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**WASHINGTON STATE  
SENATE  
LAW AND JUSTICE  
COMMITTEE**

**Majority Report**

**Investigation of  
Department of Corrections  
Early-Release Scandal**

Senator Mike Padden, Chair  
Senator Steve O'Ban, Vice Chair  
Senator Kirk Pearson  
Senator Pam Roach

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## I. Introduction

On Jan. 19, 2016, the Senate Law and Justice Committee formally launched an investigation into the early release of some 3,000 prisoners by the Department of Corrections (“DOC” or “the Department”) over a 13-year period from 2002 to 2015. The focus of this investigation was DOC’s three-year delay in correcting a problem in calculating release dates for inmates – a problem discovered by a crime victim’s parent, who alerted the Department in 2012. While the Senate investigation has largely run its course, it remains open to make further findings from ongoing public-disclosure requests and further DOC analysis of the prisoner-release data.

This report provides a summary of the investigation’s evidentiary findings and its conclusions regarding the causes of the delayed fix, as well as recommendations to help prevent such a problem from recurring in the future.

This report is organized in the following manner:

- The resolution authorizing the historic subpoenas issued in support of the Senate investigation;
- An executive summary;
- A summary of key facts;
- Conclusions; and
- Recommendations.

An appendix includes: transcripts of evidentiary hearings, exhibits, a memorandum of law regarding the “*King* error” and “*King* fix” stemming from a 2002 Washington Supreme Court ruling, summaries of witness interviews, and draft legislation.

## **II. Resolution by the Senate Law and Justice Committee, adopted Jan. 19, 2016.**

WHEREAS, serious and specific public allegations have been made against the Department of Corrections regarding the agency's early release error of over three thousand two hundred prisoners over a thirteen-year period from 2002 to 2015; and

WHEREAS, these errors have occurred despite the Legislature's significant investment in a vendor overseeing the Department of Corrections computer system and in providing funding for Department of Corrections employees responsible for accurate calculation of prisoner sentences; and

WHEREAS, the governor has announced that his office has hired two investigators to look into the matter. However, questions have arisen as to the scope and transparency of the investigation. The governor's office has also declined to make the investigators available to answer questions before the Law and Justice Committee regarding issues of legislative interest, or to agree to make the full investigation available to the Legislature; and

WHEREAS, the members of the committee have made every effort to work through the normal processes to obtain information regarding this matter including submitting a public records request and requesting that witnesses testify at committee hearings to questions provided in advance. The Department of Corrections has returned the public records request and witnesses either declined the committee's invitation or declined to answer the questions as requested; and

WHEREAS, this matter presents significant legislative issues which are directly related to the jurisdiction of the Law and Justice Committee. First, the committee is charged with implementing the statutory provisions related to sentencing and the department of corrections. Moreover, the committee is charged with consideration of the governor's appointment of the Department of Corrections secretary, which is now pending before it. These matters are directly related to the judgment and fitness of the secretary and whether he may serve as an adequate steward of the public trust. Finally, the committee requires this information because it is germane to future legislation to ensure that errors of this magnitude do not occur again; and

WHEREAS, the Washington State Constitution, Article II section 1, provides that the "legislative authority of the state of Washington shall be vested in the Legislature," chapter 44.16 RCW provides for the process of legislative inquiry, and under Senate rule 43 committees of the Legislature may have the powers of subpoena subject to the processes outlined in the rule; and

WHEREAS, it is necessary for the development of sound public policy and legislative deliberations that all of the facts pertaining to this matter with the department of corrections be addressed and considered. Therefore to properly fulfill the committee's legislative duties, the committee needs to obtain documents and take witness testimony;

NOW, THEREFORE, BE IT RESOLVED, that the Washington state Senate Committee on Rules is requested to issue two initial subpoenas for all nonprivileged documents, in electronic or written form, including, but not limited to, communications, reports, memoranda, graphs, charts, photographs, images, or data compilations, prepared by or in the possession of the department of corrections or the office of the governor on or after December 1, 2012, to December 22, 2015, relating to the erroneous early release of inmates arising from sentence calculation errors, or the failure to timely correct those errors, that was the subject of the publicly disclosed statement of the governor on December 22, 2015. The subpoenas should allow the Department of Corrections and the Office of the Governor to delete the identity of victims contained in all documents.

### **III. Executive Summary**

On Dec. 22, 2015, one of the most significant cases of state-government mismanagement in Washington history was revealed to the public. Over 13 years, the state Department of Corrections released some 3,000 inmates before their full sentences had run their course. These inmates were released an average of 59 days early, according to the most recent estimate, and in the worst case, nearly two years. This error had tragic consequences. Two deaths have been linked to felons who should have been in prison at the time, and numerous other crimes also may have committed by those who should have been in custody, according to a DOC analysis that remains incomplete.

The most disturbing fact was that DOC learned about the problem after a phone call from an anguished citizen in 2012, yet continued to release inmates early for another three years. Employees followed agency protocols to obtain legal advice, notify supervisors, and to try to get the problem corrected. Yet at no point did their efforts trigger alarms. DOC did not begin hand-calculating sentences, or launch a crash program to fix its software, nor did it try to determine the scope of the problem. The matter was treated as a routine software maintenance issue and a fix was repeatedly delayed. Not until December 2015 did executive management claim to become fully aware of the error and its impact.

The Senate Law and Justice Committee launched its own investigation, independent of the governor's. Its findings, presented in this report, indicate that the mismanagement was systemic, and it started at the top levels of state government. The consequences have been grave and the financial cost will be felt for years in expensive litigation and awards to the victims of the early released inmates. This was not a "software glitch." It was a failure of leadership.

## A. Background

Under Washington state law a state-prison inmate’s base sentence may not be reduced more than 33 percent by good-behavior time.<sup>1</sup> In July 2002 the Washington State Supreme Court ruled, in the case *In Personal Restraint of King*,<sup>2</sup> that certain state-prison inmates must receive credit for “earned release” time (commonly known as “good time”) they accrued in city or county jails prior to entering prison. Prior to the *King* decision, the Washington Department of Corrections credited offenders for good time earned only in prison, not jail. To comply with the *King* ruling the Department changed coding in the system it used to track offenders and compute their sentences. However, the coding change was inaccurately sequenced. This incorrectly allowed select offenders to receive credit for good time in excess of the statutory 33-percent limit. The erroneous calculation of certain inmates’ sentences – and thus their release dates – remained virtually undetected for a decade.

In December 2012, King County resident Matthew Mirante was notified that DOC intended to release the man who had been convicted of stabbing Mirante’s son multiple times in November 2011. Mr. Mirante suspected that the release date was premature. After calculating the proper release date by hand, in a matter of minutes, he contacted DOC. According to several DOC staff, this was their first indication that the agency offender-management computer system was calculating prisoner-release dates incorrectly in light of the *King* decision. The Department contacted the Office of the Attorney General regarding what would be known as the “*King* error.” Counsel there provided legal advice indicating the department could continue releasing prisoners early while it waited for a fix to the software.

Several low to mid-level DOC employees tried to implement a solution, which would be known as “the *King* fix,” through normal agency processes and managed to add it to a list of updates planned for the offender-management computer system. A DOC contractor began work on the *King* fix in 2013; however, it was repeatedly delayed.

By December 2015, enough of the *King* fix was implemented for DOC executives – including a new Secretary of Corrections, on the job less than two months – to realize some 3,000 offender sentences were affected by the original error that had come to light three years earlier. Gov. Jay Inslee was notified about the problem on Dec. 17, 2015 and informed the public five days later,

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<sup>1</sup> RCW 9.94A.729(1)(b).

<sup>2</sup> *In Personal Restraint of King*, 146 Wn. 658, 49 P.3d 854 (2002).

saying his office would conduct an investigation,<sup>3</sup> to be led by two former federal prosecutors hired from the Seattle firm of Yarmuth Wilsdon, PLLC.

## **B. Summary of Senate Investigation, December 2015-May 2016**

When news of the sentencing-error scandal was made public on Dec. 22, 2015, Sen. Mike Padden, R-Spokane Valley, chair of the Senate Law and Justice Committee, sent a public-records request to the Office of the Governor and DOC for all documents regarding the sentencing error, from 2012 up to the governor's announcement. The public-records request was rejected on the grounds that Sen. Padden had failed to submit it to the public records officer at DOC.<sup>4</sup> Staff for Sen. Padden invited the governor's investigators to testify before the Senate Law and Justice Committee; however, the governor's office objected and instead offered to make the investigators available for a private meeting on Jan. 14, 2016. At that meeting, Sen. Padden and Sen. Steve O'Ban, R-Pierce County, vice chair of the Senate Law and Justice Committee, learned that the investigators did not intend to take sworn testimony or have witnesses sign or verify statements. Rather, they would interview witnesses in private and the critical factual conclusions of their report would be based on the investigators' notes that they would not disclose to the public. Both senators expressed concerns with this approach.

As a result, the Senate Law and Justice Committee made a request to the Senate Rules Committee, for the authority to issue subpoenas to the governor's office and DOC. The Rules Committee met Jan. 19, 2016 and approved the subpoenas. The Senate then hired the firm of Davis Wright Tremaine, LLP, headquartered in Seattle, to assist with the Senate investigation.<sup>5</sup>

The Senate followed a strikingly different process than the governor's office, to ensure accuracy and full public transparency for its investigation. Mark Bartlett, a former federal prosecutor, served as lead attorney. During a hearing of the Senate Law and Justice Committee on Feb. 10, 2016, attended by members of both parties, Mr. Bartlett made it clear that the firm had been engaged to assist in the Senate investigation, rather than to conduct the investigation itself. Mr. Bartlett stated, "We were not engaged to do an independent internal investigation. Instead, we were engaged to

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<sup>3</sup> Following disclosure of the early-release issue, DOC undertook a number of actions, including a roundup of the relative handful of prisoners who legally could be forced to return to custody, an all-out effort by DOC to patch its faulty computer software and hand calculations of inmate sentences until the problem could be fixed.

<sup>4</sup> Sen. Padden had submitted public-records requests on another matter only a few months earlier to DOC in substantially the same format. Instead of returning those requests, DOC and the governor's office provided responses.

<sup>5</sup> The Senate Law and Justice Committee expresses its sincere appreciation to the Davis Wright Tremaine law firm and especially Mark Bartlett, for its diligence, professionalism, and perseverance in the face of unique challenges and tight deadlines. The Senate and the people of the State of Washington are grateful for their contribution.

assist the Senate as the Senate conducts its oversight hearings with regard to what happened at the DOC.”<sup>6</sup>

The first step was to review 71,000 pages of records<sup>7</sup> produced by the governor’s office and DOC in response to the subpoenas issued by the Senate Law and Justice Committee. Using a specialized software system, Davis Wright Tremaine identified the most relevant documents to be used in later questioning of witnesses<sup>8</sup> and completed the review in less than 30 days.<sup>9</sup>

As documents were being produced, Davis Wright Tremaine attorneys undertook the next step – interviewing witnesses. More than two dozen people with direct or indirect knowledge of the scandal were interviewed. Here, too, the Senate investigation stood in sharp contrast to the approach taken by the governor’s office. Rather than attempt to reconstruct witness testimony from interview notes, which relies heavily on the subjective judgments of investigators and the accuracy of which cannot be objectively corroborated,<sup>10</sup> the Senate’s process emphasized the creation of statements that would be thorough, accurate and adopted by the witness. After each witness identified by the Senate was interviewed, a written memorandum was prepared and returned to the witness so that it could be reviewed for accuracy and corrected. After making corrections as needed, each of the witnesses signed his or her statement to attest to its accuracy. These witness statements are provided with this report so that the public can determine for itself that the report accurately conveys the witnesses’ testimony.

The Senate Law and Justice Committee also received testimony from 13 witnesses, under oath, over the course of four investigatory hearings that lasted a total eight-and-a-half hours. Each of these investigatory hearings was conducted in public and was televised, with Republican and Democrat members of the committee both having the opportunity to examine witnesses. Transcripts of these hearings are provided with this report. The committee also held three less-

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<sup>6</sup> Testimony before the Senate Law and Justice Committee, [Feb. 10](#), 2016.

<sup>7</sup> Approximately 30,000 pages of documents have been received since that time.

<sup>8</sup> The system was so effective that, according to Mr. Bartlett, the governor’s investigators asked to use it.

<sup>9</sup> By contrast, the governor’s investigators had more than two months to accomplish this task, and by the time they issued their final report on Feb. 25, they still had not reviewed 16,000 pages of documents. Governor’s media availability, Feb. 25, 2016, <http://www.tvw.org/watch/?eventID=2016021403>.

<sup>10</sup> In fact, as discussed *infra*, witnesses challenged the accuracy of the testimony as reconstructed by the governor’s investigators.



formal work sessions on the matter, which are viewable on TVW, the state's public-affairs network.<sup>11</sup> This report is a compilation of the committee's findings.<sup>12</sup>

Other than the governor's investigators, only one witness invited by the Senate Law and Justice Committee to appear did not do so: Bernard ("Bernie") Warner, who served as secretary of corrections from July 2011 to mid-October 2015. Warner's tenure coincided with the period during which the *King* error was identified and the *King* fix was repeatedly delayed. Rather than submit to questioning by senators, Mr. Warner, who had left Washington State for a job in a different state, answered questions from Davis Wright Tremaine attorneys. Like other witnesses, he too attested to the accuracy of his statements.

The Senate Law and Justice Committee also conducted a novel outreach effort called "FixDOC" to seek insight from DOC employees. An email was sent to all 10,016 employees of the Department. "Many of you know how and why this happened," the message read. "You know where the mistakes were made, and what it will take to fix them. We'd like to hear from you. What changes need to be made in management processes, workforce development, ethics and culture?" The message was signed by Sen. Padden, as chair of the committee, and Sen. Jamie Pedersen, D-Seattle, ranking minority member. Nearly 300 responses were received in response to the email or via a website administered by the Senate. These responses informed the committee's understanding of the cultural issues within the Department.

### **C. Conclusions**

The Senate investigation has largely concluded, though it may issue a supplemental report. The Senate continues to review the wealth of information gained from DOC employees, which prompted more public-disclosure requests of DOC and the governor's office that remain outstanding. However, enough was learned from December 2015 through May 2016 to draw the following conclusions about the causes of the DOC early-release scandal:

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<sup>11</sup> TVW, the independent Washington state public affairs TV network, hosts the files on its website at [www.TVW.org](http://www.TVW.org). The Senate Law and Justice Committee held these work sessions on [Jan. 11](#), [Jan. 18](#) (joint session with the Senate Accountability and Reform Committee) and [Feb. 10](#).

<sup>12</sup> Three investigative reports have been produced on the subject, including this one. The other two reports, from the Attorney General's Office and the Office of the Governor, were more limited in scope. The attorney general's report examined the adequacy of legal advice the office provided to the DOC. The governor's report examined the narrow question of who was responsible for the delay to the software fix, but it did not consider the responsibility of executive-level managers for the performance of their agency. Nor did it consider the failure of the governor's office to recognize the dysfunction within DOC.

1. Although this debacle was described in some news accounts as a software or computer “glitch,”<sup>13</sup> it is more properly understood as a management failure. The initial mistake was a human error, caused when the DOC provided incorrect instructions to programmers. There was no failure of software or equipment. The systems involved worked exactly as they were programmed – incorrectly and with tragic consequences.
2. DOC’s three-year delay in implementing the *King* fix, and ending the premature release of prisoners, was largely due to failed management, starting with former Secretary Warner’s grossly inadequate management style and practices. Warner was a poor communicator; he failed to make timely decisions; he was frequently absent traveling to out-of-state and international conferences; he displayed a lack of interest in the oversight of the Information Technology (IT) department and other key departments; and he prioritized at the expense of routine maintenance a grandiose software project that he insisted be developed by a controversial company owned by a personal friend and which would consume the time, energy and resources of many IT managers and staff.
3. Former Secretary Warner’s mismanagement led to a structural breakdown and disorder within DOC, evidenced by the fact that the job of chief information officer for the Department was held by six people during the Warner administration, with three CIOs serving no more than three months each. The atmosphere became such that executive managers did not properly monitor day-to-day operations and ignored a clear warning of the early-release problem, while mid-level employees could not effectively communicate with their peers or question agency-management decisions. As a result, IT-governance processes that should have detected and corrected the sentence-calculation error instead broke down, allowing the *King* fix to languish.
4. Former Secretary Warner admitted to limited knowledge of the computer error. Nevertheless, this knowledge constituted notice that should have prompted a reasonably competent manager to make further inquiry and ensure that the matter was finally resolved.

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<sup>13</sup> Examples are numerous but include: Associated Press, “More than 3,000 Washington Prisoners Released Early Since 2002” Dec. 22, 2015, <http://www.foxnews.com/us/2015/12/23/more-than-3000-washington-prisoners-mistakenly-freed-early-since-2002.html>; Jerry Cornfield, “Inslee vows Accountability in Inmate Early-Release Glitch,” The (Everett) Herald, Jan. 7, 2016, <http://www.heraldnet.com/article/20160107/NEWS01/160109251>; Seattle Times editorial board, “Lessons Learned from State’s Deadly Prisons Scandal,” Seattle Times, Feb. 27, 2016, <http://www.seattletimes.com/opinion/editorials/an-upgrade-in-performance-from-state-government-on-it-systems/>; Steve Kiggins, “Senate Committee Hears Testimony in Probe of Erroneous Early Release of Prisoners,” KCPQ-TV, Feb. 22, 2016, <http://q13fox.com/2016/02/22/senate-committee-hears-testimony-regarding-doc-scandal/>.

5. There can be no doubt that the staff in the governor's office, which bears statutory responsibility to oversee DOC and most other agencies in the executive branch of Washington state government, had some knowledge of the early-release problem. At least one current staff member, Sandy Mullins, admitted to some knowledge of the error. Yet the state's chief executive and his staff failed to make inquiries, failed to recognize a number of warning signs of DOC's dysfunction caused by Warner's mismanagement, and failed to effectively address personal relationships that likely discouraged DOC staff from raising questions regarding the Department's inability to protect the public.

The extent of these management and oversight failures remains unknown because it is unknown how many criminals were released into the community prematurely. The latest numbers provided by DOC suggest the number of offenders released early is approximately 3,000. Some of these inmates either committed or have been accused of committing serious crimes, including murder, during the time they should have been behind bars.<sup>14</sup> At the time of publication of this report, at least two deaths have been linked to the early releases,

However, DOC has not completed its analysis of the number of offenders who were released early, the crimes committed by those who were released early, or the individual offenders who still owe additional prison time. In particular, DOC has not publicly provided any work product regarding inmates who were improperly released between 2002 and 2011.

In addition to the threat it posed to public safety, DOC's mismanagement of the *King* fix threatens huge costs for Washington taxpayers because of the potential financial liability borne by the state. Although crimes were committed by the improperly released offenders and not by the state itself, Washington law allows claims for "negligent supervision" that make the state easier to sue than other states. The Department is particularly vulnerable because courts have held that the agency has a duty to protect the public from the "dangerous propensities" of inmates under its supervision. Until DOC finishes its analysis, however, a full picture of the damage – and the state's total liability – cannot be accurately estimated.

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<sup>14</sup> The damage done by these early releases is not yet fully understood. But an incomplete analysis by the DOC indicates that at least two people may have been killed by felons during the time they should have been in jail. In addition, a number of serious crimes were committed or may have been committed by former inmates when they should have been in custody. The state faces an enormous liability: a claim for \$5 million has been filed by the family of one of those killed, and other claims are likely. Brandi Kruse, "Mother of Boy Allegedly Killed by Mistakenly Released Prisoner Sues for \$5 Million", KCPQ-TV, Feb. 22, 2016, <http://q13fox.com/2016/02/26/mother-of-boy-allegedly-killed-by-mistakenly-released-prisoner-sues-for-5-million>. The impact on crime victims also must be considered, as well as the impact on inmates who were forced to return to prison through no fault of their own.

## D. Recommendations

1. **Establish a Corrections ombuds independent of DOC or the governor's office.** During the 2016 legislative session, a number of bills were introduced that would have created an independent forum for the resolution of concerns about the Department, serving victims and their families, inmates and their families and DOC employees. This position should be independent of DOC and the governor's office.
2. **Investigate the Advance Corrections/STRONG-R initiative/project.** While the Advance Corrections project may be good public policy, there are a number of unanswered questions about the project including: whether justification existed for a sole-source contract for Assessments.com, a company owned by a personal friend of Secretary Warner, Sean Hosman, why Warner continued to invest trust and public funds in Hosman's company when he knew Hosman was a convicted criminal and suffered from a substance abuse addiction, and whether Assessments.com was fulfilling its contractual duties to DOC. These should be investigated by the appropriate authority via a performance audit conducted by the Joint Legislative Audit and Review Committee.
3. **Mandate that the governor put systems in place to directly monitor critical agency performance.** The governor's office has the clear constitutional and statutory duty to competently manage state agencies. Current law is largely silent as to how the governor is to effectively manage state agencies. It is clearly not enough to appoint the agency secretary and nothing more. Systems must be in place to monitor a secretary's performance on a regular basis, including to ensure that a pattern of poor management can be reported directly to the governor's staff with the authority and impartiality to act on such reports.
4. **Clarify through policy how personal relationships within the executive branch should be managed to avoid conflicts of interest.** Although personal relationships between staff cannot be categorically prohibited, there is special concern when staff of the governor's office form personal, and especially romantic, relationships with heads of departments. To avoid obvious conflicts of interest in those circumstances, current law and policy should be clarified that the governor should be notified of those relationships and the agency head should report directly to him or her.
5. **Simplify Washington's sentencing code in a manner that does not reduce punishment or compromise public safety.** Multiple witnesses indicated that the complexity of the sentencing structure in Washington directly led to confusion about and delay in programming the *King* fix. The Legislature should undertake a multi-year process to evaluate the sentencing code and provide a simpler sentencing system with a net-zero impact to sentence length and without compromising public safety.

6. **Review the staffing of the IT and Records departments at DOC.** Former Secretary of Corrections Dan Pacholke, who headed DOC when the early-release scandal was announced publicly, recommended a study of staffing levels of these key departments and whether they are adequately funded and staffed.
7. **Require a DOC-wide hand count in the event of any future computer error that results in early prisoner releases.** Many witnesses testified that a hand calculation of all prisoner sentences would have stopped the early release of prisoners which was allowed by the delay of the *King* fix.
8. **Require an annual report to the Legislature and plan to address DOC's IT maintenance backlog.** The Legislature should be informed of any remaining maintenance backlog defects or enhancements in DOC's offender-tracking system and a timeline for their resolution.
9. **Enhance protections for DOC "whistleblowers."** Given the workplace culture at DOC and the popularity of the FixDOC website and outreach effort, and to allay employee concerns that they have limited if any access to executive decision-makers, stronger protections should be enacted for those who wish to anonymously "blow the whistle" on practices and decisions that jeopardize public safety.
10. **Review whether additional actions may be possible against Warner.** Although Mr. Warner is no longer in the employment of the state, his gross management warrants additional scrutiny and action. The governor should consider whether other administrative options exist, such as a letter of reprimand for his personnel file.
11. **Designate public safety as DOC's highest statutory duty.** While the delay to the *King* fix does not appear to have been intentional, some witnesses indicated that the emphasis of the Department on preparation for release rather than public safety contributed to an agency culture in which such a delay may have appeared acceptable.
12. **Restructure information-technology governance at DOC.** According to testimony and witness statements, the Department already has begun to implement this recommendation, in an effort to improve prioritization of IT fixes. This important step should be encouraged legislatively, in law or budget.

## IV. Factual Summary

### A. The *King* Decision

On July 3, 2002, the Washington State Supreme Court decided a case, *In Personal Restraint of King*,<sup>15</sup> involving a personal restraint petition filed by an offender who claimed that DOC had failed to credit him with the “good time” he earned while being held in the Snohomish County jail prior to his conviction and sentencing. The offender was serving a 190-month base sentence for robbery and assault, as well as a consecutive 60-month enhancement for the use of a firearm. The court sided with the offender and required DOC to give credit for good-behavior time earned in jail.<sup>16</sup> Prior to this decision, DOC credited offenders only for the good time they earned while in prison.

Email from the date of the *King* decision indicates DOC and Office of Attorney General (AG) staff understood the decision would create challenges for the software used by DOC, known as the Offender Based Tracking System (OBTS). Paul Weisser of the AG’s office warned, “The correctional records managers may have their hands full with this one. I suspect that many offenders’ (hundreds or thousands) time structure will have to be individually recalculated because I don’t think OBTS can accommodate the rule the court announced in *King* on a system-wide basis.”<sup>17</sup> Another internal DOC email suggested that the Department’s records and IT staff review the impact of the decision.<sup>18</sup>

In its ruling, the court suggested a solution that would bring sentencing into compliance:

[T]he Department should have, upon assuming custody of King, begun the enhancement time “clock.” That “clock” would start at zero and run for the length of King’s mandatory sentence enhancement—60 months in this case. King would not earn or accrue any good time credit or earned release time during this enhancement time. After 60 months, King’s enhancement time would be complete and he would begin serving his standard time. The Department would then apply against the standard time the amount of time King spent in presentence detention, in addition to whatever early release credit he earned during that [jail] time. King would also be able to earn additional good time or early release credit while serving his standard range sentence. This approach avoids the conflicts created when an offender’s presentence detention is recharacterized as enhancement time (thus dissolving whatever earned early release credit an offender might have

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<sup>15</sup> *In Personal Restraint of King*, 146 Wn. 658, 49 P.3d 854 (2002).

<sup>16</sup> Exhibit 20.

<sup>17</sup> Exhibit 1.

<sup>18</sup> Exhibit 1.

accrued), and ensures the Department will maintain control over the important incentive of earned early release credit for good behavior.<sup>19</sup>

The suggested solution from the court was not the one taken by DOC. Instead it accepted an invitation from the court, offered in a footnote, to develop its own calculation methods. DOC continued its practice of sequencing an offender's enhancement period to run before the offender's base period and credited the amount of jail time served against that enhancement. DOC also began crediting any jail good time earned to the offender's base sentence<sup>20</sup> before calculating prison good time.

This application resulted in some offenders receiving more total good time – jail and prison good time combined – than they were legally entitled to in light of the statute that sets a maximum amount of good time that an offender can earn. This occurred because DOC subtracted the jail good time that an offender had earned from his base sentence, and then permitted the offender to earn up to one-third of the remaining base sentence as additional good time. Combined, the jail good time and prison good time in some scenarios could total more than 33 percent of the original base sentence, resulting in an early release. OBTS erroneously calculated the length of sentences in certain situations, not because it was malfunctioning but because it was behaving exactly as it was programmed – incorrectly.

This misinterpretation of *King* went undetected for the next decade. When OBTS was largely replaced by the Offender Management Network Information system (OMNI) in July 2008, the error was transferred to the new system because there was no reason to believe the old system was wrong. Kit Bail, who served DOC as chief information officer for five years until retiring in 2011 (but who was not in a position to impact the original implementation of the *King* decision programming), offered this explanation for why such a misinterpretation might go undetected:

Sentence structure and time accounting is extremely complex.... And we dealt with many, many, many, many specific situations of the complexity. We had every reason to believe that the code was working correctly. We would, as part of the process of developing OMNI, we would do test scenarios on specific SSTA processes, and then we would do hand calculations or ask the records staff to do hand calculations for comparison,

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<sup>19</sup> *In Personal Restraint of King*, p. 665 (footnote omitted).

<sup>20</sup> In her 2007 email to DOC's Leora McDonald, AAG Ronda Larson pointed out that this practice arguably violated the Hard Time for Armed Crime statute, RCW 9.94A.729(1)(b)(2). Under this new policy, offenders received jail good time for days that were credited against their enhancement, rather than their base sentence. Although the issue is ambiguous, it could be argued that permitting inmates to earn good time during a period when their time served is credited against an enhancement violates RCW 9.94A.729(1)(b)(2). To our knowledge, neither DOC nor the AG further analyzed this question, and DOC did not take any action based on this potential issue. We take no position on whether this concern was correct, and DOC no longer follows this approach.

so that we had a pretty strong sense of reliability, in terms of how the system was working. The fact that the algorithms were incorrect in OBTS and came over and were incorrect in OMNI was something that everybody missed. And my only explanation for that, senator, is the complexity of the system of sentencing.<sup>21</sup>

Testing of OBTS/OMNI for accuracy did not reveal the sentence-calculation error because the presumption that DOC had correctly interpreted the decision was not challenged. Wendy Stigall, the administrator of the DOC records program, correctly pointed out that hand calculations done prior to 2012 would not have revealed the error because DOC was intentionally applying its understanding of the law at the time.<sup>22</sup> As a result of this misinterpretation of the court decision, inmates began to receive greater sentence reductions than they were legally allowed.

In December 2012, Matthew Mirante, a Boeing truck driver and father of a stabbing victim, alerted DOC that the Department's sentencing calculations could be allowing prisoners to be released early. However, evidence indicates that personnel changes and events in motion prior to the 2012 phone call from Mr. Mirante had a direct impact on the way DOC handled the information as well as on its failure to prioritize this threat to public safety.

## **B. The Tenure of Eldon Vail**

On July 1, 2011, Gov. Christine Gregoire accepted the sudden resignation of Eldon Vail, whom she had appointed Secretary of Corrections in January 2008. The governor said Mr. Vail's decision to step down was "a loss to the State of Washington, the Department of Corrections and to me personally."<sup>23</sup> She was not alone in that sentiment. Despite the personal indiscretion that led to his sudden departure, Mr. Vail was held in high regard and led the Department through major challenges, including the budget challenges of the Great Recession and the April 2011 closure of the state prison on McNeil Island in Pierce County.

Dan Pacholke, who served briefly as Secretary of Corrections in 2015 and 2016 and was deputy director of prisons under Vail, described his former boss as "a master communicator" and "a very skilled administrator." Pacholke praised Mr. Vail's work ethic, grasp of issues, and his "tons of relationships" with department staff, community advocates, elected officials and law enforcement.<sup>24</sup> Kit Bail, former chief information officer for the agency, called Mr. Vail a great director who connected with people, maintained high standards, and instilled a sense of pride in working for the

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<sup>21</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.13. It is interesting to note that Ms. Stigall oversaw a statewide hand calculation in fall 2013 after she was aware of the *King* problem.

<sup>22</sup> DWT Memorandum, Wendy Stigall, p.2

<sup>23</sup> <http://www.doc.wa.gov/docs/docnewsrelease--eldonvailresignsassecretaryofdepartmentofcorrections.pdf>.

<sup>24</sup> Senate Law and Justice Committee hearing transcript Feb. 29, 2016, p. 35



department.<sup>25</sup> Denise Doty, who served as assistant secretary of DOC's Administrative Services Division under Mr. Vail, called him a great, effective leader who set goals, gave clear direction, and led by example, testifying personally before the Legislature on budget issues, bringing heads of prisons and community corrections divisions with him.<sup>26</sup>

At Vail's direction, Ms. Bail established a governance structure for the OMNI project and future large-scale computer projects. This new Project Review Board, an executive team of decision-makers for major projects, established a "pretty rigorous governance process," she said.<sup>27</sup> Meanwhile, the tracking of defects, a separate process, was performed by "a group of people involved in IT with the business team"<sup>28</sup> Business-team members would explain to IT staff how a defect or enhancement would affect actual operations to aid them in understanding priorities. Ms. Bail testified that when she left her position as CIO in 2011, these defect-tracking team meetings typically took place weekly. She said the IT department tracked decisions, kept documentation, and "knew what was going on."<sup>29</sup>

During this period, the IT department dealt with many challenges, the biggest being the replacement of the OBTS system with the new OMNI system. This transition included "the guts of the sentencing process," a module known as Sentencing Structure Time Accounting (SSTA). Ms. Bail said the IT department was painstaking in its effort to make sure the system was transferred without error. "We did reviews on a regular basis, we did reviews with the people who knew the sentencing calculations and knew them well, to make sure what that was programmed in OMNI was correct," she said.<sup>30</sup> The IT department had no way of knowing at that time that what had been programmed into OBTS was incorrect, and that by transferring the functions into the new system they were perpetuating the error.

These systems were extremely complex, and for at least a year after OMNI's launch, an "ongoing" string of defects required attention. According to Ms. Bail, updates and defects were placed every week into a ClearQuest tracking system to be prioritized and evaluated. Employees would review whether any of the old and new requests overlapped and worked to identify those needing immediate attention. A key component of this process was communication. Ms. Bail recalled there were comments and explanation whenever an update was rescheduled for later release and an impact analysis for each requested fix that included a severity index.<sup>31</sup>

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<sup>25</sup> DWT Memorandum, Kit Bail, p.4.

<sup>26</sup> DWT Memorandum, Denise Doty, pp.1-2.

<sup>27</sup> DWT Memorandum, Kit Bail, p.2.

<sup>28</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016 p.3-5

<sup>29</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.4.

<sup>30</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.12.

<sup>31</sup> DWT Memorandum, Kit Bail, p.3.

By the time Secretary Vail resigned in mid-2011, the IT department within DOC employed experienced staff, utilized solid tracking and governance procedures, and exercised solid communications with the business side of the department. In her testimony before the Senate Law and Justice Committee five years later, Ms. Bail expressed confidence that had these systems been in place when the *King* error was identified, the three-year delay in implementing the fix would not have occurred.

### **C. Bernard Warner takes command**

***“I think Mr. Warner did several things to set the context in which this error could occur and go undetected for some time.”— Former Secretary of Corrections Dan Pacholke, who succeeded Mr. Warner as DOC chief in October 2015***

When Eldon Vail resigned abruptly in July 2011, then-Gov. Gregoire named Bernard (“Bernie”) Warner as the new secretary of corrections. Given the clear signs of his mismanagement, it is unclear why Governor Inslee reappointed him in January 2013. Mr. Warner had served as director of prisons for 10 months under then-Secretary Vail.

Ms. Bail described the tenure of Secretary Warner as a “very big culture change” for DOC.<sup>32</sup> She said he “added layer and layer and layer” between himself and the department staff.<sup>33</sup> Mr. Pacholke, who was director of prisons and then deputy secretary during Mr. Warner’s administration before succeeding him as secretary of corrections, described Mr. Warner as “more distant and aloof... not as easily accessible. And not quite as clear -- it was more difficult to understand what he wanted.”<sup>34</sup> Mr. Pacholke said Warner had difficulty making clear decisions and he recalled discussions that never were clearly resolved. “He would go along with conversations for great lengths of time... I would think that we drew a closure to it only to understand that we had not.”<sup>35</sup> He described Secretary Warner as a “tedious” decision maker.<sup>36</sup>

Denise Doty, former assistant secretary for administrative services, said Mr. Warner was “hard to read” and “didn’t feel as open and transparent.”<sup>37</sup> She added that “it was extremely difficult to get decisions from Secretary Warner” even “on a routine level” and relayed how in meetings he might “get distracted with his cell phone or just start working on his computer.”<sup>38</sup> Similarly, Peter Jekel,

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<sup>32</sup> DWT Memorandum, Kit Bail, p.4.

<sup>33</sup> DWT Memorandum, Kit Bail, p.4. Although Ms. Bail did not serve long under Secretary Warner, she testified that she remained in contact with employees in the IT department after her departure. Her observations regarding Secretary Warner’s management style are corroborated by many witnesses.

<sup>34</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.35

<sup>35</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.36

<sup>36</sup> DWT Memorandum, Dan Pacholke, p.2

<sup>37</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.24.

<sup>38</sup> Senate Law and Justice Committee hearing transcript, Feb. 25, 2016, pp.21-22

who served briefly as acting chief information officer in 2014, noted that “on almost every issue I brought up, all I got was a polite listen, and followed a while later by directive...’this is what we are going to do.’”<sup>39</sup>

Perhaps the person in the best position to provide an evaluation of the leadership capabilities of the former secretary was his hand-picked chief of staff, Peter Dawson, who said his effectiveness in that position was hampered by the way Mr. Warner operated as secretary. “As a leader, despite all my efforts, [Warner] was non-transparent and sometimes a reluctant communicator,” he said.<sup>40</sup> Mr. Dawson pushed his boss to communicate more directly to staff, through all staff memos, town hall meetings, greater use of the internal website, and other opportunities. As one example of Secretary Warner’s lack of transparency, Mr. Dawson noted that Mr. Warner refused to share his daily schedule with his chief of staff or with Mr. Pacholke, citing safety concerns.<sup>41</sup>

***“The secretary that no one heard from.”—DOC Business Unit Manager David Dunnington***<sup>42</sup>

Mr. Warner’s disconnection from the day-to-day affairs of his agency was illustrated by his refusal to attend daily meetings between his chief of staff and his deputy secretary, which were held to coordinate agency efforts. Mr. Dawson, a Navy veteran, said there was little similarity to the close ties he had seen between leaders and chiefs of staff in military. Secretary Warner “held his cards very close – it sometimes wasn’t clear what he was behind and what he wasn’t.”<sup>43</sup>

Many in the upper echelon of DOC management recalled having little or no personal contact with the secretary. DOC employee Leora McDonald said she didn’t really have much to do with Bernie Warner as corrections secretary.<sup>44</sup> Similarly, Clela Steelhammer, the DOC legislative liaison responsible for communicating agency goals to the Legislature, also noted that she was not in Mr. Warner’s inner circle and did not have close interactions with him.<sup>45</sup> Of particular significance is the fact that Ms. Stigall, the records program administrator who initially recognized the problem with the department’s interpretation of *King*, had no personal relationship with Secretary Warner.<sup>46</sup> Although Ms. Stigall was among approximately 70 employees employed in departmental leadership positions (meaning employees with hiring authority), Stigall did not consider herself to

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<sup>39</sup> Senate Law and Justice Committee hearing transcript, Feb. 25, 2016, p.38.

<sup>40</sup> DWT Memorandum, Peter Dawson, p.2.

<sup>41</sup> DWT Memorandum, Peter Dawson, p.2.

<sup>42</sup> DWT Memorandum, David Dunnington, p.5.

<sup>43</sup> DWT Memorandum, Peter Dawson, p.2.

<sup>44</sup> DWT Memorandum, Leora McDonald, p.3.

<sup>45</sup> DWT Memorandum, Clela Steelhammer, p.4.

<sup>46</sup> Ms. Stigall’s comment is particularly interesting because she is blamed in the governor’s report for her “silence” and failure in not doing more to raise the issue within the agency. Exhibit 15, p.41. Given the unavailability of the secretary and the management dysfunction described in this report, it is unclear how Ms. Stigall could have done more.

be in the “leadership circle.” Stigall reported to former Assistant Secretary Doty, and the general practice was for information and decisions to be relayed through the Department’s chain of command.<sup>47</sup>

In addition to placing layers of personnel between himself and key managers, DOC employees had little contact with Secretary Warner because he was often out of the office. According to Department records, Secretary Warner was frequently on leave or traveling an average of one week per month- sometimes more. In July 2012, for instance, he was in the office only five business days.<sup>48</sup>

Warner’s detached management style was only one of the factors that he created and that led directly to the conditions that delayed the *King* fix. He also decimated the structure of the audit and IT departments, with detrimental effect to their morale. Ms. Bail told Senate investigators the factors that delayed the *King* fix “belong at Bernie’s feet.”<sup>49</sup> Mr. Pacholke testified that “Mr. Warner did several things to set the context in which this error could occur and go undetected for some time... whether it [is] the turnover in the IT department, whether it is the lack of governance, whether it is the lack of internal focus on operating procedures.”<sup>50</sup>

The lack of communication among DOC managers during Warner’s tenure was exacerbated by organizational problems, particularly in DOC’s Administrative Services Division, which was ground zero for the sentencing-error scandal. Initially, the division included the records and IT departments and the position of comptroller, all of which reported to Denise Doty, who reported in turn to Mr. Warner.<sup>51</sup> All of these administrative sections were in a position to recognize the delay in implementing the *King* fix and sound the alarm. According to the Department’s organizational charts, Secretary Warner changed the make-up of this division as of Sept. 26, 2014, by moving the entire administrative services division under his chief of staff, Peter Dawson. He also renamed the new section “Administrative Operations.”<sup>52</sup>

This change, which occurred in the middle of the period of time associated with the postponement of the *King* fix, created an additional level of separation between the secretary and these key

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<sup>47</sup> DWT Memorandum Wendy Stigall, p.8.

<sup>48</sup> Exhibit 21. This composite exhibit is comprised of a calendar of all travel and leave documents for Secretary Warner provided by the Department, as well as other pertinent leave documents. It is noteworthy that despite using 700 hours of leave during his tenure, Secretary Warner still had enough leave left when he resigned to warrant a cash-out payment of over \$17,000.

<sup>49</sup> DWT Memorandum, Kit Bail, p. 5.

<sup>50</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.50.

<sup>51</sup> <http://www.doc.wa.gov/aboutdoc/docs/orgchart-10-01-2013.pdf>.

<sup>52</sup> WA State Department of Corrections, Division Organizational Charts, <http://www.doc.wa.gov/aboutdoc/docs/orgchart-10-01-2013.pdf>; <http://www.doc.wa.gov/aboutdoc/docs/orgchart-10-16-2014.pdf>.

departments. Many witnesses confirmed that Secretary Warner's decision to restructure various departments within the agency in this manner served to foster resentment and a competitive atmosphere among DOC staff that aggravated the delays.

An illustration of the organizational chaos within DOC is offered by Kathy Smith and Lydia Hoffman, who worked in the auditing department during this period. Ms. Smith said that in her final year at the agency, the audit division was three levels removed from Secretary Warner, reporting to Adam Aaseby, who reported to Ms. Doty in administrative services. The reporting structure meant there was no possibility that the auditing department would be included in executive meetings. Both Ms. Smith and Ms. Hoffman felt that an audit division should report directly to the DOC secretary for maximum effectiveness.<sup>53</sup> Ms. Hoffman noted extreme turmoil in the management of the audit division during Warner's tenure. At one point, all of the supervisors above her in the chain of command left DOC, including her direct supervisor, who was the audit manager; and the two positions above that, forcing auditors to report to an acting assistant secretary.<sup>54</sup>

Ms. Doty was among those who left for another state agency during Warner's leadership. She said she noticed a "tension" and lack of trust and respect within the executive staff and a competitive environment that encouraged them to strike temporary alliances with one another. Ms. Doty said she "didn't feel the vision" under Secretary Warner that had existed under Mr. Vail.<sup>55</sup> Mr. Pacholke noted that the turmoil at the executive level left divisions to operate "a little bit more autonomously," without the coordination seen during the Vail years.<sup>56</sup>

Sandy Mullins, who joined DOC as a policy director just before Mr. Warner became secretary, described his "pull-push" style, in which he would encourage one group to complete a project, only to then move the project to another group to implement or move work units back and forth between different divisions. She said this created conflict within the senior leadership team.<sup>57</sup>

Mr. Pacholke was a witness to the exodus that resulted from Secretary Warner's restructuring, management practices and priorities. Mr. Pacholke spoke with several long-time employees about their frustrations as they left the Department. "People were relatively dismayed," he said. "They were more and more disconnected and felt less and less empowered to do the job they had."<sup>58</sup> Heavy turnover in administrative services reflected the "dysfunction" in that division, Mr.

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<sup>53</sup> DWT Memorandum, Kathy Smith and Lydia Hoffman, p.4.

<sup>54</sup> DWT Memorandum, Kathy Smith and Lydia Hoffman, p.6.

<sup>55</sup> DWT Memorandum, Denise Doty, p.2.

<sup>56</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.36.

<sup>57</sup> DWT Memorandum, Sandy Mullins, p.3.

<sup>58</sup> DWT Memorandum, Dan Pacholke, p.3.

Pacholke said.<sup>59</sup> These included Denise Doty, Brian Tinney, who became interim assistant secretary after Ms. Doty left the Department, and Doug Hoffer, Peter Jekel and Jibu Jacob, all of whom took a turn as CIO.

Mr. Pacholke didn't pull any punches. He told the Senate committee that he regarded the departures of critical personnel as an indication of dissatisfaction with Secretary Warner.<sup>60</sup> However, when he expressed those concerns, Mr. Pacholke recalled that Secretary Warner's reaction was "a little bit distant," as if he "really didn't have the time for the discussion" – an attitude that exhibited a "lack of awareness at just the totality" of the extensive departures of IT staff.<sup>61</sup> Secretary Warner would "remind me that it was somebody else's operating area," dismiss the conversation and move on, Mr. Pacholke said.

#### **D. Secretary Warner's misplaced priority: Advance Corrections/STRONG-R**

***"I think it was a contributing cause, yes."* - Kit Bail, retired DOC Chief Information Officer 2006-2011**

***"[Advance Corrections]...blocked out the sun"* - Ira Feuer, DOC Chief Information Officer 2015-16**

STRONG-R, the Department's main computer priority during the Warner years, is an ambitious effort to create a new type of risk-assessment tool, to better predict recidivism and manage the programs in which an offender should be enrolled. STRONG-R, short for Static Risk Offender Need Guide-Revised is the risk-assessment component of a broader program known as Advance Corrections.<sup>62</sup> Mr. Warner described the program as a "more comprehensive strategy of assessing somebody, understanding what the right program would be, and delivering that program to them."<sup>63</sup> The objective of Advance Corrections is to utilize "dynamic assessments" that change as an offender's behavior characteristics change, as opposed to static assessments that do not change.<sup>64</sup>

The Advance Corrections initiative predated Warner, starting with a 10-year study by Washington State University researchers that analyzed data from 44,000 offenders who agreed to take risk assessments.<sup>65</sup> Prior to Warner's administration it was one of several major initiatives for DOC,

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<sup>59</sup> DWT Memorandum, Dan Pacholke, p.2.

<sup>60</sup> DWT Memorandum, Dan Pacholke, p.5.

<sup>61</sup> DWT Memorandum, Dan Pacholke, p.5.

<sup>62</sup>"STRONG-R" and "Advanced Corrections" (as opposed to "Advance Corrections") are frequently used interchangeably by witnesses. In this report, whenever possible, the phrase "Advance Corrections" is used.

<sup>63</sup> DWT Memorandum, Bernard Warner, p.3.

<sup>64</sup> Senate Law and Justice Committee hearing transcript, Feb. 25, 2016, p.11.

<sup>65</sup> DWT Memorandum, Bernard Warner p.3

but under Mr. Warner Advance Corrections became the Department's highest priority, to the point that important departmental responsibilities suffered,

The project's objectives were not controversial among staff, but the manner in which it was pursued disturbed many. Ms. Doty told the Senate committee, "It's not that I disagree with the policy and the project...It was more in how we were executing it."<sup>66</sup> Mr. Pacholke called the effort to design an integrated case-management tool "good work to do," but noted the reality: "it is not work that we have done successfully historically."<sup>67</sup> More troubling to Ms. Bail was that the department chose to carry it out using a contractor with a record of failure.<sup>68</sup>

***"He's a crook and Bernie brought him back."* - Kit Bail, former chief information officer, DOC**

One of Secretary Warner's first hires was a former colleague, Amy Seidlitz, with whom he had worked in Arizona. Mr. Pacholke described her as "brilliant in understanding risk assessment tools" but "exceptionally unskilled" in implementing those tools.<sup>69</sup> Mr. Pacholke also stated she was difficult to work with and said she "created trouble almost everywhere she went."<sup>70</sup> Ms. Bail recalled that Ms. Seidlitz was "very vocal" in arguing that DOC had to hire contractors for the STRONG-R project because the IT department was unable to do the job, an assertion Ms. Bail said was "absolutely untrue" and which created a "real big morale hit."<sup>71</sup> In her dismissal of the IT department's abilities, Ms. Seidlitz reflected the view of Mr. Warner – a fact which came to be well-understood among staff in the IT department.<sup>72</sup>

Several tried convincing Warner that the IT department could and should handle the work. Doug Hoffer, Ms. Bail's immediate successor as CIO, told Mr. Warner that DOC was capable of building the STRONG-R processes into its OMNI system, and warned that creating a separate application would require new interfaces that frequently lead to problems. Mr. Hoffer said, "I felt I wasn't being listened to."<sup>73</sup> Ms. Doty said she offered the same advice to Mr. Warner on several occasions, "but that wasn't an option for Bernie."<sup>74</sup>

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<sup>66</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.27.

<sup>67</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016 p.39.

<sup>68</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016 p.10.

<sup>69</sup> DWT Memorandum, Dan Pacholke, p.4.

<sup>70</sup> DWT Memorandum, Dan Pacholke, p.4.

<sup>71</sup> DWT Memorandum, Kit Bail, p.3.

<sup>72</sup> Senate Law and Justice Committee hearing transcript Feb. 29, 2016, p.40.

<sup>73</sup> DWT Memorandum, Doug Hoffer, p.2.

<sup>74</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016 p.23

The vendor Secretary Warner insisted on hiring for the STRONG-R project was Assessments.com,<sup>75</sup> a firm whose previous work had failed to impress anyone in the IT department. Initially Assessments.com was hired to build a community corrections case-management system that would interface with the OMNI system, then under development. Problems with the company were extensive. Bail recalled, “[T]hey were consistently over-budget, [they] under delivered, and what they did deliver was of pretty poor quality.”<sup>76</sup> Ms. Bail described a software-maintenance contract with Assessments.com as being “fairly useless” because the firm was unresponsive to DOC complaints – indeed, it was often hard to reach anyone on the phone.<sup>77</sup> Mr. Hoffer described the company as “not the greatest vendor to work with” and observed that when it fixed defects “they weren’t always fixed right.”<sup>78</sup> When maintenance work was needed, he said “they were nowhere to be found.”<sup>79</sup>

Mr. Hoffer, who became CIO five months before Bernie Warner was appointed secretary of corrections, said concerns about the Assessments.com work product and the firm’s inability to support its own software were well known throughout the IT department and were communicated to Secretary Warner.<sup>80</sup> DOC Business Unit Manager David Dunnington testified that DOC continues to have problems with code written by the firm.

The behavior of the firm’s CEO also was a concern. Ms. Bail was characteristically blunt in her appraisal: “He’s a crook – and Bernie brought him back.” Sean Hosman’s troubled personal life was no secret to DOC’s IT staff. According to an Associated Press account, he was arrested at least nine times between 2010 and 2012, four of them for DUI. In 2012, he was charged with felony cocaine possession, but it was reduced to a misdemeanor and ultimately dismissed. After one DUI arrest that year, four troopers had to hold him down to take a blood sample to determine his blood-alcohol level.<sup>81</sup>

Mr. Hosman told reporters in 2015 he has been clean and sober since that arrest. His personal problems were well-enough-known within DOC that Secretary Warner convened a meeting of the agency’s IT staff in which Mr. Hosman described his substance abuse problems and the ways in which he was dealing with them. Recalled Mr. Dunnington, “I think they were trying to get it

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<sup>75</sup> DWT Memorandum, Peter Dawson, p.4.

<sup>76</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.11.

<sup>77</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.11.

<sup>78</sup> Senate Law and Justice Committee hearing transcript, Feb. 25, 2016, p.32.

<sup>79</sup> DWT Memorandum, Doug Hoffer, p.2.

<sup>80</sup> Senate Law and Justice Committee hearing transcript, Feb. 25, 2016 pp.32-33.

<sup>81</sup> Ronnie Greene and Eileen Sullivan, “Sean Hosman, CEO of Company Trying to Predict Repeat Criminals is a Repeat Criminal,” Associated Press, Feb. 24, 2016, [http://www.huffingtonpost.com/2015/02/25/sean-hosman-ceo-criminal\\_n\\_6752622.html](http://www.huffingtonpost.com/2015/02/25/sean-hosman-ceo-criminal_n_6752622.html).



out on the table before a lot of rumor [started].”<sup>82</sup> Many IT staffers thought Secretary Warner’s continued support for Mr. Hosman was due to a personal friendship. But Secretary Warner told Senate investigators he backed Mr. Hosman simply because he was an “incredibly smart, talented guy,” and insisted there were boundaries in place when it came to their relationship.<sup>83</sup>

Ms. Bail said her objections to Assessments.com had less to do with Hosman’s behavior than the work product of his firm. “They would promise to deliver [but] they would deliver components or pieces that were incomplete. When you called them on that, then they would say, well we are not going to be able to do that unless—we gave you kind of a lowball bid and we are going to need more money.” Ms. Bail continued, “They didn’t deliver, they didn’t deliver on time, they didn’t deliver a complete product, and it was a repeating cycle. It was a difficult organization to work with.”<sup>84</sup>

The nature of DOC’s contract with Assessments.com also raised concerns within the agency, because the agency initially proposed awarding it without a competitive bidding process. Washington law allows agencies to bypass bidding processes and award a sole-source contract if a particular contractor is clearly the only practicable source of a good or service.<sup>85</sup> Mr. Warner told Senate investigators he believed the contract was awarded properly and that he did not apply undue influence. He stated that he did not define the scope of work, negotiate, or provide the authorizing signature for the STRONG-R contract. He also stated that there was “clear direction on my part that any work [with Assessments.com] would be within appropriate procurement standards.”<sup>86</sup> He also stated that he made it “very clear” to Mr. Hosman that DOC would terminate its contract with Assessments.com if performance issues arose.<sup>87</sup>

Other observers felt the rules were being stretched for a firm of questionable repute. Ms. Bail said she believed DOC engaged Assessments.com outside of competitive procurement rules.<sup>88</sup> Former assistant secretary Doty said she felt like “we were just on the right side of the ethical line” in awarding the contract.<sup>89</sup> Jekel said the firm’s poor track record – its history of repeated quality issues, software fixes that didn’t work, and inability to maintain its own software – raised serious

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<sup>82</sup> Senate Law and Justice Committee hearing transcript, March 16, 2016, pp.29-30.

<sup>83</sup> DWT memorandum, Bernie Warner, p.4.

<sup>84</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.18. Bail’s description of Assessments.com’s performance in Washington mirrors an Associated Press account of the firm’s performance on a Florida contract in 2005. The contract originally cost \$750,000, but the contract was amended eight times, adding costs for training, curriculum development, license fees and maintenance. Cost climbed to \$2.1 million. Four subsequent contracts bumped the overall price tag to \$3 million. Ronnie Greene and Eileen Sullivan, “Sean Hosman, CEO of Company Trying to Predict Repeat Criminals is a Repeat Criminal,” Associated Press, Feb. 24, 2016.

<sup>85</sup> RCW 39.26.010.

<sup>86</sup> DWT Memorandum, Bernard Warner, p.4.

<sup>87</sup> DWT Memorandum, Bernard Warner, p.4.

<sup>88</sup> DWT Memorandum, Kit Bail, p.3.

<sup>89</sup> DWT Memorandum Denise Doty, p.3.

questions about the propriety of a sole-source contract. It “didn’t smell right,” he said, adding, “If you were in a fish market, you wouldn’t buy that fish.”<sup>90</sup> Jekel argued internally that the contract did not qualify for award on a sole-source basis, but was told that Secretary Warner wanted it awarded as a sole-source contract to Assessments.com.<sup>91</sup>

Initial attempts to award a sole-source contract created problems for DOC. A competing firm submitted a bid for the project, thus challenging the sole-source award, and the Department of Enterprise Services held up the contract. According to Brian Tinney, who took over as interim assistant secretary after Denise Doty left in 2014, Warner didn’t want to wait the six to nine months it would take to award the contract through a competitive bidding process, so DOC tried to convince Washington State University to contract directly with Assessments.com. Negotiations bogged down over licensing arrangements. “That was more time being wasted,” Tinney said.<sup>92</sup> Ultimately DOC amended the existing maintenance agreement with Assessments.com to include work on STRONG-R, essentially awarding it a sole-source contract without going through sole-source contracting procedures. The rationale was that because Assessments.com held the licensing rights to the software for the project, the Department had to use that vendor despite past performance issues and concerns.<sup>93</sup>

By December 2012, when DOC learned that its computers were improperly calculating inmate release dates, Mr. Warner had thoroughly shifted the focus and priorities of the IT department to STRONG-R. Throughout DOC, STRONG-R was understood to be Mr. Warner’s top priority. Mr. Dunnington recalled meetings of up to 40 staffers that aimed to chart a plan and define the project. These meetings included every departmental category of DOC – community corrections, prisons, mental health, budget – it touched everything.<sup>94</sup>

Doug Hoffer noticed the change in emphasis, and it was one of the biggest reasons he decided to leave DOC in February 2014 after a little more than three years as CIO. His final 18 months were almost entirely focused on STRONG-R, he said, and he was increasingly convinced it “was not going to be successful.”<sup>95</sup> Mr. Hoffer related a key insight to Senate investigators: it is easier for people to get excited about new things than it is for them to focus on existing needs.<sup>96</sup> The inordinate attention devoted to the project by the executive staff and the IT department likely had

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<sup>90</sup> DWT Memorandum, Peter Jekel, p.2.

<sup>91</sup> DWT Memorandum, Peter Jekel, p.2. Warner was identified by his former chief of staff as making the decision to pursue a sole-source contract with Assessments.com. DWT Memorandum, Peter Dawson, p. 4.

<sup>92</sup> DWT Memorandum, Brian Tinney, p.2.

<sup>93</sup> This information was relayed at a legislative staff briefing on the STRONG R project that occurred May 4, 2016.

<sup>94</sup> Senate Law and Justice Committee hearing transcript, March 16, 2016, p.29.

<sup>95</sup> DWT Memorandum, Doug Hoffer, p.1. Doug Hoffer’s final 18 months would have been Aug. 1, 2012 to Feb. 28, 2014.

<sup>96</sup> DWT Memorandum, Doug Hoffer, p.3.

a direct effect on the *King* fix, by diverting resources from tasks perceived as more mundane. Mark Ardiel, an employee of DOC vendor Sierra-Cedar and the man ultimately responsible for coding the fix, recalled that he began work in 2013 and continued again in 2014, but was stopped both times because he had questions for DOC business analysts that went unanswered.<sup>97</sup> It was Mr. Ardiel's impression that the new project consumed agency time and resources that otherwise would have gone to software maintenance and defect correction.<sup>98</sup>

In his statement to Senate investigators, former Secretary Warner said he was "pretty focused" on having a process for prioritizing projects "that would not compromise the routine work of the agency."<sup>99</sup> Yet he was unclear about how exactly he expected the IT department to accomplish this, and he was unable to describe the procedures it used to set priorities. Although Warner chief of staff Dawson provided some direction on project prioritization, that direction involved mainly the big projects – STRONG-R in particular – and not the routine work involved in software maintenance and correction. On those issues Mr. Tinney said IT "was pretty much left to decide what was important to themselves." This lack of direction from executive managers became a critical factor in the decisions that delayed the *King* fix, as mid-level managers attempted to carry out what they believed were upper-management priorities.

Chaos in the IT department reached its nadir during the middle of 2014 and into 2015, as the *King* fix was repeatedly delayed. Those working at DOC recall this as a dark and difficult period. This coincided with the most significant push by Secretary Warner to move the Advance Corrections initiative forward, the continued delay of the *King* fix, and a rapid progression of IT directors who came and went within months.

Demoralized IT staffers began voting with their feet. Ms. Bail described what she called a "brain drain" as the hiring of the incompetent Assessments.com for the STRONG-R project left many feeling "very strongly that there wasn't much point in staying."<sup>100</sup> By 2014 there were 26 vacancies in the IT department, as employees departed for other agencies with more resources and better working conditions.<sup>101</sup> Mr. Jekel described Warner's disregard for the IT department as "indifferent neglect – benign neglect is too nice."<sup>102</sup>

The heavy turnover in the IT department created major problems in continuity, management, and communication. Mr. Tinney said the IT department was particularly vulnerable to staff turnover because short staffing caused documentation to suffer. Mr. Tinney explained that when somebody

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<sup>97</sup> DWT Memorandum, Mark Ardiel, p.9.

<sup>98</sup> DWT Memorandum, Mark Ardiel, p.6.

<sup>99</sup> DWT Memorandum, Bernie Warner, p.7.

<sup>100</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.5.

<sup>101</sup> DWT Memorandum, Kathy Smith and Lydia Hoffman, p.6.

<sup>102</sup> DWT Memorandum, Peter Jekel, p.3.

learns a process by experience, but then leaves DOC without documenting how the process is done, “the next person has no knowledge.” Yet he said the IT department could not be expected to fully document processes when it had to struggle just to complete its tasks.<sup>103</sup>

A story related by IT employee Jay Ahn is particularly telling. Mr. Ahn worked within the IT department during the period of the *King* fix delays. Mr. Ahn was concerned about the diversion of resources from maintenance to Advance Corrections/STRONG-R, which he said resulted in only minimal and critical maintenance work being completed.<sup>104</sup> The directions were communicated to Mr. Ahn through layers of management, and Mr. Ahn was not confident that Secretary Warner was aware of the impact of this shift. Mr. Ahn wrote an email expressing his concerns. The goals of the Advance Corrections initiative were important, he said, but DOC should fund it with new resources rather than diverting it from routine IT maintenance. He observed that IT maintenance is important because issues that are ignored for a time can “explode” later on, as occurred in this case.<sup>105</sup>

Mr. Ahn told Senate investigators that many on DOC’s executive team were aware of the redirection of maintenance resources because he outlined for them the way in which maintenance resources could be deployed for new projects, such as the Violator Improvement Process and Advance Corrections/STRONG-R. He received approvals to redirect the maintenance resources during an IT governance meeting attended by Mr. Tinney, Mr. Dawson, the chief of staff and Mr. Pacholke, then deputy secretary of corrections. Even absent an explicit instruction to hold off maintenance work, there were clear instructions that Advance Corrections/STRONG-R was a higher priority. Mr. Ahn stated that IT generally had no voice or representation in the agency’s executive decision-making and he said he believes one reason for IT turnover was that the business units often overruled various CIOs’ preferences. Mr. Ahn said he viewed delay of the *King* fix as a management issue, because management did not support the experts who had full knowledge of the business rules and their priorities and who could make the correct calls.<sup>106</sup>

Many other DOC employees agree with the view that the IT department was in freefall during this period. DOC employee David Gale noted that when a CIO left, that departure was compounded because the departing CIO often took some of DOC’s IT people with them.<sup>107</sup> Similarly, DOC employee Leora McDonald said she wasn’t surprised the early-release problem occurred. She was close to several people in the IT business unit and said “I would hear the frustration sometimes,” as they described the frequent postponements to system fixes.<sup>108</sup> The IT department

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<sup>103</sup> DWT Memorandum, Brian Tinney, p.5.

<sup>104</sup> DWT Memorandum, Jay Ahn, p.2.

<sup>105</sup> DWT Memorandum, Jay Ahn, p.3.

<sup>106</sup> DWT Memorandum, Jay Ahn, p.3.

<sup>107</sup> DWT Memorandum, David Gale, p.3.

<sup>108</sup> DWT Memorandum, Leora McDonald, p.2.

had experienced heavy turnover in programmers and developers, and Ms. McDonald said she was glad she left when she did. She said morale was “just bad.”<sup>109</sup>

Sue Schuler, an IT business analyst who was to become a key figure in the effort to implement the *King* fix, recalled the constant turnover of CIOs, the way the IT department’s budget had been cut “to the bone,” and the way staff turnover had increased stress levels while draining continuity and institutional memory. She particularly noted the loss of three technical analysts who were not replaced, one of whom specialized in sentencing-calculation fixes.<sup>110</sup>

Mr. Pacholke observed that the IT department suffered “lots of turnover and lots of angst,” and suggested the mass exodus from the administrative services division and the IT department was caused by the constant changes in CIOs as well as the pressure to develop Advance Corrections/STRONG-R. He noted high resentment created by the attempt to bring in Assessments.com. Although Mr. Pacholke described the delay to the *King* fix as a “system error,” he said “that doesn’t mean people shouldn’t be held accountable” at the senior management level.<sup>111</sup>

### **E. The evaporation of DOC’s IT governance structure and a “breakdown of a systemic proportion”**

One of the casualties of DOC’s overemphasis on Advance Corrections/STRONG-R was the governance process that determined the IT department’s priorities. The breakdown of this governance process contributed to the postponement of the *King* fix as resources were diverted from software maintenance and defect correction. The Project Review board process “became completely about this policy initiative.”<sup>112</sup> She told the Senate Law and Justice Committee, “I would estimate that we were actually meeting more often than we were when we were just looking at the totality of the projects. But the subject matter was all Advance Corrections.”<sup>113</sup>

Former CIO Hoffer offered a similar description of the evolution of the Project Review Board under Mr. Warner, testifying that it was “a group at the top of the organization... intended to prioritize, understand the status of existing bigger projects and then prioritize those bigger projects.” Over time it became entirely focused on Secretary Warner’s priority. “At some point, I don’t think we referred to it as the Project Review Board anymore,” Mr. Hoffer said – it was all STRONG-R.<sup>114</sup>

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<sup>109</sup> DWT Memorandum, Leaora McDonald, p.3.

<sup>110</sup> DWT Memorandum, Sue Schuler, p.4.

<sup>111</sup> DWT Memorandum, Dan Pacholke, p.7.

<sup>112</sup> DWT Memorandum, Denise Doty, p.3.

<sup>113</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p. 22.

<sup>114</sup> Senate Law and Justice Committee hearing transcript, Feb. 25, 2016, p. 31.

Retired CIO Kit Bail observed that “governance processes in general pretty much evaporated.”<sup>115</sup> Based on her experience and knowledge of the department and people involved, Ms. Bail told the Senate Law and Justice Committee that hiring Assessments.com for the Advance Corrections/STRONG-R project “created an atmosphere that reduced the effectiveness of any governance that remained. And that governance would have been focused on making sure our work was done as it should have been.”<sup>116</sup> Ms. Bail remarked that this reflected a major change in approach – during her time as CIO, requested updates were “not set by whoever was the strongest” and that a sentencing change resulting from legislative or court action would always have gone “to the top of the heap.”<sup>117</sup>

Ms. Bail said she believed there was “a great deal of pressure from the secretary to focus IT’s attention almost exclusively on STRONG-R,” and like others, she believed the pressure to focus on Mr. Warner’s priority was a contributing cause to the *King* fix delay.<sup>118</sup> During Mr. Jekel’s brief tenure as CIO, he noted that if someone with sufficient political capital had a pet project or was in a position to say “this is what Bernie wants,” it was likely that project would obtain priority. “When push came to shove, what Bernie wanted, Bernie got,” he said.<sup>119</sup>

When taking over for Mr. Hoffer as CIO in March 2014, Mr. Jekel saw staff “generally fatigued and under pressure because of new work that had come down from Secretary Warner” for Advance Corrections/STRONG-R.<sup>120</sup> He said Mr. Hoffer had “burned his candle to the end” yet left IT with its governance structure intact.<sup>121</sup> As for why the *King* fix was not accomplished quickly, Mr. Jekel speculated that pressure from above – the sort of pressure that often is not documented – forced employees to do certain tasks instead of necessary maintenance items.<sup>122</sup> Mr. Jekel further explained that even a most basic “first-in-first out,” prioritization process could not explain why it took three years to fix the *King* error.<sup>123</sup>

By the third year of the *King*-fix delay, the cumulative effect of the dysfunction had left the IT department in a shambles. When Ira Feuer interviewed for the CIO position, he was told by Secretary Warner that he would be taking over a “well-run, well established, IT organization.” But upon taking the position he found quite the opposite. As he met with IT staff he learned they “just didn’t have good processes in place, good governance in place, good prioritization in place – just

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<sup>115</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p. 6.

<sup>116</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p. 10.

<sup>117</sup> DWT Memorandum, Kit Bail, p.3.

<sup>118</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, pp. 6-7.

<sup>119</sup> DWT Memorandum, Peter Jekel, p.3.

<sup>120</sup> DWT Memorandum, Peter Jekel, p.1.

<sup>121</sup> DWT Memorandum, Peter Jekel, p.2.

<sup>122</sup> DWT Memorandum, Peter Jekel, p.2.

<sup>123</sup> DWT Memorandum, Peter Jekel, p.3.

normal things that help the IT organization run more efficiently,” he said. “It was a bit helter-skelter in there.”<sup>124</sup> Staff relayed to Mr. Feuer that “the last time...that they felt that the organization was stable... was when Kit Bail was there.”<sup>125</sup> He concluded IT had “very weak governance” and had suffered a “breakdown of communications across the board.”<sup>126</sup>

Mr. Feuer was especially disturbed to learn that Warner’s reorganizations had moved the Project Management Office and the Business Services Office out of IT, and that they reported to the assistant secretary. “They did not communicate at all,” he said. “And it is critical for the project managers to talk to the IT staff and vice versa. And it is critical for the BA [Business analysis] units to talk to the development team as well. ...Communications ceased—there was just no communication between the two groups.”<sup>127</sup>

One effect of this breakdown was that the IT department no longer had the ability to properly establish priorities. Mr. Feuer explained that the business analysis unit performs a vital communications function, bridging the gap between users and the IT department. The business analysts translate the business requirements “into the technical requirements and it turns into the coding. So if the business requirement people are not talking to the development team that is just a breakdown of a systemic proportion.”<sup>128</sup>

It was evident to Mr. Feuer that Advance Corrections/STRONG-R had become a project that “blocked out the sun.” He explained the observation this way: “When large projects come into a development team, sometimes they are so massive and they are not resourced correctly, that they take over everything. And so there [are] very little resources left to do maintenance and enhancements. And that was what was kind of happening here.”<sup>129</sup> He viewed the three-year-delay in completing the *King* fix as “a systemic problem dealing with poor communication, poor governance, poor prioritization...lots of problems. It didn’t seem to be just one individual or something like that. It was just a systemic problem. It was the whole system.”<sup>130</sup> Mr. Pacholke testified that he had no reason to doubt Mr. Feuer’s observation.<sup>131</sup> After succeeding Bernie Warner as corrections secretary in October 2015, restoring software enhancements and defect correction to the agency’s top priority, while continuing work on Advance Corrections/STRONG-R where it could fit in with available resources.<sup>132</sup> As Mr. Pacholke testified, “the system protocols

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<sup>124</sup> Senate Law and Justice Committee hearing transcript, Feb. 25, 2016, p.2.

<sup>125</sup> Senate Law and Justice Committee hearing transcript, Feb. 25, 2016, p.17.

<sup>126</sup> DWT Memorandum, Ira Feuer, p.2.

<sup>127</sup> Senate Law and Justice Committee hearing transcript, Feb. 25, 2016, p.3.

<sup>128</sup> Senate Law and Justice Committee hearing transcript, Feb. 25, 2016, p.3.

<sup>129</sup> Senate Law and Justice Committee hearing transcript, Feb. 25, 2016, p.4.

<sup>130</sup> Senate Law and Justice Committee hearing transcript, Feb. 25, 2016, p.5.

<sup>131</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.38.

<sup>132</sup> Senate Law and Justice Committee hearing transcript, Feb. 25, 2016, p.17.

broke down around IT governance, around historic acuity, around AG opinions, IT governance and these serious public-safety breaches overall.”<sup>133</sup>

The environment within DOC when the agency learned it was calculating sentences improperly was one of systemic dysfunction, systemic breakdown, broken communications and misplaced priorities that festered and grew during the three-year era of the *King* fix delays. Despite Mr. Warner’s assertion that he was “pretty focused” on having a process for prioritizing projects that would not compromise the routine work of the agency, he acknowledged IT was not a department “that I frankly dove into that much.”<sup>134</sup> In remarks to Senate investigators, he dismissed problems created by IT turnover, saying there is “always a lot of mobility in that field.”<sup>135</sup> Despite his assertion that he made it “very clear” to Mr. Hosman that DOC would terminate its contract with Assessments.com if performance concerns arose, the quality of its work continues to be a sore point for IT officials. Secretary Warner was oblivious to the problems he had created.

When Mr. Warner stepped down in October 2015, exactly two months before Gov. Inslee was notified about the early-release scandal, the agency was in a condition that former CIO Kit Bail called an “effing mess” and remarked that Mr. Pacholke, the new corrections secretary, “had lots of repair work to do.”<sup>136</sup>

The wholesale dysfunction at the upper and middle management levels of DOC was clearly well-known and well-understood within the DOC long before Warner resigned in 2015. How Mr. Warner’s gross mismanagement apparently was not brought to the attention of the governor remains unanswered, and must be better understood if such dysfunction in a critical agency is to be more promptly detected and corrected by the governor in the future. In hindsight, Gov. Inslee paid what turned out to be a particularly unmerited compliment when he stated in September 2015, “In many ways he [Warner] has made Washington a model for how to run a corrections department and always put the safety of staff and the public first in his mind.”<sup>137</sup>

It is unknown whether Gov. Inslee was aware of the unique and inadequate manner in which Mr. Warner was reporting to the governor’s office. Mr. Warner confirmed he had a close personal relationship with a member of the governor’s staff that was “formally managed” by having Warner report to the governor's deputy chief of staff.<sup>138</sup> It is possible and even probable, given this arrangement, that Gov. Inslee was unaware of the extent of the problems within DOC, but the

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<sup>133</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.48.

<sup>134</sup> DWT Memorandum, Bernie Warner, p.5.

<sup>135</sup> DWT Memorandum, Bernie Warner, p.5.

<sup>136</sup> DWT Memorandum, Kit Bail, p.2.

<sup>137</sup> DOC News Release, “Corrections Secretary Bernie Warner to Leave State Service,” Sept. 22, 2015.

<sup>138</sup> DWT Memorandum Bernie Warner, p. 8.



tolerance for this arrangement raises serious concerns, because Warner’s mismanagement was never addressed – a contributing factor in the largest public-safety scandal in Washington history.

## **F. DOC response to the *King* error**

**“*What about the rest of the people?*”—King County resident Matthew John Mirante, father of a teenage stabbing victim, speaking to DOC after learning the agency would recalculate the sentence of his son’s assailant**

In November 2011, Matthew Mirante Jr., a 17-year-old high-school junior, was brutally injured. He was stabbed in the abdomen as well as his back, head, nose, lip and brow. He was rushed to Harborview Medical Center in Seattle, the state’s leading trauma center, for emergency surgery. In addition to the physical and emotional scars from the attack, the Mirante family has faced financial struggles due to the tens of thousands of dollars in medical bills and unpaid restitution from his assailant, 19-year-old Curtis Robinson. Mr. Robinson was sentenced to a stunningly short 6 months for this serious assault with a sentence enhancement of one year added for the use of a deadly weapon.<sup>139</sup>

Given the near-death of his son, Matthew Mirante followed the sentencing of his son’s assailant closely. “I followed from the day he was sentenced in King County, the day he left there to the day they sent him away to all those places. I followed him every day... all the way until he went to the minimum security place... Cedar Creek.”<sup>140</sup> So when DOC notified Mr. Mirante by letter in December 2012 that his son’s assailant would be released on Feb. 5, 2013, he had a suspicion the agency had gotten it wrong. Mr. Mirante spent about five minutes calculating Mr. Robinson’s sentence with pen and paper and determined the release date was off by 45 days. Robinson was supposed to be released March 22.<sup>141</sup>

Mr. Mirante called DOC’s victim services department and asked that it double check Mr. Robinson’s release date because, as he recalled saying later, “he is not supposed to get out at the time you say.”<sup>142</sup> The next day he received a phone call informing him that the sentence would be checked again. Mr. Mirante said he replied, “Well, what about the rest of the people?” but was told the primary concern was his specific situation.<sup>143</sup>

Steve Eckstrom, manager of the DOC victim services program, contacted Wendy Stigall, records program administrator, about the Mirante family’s concern. Initially Ms. Stigall assumed the

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<sup>139</sup> Linda Byron, “Victim’s family: Justice System let us down,” KING-TV, Feb. 23, 2016, <http://legacy.king5.com/story/news/local/2016/02/23/victims-family-justice-system-let-us-down/80784932/>.

<sup>140</sup> Senate Law and Justice Committee hearing transcript, Feb. 22, 2016, p.3.

<sup>141</sup> Senate Law and Justice Committee hearing transcript, Feb. 22, 2016, p.2 and p.4.

<sup>142</sup> Senate Law and Justice Committee hearing transcript, Feb. 22, 2016, p.2.

<sup>143</sup> Senate Law and Justice Committee hearing transcript, Feb. 22, 2016, p.2.

OMNI system was correct and Mr. Mirante didn't understand the complexities in the system. Mr. Eckstrom then sent an email to Assistant Attorney General (AAG) Ronda Larson, who had long been assigned to DOC issues; she determined that the *King* ruling was not being properly applied and informed Ms. Stigall of this via email.<sup>144</sup> Ms. Stigall and AAG Larson spoke about the issue, and Larson memorialized the conversation in an email at 2:29 p.m. on Dec. 7, 2012.<sup>145</sup>

Ms. Larson's email advised that DOC proceed with the "long process of reprogramming OMNI" and to do a "hand-calculations fix of Robinson's sentence now" due to "the likelihood that DOC will be sued and lose in a tort lawsuit" should Mr. Robinson be released early and "immediately go and kill the victim, for example."<sup>146</sup>

Ms. Larson chose not to apply the same logic to other offenders in the remainder of her advice, because "this is something that the DOC has identified internally, rather than something that is being forced upon it by an outside entity." She reasoned that if DOC other inmates continued to be released early while the agency worked on a software fix, the problem was "not so urgent as to require the large input of personnel resources to do hand-calculations of hundreds of sentences."<sup>147</sup> In her February 2016 testimony to the Senate Law and Justice Committee, after learning the *King* fix had been delayed three years and the early release of felons had continued, Ms. Larson said she believed the overall impacted inmate population to be relatively small, involving inmates with short base sentences and sentence enhancements. She said the "hundreds" of inmates she referenced in her email referred to those released since 2002, not to those that might be released before OMNI was fixed.<sup>148</sup> She said she now regrets telling DOC that it would be acceptable to wait for the computer fix and that she was not "cognizant of the extent of the problem."<sup>149</sup>

Ms. Larson sent a copy of her email to managing AAG Paul Weisser as well as to an email list for all AAGs working with DOC. Mr. Weisser either did not read the email or failed to think about it critically.<sup>150</sup> No one from the AG's office countermanded or offered contrary advice and no one from senior DOC management vetted or weighed in against it.

Ms. Larson's December 2012 email made clear that she thought the *King* fix to OMNI would take "a few more months"<sup>151</sup> and testified that based on her experience with the IT staff at the AG's office, she thought the fix would take "two months or less."<sup>152</sup> At DOC, Ms. Stigall expected the

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<sup>144</sup> DWT Memorandum, Wendy Stigall, p.4.

<sup>145</sup> Exhibit 4, p.1.

<sup>146</sup> Exhibit 4, pp. 2-3.

<sup>147</sup>Exhibit 4, p.4.

<sup>148</sup> Senate Law and Justice Committee hearing transcript, Feb. 22, 2016, p.10.

<sup>149</sup> Senate Law and Justice Committee hearing transcript, Feb. 22, 2016, p.12.

<sup>150</sup> DWT Memorandum, Paul Weisser, p.2.

<sup>151</sup> Exhibit 4, p.4.

<sup>152</sup> Senate Law and Justice Committee hearing transcript, Feb. 22, 2016, p.10.

fix to take three to six months from the time she submitted her initial request to IT.<sup>153</sup> Ms. Larson told Senate investigators that due to the volume of incoming questions she faced, it was “absolutely impossible” for her to monitor whether DOC followed through on her advice on any particular matter.<sup>154</sup> AAG Larson said it was her experience with the AG’s IT department that when staff says something will be done, it gets completed, not tossed aside or delayed.<sup>155</sup> She viewed the failure of DOC to follow through on her advice to fix OMNI a highly unusual situation.<sup>156</sup>

Although the AG’s office provides DOC with legal advice, it is up to DOC to determine the correct course to take. Mr. Pacholke observed that lower-level DOC managers often regard AG advice as “more than just AG advice” but rather as instructions that must be followed, whereas senior managers should have a better understanding that such advice needs to be considered alongside DOC’s policies and practices, and with a general understanding of corrections. Mr. Pacholke said he believed the failure to critically review Ms. Larson’s advice reflected a “lack of discipline to make sure those [opinions] were vetted or staffed at a more senior level.”<sup>157</sup> Even at the executive level there was a failure to think critically about the advice. Former Assistant Secretary Doty told the Senate Law and Justice Committee that Ms. Larson’s advice had a profound effect on the agency’s reaction. “The normal practice for us was to hand-calculate sentences and get the IT fix in. We wouldn’t have even contemplated not hand-calculating without that advice.”<sup>158</sup> She added that “we certainly would not have taken that approach had we not believed that the fix would be taken care of in a timely manner,”<sup>159</sup> meaning that only the expected timely fix of the *King* problem made the AG advice palatable to DOC.

During this period, there are two major points of disparity in the accounts of those interviewed by Senate investigators that warrant further discussion. Daniel Judge, a 30-year employee of the AG’s office, recalls a conversation with DOC’s risk management director, Kathy Gastreich, around 1 p.m. on Friday, December 7, 2012. According to Mr. Judge’s statement, Ms. Gastreich called to say she was “weighing verbal advice” from AAG Larson regarding a long-standing problem with the early release of prison inmates. The advice was that DOC could allow the early releases to continue until their computer software was fixed. Mr. Judge told Senate investigators, “I remember the issue of a computer glitch, I remember the word ‘decade,’ and that it would be another month or two [to fix] because it had gone on for a decade.”<sup>160</sup>

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<sup>153</sup> DWT Memorandum, Wendy Stigall, p.5.

<sup>154</sup> DWT Memorandum, Ronda Larson, p.4.

<sup>155</sup> DWT Memorandum, Ronda Larson, p.3.

<sup>156</sup> DWT Memorandum Ronda Larson, p.4.

<sup>157</sup> DWT Memorandum Dan Pacholke, p.6

<sup>158</sup> Senate Law and Justice hearing transcript, Feb. 29, 2016, p.24.

<sup>159</sup> Senate Law and Justice hearing transcript, Feb. 29, 2016, p.24.

<sup>160</sup> DWT Memorandum Dan Judge, p.2.

While Ms. Gastreich didn't offer many details nor did she mention OMNI or the *King* decision, Mr. Judge said, she asked what the risks might be for DOC. Mr. Judge said the risks were clear and DOC needed to fix the problem, because if any offender committed a new crime after being released, "the department is essentially on the hook. I said it that way. Kathy had handled enough negligent supervision cases. I wasn't telling her anything she didn't know."<sup>161</sup>

Daniel Judge didn't have direct responsibility for advice in the matter, as it was Ronda Larson's responsibility, and he was not her supervisor. But he said it was "a strange conversation" in that Ms. Gastreich should have been aware of the risks, having dealt with so many negligent-supervision cases in the past. It bothered him sufficiently that he left a voicemail for the attorney whose duties included oversight for AAG Larson's division – Tim Lang, who got back to him around 4 p.m. on Dec. 7, 2012.<sup>162</sup>

At that point, they had another matter to discuss. Mr. Judge asked Mr. Lang for copies of briefs in another case, then mentioned he had learned Larson was preparing written advice on an issue involving the early release of prisoners. He didn't know all the "ins and outs of it," but suggested Mr. Lang ought to "consult with Larson" about it. Mr. Lang told him to send an email and later sent the unrelated legal briefs by email; Mr. Judge said he dashed off a reply of about two sentences, reminding Mr. Lang to look into the matter. Not until the news of the early felon releases was made public did Mr. Judge think back to his conversations of that day three years earlier; he also had not seen a copy of AAG Larson's Dec. 7, 2012 email until that point.<sup>163</sup>

Neither Ms. Gastreich nor Mr. Lang recall conversations with Mr. Judge on Dec. 7, 2012.<sup>164</sup> Email records are inconclusive, but lend support to Mr. Judge's account. The email system in the AG's office retains emails from Mr. Lang to Mr. Judge, containing legal briefs, sent at 4:30 and 4:34 p.m. on Dec. 7, 2012. The system also shows that Mr. Judge replied to Mr. Lang at 4:49 p.m., but that email has been deleted from the system.<sup>165</sup>

Both the governor's report and the AG's report go to great lengths in an attempt to discredit Mr. Judge's recollection. They say it couldn't have happened, because Ms. Gastreich didn't receive a copy of AAG Larson's memo until the morning of Tuesday, Dec. 11, 2012.<sup>166</sup> But they miss a key detail, because at the time of the call, Mr. Judge recalled Ms. Gastreich was weighing "verbal advice," not written advice.<sup>167</sup> Indeed, at 1 p.m. on Friday, Dec. 7, AAG Larson had already offered

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<sup>161</sup> DWT Memorandum Dan Judge, p.2.

<sup>162</sup> DWT Memorandum Dan Judge, pp.2 – 3.

<sup>163</sup> DWT Memorandum, Dan Judge, pp.2-3.

<sup>164</sup> DWT Memorandum, Kathy Gastreich, p.3. DWT Memorandum, Tim Lang, p.3.

<sup>165</sup> Attorney General Report of Internal Review of DOC Sentencing Error, p. 13, [http://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press\\_Releases/Internal%20review.pdf](http://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/Internal%20review.pdf) .

<sup>166</sup> *Ibid.* and Exhibit 15.

<sup>167</sup> DWT Memorandum, Dan Judge, p.2.

her verbal advice to Wendy Stigall, Ms. Gastreich's administrative-division colleague, that OMNI's sentence miscalculations placed DOC at risk of losing a lawsuit – and was working on her follow-up email.<sup>168</sup> This suggests a very simple explanation – that someone who knew Ms. Larson was working on the advice, perhaps either Ms. Larson herself or Stigall, had given Ms. Gastreich a phone call to offer a heads-up.

The reports of the governor and AG also note that Mr. Judge did not memorialize the conversation, and that his memory of the date is based on his own reconstruction.<sup>169</sup> But Mr. Judge's recollection is entirely consistent with the known facts. He had no reason to memorialize the conversation once he had given a heads-up to Mr. Lang, who in turn could easily have forgotten a quick mention during a phone call about other matters, just before quitting time on a Friday. It also is possible that the call occurred on some other day the following week. Mr. Judge's very specific recollection is persuasive, and raises the possibility that Ms. Gastreich and others were not fully forthcoming. It also raises the question of whether DOC staff were "shopping" for legal advice that would be the least difficult to implement given the tumultuous implications of the *King* fix.

The Monday or Tuesday after receiving AAG Larson's advice, Ms. Stigall brought the issue to her direct supervisor, Assistant Secretary Doty, and on Doty's advice forwarded a copy of Larson's email to Ms. Gastreich, the DOC risk management director. Ms. Stigall believes she sent this email based on Assistant Secretary Doty's recommendation. Ms. Stigall emailed Ms. Gastreich because as risk manager, she needed to be informed of release-date issues.<sup>170</sup> Ms. Stigall was then out of the office for two weeks due to a surgery.

As risk manager for DOC, Ms. Gastreich spent much of her time reviewing and monitoring tort claims and other lawsuits. She stated she typically focused on four or five key cases at a time. She said she rarely received emails from Ms. Stigall, adding "what people can expect of me is to be responsible for my inbox and to respond to [email] if I get it."<sup>171</sup> However, Ms. Gastreich stated that she had no recollection of the email from Ms. Stigall or the attached advice from AAG Ronda Larson.<sup>172</sup> She also did not recall a Jan. 9, 2013 Administrative Services Division meeting she attended with Ms. Doty and Ms. Stigall, during which Ms. Stigall discussed the *King* fix.<sup>173</sup> Minutes of the meeting make clear that Ms. Gastreich was present, as she made a report regarding the death of a DOC colleague and efforts to help his family.

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<sup>168</sup> DWT Memorandum, Dan Judge p.2; Exhibit 15, p.19.

<sup>169</sup> Exhibit 15, p.19.

<sup>170</sup> DWT Memorandum, Wendy Stigall, p.5.

<sup>171</sup> DWT Memorandum, Kathy Gastreich, p.2.

<sup>172</sup> DWT Memorandum, Kathy Gastreich, p.2.

<sup>173</sup> DWT Memorandum, Kathy Gastreich, p.3.

Ms. Stigall received no response to her email from Ms. Gastreich, nor, after returning from medical leave, did she follow up with Ms. Gastreich.<sup>174</sup> Like Ms. Larson, Ms. Stigall said she did not recognize the significance of the *King* error, stating she did not think it possible that the early release issue affected a substantial improper release of prisoners. She viewed it as just another in a long list of changes and fixes that affected sentencing.<sup>175</sup> Upon returning from surgery, Ms. Stigall sent an email to AAG Ronda Larson seeking advice on the best way to solve the *King* problem and attached examples of calculation proposals. Ms. Larson replied the same day, informing Ms. Stigall that one of her proposals was not allowed by law.<sup>176</sup>

The following day, Dec. 27, 2012, Ms. Stigall submitted a request to IT to implement the *King* fix.<sup>177</sup> Despite having made hundreds of requests for IT changes to OMNI in the past, this was the first time she requested the change “ASAP.” She hoped it would mean the fix would be completed in three months rather than six.<sup>178</sup> Ms. Stigall testified that she believed this fix was important “because it [affected] releases.”<sup>179</sup> However, fixes designated as “ASAP” were treated no differently by IT than any other fix.<sup>180</sup> Because she recognized early releases were an important issue, Ms. Stigall followed up on this request and sent a copy to IT specialist/business analyst Sue Schuler,<sup>181</sup> who confirmed the Stigall request was received and stated it would be reviewed in the IT department’s triage meeting on Dec. 31, 2012. Ms. Stigall had faith at the time that the IT governance process would assess the impact of the needed changes and prioritize accordingly.<sup>182</sup> Ms. Schuler also believed that “we had folks looking at what priorities were being set by the department... for defects as well as other enhancements,” and she assumed the CIO was aware of what was needed.<sup>183</sup>

Minutes of the Administrative Service Division’s management team meetings on Jan. 2 and Jan. 9, 2013 reflect that Ms. Stigall informed the team of the *King* error, though she does not recall the extent to which she raised the issue and the minutes do not reflect the nature of her comments. However, any plausible description of the problem would have revealed the potential for early prisoner releases as well as past improper releases.<sup>184</sup>

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<sup>174</sup> DWT Memorandum, Wendy Stigall, p.5.

<sup>175</sup> DWT Memorandum, Wendy Stigall, p.4

<sup>176</sup> DWT Memorandum, Wendy Stigall, p.5.

<sup>177</sup> Exhibit 5.

<sup>178</sup> DWT Memorandum, Wendy Stigall, p.5.

<sup>179</sup> Senate Law and Justice Committee hearing transcript, Feb. 22, 2016, p.17.

<sup>180</sup> Senate Law and Justice Committee hearing transcript, Feb. 22, 2016, p.19.

<sup>181</sup> DWT Memorandum, Wendy Stigall, p.6.

<sup>182</sup> DWT Memorandum, Wendy Stigall, p.6.

<sup>183</sup> Senate Law and Justice Committee hearing transcript, Feb. 22, 2016, p.19.

<sup>184</sup> DWT Memorandum, Wendy Stigall, p.6.

In early January 2013, Ms. Stigall created a spreadsheet revealing that thousands of inmates could be affected by the *King* error, but still believed the real-world impact of the fix was limited because her list included those who were technically affected but who would not realistically be released, including inmates serving 50 years and those serving life without parole.<sup>185</sup> Furthermore, she believed the *King* fix would be completed in a matter of months, but knew even labeling it ASAP meant “you’re not going to get it in less than three months.”<sup>186</sup> Having sent her IT request, Ms. Stigall assumed IT was working on it.<sup>187</sup>

On Jan. 2, 2013, Ms. Stigall emailed DOC’s legislative liaison, Clela Steelhammer.<sup>188</sup> Ms. Steelhammer believes she read the email but doesn’t recall doing so.<sup>189</sup> Ms. Stigall said she sent this email at the suggestion of Sarian Scott, DOC budget director. Ms. Stigall stated that Mr. Scott’s suggestion came at the Jan. 2, 2013 meeting of the Administrative Service Division’s management team.<sup>190</sup>

The record also establishes that the early-release issue was likely discussed at a DOC senior-staff meeting sometime around this time period – meaning within a matter of weeks after Matthew Mirante alerted the Department about the problem in December 2012. But it is unclear who brought it up. Former Secretary Warner and Ms. Mullins, currently the governor’s policy advisor on public safety and a former DOC assistant secretary, had a near-identical recollection. Mr. Warner told the governor’s investigators that “he had a vague recollection that an issue was raised regarding the early release of one inmate but that the matter had been [resolved].”<sup>191</sup> Ms. Mullins described an identical recollection in much greater detail for Senate investigators. She recalls hearing about the early-release issue at an executive staff meeting in December 2012. The way she describes it, Ms. Steelhammer mentioned, during the meeting or before, that “this really weird thing happened.” Ms. Mullins went on to say, “It was described to me as a one-off situation, an offender with a short base sentence, with a single count and an enhancement. They consulted with the AG and it was fixed.”<sup>192</sup>

The fact that both former Secretary Warner and Ms. Mullins have the same recollection suggests that the conversation did, indeed, take place. But Ms. Steelhammer denies saying it, and it should

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<sup>185</sup> Senate Law and Justice Committee hearing transcript, Feb. 22, 2016, p.18.

<sup>186</sup> Senate Law and Justice Committee hearing transcript, Feb. 22, 2016, p.18.

<sup>187</sup> DWT Memorandum, Wendy Stigall, p.5.

<sup>188</sup> Exhibit 18.

<sup>189</sup> DWT Memorandum, Clela Steelhammer, p.2.

<sup>190</sup> DWT Memorandum, Wendy Stigall, p.6.

<sup>191</sup> Exhibit 15, p.47.

<sup>192</sup> DWT Memorandum, Sandy Mullins, p.4.

be noted that even if she did read the email from Ms. Stigall containing AAG Larson's opinion, she did not get it until Jan. 2, 2013.<sup>193</sup>

There are two ways this can be reconciled:

- The meeting took place in January 2013 or thereafter, and Ms. Steelhammer's story is not accurate; or
- Ms. Mullins is incorrect that it was Ms. Steelhammer who brought it up, and instead it was someone else. It might be noted that Ms. Gastreich and Ms. Doty also attended executive staff meetings.<sup>194</sup>

No matter who raised the issue, the recollection demonstrates that there was awareness of the early-release issue by staff at the highest level of the agency very soon after Matthew Mirante raised the alarm. And at the very best, it demonstrates top officials failed to ask questions.

On March 25, 2013, the IT department sent Ms. Stigall an "IT consultation form."<sup>195</sup> There was nothing substantive on the form that wasn't part of her initial request; she also had interacted with IT over the months since her initial request and expressed to IT her concerns regarding the time it was taking to complete the job.<sup>196</sup> Approximately one week later, Ms. Stigall received confirmation that work would begin on the *King* fix.<sup>197</sup>

At a statewide meeting of DOC records managers on Aug. 15, 2013, a PowerPoint presentation by Ms. Stigall included a slide detailing the challenge of the *King* fix.<sup>198</sup> To provide an example, she cited the hypothetical case of an offender receiving earned release time of 356 days on a 608-day sentence, which would mean "they are getting 58 percent earned release time when the maximum allowed by law is 33 1/3 percent or 202 days."<sup>199</sup> Ms. Stigall followed her presentation with an Aug. 19, 2013 email<sup>200</sup> to the statewide list of DOC records managers, re-asserting that her slide presentation "was factually correct" and acknowledging the *King* fix would be "changing some

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<sup>193</sup> Senate Law and Justice hearing transcript, March 16, 2016, p. 6-7

<sup>194</sup> Assuming Daniel Judge's account is accurate, Kathy Gastreich had knowledge of the *King* problem as early as Dec. 7, 2012. Denise Doty indicated in testimony that it had been her practice to brief Secretary Warner on all important matters, though she conceded she had no specific recollection of briefing him on this issue. Either is a reasonable alternative to Clela Steelhammer as the source of the information and lend to Ms. Steelhammer's credibility on this matter.

<sup>195</sup> Exhibit 8.

<sup>196</sup> DWT Memorandum, Wendy Stigall, p.7.

<sup>197</sup> DWT Memorandum, Wendy Stigall, p.7.

<sup>198</sup> Exhibit 7.

<sup>199</sup> Exhibit 7.

<sup>200</sup> Exhibit 7.



release dates dramatically.” Ms. Stigall stated her reason for the presentation and the email was that she believed that the fix was about to be completed and wanted managers to be aware of it.<sup>201</sup>

Secretary Warner and Assistant Secretary Doty attended the Aug. 15, 2013 meeting but did not stay long enough to see the Stigall presentation.<sup>202</sup> During her appearance before the Senate Law and Justice Committee, Ms. Doty was asked if she “at any point raise[d] this [the *King* fix] directly with Secretary Warner yourself since you became aware of the issue generally in the 2012-2013 timeframe?” Ms. Doty replied that it was her practice to make both secretaries she served to make them

Aware of the important issues going on in the administrative services division. But I do not have a specific recollection over that time. Over five-and-a-half years I told secretaries hundreds of things. I couldn’t pull out any individual item that I shared with either Secretary Vail or Secretary Warner at this point. And there are no records of those meetings. So I don’t have a specific recollection. But it was certainly my practice. I wouldn’t have any reason not to.<sup>203</sup>

Ms. Stigall had monthly one-on-one meetings with Ms. Doty. Neither followed up with the other on the *King* fix. Both Ms. Stigall and Ms. Doty assumed they could rely on IT to complete the fix. As Ms. Doty put it, “There’s this advice that just made it sound like it could get fixed. What my experience had been with IT is that those things did get fixed.”<sup>204</sup> With each delay, Ms. Stigall believed someone at IT or an IT governance committee understood the implications of the *King* error and had concluded that something else was a higher priority.<sup>205</sup> Ms. Doty recalled past sentencing-calculation issues arising with OMNI that were fixed once they had entered the “IT pipeline” and assumed hand calculations would be reconsidered if a problem was identified.<sup>206</sup> Ms. Doty stated there were two things she primarily remembers from 2013: dealing with that year’s operating budget, and dealing with former Secretary Warner’s emphasis on Advance Corrections/STRONG-R.<sup>207</sup>

When IT Specialist/Business Analyst Sue Schuler completed the IT consultation form for Ms. Stigall’s request, she included estimates for cost, development, and testing time.<sup>208</sup> Mark Ardiel, the DOC contractor from Sierra-Cedar, estimated 20 hours for the *King* fix at this time, based on

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<sup>201</sup> DWT Memorandum, Wendy Stigall, p.7.

<sup>202</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p. 31

<sup>203</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.31.

<sup>204</sup> DWT Memorandum, Denise Doty, p.5.

<sup>205</sup> DWT Memorandum, Wendy Stigall, pp.7–8.

<sup>206</sup> DWT Memorandum, Denise Doty, p.5.

<sup>207</sup> DWT Memorandum, Denise Doty, p.5.

<sup>208</sup> DWT Memorandum, Sue Schuler, p.2.

the very superficial descriptions of the problem he was provided.<sup>209</sup> Once the consultation form was complete, Ms. Schuler sent it to David Dunnington, who was DOC business unit manager at the time.<sup>210</sup> It then went to the IT department's triage team to determine where it should go and whether it should go to developers, and if so, whether it should go to in-house DOC developers or a vendor like Sierra-Cedar.<sup>211</sup> Mr. Dunnington told Senate investigators that the triage team did not approve requests as much as ensure they were directed to the right place, and determine whether they involved hardware, software, or installation.<sup>212</sup>

During Senate hearings, Mr. Dunnington was asked to clarify the nature of the triage team. He said its purpose "was to review [each request] and forward it on to the correct department, person, and area."<sup>213</sup> The triage team was therefore not a body that set priorities, but one that assigned tasks.

Mr. Dunnington stated that there had been a governance group in the past, but he did not participate in it. He believed the governance group consisted of division executives or their designees,<sup>214</sup> and that it was up to the business analyst to communicate with the submitter and advocate for the inclusion of a particular update.<sup>215</sup> In essence, Ms. Stigall was relying on IT to set priorities while the business unit manager was relying on Ms. Stigall as the submitter, and Ms. Schuler as the business analyst for guidance. Ms. Schuler stated Mr. Dunnington would communicate priorities to her although she was not sure if he was on the governance team, and stated that "somehow my bosses found out" what the department's priorities were.<sup>216</sup>

DOC IT work priorities were organized in what were known as "M releases." While the ClearQuest number assigned to the *King* fix was created on April 3, 2013, Ms. Schuler scheduled the fix for the M-34 release in September 2013, due to coding work already under way on one release and a full slate in the next release.<sup>217</sup> The "ASAP" designation from Wendy Stigall was swiftly lost. Ms. Schuler, the business analyst, stated "other priorities came up," set by the Department for new projects.<sup>218</sup> Mr. Dunnington, the business-unit manager, stated the request might have gotten lost in the volume of other requests to the IT department. "There were a number of other projects and priorities that demanded attention," he said. "Unfortunately, that's probably

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<sup>209</sup> DWT Memorandum, Mark Ardiel, p.8.

<sup>210</sup> DWT Memorandum, Sue Schuler, p.2.

<sup>211</sup> DWT Memorandum, Sue Schuler, p.2.

<sup>212</sup> DWT Memorandum, Dave Dunnington, p.2.

<sup>213</sup> Senate Law and Justice Committee hearing transcript, March 16, 2016, pp.41-42.

<sup>214</sup> DWT Memorandum, Dave Dunnington, p.2.

<sup>215</sup> DWT Memorandum, Dave Dunnington, p.2.

<sup>216</sup> DWT Memorandum, Sue Schuler, p.2.

<sup>217</sup> DWT Memorandum, Sue Schuler, p.2.

<sup>218</sup> DWT Memorandum, Sue Schuler, p.3.

part of that. There was always something new and something that needed to be fixed or someone wanted their [project] done next. The work kept piling up.”<sup>219</sup>

In a July 10, 2013 email, Ms. Stigall sent Ms. Schuler a prioritized list of defects which included the *King* fix, yet the fix still was not forthcoming.<sup>220</sup> In a late-March 2014 email exchange, Ms. Schuler and Mr. Dunnington, business unit manager, discussed yet another delay in the *King* fix.<sup>221</sup> Mr. Dunnington asks “Are there any big concerns? Will Wendy be OK with it?” Ms. Schuler replied, “If she has to be—I talked to her today.”<sup>222</sup> As indicated, Ms. Stigall had thought IT had a process for addressing agency priorities, while this exchange suggests that Ms. Schuler and Mr. Dunnington thought if the *King* fix was a high priority, Ms. Stigall would have pushed back harder.

Ms. Stigall’s original IT request specified that the *King* fix needed to be done “ASAP” because “all current ERD’s [early release dates] when there is a mandatory/enhancement are in error.”<sup>223</sup> Despite this warning regarding early releases, even at this relatively early stage in the *King*-fix delay, the priority was lost. Ms. Schuler stated, “No one knew it was going to be that many offenders affected,”<sup>224</sup> yet it was clear some offenders would be affected and that did not create any special kind of priority.

Ms. Schuler designated the *King* fix a “Severity level 2” in the ClearQuest tracking system, which was the most serious severity level short of a system-crashing error.<sup>225</sup> However, this did not call attention to the problem, because many fixes carried the same severity level. The *King* fix languished as one of many change requests (CRs) in the system.

Meanwhile, Ms. Stigall had already made every DOC records manager aware of the early-release issue, through her August 2013 presentation and email. Nothing prevented records staff from performing hand-calculations at any point<sup>226</sup>, but the agency culture was such that no action was taken. When asked why she failed to sound the alarm as the *King*-fix delay stretched from 2013 to 2014 into 2015, Ms. Stigall said she assumed there was an IT governance process in place and “there were priorities for the agency higher than that request,”<sup>227</sup> and that she “thought the whole time that somebody was actually setting a priority.”<sup>228</sup> Ms. Schuler, the business analyst, said she had similar assumptions about Ms. Stigall, stating that if Ms. Stigall had pushed back on delays

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<sup>219</sup> DWT Memorandum, Dave Dunnington, p.3.

<sup>220</sup> DWT Memorandum, Sue Schuler, p.5.

<sup>221</sup> Exhibit 15, p.30.

<sup>222</sup> Exhibit 15, p.30.

<sup>223</sup> Exhibit 5.

<sup>224</sup> DWT Memorandum, Sue Schuler, p.3.

<sup>225</sup> DWT Memorandum, Sue Schuler, p.4.

<sup>226</sup> DWT Memorandum, Denise Doty, p.5.

<sup>227</sup> Senate Law and Justice Committee hearing transcript, Feb. 22, 2016, p.37.

<sup>228</sup> Senate Law and Justice Committee hearing transcript, Feb. 22, 2016, p.21.

“everybody would have said she’s getting pissed off [and] Dave [Dunnington] and I would have said, ‘Let’s do this right now.’” Ms. Schuler added that if “Ms. Stigall or any upper management” had given the *King* fix priority over other enhancements “all other work would have stopped for this one to be completed. Same if anyone had indicated the number of affected offenders, thousands of them.”<sup>229</sup> Mr. Dunnington stated that the request may have gotten lost in the volume of other requests, “There were a number of other projects and priorities...always something new and something that needed to be fixed or someone wanted their [project] done next. The work kept piling up.”<sup>230</sup>

Mark Ardiel, the contractor from Sierra-Cedar, explained that at one time DOC set priorities for the items in a release on an A-B-C scale – “A” items were “must fix,” “B” items were those that had been bumped from a previous release, “C” items were new additions. Mr. Ardiel explained that although the “must fix” designation appears to disappear from the record, the report only shows items that are changed, so if the same status is maintained, it would not be shown on the report for later dates. At the same time, if an item came up in the ClearQuest tracking system log as “must fix,” that would mean it was not so designated previously.<sup>231</sup> This automated function of the ClearQuest system makes perceived changes to the “must fix” designation all but irrelevant to the delay of the *King* fix.

In September 2013, the *King* fix was designated a “must fix” in the ClearQuest tracking system. While seeming to impart an urgency, the “must fix” designation was actually an automated designation for change requests. Ms. Schuler explained that if a request is not moved out of DevCode after missing several releases, it automatically is classified as a “must fix.”<sup>232</sup> Ms. Schuler testified that “a ‘must fix’ is when we set a certain end release and we tell the coders that it is going to get done, and then they will come and say, well we don’t have the resources, or it’s a code freeze, or whatever, and it goes to what we call a ‘must fix,’ so it becomes top of the next release.”<sup>233</sup> Mr. Dunnington said the “must fix” category is used to “tell the developers we want this fixed in a release” and it provides a “message to the developers that we expect to get it done.”<sup>234</sup> But because priorities are not generally established within a given release, the “must” portion of the designation is misleading.

According to Ms. Schuler, the “must fix” designation was intended for IT to be able to better track fixes that had not moved out of DevCode “at a glance.”<sup>235</sup> However, the ClearQuest tracking

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<sup>229</sup> DWT Memorandum, Sue Schuler, p.3.

<sup>230</sup> DWT Memorandum, Dave Dunnington, p.3.

<sup>231</sup> DWT Memorandum, Mark Ardiel, p.9.

<sup>232</sup> DWT Memorandum, Sue Schuler, p.4.

<sup>233</sup> Senate Law and Justice Committee hearing transcript, Feb. 22, 2016, p.29.

<sup>234</sup> DWT Memorandum, Dave Dunnington, p.4.

<sup>235</sup> DWT Memorandum, Sue Schuler, p.4.

system makes that difficult because “as changes were done... only the changes are reflected....So you could go through and have eight changes to 24910 [the numeric code for the *King* fix], but until you changed that must-fix, it [wouldn't] display.”<sup>236</sup>

In September 2013, Mark Ardiel of Sierra-Cedar began work on the *King* fix.<sup>237</sup> Mr. Ardiel was the most trusted developer on OMNI fixes involving sentencing.<sup>238</sup> Ms. Schuler described him as the exclusive developer working on OMNI fixes involving sentencing<sup>239</sup> and Ms. Stigall observed that both DOC's IT department and Sierra-Cedar was reluctant to assign anyone else to work on OMNI sentence structure issues.<sup>240</sup> On Sept. 26, 2013, Ms. Stigall emailed Mr. Ardiel and their exchange left Ms. Stigall convinced the fix would be forthcoming.<sup>241</sup> But Mr. Ardiel soon stopped work on the *King* fix because he had questions on the business requirements for the item and did not receive the needed information from DOC.<sup>242</sup>

DOC often included as many as 300 IT enhancements or defects in a particular “M release,” with the understanding that not all would be completed.<sup>243</sup> Items not completed would be rescheduled for a future release and backlogs were common.<sup>244</sup> The OMNI team, which met twice weekly to discuss defects and enhancements or change requests set for the next release and to monitor progress.<sup>245</sup> Ms. Schuler described the meetings as “really informal”<sup>246</sup> and no records were kept.<sup>247</sup> Ms. Schuler explained that the OMNI team might delay CRs until a later release for a variety of reasons. Those reasons included not enough time to complete the coding, lack of resources for coding, not enough time to complete testing; and in some cases insufficiently clear business requirements. In addition, there were “code freeze” dates, meaning the code for a particular release would need to be finalized for the change to be deployed. If an update was not complete by that “code freeze” date, it would have to be delayed as a result. Generally there was no documentation as to why particular requests that had been scheduled were delayed to future releases.<sup>248</sup> OMNI meetings were not used to discuss whether certain items should be implemented

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<sup>236</sup> DWT Memorandum, Sue Schuler, p.4.

<sup>237</sup> DWT Memorandum, Mark Ardiel, p.10.

<sup>238</sup> DWT Memorandum, Sue Schuler, p.3; DWT Memorandum, Wendy Stigall, p.8.

<sup>239</sup> DWT Memorandum, Sue Schuler, p.3.

<sup>240</sup> DWT Memorandum, Wendy Stigall, p.8.

<sup>241</sup> DWT Memorandum, Wendy Stigall, p.7.

<sup>242</sup> DWT Memorandum, Mark Ardiel, p.10.

<sup>243</sup> DWT Memorandum, Dave Dunnington, p.4.

<sup>244</sup> DWT Memorandum, Dave Dunnington, p.4.

<sup>245</sup> DWT Memorandum, Dave Dunnington, p.4; DWT Memorandum, Sue Schuler, p.2.

<sup>246</sup> DWT Memorandum, Sue Schuler, p.2.

<sup>247</sup> DWT Memorandum, Dave Dunnington, p. 4

<sup>248</sup> DWT Memorandum, Sue Schuler, p.3.

or in what order. They did not engage in prioritization, but were primarily status updates on items set for the current release.<sup>249</sup>

An August 2015 email from Mr. Dunnington to the assistant secretaries of the DOC illustrates a distraction of that kind. Mr. Dunnington wrote that his email was “to share current system enhancements under your area and request your review and assistance to identify your business priorities.” He said that he sent the email in part because of a meeting with Mr. Pacholke and former Assistant Secretary Amy Seidlitz, whom he described as director of Advance Corrections. Mr. Dunnington said that because of the Advance Corrections initiative “and all the work that was going to be scheduled to be done, that some of these enhancements may have an impact on Advance Corrections, meaning that they may not need to be done, or they may need to be done sooner rather than later, or that the impact may be contrary to the direction of Advanced Corrections [sic].”<sup>250</sup> Of further note is that only Steve Sinclair from the Prisons Division responded with priorities.<sup>251</sup>

While the vast majority of the numerous delays to the *King* fix in the ClearQuest tracking system audit trail bear Mr. Dunnington’s name, there was no DOC priority given to that fix compared to others in the queue. Former CIO Hoffer stated there were typically 1,000 defects and enhancements in the database.<sup>252</sup> Both he and his successor, Mr. Jekel, described difficulty in getting sufficient and consistent prioritization information.<sup>253</sup> In addition, Mr. Jekel believed another problem was that people with political pull were able to get their priorities done while pushing other work into the future. DOC did not task Mr. Ardiel with addressing backlogged updates, but only those updates that were scheduled in a given release.<sup>254</sup> Large-scale and small-scale projects hampered the IT department’s ability to clear the backlog of updates, and even a small-scale project could become a diversion if it was requested to be completed immediately.<sup>255</sup> Mr. Dunnington stated, “I don’t think IT ever said no to anybody. The faucet would just keep filling the bucket and we kept working and working to get the job done.”<sup>256</sup>

System enhancements were ranked on a severity level from one to four, Although Ms. Schuler designated the *King* fix a “severity level 2” in the ClearQuest tracking system,<sup>257</sup> on Feb. 4, 2014

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<sup>249</sup> DWT Memorandum, Mark Ardiel, p.4.

<sup>250</sup> Senate Law and Justice Committee hearing transcript, March 16, 2016, p.32.

<sup>251</sup> Senate Law and Justice Committee hearing transcript, March 16, 2016, p.33.

<sup>252</sup> DWT Memorandum, Doug Hoffer, p.3.

<sup>253</sup> DWT Memorandum, Peter Jekel, p.3.

<sup>254</sup> DWT Memorandum, Dave Dunnington, p.5.

<sup>255</sup> DWT Memorandum, Dave Dunnington, p.5.

<sup>256</sup> DWT Memorandum, Dave Dunnington, p.3.

<sup>257</sup> DWT Memorandum, Sue Schuler, p.4.

the *King* fix was reduced in severity level from a very serious “2” to a moderate “3” by Mr. Dunnington.<sup>258</sup> However, the decision was not his alone.

The minutes of the Nov. 8, 2013 OMNI architecture committee meeting contain a notation “assign to Dave.”<sup>259</sup> Mr. Dunnington testified that this signified that he was tasked with updating the severity criteria document, following the committee’s decision that the severity level for enhancements would always be set to three.<sup>260</sup> Minutes of the meeting reflect that Mr. Dunnington did not attend this meeting.<sup>261</sup> The minutes of the Nov. 22, 2013 OMNI architecture meeting contain an assignments follow-up section; in that section the task “update severity criteria document for enhancements severity always set to three” is followed by the word “done.”<sup>262</sup> Discussions over the uniform severity rankings for defects and enhancements took place in OMNI architecture meetings, IT executive team meetings, and OMNI meetings.<sup>263</sup> Mr. Dunnington also testified that he emailed the new policy so that others might offer opinions but received only one response. Because the *King* fix was classified as an enhancement, like all enhancements, it was reclassified as a severity level 3. Ira Feuer, DOC’s sixth CIO under former Secretary Bernie Warner – and the CIO who ultimately oversaw the completion of the *King* fix – stated he was unaware of this decision and could not justify it.<sup>264</sup> The decision reflects the Department’s broad dysfunction, lack of governance and haphazard prioritization process.

Mr. Ardiel estimated he spent 80 to 100 hours on the fix between 2013 and 2014 and stopped work in March of 2014 while waiting for information from DOC.<sup>265</sup> He returned to work on the *King* fix in November 2014 and completed the algorithm that served as the foundation for the fix.<sup>266</sup> After reaching a complication, he stopped work on the fix again in late 2014 while he waited for additional business requirements from DOC.<sup>267</sup> He was working on the fix again in 2015 when he set it aside for paternity leave<sup>268</sup> from February through September 2015. Although other Sierra-Cedar team members were available to do the work,<sup>269</sup> Mr. Ardiel stated that for nearly all of 2015,

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<sup>258</sup> DWT Memorandum, Sue Schuler, p.4; DWT Memorandum, Dave Dunnington, p.6.

<sup>259</sup> It is puzzling how this task could be assigned to him if, as posited by the governor’s report, Dunnington held the sole authority to set these severity levels.

<sup>260</sup> Senate Law and Justice Committee hearing transcript, March 16, 2016, p.25.

<sup>261</sup> Senate Law and Justice Committee hearing transcript, March 16, 2016, p.25.

<sup>262</sup> Senate Law and Justice Committee hearing transcript, March 16, 2016, p.26; Exhibit 20.

<sup>263</sup> Senate Law and Justice Committee hearing transcript, March 16, 2016, pp.27-28.

<sup>264</sup> DWT Memorandum, Ira Feuer, p.4.

<sup>265</sup> Senate Law and Justice Committee hearing transcript, Feb. 25, 2016, p.30.

<sup>266</sup> DWT Memorandum, Mark Ardiel, p.10.

<sup>267</sup> DWT Memorandum, Mark Ardiel, p.10.

<sup>268</sup> DWT Memorandum, Mark Ardiel, p.11.

<sup>269</sup> DWT Memorandum, Mark Ardiel, p.11.

he believed almost his entire maintenance team was working on Advance Corrections/STRONG-R related material.<sup>270</sup>

When Mr. Ardiel returned from paternity leave in September 2015, he worked on other projects, then returned to the *King* fix in November as a matter of course. His resumption of work was not prompted by DOC. At no point was he told that work on the *King* fix should be a priority. But because of his sporadic work over the previous two years, he was nearly finished by the time DOC recognized the early-release issue was an emergency.<sup>271</sup> Ardiel did not learn of AAG Ronda Larson's 2012 legal advice until December 2015, when he saw it posted on the DOC website.<sup>272</sup>

In November 2015, the early release issue finally received the attention it warranted. On Nov. 2, 2015, three months into his new job and in the course of meeting individually with staff, CIO Ira Feuer met with Ms. Stigall, who informed him that there had been a sentencing-enhancement fix that had been repeatedly delayed. Mr. Feuer noted her clear annoyance and believed, based on his IT experience, that this was potentially a major issue. Mr. Feuer checked with Mr. Dunnington about the progress of the fix and was informed that Mr. Ardiel was working on it, with the release scheduled in early January 2016.<sup>273</sup>

Mr. Feuer said he didn't know if the problem was "impacting one prisoner, two prisoners, five prisoners, 5,000 prisoners. I really didn't know the impact."<sup>274</sup> The only way to assess the impact was to get "enough of the fix into the code where we could run a query and we could then tell the secretary exactly the magnitude of the problem," he explained.<sup>275</sup> That moment came in December 2015 – and Mr. Feuer describes it as the "oh s\*\*t moment."<sup>276</sup> The query showed the fix would cause approximately 2,900 changes to offenders' release dates.<sup>277</sup>

Also in December 2015, Ms. Stigall understood the long-awaited *King* fix was planned for release in January and wanted to inform the various prisons so they could prepare their planned releases to comply with the fix.<sup>278</sup> She met with Julie Martin, who succeeded Mr. Tinney as assistant secretary for administrative services, and Steve Sinclair, Rob Herzog, and Scott Russell of the prisons division, and informed them of the coming change.<sup>279</sup> The prison division group recognized the significance. Ms. Stigall also briefed Mr. Pacholke, who had just begun his brief

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<sup>270</sup> DWT Memorandum, Mark Ardiel, p.6.

<sup>271</sup> DWT Memorandum, Mark Ardiel, p.12.

<sup>272</sup> DWT Memorandum, Mark Ardiel, p.12.

<sup>273</sup> DWT Memorandum, Ira Feuer, p.2.

<sup>274</sup> DWT Memorandum, Ira Feuer, p.7.

<sup>275</sup> Senate Law and Justice hearing transcript, Feb. 25, 2016, p.7.

<sup>276</sup> DWT Memorandum, Ira Feuer, p.6.

<sup>277</sup> DWT Memorandum, Ira Feuer, p.2.

<sup>278</sup> DWT Memorandum, Wendy Stigall, p.8.

<sup>279</sup> DWT Memorandum, Wendy Stigall, p.8.



tenure as secretary of corrections. He decided to halt all prisoner releases and hand-calculate release dates as required.<sup>280</sup> Secretary Pacholke mobilized the DOC command center and applied the full resources of the Department, requiring staff to work through weekends and holidays to determine which former inmates required apprehension and which prisoners' sentences required hand calculation.<sup>281</sup> The governor learned of the early release of prisoners on Thursday, Dec. 17 and informed the public on Tuesday, Dec. 22.<sup>282</sup>

Despite the "must fix" designation, the *King* fix had been delayed for more than two-and-a-half years, through multiple M-releases. No substantive reasons were recorded for these delays, but as indicated previously, the OMNI team didn't track reasons for delays and no trigger or notification was in place for requests repeatedly rescheduled.<sup>283</sup> At one point the *King* fix was scheduled for the M-50 release, but was finally accomplished in the M-49 release scheduled for implementation on Jan. 7, 2016.<sup>284</sup>

## **G. The Aftermath**

The full extent of the problem has not yet been determined. The DOC has not completed its analysis of the number of offenders who were released early, the crimes committed by those who were released early, or the individual offenders who still owe additional prison time. It is not clear whether DOC plans to inquire further into the subject. Until then, the impact on the state and the state's total liability cannot be estimated.

In the days and weeks following the revelation of the early-release issue, the DOC focused on the inmates who had been released relatively recently, from Dec. 17, 2011 to Dec. 17, 2015. This prioritization made sense at the time, because those who had been released over the last four years were the ones most likely to owe additional prison time. DOC posted its final analysis regarding these prisoners on its website March 8, 2016.<sup>285</sup>

However, DOC has done little work regarding inmates who were improperly released between 2002 and 2011. Its last update regarding these offenders was posted on Feb. 4, 2016, consisting only of a list of those inmates released during this period who possibly could be affected. More than three months have passed since that time. Until DOC finishes its analysis, the total picture of the damage done by its mistake cannot be known. A complete analysis will increase the state's potential liability by identifying additional crimes committed by inmates who should have been

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<sup>280</sup> DWT Memorandum, Wendy Stigall, p.9.

<sup>281</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.47.

<sup>282</sup> Exhibit 15, p.35

<sup>283</sup> DWT Memorandum, Dave Dunnington, p.3.

<sup>284</sup> Exhibit 9.

<sup>285</sup> Figures are taken from the DOC website, at <http://www.doc.wa.gov/news/pressreleases/2015/12222015-sentencing-error-information.asp>.

serving time. A complete analysis also will reveal additional former inmates who owe more prison time to the state, and their re-incarceration will increase prison populations and operating costs. However, the public interest in a full accounting remains paramount.

### **1. Number of affected offenders**

The most current numbers provided by the DOC suggest the number of offenders who were released early is approximately 3,000, with another 3,000 affected inmates still serving time in prison. The exact number remains unknown. When the problem was announced on Dec. 22, 2015, Governor Inslee and DOC officials cited a figure of 3,200 early releases. This number has been widely cited in press accounts and in legislative discussions. However, that number represented an initial estimate, and it has not been updated by DOC.

Since December, DOC has partially corrected its figures. The most recent information available suggests the number of inmates who were released early is somewhat less than 3,200. The DOC identified a total population of 3,701 released inmates who might have been affected. That figure includes all inmates who had flat-time sentence enhancements and who were released between 2002 and 2015. DOC completed a review of those inmates released between Dec. 17, 2011 and Dec. 17, 2015, showing a total 1,530 potentially affected inmates. Of these offenders, the department found that 399, or 26 percent, did not owe additional time at the point when they were released.<sup>286</sup>

If the same rate is applied to all of the potentially affected offenders, we might estimate that a total 2,739 were improperly released. However, no conclusion can be drawn because the DOC has apparently not performed the same analysis on the cases of the 2,171 offenders released between 2002 and 2011.<sup>287</sup>

In its latest analysis of prisoners released between 2011 and 2015, DOC identified 116 prisoners who owed prison time, either because the clock was still ticking on their original sentence, or because they had been charged with new crimes or violated community supervision requirements during the time they should have been incarcerated. DOC's final analysis regarding these prisoners released between 2011 and 2015 indicates that they were released an average 59 days early. DOC

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<sup>286</sup> A 2003 Supreme Court decision, *in re Roach*, 74 P.3d 134 (Wash. 2003) says generally that when inmates are released early due to a DOC mistake, they get day-for-day credit against their sentences until the time is up. Exceptions are made when offenders are charged with a new crime during the period when they should have been incarcerated, when they violate the terms of their community supervision by failing to report or absconding, or when the mistake is due to their own misrepresentations. Those offenders may be required to serve out the remainder of their terms.

<sup>287</sup> The figure of 2,171 is drawn from the list posted by the DOC on its website Feb. 4 at <http://www.doc.wa.gov/news/pressreleases/2015/docs/sentencing-error/releases-list-2002-2011.pdf> .

has indicated that the worst case was a prisoner released nearly 600 days early – approximately one year and eight months.<sup>288</sup>

## **2. Crimes committed by prematurely released offenders**

DOC's analysis to date indicates that 29 improperly released offenders committed new crimes during the period when they should have been in prison. However, this analysis is far from complete. For prisoners released between 2011 and 2015, DOC's analysis includes pending charges and convictions. For those who were released between 2002 and 2015, DOC worked its way backward, identifying offenders who were convicted of new Class A felonies and sex-offense felonies after their release, then determining whether they were committed at a time when they should have been in prison. There were two who fell into that category, and they are included in the list of 29.

There are three problems with the analysis. The first is that for the inmates released between 2011 and 2015, the accounting includes pending charges and convictions but does not include charges that have been dropped. An arrest does not always lead to a conviction, but it is a reasonable indication of the criminal impact of DOC's error. The second problem that its analysis does not include any charges filed against improperly released inmates between 2002 and 2011. The third is that for the prisoners in this earlier group, DOC checked only convictions for the most serious crimes. It did not check for convictions for misdemeanors, gross misdemeanors, and Class B and C felonies.

Presumably, a full analysis of the impacts attributable to improperly released offenders will show a far greater number of offenses. Among the prisoners released between 2002 and 2011, for instance, it is difficult to believe that only two of them committed crimes when they should have been in prison.

The crimes committed or alleged to have been committed by these improperly released inmates run the gamut from the most serious to the most minor. They include first-degree murder, vehicular homicide, first-degree assault, first-degree burglary, theft and possession of a stolen firearm, all the way down to shoplifting and driving with a suspended license. Two particularly serious crimes warrant further description.

## **3. Death of Caesar Medina**

Early in the morning of May 28, 2015, two men forced their way into Northwest Accessories, a Spokane tattoo parlor and drug-paraphernalia store. Exactly why is unclear. Police at the time called it a botched robbery attempt but there are also indications the incident was gang-related.

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<sup>288</sup> Gov. Jay Inslee news conference, Dec. 22, 2016. <http://www.tvw.org/watch/?eventID=2015120002> .

When the men got inside, they found others waiting there for them. Among those standing guard was Caesar Medina, 17, a friend of the owner. An employee hurled an empty wine bottle at the men. The intruders opened fire.

Bullets struck Medina in the neck and chest. The men fled, and police arrived just as friends carried the injured Medina to a car to take him to the hospital. Despite lifesaving efforts by the officers, Medina died at the scene.<sup>289</sup>

Ultimately Spokane police arrested Jeremiah Smith, 26, who had been released 12 days before the incident from the Washington State Corrections Center in Shelton. Smith had served five years for felony robbery, burglary and assault. Had his sentence been calculated properly, he would have been released on Aug. 15. Instead he was released three months early.

Smith currently is in the Spokane County Jail, awaiting trial on charges of murder, assault, burglary, robbery – all in the first degree.

#### **4. Death of Lindsay Hill**

Robert Terrance Jackson, 38, took his girlfriend Lindsay Hill to a club in Seattle on the night of Nov. 11, 2015 and friends later remembered both of them seemed clearly intoxicated. Jackson had been released from the Washington Corrections Center Aug. 10, after serving five years for armed robbery, and quickly took up with Ms. Hill, 35. He moved into the Bellevue apartment she shared with her two sons, and despite what neighbors described as a violent relationship, in a Facebook posting the two of them described themselves as engaged.

What happened after they left the club that night is a matter of police record. A witness called Seattle police to report seeing a man repeatedly strike a woman as she attempted to escape his car. The witness told police that as the woman hung out the passenger window, a coat, wallet and purse were thrown outside. After the car left the scene, the witness checked the purse and wallet. They contained ID for Jackson and Hill.

Half-an-hour later, the same car careened down a residential street in Bellevue in the direction of their apartment complex at speeds of more than 60 miles an hour. It slammed into a steel utility box with such force that Hill was thrown from the passenger seat. She suffered catastrophic head injuries and died in the wreckage.

Jackson, who suffered gashes to the face, was arrested after a witness reported seeing a blood-covered man wandering around an apartment building near the accident. Police said Jackson's eyes

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<sup>289</sup> The (Spokane) Spokesman-Review, May 28, 2015, "Teen Killed When Men Broke into Tattoo Shop, Witness Tells Police," <http://www.spokesman.com/stories/2015/may/28/teen-killed-when-men-broke-into-tattoo-shop/> .

were bloodshot and he reeked of alcohol; he fought as he was arrested and had to be tasered. Today Jackson is in the King County Jail awaiting trial for vehicular homicide.<sup>290</sup>

DOC revealed six weeks later that Jackson should have been in prison that night. His correct release date was Dec. 6, 2015.

## **5. Substantial Potential Liability for State**

The state of Washington potentially bears a heavy burden of liability for these cases and others. Although crimes were committed by the improperly released offenders and not by the state itself, Washington law allows claims for negligent supervision, and makes it easier to sue than other states. Washington waived sovereign immunity to tort claims in 1961,<sup>291</sup> allowing state government to be sued just like any person or corporation. In addition, joint and several liability can require the state to pay the full amount of damages even when other parties also bear responsibility.

Finally, Washington has none of the limitations on claims that apply in other states, such as damage caps and special procedural requirements that make it more difficult to sue. The DOC is particularly vulnerable because courts have held that DOC has a duty to protect the public from the “dangerous propensities” of the inmates under its supervision. A 2011 report from the Joint Legislative Audit and Review Committee found that the DOC was responsible for \$73 million in state payouts between 2004 and 2010, or 18 percent of the state total. Nearly all of that amount, \$57 million, was due to claims that the state had negligently supervised inmates upon release – despite the fact that the state’s responsibility was rather distant in nature, such as failing to apprehend inmates who did not report to their parole officers.<sup>292</sup>

In the case of the early-release error, the cause of action is far more direct. In this case, DOC has acknowledged that its negligence allowed inmates to be released to commit new crimes. Already one claim has been filed against the state. Attorneys for Veronica Medina-Gonzalez, mother of Caesar Medina, recently filed a tort claim with the state Office of Risk Management. Medina-

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<sup>290</sup>Christine Clarridge Nov. 13, 2015, “Bellevue Man Jailed on Suspicion of Fleeing Fatal Car Crash,” Seattle Times, Nov. 13, 2015, <http://www.seattletimes.com/seattle-news/crime/bellevue-man-jailed-on-suspicion-of-fleeing-fatal-car-crash> . Sara Jean Green, “Crash That Killed Bellevue Mom Could be Boyfriend’s Third Strike,” Seattle Times, Nov. 18, 2015, <http://www.seattletimes.com/seattle-news/crime/crash-that-killed-bellevue-mom-could-be-boyfriends-third-strike> ; Allison Deangelis, “Fiancé Arrested for Bellevue Mother’s Death,” Bellevue Reporter, Nov. 22, 2015, <http://www.bellevureporter.com/news/351864671.html>; Joseph O’Sullivan, “Prisoner Released Early Killed Woman in Crash, State Says,” Seattle Times, Dec. 28, 2015, <http://www.seattletimes.com/seattle-news/politics/prisoner-released-early-killed-woman-in-crash-state-says/> .

<sup>291</sup> RCW 4.92.040.

<sup>292</sup> *State Risk Management Practices in Washington*, Joint Legislative Audit and Review Committee, 2011, Report 11-8, p. 9.

Gonzalez seeks \$5 million.<sup>293</sup> At least two personal-injury law firms have posted lengthy explanations of the issue on their websites, listings of known crimes by improperly released felons, and even explanatory graphics – an indication that trial lawyers recognize the business opportunity posed by the case.<sup>294</sup>

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<sup>293</sup> Kip Hill, “Mother of Slain Spokane Teenager Files \$5 Million Claim against State.” The (Spokane) Spokesman-Review, Feb. 26, 2016, <http://www.spokesman.com/stories/2016/feb/26/mother-of-slain-spokane-teenager-files-5-million-c/>.

<sup>294</sup> These sites can be found at <http://www.injurytriallawyer.com/blog/where-did-the-department-of-corrections-go-wrong-cfm> and <http://www.pcvlaw.com/doc-early-release/>.

## V. Conclusions

### A. Former Secretary Bernard Warner's gross mismanagement was a significant factor in the delay of the "*King* fix"

Secretary Warner's feckless management of this crucial public safety agency was a significant contributing factor to the delay of the *King* fix. His lack of attention to the basic management of his agency, combined with his unwillingness to attend meetings or engage with staff created an environment in which lower-level and front line level employees had no viable means in which to address the agency's lack of prioritization of the *King* fix. Low and mid-level DOC employees seeking to gain management attention for an IT fix that would result in more incarceration time for prisoners were swimming against the tide of what can charitably be described as "benign neglect."

- 1. Poor Communication.** Multiple witnesses indicated that Secretary Warner had poor communication skills. A repeated theme for many DOC employees in the upper echelon of DOC management was that there was little to no personal contact with the secretary.
- 2. Structure and Disorder.** The Administrative Services Division of DOC was ground zero for the DOC sentencing-error scandal. The records and IT departments were located within administrative services as well as the auditing office. All of these administrative sections were in a position to detect and raise the alarm about the *King* fix. Secretary Warner changed the make-up of this division during the exact time that the delay in the *King* fix occurred. Many witnesses confirmed that Secretary Warner's decision to restructure various departments within the agency served to foster resentment, poor communications and a competitive atmosphere among DOC staff that led to the delay of the *King* fix.

In light of the disorder in the IT department generally during this period, the governor should revisit the conclusions in the governor's investigation report regarding David Dunnington, who served as acting deputy CIO until his demotion by the governor. In its report, the governor's office has repeated three incorrect assertions, raising the possibility that Mr. Dunnington has been "scapegoated." The original report and the supplemental report both claim that Mr. Dunnington:

- Had unilateral authority to delay the *King* fix.
- Downgraded the *King* fix priority ranking from a two to a three.
- Deleted the "must fix" designation in the ClearQuest tracking system.

Not only does the governor's report ignore references to other employees who delayed the fix, but the assertions regarding Mr. Dunnington are incorrect because he:

- Served on an OMNI committee that had at least two higher ranking employees who made decisions on whether a particular enhancement should be delayed.
- Provided OMNI Architectural Meeting minutes from Nov. 8, 2013 and Nov. 23, 2013 indicating that the responsibility to downgrade the *King* fix from a "2" to a "3" was assigned to him at a meeting at which he was not present. If Mr. Dunnington had unilateral authority to downgrade priority rankings of fixes, the responsibility would not need to be assigned to him.
- Provided an email from Aug. 15, 2015 that he sent to assistant secretaries at DOC seeking their approval for the prioritization of 70 remaining OMNI enhancements including the *King* fix. If Mr. Dunnington had "unilateral authority," he would not need to send an email seeking prioritization and approval from superiors.
- Demonstrated in testimony that the report was incorrect in stating that he had deleted the "must fix" designation. Mr. Dunnington attributed this error in the report to the investigators' apparent misunderstanding of the ClearQuest tracking system that would only display changes to the "must fix" column but otherwise would not display it.

- 3. Inability to make decisions.** Multiple witnesses testified to the inability of Secretary Warner to make decisions on important matters, and said that exacerbated the frustration of those seeking direction from upper management.
- 4. IT department turnover.** Secretary Warner's open disparagement of the IT department and his preference for an underperforming, over-budgeted, untrustworthy contractor crushed the morale of IT employees and substantially deteriorated the functionality of the IT department. Warnings of the "brain drain" occurring under his watch were ignored. Institutional memory was lost along with the insight and awareness that comes with experience, and rational governance procedures evaporated.
- 5. Misplaced priority on Advance Corrections/STRONG-R over IT maintenance.** In the rare instances in which Secretary Warner did pay attention to the IT department, his fixation on the STRONG-R/Advance Corrections project served to give that project undue priority. Mr. Warner's decision to have his agency award a no-bid contract to a company owned by a personal friend resulted in years of shoddy work that consumed the time, resources, and morale of the IT department. The project "blocked out the sun"



and pushed aside IT maintenance work like the “*King* fix.” Many DOC witnesses noted that Secretary Warner’s singular fixation on the Advance Corrections/STRONG-R project contributed directly to the delay.

Although the governor’s investigators interviewed many of the same witnesses, the governor’s report ignores Mr. Warner’s failure to manage DOC as a cause of the delay to the *King* fix. Though the report acknowledges that “inordinately high turnover in the IT Department and DOC budget concerns **may** [emphasis added] have compounded delays in addressing the *King* decision,” the governor’s investigators somehow failed to find that Warner’s mismanagement contributed to the high turnover and that there was, in fact, “solid evidence” to support the assertion that “an overaggressive push by upper management to design and implement a more robust offender risk management system called ‘STRONG-R’” resulted in delay of the *King* fix.<sup>295</sup> The report asserts, without citation, that the push for STRONG-R occurred primarily during the early months of 2014, long after the *King* fix change request had been submitted, and concludes it must have had little effect. The report also states that the work lasted for a few weeks and was done by Assessments.com.<sup>296</sup>

These conclusions are clearly incorrect. First, multiple witnesses told the Senate Law and Justice Committee and its investigators, under oath that the work on STRONG-R began long before early 2014 and continued long after, it was not handled solely by Assessment.com, and it clearly impacted the workload of the IT department. It is clear that the Advance Corrections/STRONG-R initiative was a project that continued throughout Mr. Warner’s tenure, and it continues to this day. Nor can it be disputed that the project consumed enormous time and IT resources. Second, even assuming *arguendo* that the project’s impact came in “early 2014,” this is precisely the period during which the *King* fix was delayed. Although the governor’s report acknowledges the Advance Corrections/STRONG-R project was a source of friction that may have led to turnover, and as a result “perhaps, constant delays to the *King* defect,” it is unclear why the governor’s investigators would ignore the testimony of multiple witnesses who claimed the project had a direct impact on the workload of the IT department and was therefore a material causal factor of the delay.

- 6. IT governance collapse.** The prioritization and governance systems of DOC IT suffered total collapse. No proper examination was conducted of requests for IT fixes.

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<sup>295</sup> Exhibit 15, p.46.

<sup>296</sup> Exhibit 15, p.47.

Priorities were determined politically, based on who was loudest or who was most powerful.

7. **Warner knowledge of the computer error.** Former Secretary Warner admitted to what he claimed was limited knowledge of the computer error.<sup>297</sup> Nevertheless, this knowledge constituted notice that should have prompted him as a reasonable manager to make further inquiry and ensure that the matter was finally resolved. His failure to do this had tragic consequences.

**B. Lack of competent oversight from the governor's office contributed to the delay of the *King* fix.** As a cabinet officer, Secretary Warner reported to the governor, and the governor's office had a statutory responsibility to oversee agency management. RCW 43.06.010 provides that "in addition to those [responsibilities] prescribed by the Constitution, the governor may exercise the powers and perform the duties prescribed in this and the following sections: (1) The governor shall supervise the conduct of all executive and ministerial offices . . ."

In addition, position descriptions for the governor's staff specifically note that they have responsibility for overseeing the functioning of state agencies. For example, the position description for the governor's chief of staff notes that "much of the day-to-day responsibility for ensuring state agencies are functioning falls to the chief of staff. The chief of staff must monitor and manage what is going on in the cabinet and departments."<sup>298</sup> Similarly, another description for this position provides that the chief of staff is charged with supervising "the conduct of all executive and ministerial offices in the execution of the laws."<sup>299</sup> The governor's policy staff also bear responsibility for overseeing state agencies. They are to "meet regularly and lead meetings with agency directors and senior staff to identify emerging issues, share perspectives, and coordinate policy direction. Assist agencies with managing difficult issues. Advise and/or consult with agencies and others, and/or facilitate access to the governor. Participate in work sessions to provide context and determine priorities."<sup>300</sup>

In short, the governor and his staff are not potted plants. They cannot passively wait for secretaries of agencies to bring problems to their attention, and instead have an affirmative duty to put systems in place to identify significant issues at state agencies that involve

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<sup>297</sup> Exhibit 15, p.47.

<sup>298</sup> Exhibit 22.

<sup>299</sup> Exhibit 22.

<sup>300</sup> Exhibit 22.

serious threats to public health and safety and attempt to solve them. Yet the governor's office failed to recognize the serious management problems within DOC and took no action to correct them. This neglect left the agency adrift.

**1. Red flags ignored.** Two factual matters should have alerted the governor's office to the potential for management problems within DOC and should have prompted further inquiries. One was the heavy turnover within the IT department, a key indicator of trouble. The other was the curious reorganization that separated the business analysis and project management functions from IT - the potential for communication breakdowns should have been apparent.

**2. Knowledge of early release problem.** At least one member of the governor's staff, Sandy Mullins, had actual knowledge of two significant factors regarding the *King* problem:

- That there had been an issue with the release of a prisoner based upon a sentencing calculation error.
- That the DOC IT department was completely overwhelmed by the Advance Corrections/STRONG-R project.

Sandy Mullins, currently a senior policy advisor on public safety to Gov. Inslee, was a policy director at DOC who reported directly to Sec. Warner when the error came to light. Mullins recalled hearing of the issue either before or during a senior leadership meeting shortly after DOC became aware of the sentencing error in December 2012. Mullins made no further inquiries, either at DOC or after joining the governor's staff a year later. Although Mullins's statement to Senate investigators indicates that she did not understand the gravity of the matter, what she heard was odd enough that it should have provoked concern and inquiry. Ms. Mullins told Senate investigators that it was described as "this really weird thing" involving a prisoner whose sentence had been calculated inaccurately, a "one-off" situation. Three years later, when the governor's staff was briefed about the issue, Ms. Mullins said, "The first thing I think is that the story sounds familiar," adding, "it makes me cold thinking about it." Although Ms. Mullins should be credited with forthrightness, it demonstrates that the governor's office had at least limited knowledge of the early release problem, sufficient to warrant a diligent inquiry to determine the nature and extent of the issue.<sup>301</sup>

Ms. Mullins also was aware of the tumult in the administration of the agency. In hindsight, she believed that a fatal flaw was the decision to move the records unit out of

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<sup>301</sup> DWT Memorandum, Sandy Mullins, pp.3-4.

Administrative Services Division. “It became one of many back office operations,” Ms. Mullins said. Even though the records unit is responsible for fundamental processes and systems for DOC, she felt that moving the unit may have marginalized its function.<sup>302</sup> Given Ms. Mullins’s position within the governor’s office, and its statutory obligation to oversee DOC as a state agency, she should have done more prior to December 2015 to inquire into the matter. It unclear why she chose not to do so.

**3. Mr. Warner’s insistence that the STRONG-R project be awarded on a sole-source contract basis to Assessments.com, owned by his personal friend and with a widely known reputation for incompetence and controversy.** As discussed at length above, Assessments.com was widely known within the IT department to lack the competence to adequately complete projects less ambitious than the STRONG-R project. Its owner’s long history of substance abuse and criminal convictions was so widely-known throughout DOC that Warner felt he had to explain the selection of Sean Hosman’s company. Given the high-profile nature of the STRONG-R project, it is mind boggling to suggest the governor’s office was unaware of the controversial selection of Hosman’s company. And in that highly unlikely event, the governor clearly did not have systems in place to monitor Warner’s performance and perhaps that of other critical-agency secretaries.

**4. Personal relationships created conflicts of interest.** A number of sources indicate that at least one member of the governor’s staff had a close, personal relationship with the Secretary of Corrections during this period. Mr. Warner confirmed he had a close personal relationship with a member of the governor’s staff. He said “[t]hat was formally managed by me reporting to the deputy chief of staff.”<sup>303</sup> With respect to romantic relationships among DOC staff, Mr. Warner said the Department has specific policies concerning relationships in the chain of command. He noted these relationships are understandable in small communities where DOC facilities are a major employer. “That is unfortunately some of the challenge you have.” Having worked in a corrections systems in multiple states, Mr. Warner said he would not characterize such relationships as affecting day-to-day corrections operations.<sup>304</sup>

The bottom line is that such relationships, while not forbidden *per se*, pose significant complications and conflicts of interest. This is precisely why such relationships are discouraged generally and regulated in DOC’s policies. It is entirely predictable that a

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<sup>302</sup> DWT Memorandum, Sandy Mullins, p.4.

<sup>303</sup> DWT Memorandum, Bernie Warner, p.8. Warner declined to answer a question about a relationship of another senior DOC official with a member of the governor’s staff, maintaining that such questions should be directed to the individuals concerned.

<sup>304</sup> DWT Memorandum, Bernie Warner, p.8.

relationship between a member of the governor's staff and the DOC secretary could have inhibited the inclination of lower-echelon DOC staff members to push issues and problems upward. The governor's office further contributed to the *King* error by not properly addressing personal relationships between members of the governor's staff and DOC executives. If these relationships were well-known to DOC employees, they would likely lose faith that their concerns about DOC leadership would be addressed by the governor and his staff, even as a last resort.

## VI. Recommendations

**1. Establish a Corrections ombuds independent of DOC or the governor's office.** During the 2016 legislative session a number of bills were introduced that would have created an office to deal with complaints from victims and their families, inmates and their families, and DOC employees. This office should be independent of the DOC and governor's office in order to provide an independent forum for the resolution of concerns about the Department. SB 6154, introduced in 2016, should serve as a framework.

**2. Investigate the Advance Corrections/STRONG-R initiative/project.** Although it appears the project may be sound policy, there are a number of unanswered questions about how the project was administered that warrant future investigation by an appropriate authority, such as the state auditor. The investigation should consider the Department's justification for its sole source contract with Assessments.com, whether Assessments.com is fulfilling its contractual duties to DOC, and whether the project is justified as a policy. The Joint Legislative Audit and Review Committee should conduct the audit.

**3. Mandate that the governor put systems in place to directly monitor critical agency performance.** The governor's office has the clear constitutional and statutory duty to competently manage state agencies. Current law is largely silent as to how the governor is to effectively manage state agencies. It is clearly not enough to appoint the agency secretary and nothing more. Systems must be in place to monitor a secretary's performance on a regular basis, including to ensure that a pattern of poor management can be reported directly to the governor's staff with the authority and impartiality to act on such reports.

**4. Clarify through policy how personal relationships within the executive branch should be managed to avoid conflicts of interest.** Although personal relationships between staff cannot be categorically prohibited, there is special concern for conflicts of interest when staff of the governor's office form personal relationships with heads of departments. In those circumstances, current law and policy should be clarified so that the governor will be notified of those relationships and the agency head will report directly to him or her.

**5. Simplify Washington's sentencing code in a manner that does not reduce punishment or compromise public safety.** Multiple witnesses indicated that the complexity of the sentencing structure in Washington directly led to confusion regarding the *King* decision and its implementation, and complicated the *King* fix. The

Legislature should undertake a multi-year process to evaluate the sentencing code and provide a simpler sentencing system consistent with public safety.

**6. Review the staffing of the IT and Records departments at DOC.** Former Secretary Dan Pacholke recommended a study of staffing levels of these key departments and whether they are adequately funded and staffed. As Mr. Pacholke noted in his testimony,

*[Records staffing] is something we need to study overall, because the impacts of sentencing and sentencing calculations for records staff – they don't have to know what happens today, they have to know what happens 10 years ago. They have to know what happens post-July 1, 2005. ... I don't know if we've spent enough time to really study the importance of that work and are we staffed appropriately.*<sup>305</sup>

**7. Require a DOC-wide hand count in the event of any future computer error that result in early prisoner releases.** Many witnesses testified that a hand-calculation of all prisoner sentences would have had the effect of mitigating the delay of the *King* fix. Clela Steelhammer, DOC legislative liaison, testified that hand calculations in 2013 would have “fixed the problem” and thereby would have reduced the impact of the delay of the *King* fix.<sup>306</sup> A hand recalculation of all sentences was conducted in 2013 after the Legislature approved Second Engrossed Substitute Senate Bill 5892. This new law’s purpose was to standardize the way Washington counties calculate earned release time (“good time”). Although Wendy Stigall was aware of the early release problem and oversaw the hand calculations associated with 2ESSB 5892, the *King* fix was not incorporated into that effort, for reasons that are unclear.<sup>307</sup> Current law should be amended to require such an efficiency measure in future similar circumstances.

**8. Require a report to the Legislature of IT maintenance backlogs and a plan to address and annual reports on progress.** The Legislature should be informed of any remaining OMNI maintenance backlog, defects or enhancements and should be given a timeline for their resolution.

**9. Enhance protections for DOC “whistleblowers.”** Given the workplace culture at DOC and the popularity of the FixDOC website and outreach effort, and to allay employee concerns about retaliation from executive decision-makers, stronger

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<sup>305</sup> Senate Law and Justice Committee hearing transcript, Feb. 29, 2016, p.42.

<sup>306</sup> Senate Law and Justice Committee hearing transcript, March 16, 2016, p.13.

<sup>307</sup> Exhibit 15, p.26.

protections should be enacted for those who wish to anonymously “blow the whistle” on practices and decisions that jeopardize public safety. These should include the recommendations of the 2015 report from the Office of Financial Management performance audit of the Whistleblower Act.<sup>308</sup>

As an example, at least one witness provided testimony regarding a DOC whistleblower suit from 2014. The suit was brought by two former DOC employees who alleged that the DOC took adverse employment action against them following their report that Department officials provided false information regarding the success of a research project to the legislature in order to secure funding. While the case is still pending in court and does not involve the *King* fix, it is illustrative of the lack of effectiveness of the whistleblower provisions during the period in which the *King* fix was delayed.<sup>309</sup> Many of the comments from the FixDOC website reinforce the view that DOC employees who attempt to alert agency administration or the governor's office of problems are subject to retaliation.<sup>310</sup>

**10. Review whether additional actions may be possible against Warner.** Although Mr. Warner is no longer in the employment of the state, the seriousness of his management failures warrants additional scrutiny and action. The governor should consider and the attorney general should evaluate whether legal grounds exist for further action against Mr. Warner, such as including a letter of reprimand in his personnel file.

**11. Designate public safety as DOC’s highest statutory duty.** While the delay in the *King* fix does not appear to be an intentional matter, some witnesses indicated that the emphasis of the department on preparation of inmates for release rather than public safety contributed to an agency culture in which the fix could be delayed. Assistant Attorney General Ronda Larson testified,

*DOC’s goal and its mission is to reduce recidivism. To do that, you have to have offenders prepared for reentry, and part of that is to have them serve their enhancement as early as possible in the sentence. So my e-mail is going up against that important policy, and who am I to say that it should have been followed when they can arguably still abide by the statute? No court has come out and said that the statute was being*

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<sup>308</sup> <http://www.ofm.wa.gov/reports/audit/whistleblower.pdf> .

<sup>309</sup> Schrader, Jordan, "State workers say they were punished for blowing whistle on prison violence stats" *Tacoma News Tribune*, September 6, 2014. <http://www.thenewstribune.com/news/politics-government/article25879927.html>

<sup>310</sup> [www.FixDOC.org](http://www.FixDOC.org)



*violated. I was simply proposing this as a possibility -- here's something, an issue that you might want to look at. It wasn't saying that is something I know is wrong and the statute is being violated, no question about it. That is not what this was about. So when you have that, and then on the other hand you have the knowledge you need to make sure that offenders are ready for reentry, it is a balancing test, I would imagine, for whoever had this information.*<sup>311</sup>

Former Secretary of Corrections Dan Pacholke shared a similar sentiment in his testimony:

*Well, certainly the core mission of the DOC, at a strategic level, reduction of recidivism will always be a strategic goal, in the sense of reducing the likelihood that when people get out that they harm more people, reduce victimization... We [also] are charged with incapacitation, in keeping people inside the perimeter, consistent with the terms and conditions of the court. So you have to do these things in tandem, right? I mean, on the one hand you have to maintain good operations, keep people inside while you are looking toward recidivism reduction.*<sup>312</sup>

RCW 72.09.010 provides that “it is the intent of the Legislature to establish a comprehensive system of corrections for convicted law violators within the state of Washington to accomplish the following objectives. (1) The system should ensure the public safety. The system should be designed and managed to provide the maximum feasible safety for the persons and property of the general public, the staff, and the inmates.” In listing public safety first, the Legislature conveyed the importance of this objective; however, given the tension described by the two witnesses cited above regarding public safety and recidivism reduction, it is possible this provision could be clarified to observe that public safety is the paramount duty of the DOC, irrespective of other objectives.

**12. Restructure information-technology governance at DOC.** The Department has apparently already begun to implement this recommendation to streamline IT prioritization. This important step should be encouraged legislatively in law or budget. Under the leadership of former Secretary Eldon Vail, there was a process for IT prioritization and governance, and this broke down during the Warner administration

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<sup>311</sup> Senate Law and Justice Committee hearing transcript, Feb. 22, 2016, p.25.

<sup>312</sup> Senate Law and Justice Committee hearing transcript, Feb. 22, 2016, p.49.

that followed. Under former Secretary Pacholke steps were taken to reinstate a proper system. These efforts should be continued and supported.