

Frequently asked questions about the Senate DOC investigation

1. Why didn't attorney Mark Bartlett/ Davis Wright Tremaine write the Senate's report?

The Senate did not hire attorney Mark Bartlett or the Davis Wright Tremaine law firm to write a report, but rather to assist in analyzing documents, interviewing witnesses, and preparing for hearings. This was made clear from the beginning. For example, in testimony Feb. 10, 2016 before the Senate Law and Justice Committee, Mr. Bartlett stated, "We were not engaged to do an independent internal investigation. Instead, we were engaged to assist the Senate as the Senate conducts its oversight hearings with regard to what happened at the Department of Corrections."

2. Is the cost of the Senate investigation unusual or excessive?

Numerous questions have been raised regarding the amount spent for the assistance of outside counsel – \$125,000 – yet costs are small by comparison with the state's potential liability for negligent supervision claims. Already the family of one murder victim has filed a claim against the state for \$5 million. Mr. Bartlett and Davis Wright Tremaine charged the state one-half of their regular rate. Curiously, there has been little interest in the cost of the governor's investigation – at one point the governor's staff estimated the amount spent at \$140,000, though no final accounting has been provided. Ultimately the cost of the Senate's investigation is small by comparison with the amount spent by the governor's office, the state's potential liability, and the state's interest in obtaining the truth.

3. Does the AG's office bear sole responsibility for the *King* fix delay?

Some have asserted the advice of Assistant Attorney General Ronda Larson was the sole reason for DOC's error. Without that advice, they argue, hand calculations would have been performed, inmates would have been released at the proper time, and no investigation would have been required. Ms. Larson's advice certainly was a factor in DOC's continuing early releases, but it is not the sole factor. Ms. Larson's advice

included the caveat “a few more months [emphasis added] is not going to make that much difference.” She assumed the fix would be implemented quickly. Further, her written advice made clear that inmates would be released early until the fix was in – meaning DOC managers had ample opportunity to review the advice and recognize its shortcomings. That they failed to do so is indicative of an agency culture of apathy and indifference.

4. Was the problem that DOC failed to hand-calculate sentences while IT fixed the software?

Some have asserted that “hand calculations would have fixed everything.” What is more important is why the hand calculations did not occur. Agency executives should have been alerted to the early-release issue by Ms. Larson’s advice, and they should have recognized the peril inherent in waiting for a fix. Hand calculations might have prevented the early release of prisoners, but the fact remains they were not done. Further, the agency’s failure to review legal advice, the misguided management priorities that caused interminable delays to the *King* fix and the lack of internal awareness and concern regarding the early-release problem demonstrate a broad, systemic agency-wide dysfunction.

5. Was this a partisan investigation?

The early release of prisoners at DOC came to light in late December 2015, meaning any investigation would inevitably occur during an election year. Although the Senate is controlled by a different party than the executive branch, the majority worked to minimize concerns regarding partisanship by creating an open and transparent process. Republicans and Democrats had full access to the evidence collected by Mr. Bartlett and his team. Mr. Bartlett shared information with leadership in both caucuses. Democrat members of the committee were encouraged to participate fully in the hearings and examine witnesses. Sen. Pedersen, D-Seattle, ranking minority member on the committee, accepted the invitation to co-sponsor the Senate’s “FixDOC” program, which sought input from all 10,000 DOC employees. This open and transparent process assured evidence could not be cherry-picked.

6. Is the timing of the investigation political?

The timing was established by the Department of Corrections, not the governor’s office, the courts or the Legislature. The governor’s office was informed of the issue in

December 2015. The Senate opted to conduct an independent investigation only after the parameters of the governor's investigation became known.

Obtaining information is a long process. Many thousands of pages of documents requested by the Senate were provided only within the last week. Analyzing that information takes time. The Senate has moved at the speed at which the evidence was made available.

7. Why bother investigating the failures of a secretary who has resigned?

The Senate investigation determined that the management of former Corrections Secretary Bernie Warner "set the context" for the *King* fix delay. In addition to his failure to act on the early-release issue, or even to make inquiries when informed of the problem, Warner deserves significant blame for decisions that accelerated employee turnover, caused the collapse of computer-project prioritization processes, and impeded communication within the agency that might have helped bring the problem to light. Although Warner resigned in 2015 before these problems became known, the people of Washington deserve to know the truth. And the Senate investigation revealed far more than Warner's poor management. It illuminated serious systemic problems within DOC and within the governor's office, which should have provided proper oversight. Recognizing these problems should assist future governors and agency heads in maintaining effective control over their agencies.

8. Should the Senate have waited for the governor's report, then "filled in the gaps?"

Had the Senate Law and Justice Committee waited for the governor's report before launching its investigation, the committee's investigatory hearings could not have practically been held during the 2016 legislative session. The governor's report also offered little clue about "the gaps." Several witnesses testified that their views were not accurately reflected by the governor's investigators. Only because the Senate conducted hearings in public view – and made its work available for public inspection – is it possible for the public to have an "unfiltered" view of what really happened.

9. Didn't the governor's report already mention STRONG-R and IT turnover?

The governor's report did mention "other IT priorities" and "inordinately high turnover" along with "DOC budget concerns" as factors that may have contributed to the many delays of the *King* fix – and then it promptly dismissed the possibility that they were of any particular importance. The governor's report stated that investigators "did not find solid evidence to support" the assertion that the misplaced priorities of senior management contributed to the delays. The Senate investigation found overwhelming and conclusive evidence that STRONG-R and turmoil within the IT department were of major significance. The Senate has no explanation for the failure of the governor's investigators to recognize the importance of these factors.

10. Was the delay caused by complicated sentencing laws?

Although sentencing procedures can be very complicated and simplifying them may be desirable, the overwhelming evidence indicates that legislative action was not a significant factor, if a factor at all, in the *King* fix delay.