36.28.010 when he rehired deputy sheriffs previously discharged following investigation into their acts of misconduct.

- i. *The reinstatement of Deputy Art Wallin after Deputy Wallin was terminated by former Snohomish County Sheriff Ty Trenary was an act of misfeasance.*

Deputy Art Wallin was discharged from the Snohomish County Sheriff's Office after an internal investigation found he had violated Snohomish County Sheriff's Office policy by initiating a vehicle pursuit that culminated in the deputy shooting and killing Nickolas Michael Peters in October 2018. Deputy Wallin engaged in a vehicle pursuit of Mr. Peters after attempting a traffic stop for reckless driving and he, along with other law enforcement officers, eventually were able to stop the vehicle. After the vehicle was stopped, Deputy Wallin stood at the passenger side of Mr. Peters' vehicle while another deputy climbed onto the hood. Deputy Wallin then opened fire and shot Mr. Peters to death.

Former Snohomish County Sheriff Ty Trenary had an investigation conducted into the use of deadly force in the incident. This investigation concluded that Deputy Wallin's shooting of Mr. Peters was an unnecessary and unjustified use of deadly force. Deputy Wallin was fired from the Sheriff's Office in October 2019. Sheriff Fortney was a sergeant with the Sheriff's Office and was Deputy Wallin's supervisor at the time of the pursuit. Then-Sergeant Fortney was reprimanded for not taking action to call off the pursuit of Mr. Peters, even though it was against departmental policy.

In January 2020, Sheriff Fortney reinstated Deputy Wallin into his old position, with full backpay for the time during which he had been terminated. Despite the result of a year-long investigation into Deputy Wallin's actions, the findings of that investigation, and the settlement paid by the County, Sheriff Fortney described the termination as an error. Snohomish County paid a \$1 million settlement to the family of Mr. Peters in a federal lawsuit filed as a result of the killing. The reinstatement of Deputy Wallin displays

²⁸ Snohomish County Sheriff Office, Vulnerable Inmate Criteria attached as Exhibit 10.

poor judgment, reckless decision making, and a complete lack of accountability within Sheriff Fortney's department.

- ii. *The reinstatement of Deputies Evan Twedt and Matthew Boice after each was terminated following misconduct investigations was an act of misfeasance.*

On November 1, 2019 Deputy Evan Twedt and Deputy Matthew Boice were fired from the Snohomish County Sheriff's Office after an internal investigation found each to have violated departmental policy, knowingly conducted an illegal search, and engaged in dishonesty and untruthfulness. These findings were made following an internal investigation. Despite the results of the investigation, Sheriff Fortney has stated the terminations were political in nature and reinstated both deputies in January 2020.

The search violated the constitutional rights of the vehicle owner by being warrantless and conducted without the consent of the driver. (cite to termination letter). Along with its unconstitutional nature, the search was determined to be contrary to departmental policy. Deputy Twedt wrote narratives regarding the arrest of this suspect, but at no point did he disclose or mention the warrantless search. A search warrant was submitted to a Judge requesting permission to search the car, again without mention of the prior warrantless search. After investigation, Sheriff Trenary found that the lack of mention in any reports showed an intention to be dishonest and cover up an illegal warrantless search.

Deputy Boice was also at the scene during the illegal vehicle search. He also wrote narratives detailing the events of this stop and failed to mention his observation of the warrantless search, or that anything had been found in the vehicle based on that undisclosed search. Notably, Deputy Boice was a "Field Training Officer" at the time of this incident, meaning he was responsible for supervising and teaching new law enforcement officers how to properly do their jobs and provide feedback and supervision to new hires. During the investigation into this incident, some of Deputy Boice's former trainees were interviewed. Two indicated they received instruction from Deputy Boice to conduct warrantless searches of vehicles being towed pending a search warrant in violation of department policy and the constitutional rights.

The reinstatement of deputies having been found to have engaged in unlawful searches of property and dishonesty to cover up their unlawful behavior presents a serious disregard for the constitutional rights of the citizens of Snohomish County. Sheriff Fortney's decision to reinstate Deputy Twedt and Deputy Boice diminishes public trust in law enforcement and places a shadow on the Snohomish County Sheriff's Office and amounts to nothing more than cronyism. These actions were an improper performance of Sheriff Fortney's official duties, a misfeasance pursuant to RCW 29A.56.110.

- E. Adam Fortney violated his statutory duties under RCW 36.28.011 and RCW 36.28.020 when failed to investigate a deputy sheriff who tackled and injured a black female medical assistant for jaywalking.

On March 21, 2020, Sharon Wilson, a black, female medical assistant, was tackled and injured by a white, male Snohomish County Sheriff's deputy for allegedly jaywalking. Sheriff Fortney cleared the deputy involved of all wrongdoing within 24 hours of the incident becoming public. As a result, Sheriff Fortney performed his duty in an improper manner and neglected or knowingly failed to perform faithfully a duty imposed by law. Sheriff Fortney's duty to properly investigate allegations of misconduct by his deputies arises by statute, the constitution, and the Snohomish County Sheriff's Office written policies.

The Washington Constitution delegated authority to the legislature to determine the duties of county sheriffs:

The legislature, by general and uniform laws, shall provide for the election in the several counties of Sheriffs...and shall prescribe their duties...

Const. art. XI, § 5. The legislature provided that a Sheriff has a duty under RCW 36.28.011 to make a complaint of all violations of the criminal law that comes to his or her attention and is responsible under RCW 36.28.020 for the misconduct of his or her deputies.

The Snohomish County Sheriff's Office police manual includes Policy 1019 which outlines the policies and procedures for investigating deputy misconduct.²⁹ The policy manual requires the investigation of personnel complaints including that "[s]upervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action."³⁰

The responsibility of a supervisor includes ensuring that a complaint form is completed when receiving a personnel complaint, responding in a courteous and professional manner, following up with complainants within 24 hours, notification of roles in addressing a complainant related to racial discrimination, investigating a complaint by obtaining witness information, following procedural rights of the accused deputy, and ensuring interviews of the complainant are conducted at reasonable hours.³¹ Upon completion of the proper investigation, the policy manual provides for the format for the report of investigation including an introduction, synopsis, evidence, conclusion, exhibits, and a disposition of unfounded, exonerated, non-sustained, sustained, or undetermined.³²

In Sharon Wilson's case, Sheriff Fortney failed to perform his duty to properly investigate a complaint of a deputy's misconduct and any superficial effort on his part was a failure to perform his duty in a proper manner. The complaint was made public by Attorney James Bible on March 26, 2020. This complaint of misconduct triggered the duties proscribed by Policy 1019.

²⁹ Snohomish County Sheriff's Office Policy Manual, Policy 1019, page 480 attached as Exhibit 11.

³⁰ *Id.* at 1019.4.1(c), page 481.

³¹ *Id.* at 483.

³² *Id.* at 485.

Instead of discharging the duties required by his oath and the Snohomish County Sheriff's Office policy manual, Sheriff Fortney disregarded his duty, failed to perform any investigation, and cleared the deputy of any wrongdoing the next morning. Rather than conducting an adequate investigation, Sheriff Fortney issued a public statement clearing the deputy of wrongdoing:

I was notified of the arrest of Ms. Sharon Wilson earlier today. I have since had the opportunity to review the pertinent case reports from the incident. While I understand the community concern that has gained much attention on social media, as is so often the case with social media, it is not the whole story. I think this would be a good opportunity to hear directly from me and a reminder to all about the legal requirements of Washington State law.

This incident began when a deputy sheriff was driving in the 21700 block of SR 99, Edmonds. As the deputy was driving northbound he observed Ms. Wilson cross from the west to the east in a marked crosswalk. Although this was a marked crosswalk, Ms. Wilson chose to disregard the red stop pedestrian signal and cross while the traffic light was green for north and south traffic to continue. The deputy observed that at least one other vehicle had to slow down to allow Ms. Wilson to cross even though the vehicle traffic had the green light.

The deputy in this case chose to stop Ms. Wilson and talk to her about this infraction. To be clear this is a violation of law, the deputy has every right to stop and talk to the person no matter who it is or what they are wearing, and request their identification for purposes of a citation. In nearly ALL cases of this type that I have experienced over 23 years of service it is a 5-10 min (at most) interaction with law enforcement and it may end with a citation or warning.

Unfortunately, this case took a different direction. Ms. Wilson refused to identify herself. While the deputy was speaking with Ms. Wilson she made the decision to get up from a seated position and run from the deputy. At this point in the contact, the deputy had no way to know why Ms. Wilson made the decision to get up and run but he felt he had an obligation to try and stop her. Our deputies face these split second decisions every day and this deputy was placed in this position by the actions of Ms. Wilson. He ran after her, tackled her, and arrested her.

Law enforcement is judged based on whether their actions are objectively reasonable under the totality of the circumstances. Ms. Wilson chose to cross a major highway against a red pedestrian light. At least one vehicle had to slow down in order to not hit her. This was witnessed by a deputy sheriff in a marked patrol car and in full uniform. Ms. Wilson refused to identify herself after a lawful order to do so and then made the situation

worse by getting up from a seated position and running. Based on these circumstances, the deputy's actions are reasonable.

While this entire incident is unfortunate, it is unfortunate because of the actions of Ms. Wilson. It would simply be unreasonable to have an expectation of law enforcement to simply watch people who decide to suddenly get up and run from the police and watch them run away.

I have worked in south Snohomish County, along the Hwy 99 corridor for over two decades. There have been many, many pedestrian car crashes with people who try to illegally cross the multi-lane highway. So while this may seem like a "low level" infraction, there is a safety and education component to it as well. If Ms. Wilson would have cooperated with this lawful stop, she would have been to her destination without any problems at all. The deputy sheriff even offered to drive her to her destination once the contact was over.

Of note, the claim that Ms. Wilson had been offered a ride to her destination is, at best, an indication of Sheriff Fortney's lack of knowledge regarding the incident. When reviewing the Jail's own database, it cannot be disputed that Ms. Wilson was booked into the jail immediately following the incident and was not released for over 24 hours.³³ It was impossible for Sheriff Fortney to complete a proper investigation as required of him by the Snohomish County Sheriff's Office policy manual within 24 hours. He did not ensure a complaint was reduced to writing, he did not assign a supervisor to investigate the complaint, he did not ensure a supervisor obtained witness information, he did not ensure an interview of the complainant, he did not ensure a report of investigation was written, and he did not ensure a proper finding was made based on the investigation.

Instead, Sheriff Fortney continued his pattern to defend his deputies against any and all allegations of misconduct in the apparent belief that his deputies are incapable of misconduct. This failure to discharge his duties required by law and his department's own policies promote the very corruption the well-written policies were intended to prevent.

VI. Conclusion

Within months of taking office, Snohomish County Sheriff Adam Fortney: (1) refused to enforce Governor Jay Inslee's "Stay Home – Stay Healthy" order – an order lawfully issued under RCW 43.06.220; (2) encouraged members of the public to violate Governor Inslee's lawful "Stay Home – Stay Healthy" order; (3) failed to institute adequate policies and safety measures for the Snohomish County Jail; (4) rehired deputy sheriffs who committed acts of misconduct; and (5) failed to investigate a deputy sheriff who tackled and injured a black female medical assistant for jaywalking.

Adam Fortney's actions and conduct resulting in these charges constitutes misfeasance, malfeasance, and a violation of his oath of office. The factual basis for these

³³ Jail inmate inquiry page related to Sharon Wilson attached as Exhibit 12.

charges includes the information contained in the attached exhibits, which are incorporated by reference.

Petitioners declare, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of our knowledge, and that we have sufficient knowledge of the alleged facts upon which the stated grounds for recall are based.

Signed in Everett, WA this 15th day of May 2020.


Colin McMahon
Samantha Sommerman
Brittany Tri
Terry Preshaw

ROUD

Wendy Hance

MAY 15 '20 AM 10:44

Shanowish County Auditor

Exhibit 1

OATH OF OFFICE

STATE OF WASHINGTON)
)ss
COUNTY OF SNOHOMISH)

I, _____, do solemnly swear (or affirm) that I
will support the Constitution and Laws of the United States and the
Constitution and Laws of the State of Washington, and that I will
faithfully and impartially perform and discharge the duties of the office
of _____
jurisdiction or district

_____, _____ for
office position

a _____ term according to law to the best of my ability.
term length

Signature of elected or appointed official

Note: The following can administer the oath: judges, notary publics, county auditors or deputies, city/town clerks, school officials, county commissioners, and clerks of the court.

Subscribed and sworn to before me this _____ day of _____, _____

Signature

Official Title

Exhibit 2



Snohomish County Sheriff's Office ✓

March 23 · ⚙

...

A message from Sheriff Fortney about Gov. Inslee's announcement to stay home:

Our local dispatchers are receiving a record number of calls to 911 with Snohomish County residents wanting more information about Gov. Inslee's announcement today for Washington residents to stay home. I want to clarify that the governor is NOT asking law enforcement to enforce a statewide stay-at-home order. To preserve public health and safety, the goal of today's announcement is to encourage people to self-regulate their behavior and home isolate, protect themselves and go about only the essential activities, while practicing social distancing and common sense. Please do NOT call 911 if you just want information. You can visit <https://coronavirus.wa.gov/> to read all about the order and what is considered essential services.

As your elected sheriff, I have no intention of carrying out enforcement for a stay-at-home directive. For the most part, our communities have already shown they understand the severity of the situation we are all experiencing and are doing all they can already to keep themselves, their families and neighbors safe and healthy.

Our deputies are not going to be going around neighborhoods to check to see if people are out when they shouldn't be. There are a lot of people in Snohomish County that we rely on to carry out essential duties. And we understand county residents need to carry out certain essential errands to keep their families and households safe. If you need to go to the pharmacy and pick up your medication, that's OK. If you're out in the grocery store to pick up food, that's fine. We will not actively be seeking people out that may be in violation of this directive. We will not ask for badges, identification, or a letter that certifies why you are out. We just want people to listen to the order and stay home if they don't need to be out.

The Snohomish County Sheriff's Office will not make any arrests or take anybody to jail for violations. We view our role more as one of education: educating people how to keep themselves safe, how to keep their families safe and most importantly, to keep the rest of the community safe, especially our elderly and other vulnerable populations.

-Sheriff Adam Fortney

   1.7K

800 Comments 1.8K Shares

 Like

 Comment

 Share



Exhibit 3



Snohomish County Sheriff Adam Fortney

April 21 at 8:36 PM · 🌐

...

Snohomish County Residents and Business Owners,

I just watched the Governor's speech to Washingtonian's regarding our approach to getting Washington back in business and I am left to wonder if he even has a plan? To be quite honest I wasn't even sure what he was trying to say half of the time. He has no plan. He has no details. This simply is not good enough in times when we have taken such drastic measures as the suspension of constitutional rights. I wrote most of this about two weeks ago but I decided to wait out of respect for the Governor and my own misguided hope that each day he did a press conference he would say something with some specificity on getting Washington back to work. After what I witnessed tonight I can no longer stay silent as I'm not even sure he knows what he is doing or knows what struggles Washingtonian's face right now.

I want to start by saying this virus is very real and sadly, it has taken 97 lives in Snohomish County. This is a very serious issue and the appropriate precautions need to be taken to protect our most vulnerable populations. However, our communities have already shown and continue to show they understand the severity of the situation and are doing all they can already to keep themselves, their families and neighbors safe and healthy.

I am worried about the economy and I am worried about Washingtonian's that need to make a living for their family. As more data floods in week by week and day by day about this pandemic I think it is clear that the "models" have not been entirely accurate. While that is okay, we cannot continue down the same path we have been on if the government reaction does not fit the data or even worse, the same government reaction makes our situation worse.

As elected leaders I think we should be questioning the Governor when it makes sense to do so. Are pot shops really essential or did he allow them to stay in business because of the government taxes received from them? That seems like a reasonable question. If pot shops are essential, then why aren't gun shops essential? Our Governor has told us that private building/construction must stop as it is not essential, but government construction is okay to continue. So let me get this right, according to the Governor if you are employed or contracted by the government to build government things you can still make a living for your family in spite of any health risk. If you are a construction worker in the private sector you cannot make a living and support your family because the health risk is too high. This contradiction is not okay and in my opinion is bordering on unethical.

As I arrive to work at the courthouse, I see landscapers show up each day to install new landscape and maintain our flowerbeds. How has Governor Inslee deemed this essential work? However, a father who owns a construction company and works alone while outdoors is not allowed to run his business to make a living to provide for his wife and children? How has Governor Inslee deemed thousands of Boeing employees who work inside a factory building airplanes essential? But building residential homes is not essential? If a factory with 20,000+ employees each day can implement safe practices to conduct normal business operations, I am entirely confident that our small business owners and independent contractors are more than capable of doing the same.

If this Coronavirus is so lethal and we have shut down our roaring economy to save lives, then it should be all or nothing. The government should not be picking winners or losers when it comes to being able to make an income for your family. If the virus is so lethal it shouldn't matter whether you are building a school for the government, building a new housing development, restaurant owner, or you happen to be an independent contractor. To the contrary, if the virus is proving to not be as lethal as we thought, maybe it's time for a balanced and reasonable approach to safely get our economy moving again and allowing small businesses to once again provide an income for their families and save their businesses. This is what I hoped for from the Governor tonight but he is not prepared or ready to make these decisions. If we are going to allow government contractors and pot shops to continue to make a living for their families, then it is time to open up this freedom for other small business owners who are comfortable operating in the current climate. This is the great thing about freedom. If you are worried about getting sick you have the freedom to choose to stay home. If you need to make a living for your family and are comfortable doing so, you should have the freedom to do so.

As I have previously stated, I have not carried out any enforcement for the current a stay-at-home order. As this order has continued on for well over a month now and a majority of our residents cannot return to work to provide for their families, I have received a lot of outreach from concerned members of our community asking if Governor Inslee's order is a violation of our constitutional rights.

As your Snohomish County Sheriff, yes I believe that preventing business owners to operate their businesses and provide for their families intrudes on our right to life, liberty and the pursuit of happiness. I am greatly concerned for our small business owners and single-income families who have lost their primary source of income needed for survival.

As your elected Sheriff I will always put your constitutional rights above politics or popular opinion. We have the right to peaceably assemble. We have the right to keep and bear arms. We have the right to attend church service of any denomination. The impacts of COVID 19 no longer warrant the suspension of our constitutional rights.

Along with other elected Sheriffs around our state, the Snohomish County Sheriff's Office will not be enforcing an order preventing religious freedoms or constitutional rights. I strongly encourage each of you to reach out and contact your councilmembers, local leaders and state representatives to demand we allow businesses to begin reopening and allow our residents, all of them, to return to work if they choose to do so.

The great thing about Snohomish County government is we have all worked very well together during this crisis. I'm not saying we agree all of the time, I'm saying we have the talent and ability to get this done for Snohomish County! This is not a time to blindly follow, this is a time to lead the way.

Sheriff Adam Fortney

   16K

10K Comments 16K Shares

 Like

 Comment

 Share



Exhibit 4

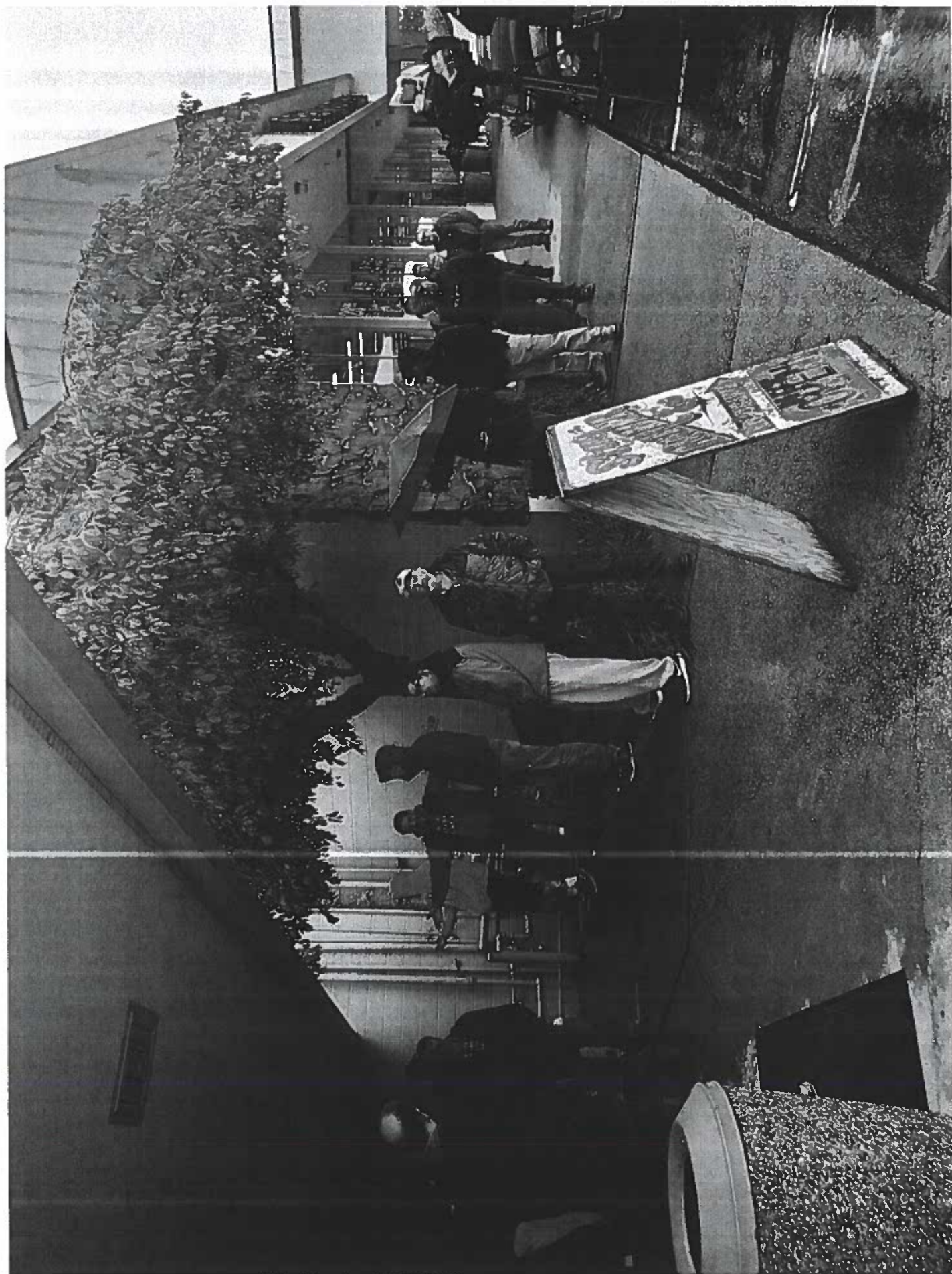


Exhibit 5



Snohomish County

Prosecuting Attorney

Adam Cornell
Prosecuting Attorney

Robert J. Drewel Bldg., 7th Floor
3000 Rockefeller Ave., M/S 504 | Everett, WA
98201-4046
(425) 388-7002 | Fax (425) 388-6333
www.snoco.org

April 28, 2020

Snohomish County Sheriff Adam Fortney
3000 Rockefeller Avenue
Everett, WA 98201

Via Electronic Mail: Adam.Fortney@snoco.org

Re: Response to your request for counsel at public expense pursuant to RCW 4.96.041

Dear Sheriff Fortney,

On April 23, 2020, a charge was filed by a citizen seeking your recall. On April 27, 2020, pursuant to RCW 4.96.041, you requested the charge be defended by the County at taxpayer expense. The decision to grant such a request rests with, and requires the consent of, both the legislative authority of Snohomish County (the County Council) and the Prosecuting Attorney. Our state Supreme Court has recognized that one of the purposes of RCW 4.96.041 "is to protect elected officials from being subjected to the financial and personal burden of recall elections *based on false and frivolous charges.*" Recall of Persall-Stipek, 129 Wn.2d 399, 402, 918 P.2d 493 (1996) (*emphasis added*).

After considerable thought, it is my determination that the public statements made by you on a personal Facebook page, which serve as the basis of the charge, do not warrant a defense at public expense. Without commenting on the ultimate merits of the charge, the petition sets forth a colorable question as to whether your public comments evidence misfeasance, neglect, or a knowing failure to perform faithfully the duties imposed on you by law. At a minimum, the record before me is insufficient to conclude that the petition is false or frivolous.

This exercise of my statutory discretion is informed by my belief that your Facebook post of April 21, 2020, can reasonably be read as a call to defy public health officials and a declaration that Governor Inslee's Stay At Home order is unconstitutional. It can also be read as a pronouncement that the medical science and current statistical modeling relied upon by the Governor, and others, is flawed and not to be trusted; that citizens—particularly those who look to you for guidance as our County's chief law enforcement officer—have your permission to disregard orders that intrude on their rights to life, liberty, the pursuit of happiness, the exercise of religious freedom, or other constitutional entitlements, on the promise that you will not enforce any violation of those orders. By directly or indirectly encouraging people to disobey data-driven, science-based lawful orders handed down expressly to limit the spread of COVID-19 and to protect our health and well-being during this

Criminal Division
Matthew D. Baldock, Chief Deputy
Mission Building, 1st Floor
(425) 388-3333
Fax (425) 388-3572

Civil Division
Jason J. Cummings, Chief Deputy
Robert J. Drewel Bldg., 8th Floor
(425) 388-6330
Fax (425) 388-6333

Family Support Division
Jennifer Tourje, Chief Deputy
Robert J. Drewel Bldg., 6th Floor
(425) 388-7280
Fax (425) 388-7295

pandemic emergency, your statement is fairly construed to support behavior that puts all citizens at greater risk of harm and death. Put simply, your words were akin to yelling "fire" in a crowded theater.

The above notwithstanding, if after judicial review of the charge it is determined that the petition is false and frivolous, upon request, I will revisit my determination that any costs associated with defending the petition should be covered at taxpayer expense. At that time, the matter would also require independent review and approval by the County Council.

Sincerely,



Adam Cornell

Snohomish County Prosecuting Attorney

Cc: Nate Nehring, Chair, Snohomish County Council
Stephanie Wright, Vice Chair, Snohomish County Council
Sam Low, Snohomish County Councilmember
Megan Dunn, Snohomish County Councilmember
Jared Mead, Snohomish County Councilmember
Geoffrey Thomas, Chief of Staff, Snohomish County Council

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Mission Building, 1st Floor
(425) 388-3333
Fax (425) 388-3572

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Robert J. Drewel Bldg., 8th Floor
(425) 388-6330
Fax (425) 388-6333

Family Support Division
Jennifer Tourje, Chief Deputy
Robert J. Drewel Bldg., 6th Floor
(425) 388-7280
Fax (425) 388-7295

Exhibit 6

M E M O R A N D U M



DATE: April 21, 2020

TO: To Whom It May Concern

FROM: Sheriff Adam Fortney

RE: Release of Jail Restrictions

The intent of this memo is to notify all applicable police agencies that I am lifting the booking restrictions at the Snohomish County Jail, effective immediately. Because of the unique set of circumstances surrounding our current working conditions, I thought an explanation was appropriate.

Several months ago when the potential impacts of COVID 19 hit all of us extremely hard, we all worked tirelessly to plan for the worse possible outcome as that is what we are here to do. This was no different for Snohomish County Corrections. Corrections worked with all of the pertinent stakeholders (courts, public defenders, prosecutors) to mitigate the impacts of COVID 19 and to make every effort to reduce exposure in our jail while protecting the rights of our inmates. I am proud to say we have been successful thus far and we are confident in our ability to screen, detect, isolate, and provide appropriate treatment for inmates in our custody, and new bookings admitted to our facility. It would not be an overstatement to say that all of Snohomish County Corrections Bureau has been a shining light during this pandemic. We are in a good place.

The average daily jail population prior to COVID 19 was around 950 inmates. As of April 20th, 2020 at 1547 hours, the population at the Snohomish County Jail is 290 inmates. This reflects a 69% decrease in our average population. Now we can all agree that these measures had to be taken early on in the COVID 19 pandemic but we are now at a different place. Thankfully, the pandemic has slowed, the survival rate is currently at approximately 98%, and cities and counties across the nation are looking at a slow but steady ramp up to normal business with protections in place. I am very confident in saying that those protections are in place within Snohomish County Corrections and we are beginning our slow and steady course to normalcy!

Snohomish County Jail can currently house a moderate increase in population and keep them isolated in single cells to maintain social distancing. We can do so with zero impacts to our current staffing model as we have modules already staffed with empty cells in them. We have the capacity to do this safely! Snohomish County Corrections EXCEEDS all recommendations made for correctional facilities by the Center for Disease Control and we will continue to do so. While the booking decision(s) lie with the individual departments, we are ready to increase our

NORTH PRECINCT
15100 40th Ave. N.E.
Marysville, WA 98271
Phone (425) 388-5200
FAX (360) 653-7609

SOUTH PRECINCT
15928 Mill Creek Blvd
Mill Creek, WA 98012
Phone (425) 388-5250
FAX (425) 337-5809

EAST PRECINCT
515 Main Street
Sultan, WA 98294
Phone (425) 388-6260
FAX (360) 793-7774

CORRECTIONS
3000 Rockefeller Ave. M/S 509
Everett, WA 98201
Phone (425) 388-3474
FAX (425) 339-2244

ADMINISTRATION
3000 Rockefeller Ave. M/S 606
Everett, WA 98201
Phone (425) 388-3334
FAX (425) 388-3805

daily population and we are working hard at on creating a plan to continue to gradually increase our inmate population over the next few weeks. As we increase population we will continually monitor the overall population and if needed put short term restrictions in place on a limited basis in order to ensure we are still exceeding best practices.

This is not about getting to any specific number in our jail, this is about public safety. This is about giving some discretion back to officers, troopers, and deputies to make a physical arrest when they think it is necessary to protect the public. With an average daily jail population down about 69% that means those criminals that would normally be incarcerated are now free to commit other crimes. It is only a matter of time before this goes bad and it will not be for lack of effort on our part to house these offenders within Snohomish County Corrections. It is time to get back to enforcing the law and ensuring the safety of our community.

Please don't hesitate to call or email with questions.

Sheriff Adam Fortney
425-388-3414

NORTH PRECINCT
15100 40TH Ave. N.E.
Marysville, WA 98271
Phone (425) 388-5200
FAX (360) 653-7609

SOUTH PRECINCT
15928 Mill Creek Blvd
Mill Creek, WA 98012
Phone (425) 388-5250
FAX (425) 337-5809

EAST PRECINCT
515 Main Street
Sultan, WA 98294
Phone (425) 388-6260
FAX (360) 793-7774

CORRECTIONS
3000 Rockefeller Ave. M/S 509
Everett, WA 98201
Phone (425) 388-3474
FAX (425) 339-2244

ADMINISTRATION
3000 Rockefeller Ave. M/S 606
Everett, WA 98201
Phone (425) 388-3334
FAX (425) 388-3805

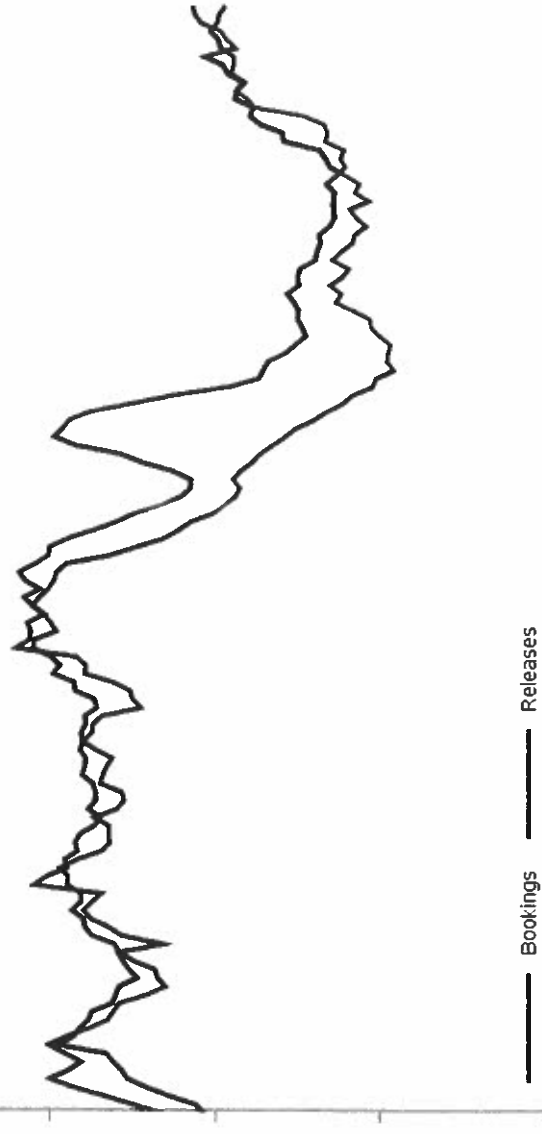
Exhibit 7

omish County Corrections Bureau ings, Releases and Population - between 01/01/2020 and 05/10/2020

Daily population



7-day rolling average bookings and releases



Daily and rolling average detail - last seven weeks

Date	Daily			7-day Average	
	Population	Bookings	Releases	Bookings	Releases
05/10/2020	337	36	40	38.9	42.5
05/09/2020	325	40	25	39.6	42.5
05/08/2020	332	37	49	39.9	41.5
05/07/2020	334	34	42	40.7	39.4
05/06/2020	334	48	45	39.7	38.7
05/05/2020	336	41	40	39.4	37.5
05/04/2020	356	36	59	37.9	41.4
05/03/2020	364	41	38	37.9	39.1
05/02/2020	338	42	20	38.1	38.5
05/01/2020	315	43	32	36.4	36.7
04/30/2020	322	27	37	37.4	37.5
04/29/2020	320	46	37	37.7	36.1
04/28/2020	351	30	67	35.4	35.2
04/27/2020	369	36	43	35.9	29.2
04/26/2020	356	43	34	34.6	26.5
04/25/2020	327	30	7	31.9	26.4
04/24/2020	324	50	38	31.7	26.7
04/23/2020	311	29	27	27.4	24.4
04/22/2020	313	30	31	26.7	24.5
04/21/2020	305	33	25	26.1	24.2
04/20/2020	307	27	26	24.3	25.2
04/19/2020	313	24	31	22.6	26.5
04/18/2020	295	29	9	23.1	25.5
04/17/2020	290	20	22	21.4	25.7
04/16/2020	302	24	30	23.7	25.7
04/15/2020	299	26	27	23.0	25.5
04/14/2020	311	20	32	21.7	26.1
04/13/2020	334	15	35	23.1	27.4
04/12/2020	331	28	24	23.4	27.2
04/11/2020	322	17	10	24.7	27.7
04/10/2020	315	36	22	25.9	27.5
04/09/2020	320	19	29	23.9	29.7
04/08/2020	329	17	31	24.6	30.0
04/07/2020	343	30	41	26.1	29.5
04/06/2020	361	17	34	24.7	31.2
04/05/2020	353	37	27	25.4	30.4
04/04/2020	338	25	11	23.3	29.5
04/03/2020	349	22	35	21.3	30.0
04/02/2020	355	24	31	21.1	29.4
04/01/2020	358	28	30	20.1	29.0
03/31/2020	387	20	51	18.9	30.2
03/30/2020	394	22	28	19.1	31.4
03/29/2020	396	22	23	19.3	33.5
03/28/2020	392	11	12	18.4	34.1
03/27/2020	403	21	31	20.6	34.7
03/26/2020	413	17	28	21.0	38.2
03/25/2020	436	19	39	23.4	45.0
03/24/2020	477	22	59	24.6	50.0
03/23/2020	493	23	43	26.6	55.0
03/22/2020	505	16	27	28.1	57.5

Note: daily population based in inmate counts at 0700

Exhibit 8

From: Cornell, Adam
Sent: Thursday, March 12, 2020 6:20 PM
To: SPA-Criminal <SPA-Criminal@co.snohomish.wa.us>
Cc: Held, Michael <Michael.Held@co.snohomish.wa.us>; Cummings, Jason <jcummings@co.snohomish.wa.us>; Kane, Jamie <Jamie.Kane@co.snohomish.wa.us>
Subject: Judge Weiss Order / Impact + Solutions Re: Pre-Trial Defendants
Importance: High

Colleagues,

Earlier this afternoon, Chief Criminal Deputy Matt Baldock and I met with Corrections Bureau Chief Jamie Kane, Corrections Captain Dave Hall, Director of OPD Jason Schwarz, and Public Defender Director Kathy Kyle. The purpose of the meeting was to address the impact of Judge Weiss's Order on jail staff, inmates, and other criminal justice participants.

Bureau Chief Kane and Captain Hall expressed deep concern for the health and safety of his staff and the health and safety of vulnerable defendants in the custody of our jail. He also shared concern regarding anticipated limited jail resources. Matt and I were joined by Jason and Kathy in sharing those concerns. Notwithstanding those concerns, Matt and I are mindful of our obligation to protect our community and hold offenders accountable—which we will continue to be focused on. Nevertheless, in light of our pending health emergency, we have to balance that obligation with the health needs of inmates in categories of high-level susceptibility to the virus per Center for Disease Control guidelines. Matt and I also have to consider increasingly limited jail resources that are likely to get more limited in light of the Governor's recent decision to cancel school in Snohomish County until April 24th. For the reasons stated above, and with the wholehearted support of the Corrections Bureau, I am adopting a temporary policy limited to **some defendants charged with non-violent and non-sex offenses who do not have pending warrants**. The policy is as follows:

For pre-trial defendants who are charged with a non-violent and non-sexual assault offense and have no other pending warrants, there should be a presumption of agreed release of the defendant with offense-related conditions—upon proper notice and filing by defense counsel—in the following circumstances:

- Defendant has compromised health as determined by Corrections Bureau medical staff.
- Defendant is in a high-risk age group as defined by the Central for Disease Control guidelines.
- Defendant is charged with a misdemeanor or gross misdemeanor that is not a DUI or a DV-related offense.
- Defendant is charged with simple Possession of a Controlled Substance and has limited prior felony charges.
- Defendant would presumptively be eligible for one of our alternative justice programs.

Every case is different and the laboring oar is on counsel for the defendant to make their case. You may exercise your thoughtful discretion by agreeing to release in other cases of those not charged with a

violent or sex offense or DUI. Please direct questions to your Lead or Chief Criminal Deputy Matt Baldock.

On another note, late this afternoon, in a meeting with other criminal justice stakeholders that I convened to address COVID-19 related issues, Matt and I learned that as a part of his emergency Order, Presiding Judge Weiss intends to strike all out of custody matters to be held in C-304 the week of 3/16. There was discussion about whether this practice would be extended, but for now it's just one week. Obviously, this means we will have to resummons defendants as new hearings are scheduled—and re-subpoena witnesses. To make sure that necessary hearings do not fall through the cracks, please be diligent about communicating with staff and including relevant notes in JustWare.

I am including staff and victim advocates in this email because it will inevitably result in a spike in bail review motions and other work related to rescheduling hearings.

Adam

Adam Cornell
Prosecuting Attorney

 Snohomish County
3000 Rockefeller Avenue, MS 504
Everett, WA 98201
Office: 425.388.3333

Administrative Assistant: Heather Hottinger | heather.hottinger@snoco.org | 425.388.7002

Exhibit 9

From: Kane, Jamie
Sent: Wednesday, April 8, 2020 7:23 AM
To: Weiss, Bruce; Larsen, Cindy; Corneli, Adam; Basklock, Matthew; Fair, Douglas; Bul, Tam
; Howard, Anthony; Kathleen Kyle; Schwar, Jacob; Johnstone, Marc
; Scott-Commander; Ray, Armand; Bellinger, Debbie; Johnston, Marc
Subject: COVID-19

All,

On 04/07/2020 at about 0930hrs, a 35 year old male subject was booked into the Snohomish County Jail by Marysville Police for two outstanding felony warrants (see attached Snohomish County Superior Court warrants). Prior to booking and at their own prompting, Marysville PD brought this subject to Providence where a COVID-19 test was administered (test results were not immediately available). Upon arrival at our jail, this information was relayed to our jail booking registered nurse who met the arresting officer and arrestee in the outdoor triage tent within the vehicle safety port. The subject complained of a mild cough, though there was no fever, other symptoms, or complaint of a previous COVID-19 exposure. In accordance with jail protocol, our nurse placed the subject on medical isolation status immediately (pending the results of the test), before the subject was ever brought inside the Snohomish County Jail booking area. Once inside the jail booking area, staff interacted with this subject in full PPE and the subject was given a surgical mask to wear when out of their assigned single occupant cell for processing. In my initial review of this event, it appears our jail COVID-19 screening, containment, and medical care protocols worked as designed.

After being processed for booking, the subject was transferred to the jail's medical unit where they were housed in a designated single occupant medical isolation cell. On 04/08/2020 at about 0400hrs, we learned that this subject tested positive for COVID-19.

This individual is not in medical distress and is being monitored by security and medical staff 24/7. We do not believe there have been any inmate or staff exposures by this subject within the Snohomish County Jail. This subject will not attend court and remain on medical isolation status until they are symptom free for at least 72 hours, as determined by a jail medical provider (ARMP or MD) and the designated health authority of the Snohomish Health District. If the subject remains in custody, I am fully confident in our ability to continue medical isolation, care, and supervision of this individual within our jail.

If this subject is released prior to that occurring, we will facilitate possible transfer to the Angel of the Winds Isolation and Quarantine site in consultation with Dr. Spitters of the Snohomish Health District. If the subject does not qualify, we will work with Dr. Spitters to develop a safe release plan.

Please contact me if you have any questions or concerns. Please forward to appropriate personnel as needed and appropriate.

Respectfully,
Jamie



Jamie Kane
Bureau Chief of Corrections
Snohomish County Sheriff's Office
3000 Rockefeller Ave. N/S 509
Everett, WA 98201
(425) 388-3616
Community First

Exhibit 10



Coronavirus Disease 2019 (COVID-19) - Vulnerable Inmate Criteria

In order to identify inmates as being vulnerable to significant illness or death if exposed to COVID-19, the Corrections Bureau Health Services Division has compiled a screening protocol for inmates who meet set criteria as established by the Centers for Disease Control:

- Older Adults (65 and older)
- People who have serious underlying medical conditions like:
 - Heart disease
 - Diabetes
 - Lung disease

The CDC does not have data to support a significant risk to pregnant women or new mothers at this time. However, the Snohomish County Jail will take this into account when providing an individualized medical assessment of pregnant inmates and new mothers regarding the risks of exposure to COVID-19.

The CDC also states that individuals with asthma (pre-existing respiratory issues) or HIV may be at higher risk for significant illness if exposed to COVID-19.

New Inmates: During the booking medical screening process, Corrections Medical staff will assess and determine if the subject meets the criteria. If so, they will be placed on the COVID-19 Vulnerable Inmate List.

Existing Inmates: Designated Corrections Medical staff will compile a list daily of inmates who meet the established high risk criteria and remove those who have been released. They will also add the "New Inmates" names to this list daily, creating one comprehensive list per day.

The COVID-19 Vulnerable Inmate List will be provided to Health Services Administrator Jacob Taylor, Major Scott Robertson, and Bureau Chief Jamie Kane. The Bureau Chief, or designee, will in turn provide this list to the Office of Public Defense, the Public Defender's Association, the Prosecutors Office, and court administration daily.

The list is not a "release request" from the Snohomish County Sheriff's Office. Instead, this list is strictly objective information gathered for stakeholders (i.e. attorney's, prosecutor, the court) to be used for criminal justice purposes relating to an inmate's incarceration status.

In the event the Snohomish County Sheriff's Office Corrections Administration seeks the release of an individual inmate for medical reasons, that request will be separate and clearly denoted as our request.

Additionally, Corrections Bureau medical staff will only be providing names on the COVID-19 Vulnerable Inmate list. The Corrections Bureau medical staff will not provide information as to why an inmate is on the list, or associated medical diagnosis.

Exhibit 11

Personnel Complaints

1019.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Snohomish County Sheriff's Office. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1019.2 POLICY

The Snohomish County Sheriff's Office takes seriously all complaints regarding the service provided by the Office and the conduct of its members.

The Office will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any memorandum of understanding or collective bargaining agreements.

It is also the policy of this Office to ensure that the community can report misconduct without concern for reprisal or retaliation.

1019.3 EARLY IDENTIFICATION AND INTERVENTION SYSTEM (EIS)

The primary goal of the Early Identification and Intervention System (EIS) is to allow management to intervene, utilizing counseling or training, when an employee has been identified as having problematic behavior. As an early response, management will intervene before such an employee is in a situation that warrants formal disciplinary action. The EIS will alert management to those individuals who have three indicators in a quarter, or four or more in a year.

Indicators, such as citizen complaints, (including sustained, non-sustained, and undetermined findings), firearms discharge, use-of-force reports, civil litigation, resisting arrest incidents, and vehicle damage may be selection criteria for identifying problematic pattern behavior. Including non-sustained and undetermined citizen complaints in the EIS will give management a broader base to help identify potential employees for early intervention. The intervention is not discipline, but counseling, provided in order to correct behavior before the employee's conduct merits formal discipline. Many non-sustained complaints are inconclusive, especially when the citizen is the only witness and there is no corroborating evidence.

Intervention should consist of a counseling session or training class provided by the employee's immediate supervisor. The counseling or training should be documented on a Performance Incident Report (PIR) in accordance with the Performance Evaluation Standard Operating Procedure.

Post intervention monitoring should take place following any counseling or training session. The post intervention meetings between the employee and their immediate supervisor shall take place at 14, 30, and 60 days after the intervention and documented on a PIR.

Personnel Complaints

1019.4 PERSONNEL COMPLAINTS

Personnel complaints include an allegation of circumstances describing act(s) or failure(s) to act, that if proven true, would constitute a violation of office policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate office policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Office.

1019.4.1 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any office member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

1019.5 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1019.5.1 COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public area of the sheriff's facility and be accessible through the office website. Forms may also be available at other County facilities. Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

1019.5.2 ACCEPTANCE

All complaints will be courteously accepted by any office member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant and initiate the personnel complaint form. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

Personnel Complaints

1019.6 DOCUMENTATION

Supervisors shall ensure that all personnel complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

Copies of all complaints shall be sent to OPA for logging and tracking in a data base . The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Office should audit the log and send an audit report to the Sheriff or the authorized designee.

1019.7 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows.

1019.7.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Sheriff or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring that upon receiving or initiating any personnel complaint, a complaint form is completed.
 - 1. The original complaint form will be directed to the supervisor of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
 - 2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Bureau Commander or the Sheriff, who will initiate appropriate action.
- (b) Responding to all complaints in a courteous and professional manner.
- (c) Follow-up contact with the complainant should be made within 24 hours of the Office receiving the complaint, if possible, or as soon thereafter.
 - 1. If the matter is resolved and no further action is required, the supervisor will note the resolution on the complaint form and forward the form to their supervisor for concurrence and closure.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Under Sheriff and Sheriff are notified via the chain of command as soon as practicable.

Personnel Complaints

- (e) Notification through the chain of command direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
- (f) Informing the complainant of the investigator's name and contact information.
- (g) Investigating a complaint as follows:
 - 1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
 - 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (h) Ensuring that the procedural rights of the accused member are followed in accordance with policy and current labor agreements. .
- (i) Ensuring interviews of the complainant are generally conducted during reasonable hours.

1019.7.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Office of Professional Accountability, the following applies to employees:

- (a) Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, he/she shall be compensated as per their labor agreement.
- (b) Unless waived by the employee, interviews of an accused employee shall be at the Snohomish County Sheriff's Office or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused employee.
- (d) Prior to any interview, an employee should be informed of the nature of the investigation.
- (e) All interviews should be for a reasonable period and the employee's personal needs should be accommodated.
- (f) No employee should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
- (g) The interviewer should audio record all interviews of employees and witnesses, whenever possible. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview shall be provided to the employee prior to any subsequent interview.
- (h) All employees subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.

Personnel Complaints

- (i) All employees shall provide complete and truthful responses to questions posed during interviews.
- (j) No employee may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation.
- (k) An employee covered by civil service shall be provided a written statement of all accusations with a duplicate statement filed with the civil service commission if the employee is facing disciplinary removal, suspension, demotion or discharge. (RCW 41.12.090; RCW 41.14.120).

1019.7.3 EMPLOYEE RIGHTS AND RESPONSIBILITIES

- (a) All employees are required to cooperate in any internal investigation. Employees shall answer all questions truthfully and completely.
- (b) Employees must submit to any lineup, photo, ballistics, chemical or other tests (excluding polygraph) legally requested by a supervisor or member of the Office of Professional Accountability.
- (c) Employees who fail to cooperate in any internal investigations are subject to disciplinary action.
- (a) When any employee is under investigation and subjected to interrogation, such interrogation shall be conducted under the following conditions:
 - (a) All interrogations shall be conducted at a reasonable hour, preferably when the employee is on duty, or during the normal waking hours for that employee, unless the seriousness of the investigation requires otherwise. If such interrogation does occur during the employee's off duty time, the employee shall be compensated in accordance with the prevailing labor agreement.
 - (b) All employees shall be advised of the nature of the investigation prior to any interrogation.
 - (c) The employee shall be advised of the name and rank of the officer in charge of the interrogation and the names and ranks of all persons present during the interrogation.
 - (d) All interrogations shall be for a reasonable period of time, taking into consideration the seriousness and complexity of the issue being investigated. The employee shall be allowed access to a telephone, reasonable meal breaks and rest periods.
 - (e) In the course of any interrogation or questioning, the employee has the right to be accompanied by a representative of the bargaining unit, if requested. If the employee decides not to have a union representative, they may have any one adult of the employee's choosing. This person may attend for the purpose of providing counsel to the employee.

Personnel Complaints

- (b) The Office shall not cause the employee under investigation to be subjected to visits by the press or news media without the employee's consent.
- (c) The employee's home address, telephone number, and/or photograph shall not be given to the media without the employee's consent.

1019.7.4 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

Introduction - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

Summary - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

Evidence - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

Conclusion - A recommendation regarding further action or disposition should be provided.

Exhibits - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

1019.7.5 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - The complainant admits to making a false allegation, the accused employee was not involved in the incident, or the incident did not occur.

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Non sustained -

- (a) Cleared: there is sufficient evidence to provide the allegation is false or is not supported by the facts.
- (b) Inconclusive: There is insufficient evidence to either prove or disprove the allegation.
- (c) The investigation revealed that the employee committed a violation(s) other than the original allegation(s). A new allegation would be alleged and findings made.

Sustained - When the investigation discloses sufficient evidence to establish that the employee committed one or more of the alleged act(s) and that the employees act(s) constituted misconduct.

Undetermined This may involve but is not limited to the following;

Personnel Complaints

- (a) The complainant withdraws the complaint
- (b) The complainant cannot be located
- (c) The complainant is uncooperative
- (d) The accused member separates from the office before the conclusion of the investigation.

1019.7.6 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within four (4) working days at each level of review, unless an extension is granted by the Bureau Chief in the employee's chain of command. A completed investigation must be accomplished within the time lines established by the accused members current labor contract, unless the Sheriff or his designee grants an extension.

Once the investigation process has been completed the assigned investigator or supervisor shall notify the complainant of the disposition of their complaint. If possible, the notification should be in writing.

1019.8 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct, excluding personal items/containers, except as provided by law. The employee should be notified of such a search in a reasonable period of time.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

1019.9 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Office, the Sheriff or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any office badge, identification, assigned weapons and any other office equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

Personnel Complaints

1019.10 CRIMINAL INVESTIGATION

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Sheriff shall be notified as soon as practicable when a member is accused of criminal conduct. The Sheriff may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be provided with all rights afforded to a civilian.

The Snohomish County Sheriff's Office may release information concerning the arrest or detention of any member, including a deputy, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

1019.11 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

The purpose of the review process is to ensure that the supervisor charged with proper authority to decide the finding and impose discipline has had their decision reviewed by the next higher level. The listed steps shall be followed:

- (a) The supervisor investigating the allegations shall provide a summary of facts and make a recommendation of finding.
- (b) If sustained, the supervisor shall make a recommendation of discipline based on culpability standards and the discipline matrix. Supervisors shall be required to investigate prior discipline imposed by contacting the OPA sergeant. Prior incidents will be considered when consulting the discipline matrix.
- (c) Completed investigation and recommendation shall be forwarded to the next supervisor in the chain of command for review and concurrence.
- (d) Before discipline is imposed the supervisor with authority to administer discipline shall have the concurrence of their immediate supervisor.
- (e) Completed investigations and discipline shall be forwarded through the chain of command. The completed case shall be sent to the OPA for filing.

The Office of Professional Accountability shall be responsible for investigating alleged significant or complex cases of misconduct by employees. The Office of Professional Accountability shall be responsible for review of all employee involved shooting or other incidents where potential lethal force was used. All Internal Investigations shall be conducted in accordance with the Internal Investigations Standard Operating Procedure. Upon completion, the final report shall be forwarded, without recommendation, to the appropriate Bureau Chief. The Bureau Chief shall ensure the investigation is complete then forward it to the Undersheriff.

1019.11.1 BUREAU COMMANDER RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Bureau Commander of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

Personnel Complaints

The Bureau Commander may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Sheriff, the Bureau Commander may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Sheriff, the Bureau Commander shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

1019.11.2 SHERIFF RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Sheriff or his designee shall review the recommendation and all accompanying materials. The Sheriff may modify any recommendation and/or may return the file to the Bureau Commander for further investigation or action.

Once the Sheriff is satisfied that no further investigation or action is required by staff, the Sheriff or his designee shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Sheriff or his designee shall provide the member with a written notice and the following:

- (a) Access to all of the materials considered by the Sheriff in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Sheriff within five days of receiving the notice.
 - (a) Upon a showing of good cause by the member, the Sheriff may grant a reasonable extension of time for the member to respond.
 - (b) If the member elects to respond orally, the presentation may be recorded by the Office. Upon request, the member may be provided with a copy of the recording.

Once the member has completed his/her response or if the member has elected to waive any such response, the Sheriff shall consider all information received in regard to the recommended discipline. The Sheriff shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Sheriff has issued a written decision, the discipline shall become effective.

1019.12 PRE-DISCIPLINE EMPLOYEE RESPONSE

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the supervisor making the disciplinary decision on the matter, after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The supervisor holding a pre-disciplinary review shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.

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- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Sheriff to consider.
- (d) In the event that the Sheriff elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Sheriff on the limited issues of information raised in any subsequent materials.

1019.13 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

1019.14 PROGRESSIVE DISCIPLINE PHILOSOPHY

- (a) When discipline is deemed appropriate, it is the policy of this Office to use a progressive system. The steps of progressive discipline are listed below, however, the principles of progressive discipline do not require that every step in the continuum be administered, or that discipline be initiated at any particular step. For example, in the event of an employee committing a crime, the Sheriff or his designee may find suspension or termination as the only appropriate sanction and not administer any lesser form of discipline.
- (b) Discipline shall be for cause and shall follow the basic concepts of due process as established elsewhere by administrative procedures and labor agreements and shall be in accordance with RCW 41.14.110, 41.14.120, and Snohomish County Civil Service Rules 12.1, 12.2.
- (c) In the interest of fairness, an employee's work history and performance shall be considered in conjunction with any information presented by the employee in a pre-disciplinary hearing. For these reasons, the level of discipline administered to one employee may not be identical to the level of discipline administered to another under similar circumstances.
- (d) Complaints involving possible criminal violations may be referred to the Prosecutor's Office for criminal charges.
- (e) Employees are subject to office disciplinary action as well as sanctions imposed by any court of competent jurisdiction.

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1019.14.1 STEPS OF PROGRESSIVE DISCIPLINE

- (a) Verbal Reprimand.
- (b) Written Reprimand.
- (c) Loss of leave.
- (d) Suspension without pay.
- (e) Demotion (if applicable).
- (f) Termination.

1019.14.2 ADMINISTERING DISCIPLINE

Verbal reprimands may be issued by a person holding the rank of Sergeant or equivalent civilian position, or above.

Written reprimands may be issued by a person holding the rank of Lieutenant or equivalent civilian position, or above.

Loss of leave or suspensions without pay (up to three days) may be issued by a person holding the rank of Captain or equivalent civilian position, or above.

Loss of leave or suspension without pay (in excess of three days) may be issued by a person holding the rank of Bureau Chief, or above.

Discipline involving demotion or termination shall be issued by the Sheriff or his designee.

Prior to the issuance of a suspension, demotion or termination, the supervisor with the authority to impose discipline shall take the following action:

- (a) The supervisor shall serve a pre-disciplinary letter on the subject employee.
- (b) The pre-disciplinary letter shall describe the allegations against the subject employee and the potential discipline.
- (c) The pre-disciplinary letter shall notify the subject employee of the date, time and location of the hearing. Attempts should be made to have the hearing at a time and date close to the employees work schedule.
- (d) The supervisor shall consider information provided by the employee at the pre-disciplinary hearing prior to imposing discipline. (To avoid the appearance of predisposition, discipline should be imposed at a separate hearing)

Supervisors with the authority to impose a written reprimand are encouraged to take the above steps.

1019.15 DISCIPLINE MATRIX

Public Trust is a paramount objective of the Sheriff's Office. A violation of this trust affects our ability to provide service to our communities. Discipline serves as a tool for conformance to policy

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and procedures. The Discipline Matrix is used as a guide to ensure fairness and consistency. The severity of the conduct should be consistent with the discipline imposed.

The Matrix is divided into three Grades that represent severity of conduct and number of offenses over a 24 month period. Within each Grade is a range of discipline. The result of the employees conduct will be the determinant of the Grade. Culpability Factors will be utilized to determine the discipline imposed within the Grade.

In cases with multiple offenses, the most serious offense will determine the grade.

Definitions:

Grade 1. Minor policy violations: No potential for loss of life, injury or property damage, loss of reputation, criminal charges, or civil litigation. Collisions found to be preventable in which there is no or minor injury and/or minor damage should be considered to fall within this grade.

Grade 2. Moderate policy violations: Potential loss of life, injury or property damage, loss of reputation, criminal charges or civil litigation. Collisions found to be preventable with significant injuries and/or significant property damage should be considered to fall within this grade.

Grade 3. Major policy violations: Actual loss of life, injury, significant property damage, loss of reputation, insubordination, criminal charges, or civil litigation. Collisions found to be preventable are excluded from this grade as a stand-alone violation.

	Any single event or combination of events in 24 consecutive months		
	1st Offense	2nd Offense	3rd Offense
Grade 1	Verbal Reprimand One Year Written Reprimand	One Year Written Reprimand to Three Year Written Reprimand	Two Year Written Reprimand to Five Year Written Reprimand

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Grade 2	One Year Written Reprimand to Three Days Loss of Leave/Suspension	Two Year Written Reprimand to Seven Day Loss of Leave/ Suspension	Five Year Written Reprimand to 14 Day Loss of Leave/Suspension
Grade 3	Two Year Written Reprimand to Demotion / Termination	Three Days Loss of Leave / Suspension to Demotion / Termination	30 Day Loss of Leave/Suspension to Demotion / Termination

The matrix above will determine the range of discipline for sustained allegations.

Depending on the employees disciplinary record, the new allegation(s) may fall within the first offense of the next higher Grade as defined in the Office of Professional Accountability SOP.

1019.16 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees have the right to appeal discipline. The employee has the right to appeal using the procedures established by any collective bargaining agreement, memorandum of understanding and/or personnel rules.

In the event of punitive action against an employee covered by civil service, the appeal process shall be in compliance with RCW 41.12.090 and RCW 41.14.120.

1019.17 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

At-will and probationary employees and members other than non-probationary employees may be disciplined and/or released from employment without adherence to any of the procedures set out in this policy, and without notice or cause at any time. These individuals are not entitled to any rights under this policy. However, any of these individuals released for misconduct should be afforded an opportunity solely to clear their names through a liberty interest hearing, which shall be limited to a single appearance before the Sheriff or the authorized designee.

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Unless otherwise defined in a collective bargaining agreement, any probationary period may be extended at the discretion of the Sheriff in cases where the individual has been absent for more than a week or when additional time to review the individual is considered to be appropriate.

1019.18 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with state law and the established records retention schedule and as described in the Personnel Files Policy.

1019.19 NOTIFICATION TO CRIMINAL JUSTICE TRAINING COMMISSION (CJTC) CERTIFICATION BOARD

Upon termination of a peace officer for any reason, including resignation, the Office shall, within 15 days of the termination, notify the CJTC on a personnel action report form provided by the commission. The Office shall, upon request of the CJTC, provide such additional documentation or information as the commission deems necessary to determine whether the termination provides grounds for revocation of the peace officer's certification (RCW 43.101.135).

Exhibit 12

Welcome to the Snohomish County Corrections Jail Inmate Inqu

To access the Snohomish County Corrections *Jail Register Classic View* please click [here](#)

To access the Lynnwood Municipal Jail Inmate Inquiry please click [here](#)

To access the Marysville Municipal Jail Inmate Inquiry please click [here](#)

[Back to Search](#)

Inmate Detail - WILSON, SHARON R

Demographic Information

Name: **WILSON, SHARON R**
Subject Number: **2367479**

Booking History

Booking 2020-00004411

Booking Date: **3/21/2020 4:53 PM**
Release Date: **3/22/2020 6:44 PM**
Housing Facility:
Total Bond Amount: **\$0.00**
Total Bail Amount: **\$0.00**
Booking Origin: **Snohomish County Sheriff's Office**

Bond Number
2020-00008789
2020-00008790

Charges	Court D
1, 2	3/22/20

Number	Charge Description	Offense Date	Docket Number	Sentence Date	Disposition	Disposition Dat
2	OBSTRUCT LAW ENFORCEMENT OFFICER	3/21/2020 4:15 PM			Court Order	3/22/2020
1	RESISTING ARREST	3/21/2020 4:15 PM			Court Order	3/22/2020

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