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SUPREME COURT NO. 100060-0

(COA No. 812599-I)

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON

v.

ISABELITA HAWKINS

**BRIEF OF *AMICI CURIAE*
NORTHWEST JUSTICE PROJECT
ACLU OF WASHINGTON
COLUMBIA LEGAL SERVICES
DISABILITY RIGHTS WASHINGTON
REVIVE CENTER FOR RETURNING CITIZENS**

Sandy García, WSBA# 45460
Claire Carden, WSBA#50590
Maria Hanley, WSBA# 51288
1702 W. Broadway Avenue
Spokane, WA 99201
Sandy.Garcia@nwjustice.org
Claire.Carden@nwjustice.org
mariahh@nwjustice.org

Attorneys for Amici Curiae
Northwest Justice Project and
Revive Center for Returning Citizens

Jazmyn Clark, WSBA #48224
Nancy Talner, WSBA #11196
P.O. Box 2728
Seattle, WA 98111
jclark@aclu-wa.org
talner@aclu-wa.org
Attorneys for Amicus Curiae
ACLU of Washington Foundation

Nick Allen, WSBA #42990
101 Yesler Way, Suite 300
Seattle, WA 98104
Nick.Allen@ColumbiaLegal.org
Attorney for Amicus Curiae
Columbia Legal Services

Heather McKimmie, WSBA #36730
315 5th Avenue South, Suite 850
Seattle, WA 98104
heatherm@dr-wa.org
Attorney for Amicus Curiae
Disability Rights Washington

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I. INTRODUCTION AND STATEMENT OF THE CASE

Amici submit this brief because trial courts need guidance in how and when to exercise discretion in the context of RCW 9.94A.640. By relying exclusively on the probable cause statement, the trial court in this case focused on a snapshot in time when Ms. Hawkins was in the midst of a mental health crisis to deny relief a decade later. The King County Superior Court also ignored a decade of Ms. Hawkins' exemplary work to rehabilitate herself. *Amici* ask this Court to take into consideration the overrepresentation of individuals with serious mental illness in the criminal legal system, the purpose and efficacy of treatment courts, like veterans court, and the long-term negative effects of conviction history.

II. IDENTITY AND INTEREST OF AMICI

The identity and interests of *Amici* are fully laid out in the Motion for Leave to File *Amici Curiae* Brief filed concurrently with this Brief.

III. ISSUES ADDRESSED BY AMICI

1. People with disabilities are disproportionately impacted by the criminal legal system. This disproportionality is exacerbated by its intersection with systemic racism.
2. Criminal-justice involved veterans, benefit from the services and supports available through veteran treatment courts.
3. Criminal-justice involvement has long-term impacts that perpetuate systemic racism.

IV. STATEMENT OF FACTS

Amici defer to the Statement of the Case presented in the Supplemental Brief filed on behalf of Isabelita Hawkins.

V. ARGUMENT

Amici request the Supreme Court provide guidance to the trial courts regarding how and when to exercise discretion in denying motions to vacate criminal convictions under RCW 9.94A.640. Appellate courts frequently set forth multifactor frameworks to provide guidance to trial courts exercising their discretion so as to render those decisions consistent and susceptible to meaningful appellate review. *See, e.g., Yousoufian*

v. Office of Ron Sims, 168 Wn.2d 444, 229 P.3d 735 (2010)(identifying aggravating and mitigating factors for a trial judge to consider when determining the penalty for public records act (PRA) violations); *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 595, 675 P.2d 193 (1983) (adopting an analytical framework to calculate reasonable attorney fees under the Consumer Protection Act, chapter 19.86 RCW); *Glover v. Tacoma Gen. Hosp.*, 98 Wn.2d 708, 717, 658 P.2d 1230 (1983) (identifying factors as proper considerations for trial judges to use in determining whether settlement agreements involving multiple defendants and contributory fault are “reasonable” under RCW 4.22.060), *overruled on other grounds by Crown Controls, Inc. v. Smiley*, 110 Wn.2d 695, 756 P.2d 717 (1988).

Vacating a criminal conviction returns a justice-involved individual to their “preconviction status as a full-fledged citizen.” *State v. Breazeale*, 144 Wn.2d 829, 837, 31 P.3d 1158 (2001)(internal quotations and citations omitted). RCW 9.94A.640 relieves individuals of all penalties and disabilities of

that criminal conviction. A stated purpose of the 2019 amendments to RCW 9.94A.640, titled the New Hope Act, was to “promot[e] successful reentry by modifying the process to for obtaining certificates of discharge and vacating conviction records.” SUBSTITUTE HOUSE BILL 1041, Chapter 331, Laws of 2019. The New Hope Act also expanded the types of convictions that can be vacated, thus expanding access to vacate relief. Despite this expansion, there is still a significant second chance gap with one study of Washington’s criminal record vacates finding “less than 3% of individuals eligible for relief, and less than 1% of the charges eligible for relief have received the remedies.”¹ “In theory, second chance laws restore human dignity and personal liberty, save incarceration costs, lower recidivism rates, and lead to the more efficient allocation of

¹ Colleen Chien, Zuyan Huang, Jacob Kuykendall, and Katie Rabago, *The Washington State Second Chance Expungement Gap* (2020) Abstract. Available at: <https://digitalcommons.law.scu.edu/facpubs/971/> accessed on March 29, 2021.

talent through society. But only to the extent they are successfully implemented.”²

The purposes of RCW 9.94A.640 would be best served by providing the trial courts with some guidance as to when and how to exercise discretion to deny a motion to vacate a felony conviction for an otherwise eligible individual. Such frameworks are appropriate where a statute affords discretion to trial judges but fails to adequately guide how such discretion should be exercised. Given the lack of published cases relating to RCW 9.94A.640, the abuse of discretion standard is insufficient guidance for trial courts. *Yousoufian*, 168 Wn.2d at 464.

The plain language of RCW 9.94A.640 makes it discretionary; however, unguided discretion can lead to disparate impact. Motions to vacate are handled differently in different counties resulting in justice by geography. Hawkins is the second

² Colleen Chien, *America's Paper Prisons: The Second Chance Gap*, 119 MICH. L. REV. 519, 531 (2020). Available at: <https://repository.law.umich.edu/mlr/vol119/iss3/3> accessed on March 30, 2022.

appellate case where the King County Superior Court denied a motion to vacate based on absolute discretion and the facts in a probable cause statement. *State v. Kopp*, 15 Wn. App. 2d. 281, 475 P.3d 517 (2020). King County has the largest population in Washington. However, in 2019, King County Superior Court only vacated 23 convictions, while Pierce County vacated 198, Spokane County vacated 110, and Kitsap County vacated 151.³

Due to the potential for disparate impact and justice by geography, *Amici* propose the Court lay out legal factors detailing what the trial court can consider when denying a motion to vacate. For example, courts may not consider unproven allegations from the underlying criminal conduct in its analysis; the courts must consider the impact of disability on prior behavior; the courts must consider evidence of rehabilitation, including successful participation in treatment courts. If such a framework is adopted, it should take into account the purpose of

³ Colleen Chien, *supra* n. 1, at Appendix A.

the Sentencing Reform Act to ensure appropriate and proportionate punishment and to offer the offender an opportunity to improve herself and reduce risk to the community. *See, generally*, RCW 9.94A.010. When determining what factors to include in a multi-factor test, *Amici* ask the Court to consider: (A) the overrepresentation of people experiencing serious mental illness in the criminal legal system, (B) the purpose and efficacy of problem-solving courts including veterans' courts, and (C) the long-term negative effects of a criminal conviction.

A. PEOPLE WITH MENTAL ILLNESS ARE DISPROPORTIONATELY IMPACTED BY THE CRIMINAL LEGAL SYSTEM.

Trial courts should consider the relationship between criminal-justice involvement and disability, like mental illness, when determining whether to grant or deny a motion to vacate pursuant to RCW 9.94A.640. “People with mental illness and people of color — particularly Black people — are

overrepresented in the criminal justice system.”⁴ The number of inmates with a serious mental illness⁵ has been steadily increasing since the 1980s.⁶ At this point, individuals with serious mental illness are dramatically overrepresented in the criminal legal system. Human Rights Watch found that up to 19 percent of adults in State prisons have significant psychiatric or functional disabilities⁷. Approximately 14.5 percent of men and

⁴ National Alliance on Mental Illness, Shannon Scully, *Criminal Justice Reform Means Reforming the Mental Health System* (March 5, 2021) BUILDING A SYSTEM THAT REFLECTS OUR COMMUNITIES. Available at: <https://www.nami.org/Blogs/NAMI-Blog/March-2021/Criminal-Justice-Reform-Means-Reforming-the-Mental-Health-System> accessed on March 30, 2022.

⁵ Serious mental illness (SMI) is defined as individuals 18 years of age or older who currently have received a diagnoses of schizophrenia, schizoaffective disorder, bipolar disorder, or major depression.

⁶ Matt Vogel, Katherine D. Stephens, Darby Siebels, *Mental Illness and the Criminal Justice System*, SOCIOLOGY COMPASS, Vol 8, Issue 6, 627-638, 627 (June 2014). Available at: <https://doi.org/10.1111/soc4.12174>, accessed on March 30, 2022.

⁷ Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*, 17 (2003). Available at: <https://www.hrw.org/reports/2003/usa1003/usa1003.pdf> accessed on September 30, 2021.

31.0 percent of women in jails experience serious mental illness⁸ compared to just 4.2 percent of the general population.⁹ “Research suggests that patients with mental illness may be more prone to violence if they do not receive adequate treatment, are actively experiencing delusions, or have long-standing paranoia.”¹⁰ As Human Rights Watch noted, “[a]bsent appropriate mental health treatment (as well as supports for housing, employment and income), the mentally ill who commit

⁸ Steadman, H. et al. *Prevalence of Serious Mental Illness Among Jail Inmates*. PSYCHIATRIC SERVICES, 60 (6). 761 – 765 (June 2009).

⁹ Substance Abuse and Mental Health Services Administration. *Behavioral Health Barometer: United States, 2015*. HHS PUBLICATION NO. SMA–15–4895, Rockville, MD: Substance Abuse and Mental Health Services Administration, (2015).

Available at:

https://www.samhsa.gov/data/sites/default/files/2015_National_Barometer.pdf accessed on March 30, 2022.

¹⁰ Noman Ghiasi, Yusra Azhar, Jasbir Singh, *Psychiatric Illness and Criminality*, NCBI, STATPEARLS PUBLISHING (Internet), (January 15, 2022). Available at:

<https://www.ncbi.nlm.nih.gov/books/NBK537064/> accessed on March 30, 2022.

criminal offenses are likely to repeat them, cycling in and out of correctional facilities for years.”¹¹

“Many individuals with mental illness face an uphill battle when trying to access mental health treatment.¹²” In this case, Ms. Hawkins attempted repeatedly to get mental health treatment prior to these charges and was unsuccessful. This is all too common for women of color, who are more likely to experience medical neglect and misdiagnosis¹³. There is still a stigma to mental illness and that stigma compounds with racism when people of color¹⁴ experience mental health crises. The stigma

¹¹ Human Rights Watch, *supra* n. 7.

¹² Noman Ghiasi, *supra* n. 10.

¹³ See generally, David Newman-Toker, et al, *Missed Diagnosis of Stroke in the Emergency Department: A Cross-Sectional Analysis of a Large Population-Based Sample*, Diagnosis (Berl) (June 1, 2014). Available at <https://pubmed.ncbi.nlm.nih.gov/28344918/> accessed on March 30, 2022; Melinda Wenner Moyer, *Women Are Calling Out ‘Medical Gaslighting’*, N.Y. TIMES, (March 28, 2022). Available at: <https://www.nytimes.com/2022/03/28/well/live/gaslighting-doctors-patients-health.html> accessed on March 30, 2022.

¹⁴ The amicus brief submitted by Public Defender Association and others focuses on the impacts of systemic racism.

attached to mental illness is ubiquitous.¹⁵ However, “[s]tigmatization of mental health problems and discrimination of . . . people of color are strong influencing factors of mental health consequences.”¹⁶ People of color are less likely to receive mental health care: “[I]n 2015, among adults with any mental illness, 48% of whites received mental health services, compared with 31% of [B]lacks and Hispanics, and 22% of Asians.”¹⁷

In this case, Ms. Hawkins’ criminal culpability was limited by her mental illness. This was recognized by all parties involved, with the initial expected result being a plea of not guilty

¹⁵ Wulf Rossler, *The Stigma of Mental Disorders*, EMBO Reports vol. 17:9 (2016). Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5007563/> accessed on March 30, 2022.

¹⁶ M. Schouler-Ocak et al, *Racism and Mental Health and the Role of Mental Health Professionals*, EUROPEAN PSYCHIATRY vol. 64, 1 (June 17, 2021). Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8278246/>

¹⁷ American Psychiatric Association, *Mental Health Disparities: Diverse Populations* (2017). Available at https://www.psychiatry.org/psychiatrists/cultural-competency/education/mental-health-facts?source=post_page accessed on March 30, 2022.

by reason of insanity. This plea was ultimately abandoned in order for Ms. Hawkins to be able to get medical treatment. Treatment that she had sought repeatedly prior to criminal-justice involvement. Individuals, like Ms. Hawkins, with serious mental illness are disproportionately represented in the criminal legal system. Her mental illness is the context of her criminal-justice involvement, and it should have been carefully considered by the trial judge.

B. CRIMINAL-JUSTICE INVOLVED VETERANS BENEFIT FROM THE SERVICES AND SUPPORTS AVAILABLE THROUGH VETERAN TREATMENT COURTS

Washington State is home to over 540,000 veterans. Starting in 2009, in Thurston County, courts around the state began to recognize that criminal-justice involved veterans have unique needs and cultural considerations that are best addressed by a dedicated veteran treatment court. Today, there are 11 veteran treatment courts in locations across the state, including both urban and rural counties and cities.

Although these courts are a relatively recent development in the criminal justice system, they have proven their efficacy. The one-year recidivism rate is only 14% compared to the national average of a 23-46% recidivism rate.¹⁸ Much of the success of these courts is likely due to the intense focus on the needs of veterans as population with shared characteristics, experiences, and risk factors.

One key shared experience that veteran treatment court judges and staff understand is that all veterans have been taught how to use weapons and be decisive, especially during times of stress or danger. This training is necessary to complete the mission and saves lives on the battlefield, but it does not translate well to reintegrating into civilian life, where using weapons, responding with force, or making split-second decisions can

18 Jack Tsai, et al, *A National Study of Veterans Treatment Courts Participants: Who Benefits and Recidivates*, ADMINISTRATION AND POLICY IN MENTAL HEALTH vol. 45, 2 (2018): 236-244. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5776060/> accessed March 30, 2022.

result in devastating consequences. University of Arizona Law School Professor Kristine Huskey describes this phenomenon, saying, “Behaviors that promoted survival in the combat zone may cause difficulties during the transition back to civilian life.” For example, “[h]ypervigilance, aggressive driving, carrying weapons at all times, and command and control interactions, all of which are beneficial in theater, can result in negative and potentially criminal behavior back home.”¹⁹ A court’s understanding of common reactions by veterans in times of actual or perceived danger can shed light on decisions made during the commission of the alleged offense or during the Veteran Treatment Court legal process.

Although there is a substantial benefit to courts understanding the training veterans receive, it is even more

19 Kristine A. Huskey, *Reconceptualizing “the Crime” in Veterans Treatment Courts*, FEDERAL SENTENCING REPORTER Vol. 27, No. 3, (February 2015), 178. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2602522# accessed March 30, 2022

important for courts to fully understand the impact of mental health conditions such as post-traumatic stress disorder and traumatic brain injury on veterans. In this case, the psychotic break that led Ms. Hawkins to harm her mother were caused by “significant mitigating circumstances and circumstances that . . . need treatment and need to be addressed.”²⁰ Veterans like Ms. Hawkins benefit immensely when judges and attorneys see mental health issues as treatable conditions rather than immutable characteristics and design court-ordered treatment to address those conditions, rather than focus only on punishment.

Post-traumatic stress disorder, traumatic brain injury, and other mental health conditions can also have deleterious impacts on the court process itself. Judges and court staff can factor these risks in so that veterans remain accountable and are not put in a position where their mental illness is preventing engagement with the court process. For example, veterans may experience

²⁰ Verbatim Report of Proceedings (December 21, 2012) page 23.

cognitive impairment due to a traumatic brain injury and fail to follow up with a probation officer, or may experience triggering moments during court proceedings that leads to avoidance of the courtroom or court process going forward.²¹ As a result of their experience with other veterans, judges in veteran treatment courts are much more likely to see these challenges as a manifestation of a mental health issue rather than an indicator that the veteran does not care or is disrespecting the court.

Veteran treatment courts are also an opportunity for judges, attorneys, mentors, and community partners to address the stigma against obtaining mental health care that many veterans experienced while in service. Judge Robert Russell, who established the first Veterans Treatment Court in the nation in Buffalo, New York, calls this the “warrior mentality,” and says

²¹ Evan Seamone, *The Veterans' Lawyer as Counselor: Using Therapeutic Jurisprudence to Enhance Client Counseling for Combat Veterans With Posttraumatic Stress Disorder*, MILITARY LAW REVIEW, Vol. 202 (2009). Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2456051 accessed on March 30, 2022

that veteran treatment courts can work to, “change that paradigm and teach veterans that it takes courage and strength of a warrior to ask for help. The Veteran Court model provides a community of warriors in which the veteran can be comfortable in overcoming this stigma and their service-related mental health or chemical dependency problems.”²² As addressed above, people with severe mental illness are overrepresented in the criminal legal system. Veteran treatment courts can be an effective intervention that prevents yet another person with severe mental illness from becoming incarcerated and, as so many do, deteriorating due to lack of adequate mental healthcare while incarcerated.

Although much of the veteran treatment court model is designed to address the challenges faced by veterans in the criminal legal system and as a result of their service, veteran

²² Robert T Russell & Catherine A O’Connor, *Veterans Treatment Courts*, THE ATTORNEY’S GUIDE TO DEFENDING VETERANS IN CRIMINAL COURT, 523–535, 534 (2014).

treatment courts can also acknowledge how military service hones certain values or skills that can help criminal-justice involved veterans succeed in the therapeutic court process. Established veteran treatment courts are built around accountability, honor, respect, and camaraderie with others. Courts can incorporate these values by setting up a peer mentor program, choosing judges and other courtroom or program staff who are veterans themselves, and connecting veterans to culturally-competent social and health services such as the VA or veteran service organizations.²³

Judge Russell describes the court roles as “analogous” to military roles.²⁴ The judge is the commanding officer, and mentors assigned to work with veterans moving through the system “act much like non-commissioned officers who make sure orders are carried out.” Judge Russell says “Military people have proven through their service that they are comfortable with

²³ *Id* at 528.

²⁴ *Id* at 533.

structure, capable of following directions, and their ability to do so provides yet another reason to give them this opportunity.”²⁵

In this case, Ms. Hawkins benefitted substantially from the resources provided to her by the court, including housing and healthcare from the VA. Courts who leverage the many resources available for veterans improve the lives of participants moving forward in a way that is not possible in typical courts. A national study of veteran treatment courts found that more veterans were housed in their own housing and connected with VA benefits at the conclusion of their time with the veteran treatment court.²⁶ A court that works with defendants to obtain these basic needs is positively impacting not only the participants, but also the community at large.

Veteran treatment courts are an excellent place for the criminal legal system to address structural racism and

²⁵ *Id* at 533.

²⁶ Jack Tsai, *supra* n. 13, at 236-244.

institutional bias; only 18% of veterans are people of color,²⁷ but one analysis of federally-convicted veteran prisoners found that over 40% were people of color.²⁸ An increase in the number of VTCs, with the focus on rehabilitation rather than punishment, could markedly reduce the number of BIPOC veterans who spend time in prison. Veterans who are incarcerated for more than 60 days after conviction of a felony lose access to the majority of their VA disability compensation benefits, and veterans who are convicted of a felony or misdemeanor and who are receiving non-service connected pension lose their entire benefit on the 61st day of incarceration after conviction.²⁹

²⁷ National Alliance to End Homelessness, *People of Color Make Up a Disproportionate Share of Homeless Veteran Population*, (October 22, 2018). Available at:

<https://endhomelessness.org/resource/people-color-make-much-larger-share-homeless-veteran-population-general-veteran-population/> accessed on March 30, 2022.

²⁸ United States Sentencing Commission, *Federal Offenders Who Served in the Armed Forces*, (October 2021). Available at: https://www.usc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20211028_armed-forces.pdf accessed on March 30, 2022.

²⁹ Department of Veteran Affairs, *Incarcerated Veterans*,

Oftentimes, veterans struggle to reinstate these benefits after incarceration, causing immediate financial instability and risking additional involvement with the criminal justice system.

Veteran treatment courts can also tailor the court-ordered treatment and services to stabilize veterans who committed offenses because they were in poverty or lacked housing, such as stealing food or trespassing to find a warm place to sleep. This is particularly important when considering that over 43% of homeless veterans are people of color,³⁰ and minority veterans are almost twice as likely to experience poverty than white veterans.³¹ Veteran treatment courts are uniquely situated to assist veterans experiencing poverty or housing instability by

(August 4, 2020). Available at: <https://www.benefits.va.gov/persona/veteran-incarcerated.asp> accessed on March 31, 2022.

³⁰ National Alliance to End Homelessness, *supra* n. 27.

³¹ Department of Veterans Affairs, Washington, DC., *Minority Veterans Report: Military Service History and VA Benefit Utilization Statistics*, NATIONAL CENTER FOR VETERANS ANALYSIS AND STATISTICS (March 2017), 35. Available at: https://www.va.gov/vetdata/docs/SpecialReports/Minority_Veterans_Report.pdf accessed on March 31, 2022.

connecting these veterans with housing services, healthcare, VA monetary benefits, and other stability services. The over-criminalization of BIPOC individuals, combined with the possible mental health issues experienced by BIPOC veterans and significant rates of homelessness, put BIPOC veterans at an increased risk of criminal justice involvement that veteran treatment courts can try to address and, hopefully prevent, going forward.

C. CRIMINAL-JUSTICE INVOLVEMENT HAS LONG-TERM IMPACTS THAT PERPETUATE SYSTEMIC RACISM

Criminal-justice involvement has long-term impacts on every aspect of an individual's life. These impacts are compounded by race, disability status, sex, and other vulnerabilities. The criminal legal system has been likened to a tar pit: An individual falls in and then spends the rest of their life crawling back out, trying to remove the tar stains from their bodies. Each person with a criminal conviction faces barriers

accessing services, obtaining employment, accessing education, obtaining stable housing, and even accessing healthcare.

Housing insecurity is especially prevalent among individuals with criminal justice involvement. People with a criminal record often face barriers to housing. “These barriers range from background checks as part of rental and public housing applications, denial of constitutional fair housing law protections, eviction and housing forfeiture, and denial of rental or sale.”³² Vulnerabilities compound to increase housing insecurity. Among individuals with criminal-justice involvement, those with mental illness have higher than average rates of homelessness and housing insecurity.³³ Black women

³² Jaboa Lake, *Preventing and Removing Barriers to Housing Security for People with Criminal Convictions*, (April 14, 2021) Why Criminal Convictions Lead to Housing Insecurity.

Available at:

<https://www.americanprogress.org/article/preventing-removing-barriers-housing-security-people-criminal-convictions/>

accessed on March 30, 2022.

³³ Patricia McKernan, *Homelessness and Prisoner Reentry: Examining Barriers to Housing Stability and Evidence-Based Strategies that Promote Improved Outcomes*, (May 2017), 1.

face higher rates of eviction.³⁴ In addition, criminal-justice involved veterans³⁵ have higher rates of homelessness.³⁶

In addition to housing insecurity, unemployment rate for formerly incarcerated people is much higher than the unemployment rate for the general population. “After submitting a job application, people with records on average are only half as likely to get a callback as those without a record.”³⁷ Race compounds these dismal figures with justice-involved Black men only receiving a callback one in three times.³⁸ “Formerly

Available at:
<https://www.njreentry.org/application/files/8115/5654/6843/Homelessness-and-Prisoner-Reentry-2017.pdf> accessed on March 30, 2022.

³⁴ Jaboa Lake, *supra* n. 32.

³⁵ This is addressed more fully *infra* at Section B

³⁶ National Alliance to End Homelessness, *supra* n. 27.

³⁷ Michelle Natividad Rodriguez, Beth Avery, *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records*, (April 26, 2016) Executive Summary. Available at: <https://www.nelp.org/publication/unlicensed-untapped-removing-barriers-state-occupational-licenses/> accessed on March 30, 2022.

³⁸ *Id.*

incarcerated Black women in particular experience severe levels of unemployment, whereas white men experience the lowest.”³⁹

Currently “no national data exists as to the number of people denied [occupational] licenses because of the collateral consequences”; however, there are a number of ways that criminal justice involvement restricts access to occupational licenses.⁴⁰ In 2018, Washington “banned the box.” RCW 49.94. RCW 49.94 did not change any of the occupational licensing restrictions. Blanket bans and overly broad criminal record inquiries are still allowed for occupational licensing.⁴¹ Washington, like many states, has both blanket bans and overly broad criminal record inquiries for many occupational licenses, though there has been significant improvement on these issues.

³⁹ Lucius Couloute, Daniel Kopf *Out of Prison & Out of Work: Unemployment among Formerly Incarcerated People*, (July 2018) Race and Gender. Available at: <https://www.prisonpolicy.org/reports/outofwork.html> accessed on March 30, 2022.

⁴⁰ Michelle Natividad Rodriguez, *supra* n. 37 at Executive Summary.

⁴¹ *Id.* at The Landscape of State Occupational Licensing Barriers.

See e.g. RCW 9.96A. This means that individuals, like Ms. Hawkins, are often precluded from obtaining or renewing licenses for criminal conduct that occurred years ago.

In addition, criminal-justice involved individuals are ineligible for welfare benefits like Temporary Assistance to Needy Families (TANF).⁴² As discussed *infra* at section B, veterans lose benefits after 60 days of post-conviction incarceration for a felony or, in some cases, even post-conviction incarceration for a misdemeanor. Getting those benefits reinstated following incarceration takes significantly more than 60 days.

These long-term impacts make successful reentry extremely difficult. When individuals, like Ms. Hawkins, have satisfied the requirements of RCW 9.94A.640 they have the opportunity to have these barriers lifted. In order to ensure discretion is exercised in ways that do not perpetuate the disproportionate

⁴² Patricia McKernan, *supra* n. 33 at 8.

harms of criminal history, trial courts need guidance on how to exercise their discretion.

VI. CONCLUSION

Amici respectfully request the Supreme Court provide guidance to the trial courts regarding how and when to exercise discretion in denying motions to vacate criminal convictions under RCW 9.94A.640.

CERTIFICATE OF COMPLIANCE

This document contains 4062 words exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, this certificate of compliance, the certificate of service, signature blocks, and pictorial images.

RESPECTFULLY SUBMITTED this 1st day of April 2022.

NORTHWEST JUSTICE PROJECT

s/ Claire Carden

Sandy Garcia, WSBA #45460
Claire Carden, WSBA #50590
Mariah Hanley, WSBA# 51288
1702 W. Broadway Ave.
Spokane, WA 99201
Tel. (509) 324-9128
Sandy.Garcia@nwjustice.org
claire.carden@nwjustice.org
mariahh@nwjustice.org

Attorneys for *Amicus Curiae*
Northwest Justice Project and
Revive Center for Returning Citizens

ACLU OF WASHINGTON FOUNDATION

Jazmyn Clark, WSBA #48224

Nancy Talner, WSBA #11196

P.O. Box 2728

Seattle, WA 98111

jclark@aclu-wa.org

talner@aclu-wa.org

Attorneys for Amicus Curiae

COLUMBIA LEGAL SERVICES

Nick Allen, WSBA #42990

101 Yesler Way, Suite 300

Seattle, WA 98104

Nick.Allen@ColumbiaLegal.org

Attorneys for Amicus Curiae

DISABILITY RIGHTS WASHINGTON

Heather McKimmie, WSBA #36730

315 5th Avenue South, Suite 850

Seattle, WA 98104

heatherm@dr-wa.org

Attorney for Amicus Curiae

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this 1st day April 2022, I caused the foregoing document to be filed with the Supreme Court of the State of Washington, and to be served to all participants via the Washington State Appellate Courts' Portal.

SIGNED at Spokane, Washington, this 1st day of April 2022.

NORTHWEST JUSTICE PROJECT

s/ Nia R. Platt

Nia R. Platt, Legal Assistant
1702 W. Broadway Ave.
Spokane, WA 99201
Ph: (509) 324-9128
Fax: (206) 299-3185 (Temporary)
Email: nia.platt@nwjustice.org

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