

**LAW ENFORCEMENT DIGEST**  
**SUMMARIES/SUBJECT MATTER INDEX:**

INTRODUCTORY NOTE:

The following cumulative LED Subject Matter Index covers five years of LED's from January, 1989, to December, 1993. This cumulative index was constructed primarily by merging periodic subject matter indexes which appeared in the LED's for December 1989, 1990, 1991, 1992 and 1993. For all topical headings we have fully merged the prior indexes by setting out in roughly chronological order all case descriptions which have appeared under that heading in the prior subject matter indexes. In 1989, we published a cumulative LED Subject Matter Index covering LED's from January 1979 through December 1988.

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**ABORTION**

Missouri statute on abortion survives constitutional attack. Webster v. Reproductive Health Services, 492 U.S. 490 (1989) Nov. '89:04

**AMERICANS WITH DISABILITIES ACT**

Notice regarding Americans With Disabilities Act. Jan. '92:20

**APPEAL RIGHTS**

Flight from jurisdiction while appeal pending may waive right of appeal. State v. Rosales-Gonzales, 59 Wn. App. 583 (Div. III, 1990) Oct. '91:18

**ARREST, STOP & FRISK**

Eyewitness statement and attendant circumstances justified investigatory stop. State v. Ortiz, 52 Wn. App. 523 (Div. I, 1988) Feb. '89:13

Taking ID was "Terry stop," but later arrest on warrant was not tainted. State v. Dudas, 52 Wn. App. 832 (Div. I, 1988) March '89:06

Court finds unlawful seizure where officer ordered passenger to "get back" in car. State v. Mennagar, 53 Wn. App. 257 (Div. I, 1989) April '89:09. [See entry below regarding reversal by State Supreme Court in Mennagar.]

"Reasonable suspicion," not drug courier profile, justifies investigative stop. U.S. v. Sokolow, 490 U.S. 1 (1989) June '89:08

Panel rules 2-1 that authority to search "incident to arrest" is limited to custodial arrests, and that an officer's intention to "cite and release" precludes treating a detention as a custodial arrest; dicta indicates that RCW 10.31.100(3) does not give automatic authority to make a custodial arrest. State v. Stortroen, 53 Wn. App. 654 (Div. I, 1989) August '89:14. [Compare with entry below regarding the State Supreme Court ruling in State v. Reding, 119 Wn.2d 685 (1992) Dec. '92:17]

Officers' use of drawn guns and "felony stop" procedures to detain and investigate possible burglars upheld on totality of the circumstances. State v. Belieu (and Blount), 112 Wn.2d 587 (1989) Sept. '89:17

Activating emergency lights is "stop;" stop of vehicle not justified merely by observation of motionlessness at stop sign. State v. DeArman, 54 Wn. App. 621 (Div. I, 1989) Nov. '89:19

Suspect's furtive gesture to pocket during Terry stop justifies "frisk" of pocket for evidence, not just for weapons. State v. Pimintel, 55 Wn. App. 569 (Div. III, 1989) Jan. '90:08

Field contact and request for identification not a "seizure"; later warrantless entry of apartment to arrest suspected robbers justified under exigent circumstances. State v. Machado, 54 Wn. App. 771 (Div. II, 1989) Feb. '90:10

Right to resist unlawful arrest limited; "lawfully arresting" phrase in "resisting" ordinance not void for vagueness. Seattle v. Cadigan, 55 Wn. App. 30 (Div. I, 1989) Feb. '90:19

Protective custody for mentally disturbed person justified. State v. Mason, 56 Wn. App. 93 (Div. III, 1989) March '90:10

Booking inventory search of purse following arrest on warrant with \$25 bail provision invalidated because officers failed to give arrestee an opportunity to post bail. State v. Gloria Smith, 56 Wn. App. 145 (Div. III, 1989) March '90:12

Terry stop standard of "reasonable suspicion" same under state and federal constitutions. State v. Baro, 55 Wn. App. 443 (Div. I, 1989) March '90:19

Custodial arrest not per se lawful in arrest for driving without valid license. State v. Watson, 56 Wn. App. 665 (Div. II, 1990) April '90:07

"Fellow officer" rule justifies arrest; arresting officer need not testify. State v. Alvarado, 56 Wn. App. 454 (Div. I, 1989) April '90:14

Flight from Terry stop constitutes "obstructing." State v. Hudson, 56 Wn. App. 490 (Div. I, 1990) April '90:16

"Protective sweep" of residence ok if supported by individualized "reasonable suspicion" of danger. Maryland v. Buie, 494 U.S. 325 (1990) May '90:02

Motor vehicle trunk checks in "high risk felony stops" -- what are the limits? May '90:04

Officer lawfully requested drivers' license from vehicle passenger following DWI investigation of driver. "Community caretaking function" justifies asking potential sub driver for license. State v. Mennegar, 114 Wn.2d 304 (1990) May '90:12; June '90:08

Wallet search for ID during Terry stop for suspected drug activity held unlawful. State v. Biegel, 57 Wn. App. 192 (Div. III, 1990) June '90:14

Custodial arrest, impoundment of car driven by unlicensed driver invalidated. State v. Barajas, 57 Wn. App. 556 (Div. III, 1990) July '90:05

Fourth Amendment -- anonymous tip provides reasonable suspicion for lawful Terry stop. Alabama v. White, 496 U.S. 325 (1990) Aug. '90:07

Frisk, questioning without Miranda warnings in Terry stop held to be lawful. State v. Wilkinson, 56 Wn. App. 812 (Div. I, 1990) Oct. '90:03

Absent prior police misconduct, drugs abandoned as police approach seizable. State v. Whitaker, 58 Wn. App. 851 (Div. I, 1990) Nov. '90:07

Second-hand telephonic report of recent theft justifies Terry stop. State v. Conner, 58 Wn. App. 90 (Div. I,

1990) Nov. '90:16

Search is justified under "incident to arrest" rule if PC for custodial arrest is present, despite lack of formal arrest and officer's lack of subjective intent to make arrest. State v. Brantigan, 59 Wn. App. 481 (Div. I, 1990) Feb. '91:05 (See also April '91:19 note re: Brantigan)

Community caretaking function rationale does not justify seizure, ID request. State v. Markgraf, 59 Wn. App. 509 (Div. III, 1990) Feb. '91:07

Transport of suspect to station unlawful as not supported by probable cause. State v. Lewis, 59 Wn. App. 834 (Div. III, 1990) April '91:09

Facts do not add up to PC justifying custodial arrest of traffic violator. State v. Tarica, 59 Wn. App. 368 (Div. I, 1990) May '91:12

Investigatory stops of non-residents at Lakeshore Village Apartments upheld. State v. Little, 116 Wn.2d 488 (1991), State v. Glover, 116 Wn.2d 509 (1991) June '91:09

Chasing fleeing suspect is not "seizure" unless he submits to show of authority. California v. Hodari D., 113 L.Ed.2d 690 (1991) July '91:01

Following suspect without show of authority is not seizure. State v. Toney, 60 Wn. App. 804 (Div. I, 1991) July '91:04

Custodial arrest for driving while suspended or revoked is per se lawful. State v. Quintero-Quintero, 60 Wn. App. 902 (Div. III, 1991) July '91:06

Custodial arrest for driving without a license not justified. State v. Feller, 60 Wn. App. 678 (Div. III, 1991) July '91:08

Frisk justified by hostile, nervous behavior of person who approached officer even though officer had no articulable suspicion that person had committed a crime. State v. Hall, 60 Wn. App. 645 (Div. I, 1991) July '91:11

48-hour rule established for probable cause hearing following warrantless arrest. Riverside County, California v. McLaughlin, 114 L.Ed.2d 49 (1991) Aug.

'91:16

Asking seated bus passenger for consent to search his luggage is not per se a "seizure." Florida v. Bostick, 115 L.Ed.2d 389 (1991) Sept. '91:06

Officer's request for consent to search vehicle after deciding not to cite driver held unlawful. State v. Tijerina, 61 Wn. App. 626 (Div. III, 1991) Oct. '91:12

Article: "Pretext Arrest -- Is There A Well-Defined Legal Doctrine?" Dec. '91:13

Probable cause standard is objective, not subjective, so officer's belief that "no PC" to arrest is not controlling. State v. Lewis, 62 Wn. App. 350 (Div. II, 1991) Dec. '91:19

"Pretext arrest" article revisited. Jan. '92:17

DWI citation issued by Washington officer in Idaho held invalid. City of Clarkston v. Stone, 63 Wn. App. 500 (Div. III, 1991) March '92:06

"Racial incongruity" of person to neighborhood not reasonable suspicion. State v. Barber, 118 Wn.2d 335 (1992) April '92:02

"Least intrusive means" may not be the standard under Terry . . . but this is a good "rule of thumb" for seizing officer to follow. State v. Bennett, 62 Wn. App. 702 (Div. I, 1991) April '92:18

Anonymous phone tip re: man "brandishing sawed-off shotgun" doesn't justify Terry stop; reasonable suspicion not established by anonymous tip. State v. Vandover, 63 Wn. App. 754 (Div. II, 1992) May '92:07

Gang member's "C" hand signal doesn't justify Terry stop of vehicle. State v. Rowe, 63 Wn. App. 750 (Div. I, 1991)(Corrected at 63 Wn. App. 931) May '92:09

Custodial arrest lawful where driver had a history of FTA's. State v. Reeb, 63 Wn. App. 678 (Div. III, 1992) May '92:11

Totality of circumstances add up to reasonable suspicion for stop. State v. Pressley, 64 Wn. App. 591 (Div. I, 1992) Aug. '92:09

Mere contact became stop when citizen told to empty his

pockets. State v. Richardson, 64 Wn. App. 693 (Div. III, 1992) Aug. '92:15. [See LED entry regarding Court of Appeals' incorrect statement of the facts in Richardson at Jan. '93:07.]

Officer's prior directive to a person to stay out of an area doesn't provide probable cause to arrest for trespass in later contact in the area. State v. Blair, 65 Wn. App. 64 (Div. I, 1992) Oct. '92:13

Radio check for warrants valid following completion of Terry stop. State v. Madrigal, 65 Wn. App. 279 (Div. III, 1992) Oct. '92:18

Juvenile detainee's conclusory claim that man on motorcycle selling marijuana does not provide reasonable suspicion for stop of man on bike. State v. Hart, 66 Wn. App. 1 (Div. I, 1992) Nov. '92:13

Custodial arrest lawful per se for traffic offenses listed in RCW 10.31.100(3). State v. Reding, 119 Wn.2d 685 (1992) Dec. '92:17

LED EDITOR'S NOTE regarding the Court of Appeals' statement of facts with no apparent support in the record in the case of State v. Richardson, a case previously reported in the Aug. '92 LED at 15. Jan. '93:07

Radio dispatch re suspects randomly going door-to-door "looking for place to rent" did not provide "reasonable suspicion" to justify stop, frisk. State v. Walker, 66 Wn. App. 622 (Div. I, 1992) Jan. '93:16

Washington Mutual Aid Peace Office Powers Act -- county not liable in assist action because its officers were subject to "direction and control" by city police command staff. Sheimo v. Bengston, 64 Wn. App. 545 (Div. III, 1992) Jan. '93:18

Court finds probable cause for vehicular homicide arrest in alcohol use evidence plus admissions and circumstances of accident. State v. Dunivin, 65 Wn. App. 501 (Div. II, 1992) Jan. '93:19

Open container traffic infraction doesn't justify arrest, nor does fact that violator claimed that his only ID was a picture-less Costco card. State v. Barwick, 66 Wn. App. 706 (Div. III, 1992) Feb. '93:07

Prior contact with possible armed felon plus late-night

hour and large size of detainee justify frisk during traffic stop. State v. Collins, 66 Wn. App. 157 (Div. I, 1992) Feb. '93:09

Law allowing stop because of license plate tab indicating prior "no license" arrest upheld in Fourth Amendment and Article 1, Section 7 challenges. Seattle v. Yeager, 67 Wn. App. 41 (Div. I, 1992) Feb. '93:10

Use of drawn guns to approach suspect on just-completed burglary not necessarily an "arrest". State v. Smith, 67 Wn. App. 81 (Div. I, 1992) Feb. '93:11

Officer's contact, drug inquiry, consent request, add up to "seizure". State v. Soto-Garcia, 68 Wn. App. 20 (Div. II, 1992) March '93:09

Mental disorder statute justifies emergency detention and limited search of large handbag; PC arrest justifies search of small pouch inside larger bag as a search incident to arrest. State v. Lowrimore, 67 Wn. App. 949 (Div. I, 1992) March '93:15

Founded suspicion standard for frisk during Terry stop-and-frisk requires objective proof only that pat-down was not arbitrary or harassing. State v. Collins, 121 Wn.2d 168 (1993) July '93:07

"Plain feel" during Terry frisk may justify seizure of contraband but test will be difficult to meet. Minnesota v. Dickerson, 124 L.Ed.2d 334 (1993) Sept. '93:15

Patting of possible drugs during frisk did not justify coke seizure, in part because officer's description of what he expected to feel did not match what he said he felt. State v. Hudson, 69 Wn. App. 270 (Div. I, 1993) Sept. '93:17. On review in State Supreme Court.

Officer's deception as to purpose of entry request destroys consent. State v. McCrorey, 70 Wn. App. 103 (Div. I, 1993) Oct. '93:12

Officer's request to talk to person walking away, plus his "demand" for ID, declared to be a Terry stop requiring reasonable suspicion of crime. State v. Gleason, 70 Wn. App. 13 (Div. III, 1993) Oct. '93:15

Court disapproves officer's request for consent to search after traffic stop completed. State v. Cantrell, 70 Wn. App. 340 (Div. II, 1993) Oct. '93:21

No "seizure" in request to talk, order to remove hands from pockets. State v. Nettles, 70 Wn. App. 706 (Div. I, 1993) Nov. '93:09

#### **ASSAULT (Chapter 9A.36 RCW)**

Assault three defendant gets new trial because jury was improperly instructed that defendant acted "unlawfully" in failing to produce his driver's license. State v. Smits, 58 Wn. App. 333 (Div. I, 1990) Oct. '90:17

Intent is element of assault in the fourth degree. State v. Robinson, 58 Wn. App. 599 (Div. I, 1990) Dec. '90:17

"Torture" language in second degree assault statute not void for vagueness. State v. Harold A. Brown, 60 Wn. App. 60 (Div. I, 1990) April '91:14

Shoplifter's assault on store personnel is third degree assault if it occurs while they are attempting to detain him for theft. State v. Jones, 63 Wn. App. 703 (Div. I, 1992) May '92:18

Statute making intentional HIV exposure second degree assault is not unconstitutionally vague. State v. Stark, 66 Wn. App. 423 (Div. II, 1992) Feb. '93:16

#### **ATTEMPT (Chapter 9A.28 RCW)**

Evidence of substantial step sufficient to support attempted murder convictions. State v. Hale, 65 Wn. App. 752 (Div. III, 1992) June '93:14

#### **ATTORNEY DISCIPLINE**

Deputy prosecutor disciplined for allowing picture of narcotics officers to come into hands of drug dealer. In Re John S. Lynch, III, 114 Wn.2d 598 (1990) Nov. '90:02

#### **BRIBERY (RCW 9A.68.010)**

Bribery statute contains an implied element of corrupt intent. State v. Greco, 57 Wn. App. 196 (Div. II, 1990) Oct. '90:15

#### **BURGLARY AND TRESPASS (Chapter 9A.52 RCW)**

Taking of unloaded guns during burglary of dwelling

justifies first degree burglary charge. State v. Faille, 53 Wn. App. 111 (Div. I, 1988) Sept. '89:19

Inference of intent instruction may be proper in burglary prosecution. State v. Handran, 113 Wn.2d 11 (1989) Nov. '89:07

"Inference of intent" instruction may not be given to jury in some "attempted burglary" trials. State v. Jackson, 112 Wn.2d 867 (1989) Nov. '89:07

Fenced junkyard is a "building" as a matter of law under burglary statute. State v. Brenner, 53 Wn. App. 367 (Div. I, 1989) Nov. '89:16

Fingerprint matched with defendant unknown to burglary victim justifies conviction. State v. Lucca, 56 Wn. App. 587 (Div. I, 1990) April '90:09

Appeals Court mulls question of when child can be charged with burglary of parent's home. State v. Howe, 57 Wn. App. 63 (Div. II, 1990); State v. Jensen, 57 Wn. App. 501 (Div. I, 1990) Sept. '90:11; State v. Walsh, 57 Wn. App. 488 (Div. I, 1990) Sept. '90:11

Stealing firearm in burglary of dwelling satisfies armed with deadly weapon element of first degree burglary. State v. Speece, 56 Wn. App. 412 (Div. I, 1989) Dec. '90:18

Dependent child may be convicted of burglarizing family home where parents have revoked child's privilege to enter the home but have arranged for child's needs for room and board. State v. Howe, 116 Wn.2d 476 (1991) June '91:17

Evidence does not support burglary conviction -- act of kicking in door, alone, is not evidence of intent to commit crime within premises. State v. Woods, 63 Wn. App. 588 (Div. I, 1991) April '92:16

Fingerprints on inner side of glass from window which was broken in forced entry constitutes evidence of "entry" under burglary statute. State v. Berglund, 65 Wn. App. 648 (Div. I, 1992) Jan. '93:20

Assault outside residence is not "assault therein" under burglary statute. State v. Gilbert, 68 Wn. App. 379 (1993) April '93:18

House's attached garage is part of "dwelling" for

purposes of burglary statute. State v. Murbach, 68 Wn. App. 509 (Div. III, 1993) May '93:16

Burglar's claim/threat that he was searching his pockets for his knife did not make him "armed" for purposes of burglary one statute. State v. Chariello, 66 Wn. App. 241 (Div. III, 1992) May '93:17

#### **CHILD ABUSE REPORTING REQUIREMENT (Chapter 26.44 RCW)**

Child abuse reporting statute does not apply to ordained ministers counseling parishioners; statute does apply to religious counselors who are not ordained ministers. State v. Motherwell, 114 Wn.2d 353 (1990) Sept. '90:02

#### **CHILD PORNOGRAPHY (CHAPTER 9.68A RCW)(See also Freedom of Speech)**

Washington's child pornography statute withstands constitutional privacy challenge. State v. Davis, 53 Wn. App. 502 (Div. I, 1989) Nov. '89:15

#### **CIVIL LIABILITY**

Difficult test established for plaintiffs pursuing civil rights suit based on "negligent" police training. City of Canton (Ohio) v. Harris, 489 U.S. 378 (1989) Sept. '89:13

Neither state nor its officials acting in their official capacities are "persons" under civil rights law. Will v. Michigan, 491 U.S. 58 (1989) Sept. '89:15

Objective test applies in federal civil rights suit for 4th Amendment violation. Graham v. Connor, 490 U.S. 386 (1989) Nov. '89:05

No general "duty to protect" under federal constitution's "due process" clause. DeShaney v. Winebago County Department of Social Services, 489 U.S. 189 (1989) Nov. '89:06

Civil liability of city to jaywalker who tripped in a pothole limited to wilful and wanton misconduct by city. McKee v. City of Edmonds, 54 Wn. App. 265 (Div. I, 1989) Nov. '89:12

Agency loses civil suit over shooting because officer out of shape. Parker v. District of Columbia, 850 F.2d 708 (D.C. Cir. 1988) March '90:02

No agency "custom or policy" linked to any constitutional deprivation in shooting of barricaded man. Baldwin v. City of Seattle, 55 Wn. App. 231 (Div. I, 1989) March '90:19

Civil rights plaintiff may not force city to not indemnify individual officer for punitive damages award. Cornwell v. City of Riverside, 46 CrL 1480 (9th Cir. 1990) May '90:09

Malicious prosecution verdict affirmed; court notes detective's failure to disclose to the prosecutor major gaps in detective's investigation. Peterson v. Littlejohn, 56 Wn. App. 1 (Div. I, 1989) May '90:18

Jury to hear claim for "failure to enforce" in landlord-tenant dispute. Coffel v. Clallam County, 58 Wn. App. 517 (Div. II, 1990) Nov. '90:03

Public duty doctrine does not bar suit by women allegedly accused of being prostitutes; \$15,000 jury verdict for negligent infliction of emotional distress. Garnett v. Bellevue, 59 Wn. App. 281 (Div. I, 1990) Feb. '91:13

Failure-to-train results in civil rights liability for Mason County. Davis v. Mason County, 927 F.2d 1473 (9th Cir. 1991) June '91:05 (See also the notes regarding this case, July '91:18, Aug. '91:18)

"Deliberate indifference" is standard for prisoner Eighth Amendment civil rights suit challenging conditions of confinement. Wilson v. Seiter, 115 L.Ed.2d 271 (1991) Sept. '91:15

Prosecutor not absolutely immune from federal civil rights liability when advising police on probable cause to arrest. Burns v. Reed, 114 L.Ed.2d 547 (1991) Sept. '91:15

Civil liability -- no state cause of action for "negligent investigation". Dever v. Fowler, 63 Wn. App. 35 (Div. 1, 1991) Feb. '92:17

Parents cannot be sued for juvenile son's shooting of officer where they had no prior knowledge of their son's propensity for violence. Barrett v. Pacheco, 62 Wn. App. 717 (Div. I, 1991) Feb. '92:18

Public duty doctrine precludes civil suit against Department of Corrections for failure to protect.

Forest v. State, 62 Wn. App. 363 (Div. II, 1991) Feb. '92:19

Statute of limitations for excessive force, false arrest civil actions is two years. Boyles v. City of Kennewick, 62 Wn. App. 174 (Div. III, 1991) Feb. '92:20

Public duty doctrine does not give parole officers absolute immunity for negligent supervision of parolees - only qualified immunity applies. Taggart v. State, 118 Wn.2d 195 (1992) March '92:05

Unlawful force by corrections officer may trigger civil rights suit for Eighth Amendment violation even if injury to prisoner is not "significant". Hudson v. McMillian, 117 L.Ed.2d 156 (1992) May '92:03

Immunity provision of domestic violence act doesn't protect police from suit for "failure to enforce"; immunity only for good faith acts, not omissions. Roy v. Everett, 118 Wn.2d 352 (1992) May '92:06

Premeditated and extended unlawful custodial interrogation of suspect after he requests an attorney may result in civil rights act liability. Cooper v. Dupnik, 963 F.2d 1220 (9th Cir., 1992) Nov. '92:02

Mandatory arrest provision of RCW 10.31.100 does not create actionable duty to search for absent domestic violence suspect. Donaldson v. Seattle, 65 Wn. App. 661 Div. I, 1992) Nov. '92:19

"Professional rescuer doctrine" and "fireman's rule" get narrow reading; officers may sue men who assaulted them in their response to a hotel disturbance. Ballou v. Nelson, 67 Wn. App. 67 (Div. I, 1992) Feb. '93:19

No absolute immunity for prosecutor where allegation that he "shopped" for expert witness before probable cause developed. Buckley v. Fitzsimmons, 125 L.Ed.2d 209 (1993) Dec. '93:17

#### **COMMUNICATION WITH MINOR FOR IMMORAL PURPOSES (RCW 9.68A.090)**

"Communication with a minor for immoral purposes" (RCW 9.68A.090) gets broad reading; conflicting Court of Appeals' rulings resolved in pro-state decision. State v. McNallie, 120 Wn.2d 925 (1993) May '93:07

#### **CONSPIRACY (Chapter 9A.28 RCW)**

"Substantial step" element of conspiracy statute does not require "overt act" as does "substantial step" element of attempt statute. State v. Dent, 67 Wn. App. 656 (Div. I, 1992) June '93:19. Review pending in State Supreme Court.

#### **CORPUS DELICTI RULE**

State fails to show corpus delicti of possession of marijuana with intent to deliver. State v. Cobelli, 56 Wn. App. 921 (Div. I, 1990) June '90:17

Preparation for killing equals "substantial step," thus providing corpus delicti for attempted murder; suspect's confession therefore admissible. State v. Lesley Wayne Smith, 115 Wn.2d 775 (1990) March '91:06.

#### **CRIMINAL RECORDS PRIVACY ACT**

Trial court has no inherent authority to order expungement of conviction records and records of dispositions adverse to a person. State v. Gilkinson, 57 Wn. App. 861 (Div. II, 1990) Oct. '90:13

#### **CRUEL AND UNUSUAL PUNISHMENT**

Routine, through-the-clothes, body searches of female inmates by male correctional officers ruled impermissibly "cruel and unusual". Jordan v. Gardner, 986 F.2d 1521 (9th Cir. 1993) July '93:06

Prisoner allowed to pursue claim that exposure to second-hand smoke was "cruel and unusual" punishment. Helling v. McKinney, 125 L.Ed.2d 22 (1993) Dec. '93:18

#### **CUSTODIAL INTERFERENCE (See also Kidnapping)**

Evidence supports custodial interference conviction -- defendant's use of child as "bait" to force marital reconciliation shows intent to deny access. State v. Lund, 63 Wn. App. 553 (Div. I, 1991) July '92:18

#### **DEADLY WEAPON SENTENCING ENHANCEMENT**

Defendant's knowledge that co-participant armed not necessary for sentencing enhancement under RCW 9.94A.125. State v. Bilal, 54 Wn. App. 778 (Div. I, 1989) May '90:19

#### **DEFERRED PROSECUTION**

Defenses limited when deferred prosecution revoked; also, right of access to counsel at time of arrest qualified. State v. Shattuck, 55 Wn. App. 131 (Div. I, 1989) March '90:19

#### **DISABILITY LAW**

LEOFF I officer is disability retired because he can't perform strenuous physical activities. Morrison v. Retirement Systems, 67 Wn. App. 419 (Div. I, 1992) March '93:12

#### **DISCOVERY**

State may discover records of statements that are made to defense counsel by the state's witnesses. State v. Yates, 111 Wn.2d 793 (1988) Feb. '89:06

Child's reticence in pre-trial interviews with defense counsel does not justify dismissal of indecent liberties charges. State v. Christopher Edward Clark, 53 Wn. App. 120 (Div. I, 1988) Nov. '89:13

State may discover psychiatric reports relevant to insanity defense. State v. Palwyk, 115 Wn.2d 457 (1990) Jan. '91:08

Officer service records and personnel files not subject to discovery by criminal defendant absent special showing of basis for request. State v. Blackwell, 120 Wn.2d 822 (1993) May '93:09

#### **DISMISSAL AUTHORITY OF TRIAL COURT**

Trial court abused discretion in setting aside jury verdict for (1) insufficient evidence and (2) discovery delays. State v. Coleman, 54 Wn. App. 742 (Div. I, 1989) Nov. '89:20

#### **DOMESTIC VIOLENCE LEGISLATION**

"Initiative 62" requires that state pay Tacoma's costs in implementing domestic violence prevention act. Tacoma v. State, 117 Wn.2d 348 (1991) Jan. '92:05

Immunity provision of domestic violence act doesn't protect police from being sued for "failure to enforce". Roy v. Everett, 118 Wn.2d 352 (1992) May '92:06

Article: 1992 DV amendments did not change mandatory

arrest. Sept. '92:04

## **DOUBLE JEOPARDY**

Attempt by federal government to invoke "civil" fine following criminal prosecution implicates constitutional double jeopardy clause. U.S. v. Halper, 490 U.S. 435 (1989) Nov. '89:05

## **DUE PROCESS**

Misdemeanor complaint's failure to state elements of crime is constitutional defect. State v. Duncan Leach, 53 Wn. App. 322 (Div. I, 1989) May '89:12

Due process sufficiency of complaint, citation language addressed. State v. Elverston, 113 Wn.2d 679 (1989) Feb. '90:07

Officer's act of erroneously citing juvenile on municipal court complaint form not fatal to juvenile court proceeding. State v. Getty, 55 Wn. App. 152 (Div. I, 1989) March '90:19

State Supreme Court decision overturned regarding the process required prior to administration of anti-psychotic medication to prison inmates. Washington v. Harper, 494 U.S. 210 (1990) April '90:02

Information constitutionally defective due to omission of crime's mental state. State v. Hopper, 58 Wn. App. 210 (Div. I, 1990) Dec. '90:18

Essential elements rule for charging documents applies to citations but test is less stringent. Seattle v. Hein, 115 Wn.2d 555 (1990) March '91:06

Essential elements rule for charging documents, as applied to citations, satisfied by disorderly conduct citation. Auburn v. Brooke, 60 Wn. App. 87 (Div. I, 1991) April '91:15

LED Editor's note explains that most decisions on the "essential elements" rule for citations and other charging documents will not be digested in the LED. Dec. '91:12

"Essential elements" rule has different standard where defendant first challenges information on appeal. State v. Kjorsvik, 117 Wn.2d 93 (1991) April '92:05

"Essential elements" rule for charging documents applies to criminal citations as well as criminal complaints. Auburn (City of) v. Brooke, and Seattle (City of) v. Wandler, 119 Wn.2d 623 (1992) Dec. '92:19

Admission of evidence of child's prior non-accidental injuries to show she was "battered" not a violation of due process clause. Estelle v. McGuire, 116 L.Ed.2d 385 (1991) May '92:05

#### **ELECTRONIC SURVEILLANCE AND MONITORING (Chapter 9.73 RCW)**

Draft guidelines for monitoring and/or recording drug discussions without judicial authorization -- implementing single-party consent, executive-authorization provisions of the 1989 Omnibus Drug Bill. July '89:3-21

NOTE: Single party consent -- monitoring and recording drug discussions, update on guidelines and clarification re: tainting. Oct. '89:19

Videotaping drug deals without recording sound not prohibited by 9.73 RCW. State v. Raymer, 61 Wn. App. 516 (Div. III, 1991) Nov. '91:12

Raymer ruling on single party consent videotape surveillance revisited. Jan. '92:19

Electronic intercept order under Privacy Act (9.73) supported by showing that other normal investigative efforts would likely be inadequate. State v. Cisneros, 63 Wn. App. 724 (Div. I, 1992) May '92:13

Provisions for nonjudicial, agency-authorized single party consent recording under 1989 amendments to Privacy Act held constitutional. State v. Salinas, 119 Wn.2d 192 (1992) Aug. '92:05

Privacy Act's exemplary damages provision not applicable where the unauthorized interception is inadvertent and the conversation intercepted is inconsequential. Kadoranian v. Bellingham Police Department, 119 Wn.2d 178 (1992) Aug. '92:06

State constitution's due process clause does not require tape-recording of police interrogations. State v. Spurgeon, 63 Wn. App. 503 (Div. I, 1991) Sept. '92:18

Broad exclusionary provision of electronic surveillance

statute, RCW 9.73, mandates suppression of evidence where officers monitored conversations without court order or written supervisor authorization. State v. Salinas, 67 Wn. App. 232 (Div. I, 1992) Feb. '93:14 [See State Supreme Court affirmance entry below]

Listening in at tipped phone receiver not barred by statutory, constitutional privacy protections. State v. Corliss, 67 Wn. App. 708 (Div. I, 1992) March '93:12. Review pending in State Supreme Court.

Consenting use of "line trap" for source of phone calls not covered by Chapter 9.73 privacy law; computer hacker search warrant fails particularity test. State v. Riley, 121 Wn.2d 22 (1993) July '93:10

Citizen-police conversation during arrest of citizen in his front driveway held not "private" under communications privacy law (Ch. 9.73 RCW); hence, citizen's taping of conversation with police not proscribed by law. State v. Flora, 68 Wn. App. 802 (Div. I, 1992) July '93:17

All information, including visual observations, obtained by an officer wearing an unauthorized listening device is inadmissible; 1989 amendments to Chapter 9.73 RCW did not change chapter 9.73's basic broadly-inclusive exclusionary rule. State v. Salinas, 121 Wn.2d 689 (1993) Nov. '93:08

Informant's undisclosed pending charges don't negate probable cause; 9.73 requirements requiring showing that other investigative methods inadequate met; search of vehicle incident to arrest nearby lawful. State v. Lopez, 70 Wn. App. 259 (Div. III, 1993) Nov. '93:15

Monitoring of numbers coming to lawfully seized pager withstands statutory and constitutional challenges. State v. Wojtyna, 70 Wn. App. 689 (Div. I, 1993) Dec. '93:20

## **ENTRAPMENT**

Entrapment as a matter of law of Nebraska farmer who ordered child pornography after two years of undercover efforts by government. Jacobson v. U.S., 118 L.Ed.2d 174 (1992) Aug. '92:02

Defendant not entitled to entrapment instruction; evidence sufficient to support VUCSA conviction on theory that he was accomplice to drug deal. State v.

Galisia, Norgard, 63 Wn. App. 833 (Div. I, 1992) Sept. '92:14

#### **EQUAL PROTECTION**

Local ordinance's penalty for attempted vehicle prowling unlawfully exceeds state law. Seattle v. Hogan, 53 Wn. App. 387 (Div. I, 1989) Nov. '89:15

Animal control ordinance permitting state to charge either a misdemeanor or to seek a civil penalty, or to do both, does not violate equal protection requirements. State v. Ankney, 53 Wn. App. 393 (Div. I, 1989) Nov. '89:16

Seattle's pedestrian interference ordinance survives constitutional challenge. Seattle v. Webster, 115 Wn.2d 635 (1990) March '91:04

#### **ESCAPE (RCW 9A.76.100) AND RELATED OFFENSES**

Escape in the first degree includes escape from detention imposed after violating community supervision which was imposed for a felony conviction. State v. Perencevic, 54 Wn. App. 585 (Div. 1, 1989) Nov. '89:19

Misdemeanant's failure to return from work release, furlough is "escape". State v. Kent, 62 Wn. App. 485 (Div. II, 1991) Feb. '92:10

#### **EVIDENCE**

Rape victim's next-day statement to police held to be inadmissible hearsay; this hearsay did not qualify either as an "excited utterance" or as a "prior statement by a witness." State v. Bargas, 52 Wn. App. 700 (Div. III, 1988) Feb. '89:11

CCDR properly admitted in prosecution for "driving while suspended". State v. Monson, 53 Wn. App. 854 (Div. I, 1989) Sept. '89:18

Corroboration requirement of child hearsay statute (RCW 9A.44.120) met in "golden showers" case. State v. Jones (Gerald Douglas), 112 Wn.2d 488 (1989) Oct. '89:16

Eyewitness expert properly excluded where Moon's identification factors not present. State v. Hernandez, 54 Wn. App. 323 (Div. III, 1989) Nov.

'89:12

Evidence that defendant was beneficiary on insurance policy on victim not admissible in assault prosecution. State v. Cole, 54 Wn. App. 93 (Div. II, 1989) Nov. '89:18

Officers' testimony re: "body language" expertise held to be inadmissible scientific opinion evidence. State v. Wilber, 55 Wn. App. 294 (Div. I, 1989) Feb. '90:19

Certified copy of DOL driving record admissible as public record. State v. Monson, 113 Wn.2d 833 (1989) March '90:04

Evidence rule (ER 410) which excludes plea bargaining statements does not apply to statements which suspect made to law enforcement officers unless officers were acting as prosecutor's agents at the time. State v. Pizzuto, 55 Wn. App. 421 (Div. I, 1989) May '90:19

Witness's prior statement of identification (to investigator) not hearsay and is admissible even though witness recants at trial. State v. Grover, 55 Wn. App. 923 (Div. I, 1989) May '90:19

Use of colposcope for gynecological photos not subject to "new scientific evidence" standard. State v. Noltie, 57 Wn. App. 21 (Div. I, 1990) Sept. '90:09

Spontaneity requirement of child hearsay statute, RCW 9A.44.120, liberally construed. State v. Borland, 57 Wn. App. 7 (Div. I, 1990) Sept. '90:10

State allowed to play police siren for jury in "felony eluding" trial. State v. Mitchell, 56 Wn. App. 610 (Div. I, 1990) Oct. '90:15

Evidence of defendant's use of alias at time of arrest admissible. State v. Allen, 57 Wn. App. 134 (Div. I, 1990) Oct. '90:15

Defendant's threat to witness may be relevant evidence. State v. McGhee, 57 Wn. App. 457 (Div. I, 1990) Oct. '90:16

Corroboration, reliability requirements of child abuse hearsay statute addressed. State v. Swan, 114 Wn.2d 613 (1990) Nov. '90:01

Statutory rape conviction under former law withstands

defendant's evidence law objections of "hearsay" and "improper impeachment with prior convictions"; but court disapproves of detective's testimony about victim's performance on "truth test." State v. Everett LaVerne Smith, 56 Wn. App. 909 (Div. III, 1990) Nov. '90:19

Utterances by alleged child-sex-abuse victims during nightmares admitted as non-hearsay. State v. Stevens, 58 Wn. App. 478 (Div. I, 1990) Dec. '90:16

"Battered woman syndrome" evidence inadmissible in support of accident defense theory that shooting of victim was an accident. State v. Hanson, 58 Wn. App. 504 (Div. I, 1990) Dec. '90:16

"Other crimes" evidence admissible to show identity under ER 404(b) because of "signature" MO. State v. Lynch, 58 Wn. App. 83 (Div. I, 1990) Dec. '90:18

Attorney charged with theft of client funds may testify that deceased loaned or gave him money; "state of mind" testimony not hearsay, deadman statute not applicable. State v. Hamilton, 58 Wn. App. 229 (Div. III, 1990) Jan. '91:08

Expert testimony may be offered to explain that youthful sex abuse victims often delay in reporting the abuse. State v. Graham, 59 Wn. App. 418 (Div. I, 1990) Jan. '91:19

Certified copy of drug lab report lawfully admitted into evidence. State v. Sosa, 59 Wn. App. 678 (Div. I, 1990) March '91:13

"Spontaneity" of child hearsay statement, "staleness" of probable cause information addressed. State v. Young, 60 Wn. App. 95 (Div. I, 1991) April '91:13

Expert testimony may go to "ultimate issue" before jury if expert opines re technical matters and his expert opinion is based on physical facts as opposed to the expert's evaluation of the credibility of witnesses. Therefore, expert's testimony that child's injuries had not occurred by accident was admissible. State v. Ronald Hampton Jones, 59 Wn. App. 744 (Div. I, 1990) April '91:16

"Excited utterance" exception to hearsay rule applies to delayed 911 call. State v. Guizotti, 60 Wn. App. 289 (Div. II, 1991) May '91:10

Theft is a crime involving "dishonesty", so ER 609(A)(2) makes prior theft convictions per se admissible for purposes of impeaching witnesses. State v. Ray, 116 Wn.2d 531 (1991) Sept. '91:15

Police testimony regarding defendant's use of alias at time of arrest was properly admitted. State v. Chase, 59 Wn. App. 501 (Div. II, 1990) Oct. '91:19

Possession of stolen property is per se a crime of dishonesty for purposes of impeaching witnesses. State v. McKinsey, 116 Wn.2d 911 (1991) Nov. '91:04

Corroboration requirement under child sex abuse victim statute (RCW 9A.44.120) reviewed in two Court of Appeals decisions. State v. Swanson, 62 Wn. App. 186 (Div. III, 1991) Dec. '91:18; State v. Gribble, 60 Wn. App. 374 (Div. I, 1991) Dec. '91:18

"Availability" under child sex abuse victim hearsay law construed; "treating physician" hearsay rule also construed - State prevails. State v. Bishop, 63 Wn. App. 15 (Div. I, 1991) Feb. '92:17

State v. Ray retroactive; prior theft conviction admissible to impeach witness. State v. Eisenman, 62 Wn. App. 640 (Div. I, 1991) March '92:15

Burglary conviction, unlike theft conviction, not per se admissible to impeach a witness. State v. Watkins, 61 Wn. App. 552 (Div. I, 1991) March '92:15

"Missing witness" argument ok where defendant "opens the door" by testifying alleged drug "crib" sheets are note re: lawful activity. State v. Blair, 117 Wn.2d 479 (1991) April '92:05

Confrontation clause challenge fails -- established hearsay exceptions support admission of child hearsay even though no showing by state of "unavailability" of the child witness to testify. White v. Illinois, 116 L.Ed.2d 848 (1992) May '92:04

State's failure to preserve evidence, court's admission of human-tracker's testimony, do not taint murder conviction; premeditation proven. State v. Ortiz, 119 Wn.2d 294 (1992) Sept. '92:06

Illegal drug use history of witness not per se admissible to impeach. State v. Tigano, 63 Wn. App.

336 (Div. II, 1991) Sept. '92:18

Delay of a few hours between end of rape and victim's report does not disqualify report from "excited utterance" status under hearsay rule. State v. Strauss, 119 Wn.2d 401 (1992) Nov. '92:09

Marital privilege -- no spousal incompetency to testify against other spouse under RCW 5.60.060(1) where any interspousal crime charged. State v. Thornton, 119 Wn.2d 578 (1992) Jan. '93:08

Officer's expert testimony re: significance of lack of drug paraphernalia in residence admissible to support UCSA intent to deliver element. State v. Sanders, 66 Wn. App. 380 (Div. I, 1992) Jan. '93:16

Delay of a few hours between end of attack and victim's report does not disqualify report from "excited utterance" status. State v. Strauss, 119 Wn.2d 401 (1992) Feb. '93:05

Excited utterances by three-year-old admissible under hearsay exception of ER 803(a)(2) even though child could not be shown to be competent witness. State v. Bryant, 65 Wn. App. 428 (Div. I, 1992) Feb. '93:19

CCDR sent by "fax" admissible as proof driving privilege revoked. State v. Smith (Timothy), 66 Wn. App. 825 (Div. I, 1992) Feb. '93:19

Detective lawfully gave expert testimony about pimp-prostitute relationship. State v. Simon, 64 Wn. App. 948 (Div. I, 1991) Feb. '93:20

Fingerprint expert's testimony that another expert verified his analysis was inadmissible hearsay. State v. Wicker, 66 Wn. App. 409 (Div. I, 1992) Feb. '93:20

No marital privilege where defendant accused of witness tampering with regard to children so the children wouldn't testify against him for raping them. State v. Sanders, 66 Wn. App. 878 (Div. I, 1992) Feb. '93:21

Delayed report of rape by convalescent center's Alzheimer's sufferer not excited utterance. State v. Chapin, 118 Wn.2d 681 (1992) March '93:06

Spousal privilege applies to spouse's in-court testimony only; spouse's statements to others outside court are admissible if hearsay rules allow their

admission. State v. Burden, 120 Wn.2d 371 (1992) May '93:09

"Grooming process" testimony by expert generally inadmissible in state's case-in-chief in molesting prosecutions. State v. Braham, 67 Wn. App. 930 (Div. I, 1992) May '93:15

DNA typing evidence admissible if valid probability statistics show the match is not coincidental. State v. Cauthron, 120 Wn.2d 879 (1993) July '93:14

"Battered child syndrome" meets scientific evidence standard; syndrome evidence may be admitted to help prove self-defense. State v. Janes, 121 Wn.2d 220 (1993) July '93:14

#### **EXCLUSIONARY RULE**

Taking ID was "Terry stop," but later arrest on warrant was not tainted because defendant had been released. State v. Dudas, 52 Wn. App. 832 (Div. I, 1988) March '89:06

Forcibly entering house to secure it in non-exigent situation while seeking search warrant unlawful; "independent source" saves search warrant, however. State v. Hall, 53 Wn. App. 296 (Div. III, 1989) April '89:12

Where otherwise valid waiver of rights obtained, fruits of interrogation in violation of Jackson's Sixth Amendment "initiation of contact" rule may be used to impeach defendant. Michigan v. Harvey, 494 U.S. 344 (1990) May '90:07

Impeachment exception to Fourth Amendment exclusionary rule applies only to defendant's own testimony; other defense witnesses may not be impeached with excluded evidence. James v. Illinois, 493 U.S. 307 (1990) May '90:08

Probable cause arrest which violates Payton rule does not require suppression of incriminating statements made at station house if the statements are voluntary and Miranda is satisfied. New York v. Harris, 495 U.S. 14 (1990) June '90:06

Warrant description satisfies particularity rule; good faith exception to exclusionary rule would have saved the search warrant anyway. State v. Salazar, 59 Wn.

App. 202 (Div. I, 1990) Jan. '91:12

"Reverse silver platter doctrine" allows federal officers to hand over evidence to local officers. State v. Gwinner, 59 Wn. App. 119 (Div. I, 1990) Jan. '91:17

Harmless error rule applies where trial court erroneously admits coerced confession. Arizona v. Fulminante, 113 L.Ed.2d 302 (1991) June '91:02

Appeals court declines to follow Simpson plurality on "automatic standing." State v. Zakel, 61 Wn. App. 805 (Div. II, 1991) Nov. '91:13

Army sergeant's inventory search of absent soldier's locker was lawful under Fourth Amendment and did not implicate State constitution. In re Personal Restraint of Teddington, 116 Wn.2d 761 (1991) Jan. '92:05

Automatic standing doctrine left in limbo by State Supreme Court. State v. Zakel, 119 Wn.2d 563 (1992) Nov. '92:06

Impeaching defendant with unlawfully seized evidence permitted under both federal and state constitutions. State v. Greve, 67 Wn. App. 166 (Div. I, 1992) March '93:18

Wyoming deputy's Miranda warnings satisfy federal constitution; out-of-state officer's independent actions need not satisfy Washington constitution to be admissible in Washington prosecution. State v. Koopman, 68 Wn. App. 514 (Div. III, 1992) May '93:15

Co-conspirators have no automatic standing to challenge searches of fellow co-conspirators. U.S. v. Padilla, 123 L.Ed.2d 635 (1993) July '93:05

#### **EX POST FACTO DOCTRINE**

Sex offender registration statute not violative of ex post facto provision. State v. Taylor, 67 Wn. App. 350 (Div. I, 1992) June '93:10

#### **FAILURE TO APPEAR/FAILURE TO COMPLY**

Limitation period for failure to appear one year; offense is not continuing. State v. Klump, 61 Wn. App. 911 (Div. III, 1991) March '92:12

## **FIREARMS (Chapter 9.41 RCW)**

Statute prohibiting concealed pistol-carrying does not have a mental state element. State v. Sharkey, 54 Wn. App. 384 (Div. III, 1989) Nov. '89:19

Note: Firearms auction requirement of RCW 9.41.098 interpreted in Attorney General Opinion, AGO 1989 No. 19. Dec. '89:05

Preemption clause of firearms law precludes Metro from enforcing "no weapons" personnel policy against bus driver with concealed weapons permit. Cherry v. Metro Seattle, 57 Wn. App. 164 (Div. I, 1990) June '90:19. Reversed by State Supreme Court -- see entry below.

Arrest for "carrying" a loaded pistol in a vehicle upheld; conviction upheld. State v. Thierry, 60 Wn. App. 445 (Div. II, 1991) May '91:05

Preemption clause of state firearms law does not preclude municipality's restriction re bus drivers' carrying of weapons on duty. Cherry v. Metro Seattle, 116 Wn.2d 794 (1991) June '91:18

Firearms Act unconstitutional in not allowing mental disorder confinee to regain eligibility for permit to carry concealed weapon. Morris v. Blaker, 118 Wn.2d 133 (1992) March '92:04

Seattle weapons ordinance constitutional; knife-carrying citation sufficiently specific. Seattle v. Riggins, 63 Wn. App. 313 (Div. I, 1991) April '92:17

## **FIREWORKS (Chapter 70.77 RCW)**

State fireworks law delays, but does not preempt, local fireworks ordinances. Brown v. City of Yakima, 116 Wn.2d 556 (1991) June '91:18

## **FORGERY (Chapter 9A.60 RCW)**

Altered \$1 bill deemed to be a "written instrument" under forgery statute. State v. Scoby, 57 Wn. App. 809 (Div. III, 1990) Oct. '90:10

One dollar bill is "written instrument" and altering the bill is "forgery". State v. Scoby, 117 Wn.2d 55 (1991) Jan. '92:02

## **FREEDOM OF RELIGION**

Use of peyote in religious ceremony is not protected by First Amendment freedom of religion clause. Employment Division, Oregon Dept. of Human Resources v. Smith, 494 U.S. 872 (1990) Aug. '90:09

Animal sacrifice ordinance aimed at a local religious group fails religious freedom challenge. Church of the Lukumi Babalu Aye, Inc. v. Hialeah, Fla., 124 L.Ed.2d 472 (1993) Dec. '93:16

## **FREEDOM OF SPEECH**

Court establishes "prior restraint" standards restricting seizure of allegedly "obscene" materials. State v. J.R. Distributors, Inc., 111 Wn.2d 764 (1988) Feb. '89:05

Test established for prison rules limiting receipt of publications. Thornburgh v. Abbott, 490 U.S. 401 (1989) Sept. '89:15

Flag-burning protected by First Amendment. Texas v. Johnson, 491 U.S. 397 (1989) Nov. '89:04

Massachusetts nude-posing, nude-exhibition statute protecting children under age 18 may be constitutional. Massachusetts v. Oakes, 491 U.S. 576 (1989) Nov. '89:04

Federal "anti-dial-a-porn" law violates First Amendment in proscribing "indecent" messages. Sable Communications v. FCC, 45 CrL 3163 (1989) Nov. '89:04

Ohio's child pornography statute survives constitutional challenge. Osborne v. Ohio, 495 U.S. 103 (1990) Aug. '90:09

Federal Flag Desecration Act invalidated. U.S. v. Eichman, 496 U.S. 310 (1990) Aug. '90:10

Open booth requirement in adult panoram ordinance upheld against free speech, privacy challenges. Adult Entertainment v. Pierce County, 57 Wn. App. 435 (Div. II, 1990) Oct. '90:16

Seattle's lewd conduct ordinance violates First Amendment. Seattle v. Johnson, 58 Wn. App. 64 (Div. I, 1990) Oct. '90:18

Ban on totally nude dancing in places of public

accommodation not barred by First Amendment. Barnes v. Glen Theatre Inc., 115 L.Ed.2d 504 (1991) Sept. '91:14

Tukwila's adult entertainment zoning ordinance invalidated, peep show licensing ordinance upheld in constitutional challenge. World Wide Video v. Tukwila, 117 Wn.2d 382 (1991) Jan. '92:05

New York's "Son of Sam" Law violates First Amendment. Simon & Schuster, Inc. v. N.Y. State Crime Victims Board, 116 L.Ed.2d 476 (1991) May '92:04

St. Paul's malicious harassment ordinance violates free speech clause of First Amendment. R.A.V. v. St. Paul Minn., 120 L.Ed.2d 305 (1992) Sept. '92:05

Krishna Consciousness, Inc. wins one issue, loses one issue in airport soliciting case. International Society for Krishna Consciousness v. Lee and Lee v. International Society for Krishna Consciousness, 120 L.Ed.2d 541 (1992) Sept. '92:05

Parade permit ordinance requiring advance permit with standard-less adjustable permit fee of up to \$1000 fails First Amendment. Forsyth County, Georgia v. Nationalist Movement, 120 L.Ed.2d 101 (1992) Sept. '92:06

Sentence enhancement for hate crime upheld. Wisconsin v. Mitchell, 124 L.Ed.2d 436 (1993) Dec. '93:16

Per se crimes portion of former malicious harassment statute invalidated on free speech grounds; current law would pass constitutional muster. State v. Talley, 122 Wn.2d 192 (1993) Dec. '93:17

## **GAMBLING**

Terms "primarily" and "enforcement" in gambling tax statute receive pro-law enforcement interpretation. American Legion Post No. 32 v. Walla Walla, 116 Wn.2d 1 (1991) March '91:08

"Gross receipts" term in local gambling tax ordinance gets pro-taxpayer reading. TLR, Inc. v. Town of LaCenter, 68 Wn. App. 29 (Div. II, 1992) June '93:12

## **HARASSMENT (CRIMINAL) (Chapter 9A.46 RCW)**

"Let's fight" evidence insufficient to support harassment conviction. State v. Austin, 65 Wn. App.

759 (Div. I, 1992) Jan. '93:20

#### **ILLEGAL CONTRACT DOCTRINE**

Attempted payoff by massage parlor operator need not be returned by city police even though charges dismissed. State v. Pelkey, 58 Wn. App. 610 (Div. I, 1990) Dec. '90:16

#### **IMPLIED CONSENT, BREATH AND BLOOD TESTS FOR ALCOHOL**

"At your own expense" language is not authorized by implied consent law. State v. Bartels, 112 Wn.2d 882 (1989) and Seattle v. Branch, 112 Wn.2d 882 (1989) Sept. '89:16

Swabbing arm with rubbing alcohol doesn't taint blood alcohol test. State v. Weston, 54 Wn. App. 105 (Div. I, 1989) Nov. '89:17

Psychosis does not constitute a defense to drivers' license revocation for refusing to take a breath test. Gibson v. DOL, 54 Wn. App. 188 (Div. I, 1989) Nov. '89:17

Evidence of DWI arrestee's refusal of breath test admissible in prosecution's case in chief. State v. Long, 113 Wn.2d 266 (1989) Dec. '89:13

Note: Recent implied consent ruling by administrative law judge. May '90:12

Blowing into defective BAC instrument is not a "test" under RCW 46.20.308. City of Sunnyside v. Sanchez, 57 Wn. App. 299 (Div. III, 1990) June '90:12

Government is not statutorily required to give a DWI arrestee a breath test. State v. Woolbright, 57 Wn. App. 697 (Div. I, 1990) Oct. '90:16

Person's own blood not a "foreign substance" under BAC administrative rules. Sunnyside v. Fernandez, 59 Wn. App. 578 (Div. III, 1990) March '91:11

Suppression of blood test of vehicular homicide suspect not proper even if counsel contact right violated prior to test. State v. Schulze, 116 Wn.2d 154 (1991) April '91:02

Privacy protections of state and federal constitutions do not preclude warrantless seizure of blood from

vehicular homicide arrestee under authority of RCW 46.20.308. State v. Curran, 116 Wn.2d 174 (1991) April '91:03

Dismissal of DWI charges not appropriate remedy where police unlawfully deny telephonic attorney contact in pre-breath test situation. Spokane v. Kruger, 116 Wn.2d 135 (1991) April '91:04

Prejudice test under Bartels' rule for implied consent warnings explained. Gahagan v. Department of Licensing, 59 Wn. App. 703 (Div. I, 1990) April '91:15

Breath or blood alcohol testing of DWI arestees not mandatory. State v. Entzel, 116 Wn.2d 435 (1991) May '91:04

State must show no breath testing equipment available at hospital to justify offering only blood test to DWI arrestee at hospital. LED Editor's comments regarding the constitutionality of drawing blood pursuant to RCW 46.20.308. O'Neill v. Dept. of Licensing, 62 Wn. App. 112 (Div. I, 1991) Feb. '92:11

Extreme intoxication, voluntary or involuntary, generally does not make driver incapable of giving valid refusal of alcohol breath test. Steffan v. Dept. of Licensing, 61 Wn. App. 839 (Div. III, 1991) Feb. '92:14

Blood alcohol testing regulations meet statutory standards; also, blood sample properly preserved for purposes of due process analysis. State v. Clark, 62 Wn. App. 263 (Div. I, 1991) Feb. '92:19

Averaging of breath test results under "10 percent rule" should be taken to three digits, not two. State v. Cascade District Court, 62 Wn. App. 587 (Div. I, 1991) March '92:15

Correction regarding LED editorial advice on urine testing. April '92:19

DWI arrestee's right to additional breath or blood test. Aug. '92:19

Implied consent warnings per RCW 46.20.380(2) support revocation of drivers' licenses; drivers' refusals of testing preclude issuance of occupational drivers' licenses. Burnett v. DOL and Gasaway v. DOL, 66 Wn. App. 253 (Div. II, 1992) Jan. '93:19

Court finds probable cause for vehicular homicide arrest in booze and admissions and circumstances of accident; therefore, blood was lawfully taken without consent under RCW 46.20.308. State v. Dunivin, 65 Wn. App. 501 (Div. II, 1992) Jan. '93:19

DWI arrestee's right to pre-BAC test consult with counsel satisfied where public defender contacted by phone, and arrestee's private attorney could not be called due to SCAN authorization problem. Seattle v. Sandholm, 65 Wn. App. 747 (Div. I, 1992) Feb. '93:18

#### **INDECENT EXPOSURE (RCW 9A.88.010)**

Former "public indecency" statute covered defendant's activity within his home of indecent exposure to passing pedestrians. State v. Chiles, 53 Wn. App. 452 (Div. II, 1988) Nov. '89:16

Indecent exposure may be charged for conduct which occurs in private location. State v. Dubois, 58 Wn. App. 299 (Div. I, 1990) Oct. '90:17

#### **INDECENT LIBERTIES (RCW 9A.44.100)**

In "indecent liberties" case, adult victim's incapacity to consent to "sexual contact" can be proven by proof of either "mental incapacity" or "mental defect". State v. Van Vlack, 53 Wn. App. 86 (Div. I, 1988) Sept. '89:19

Lips an "intimate part" in some circumstances under indecent liberties statute. State v. R.P., 67 Wn. App. 663 (Div. I, 1992) March '93:19. Court of Appeals' decision was later reversed by State Supreme Court holding that lips cannot be an "intimate part." 122 Wn.2d 735 (1993)

#### **INDIAN/TRIBAL LAW ENFORCEMENT**

Tribal officer had authority to: (a) stop speeding driver to determine if tribal member and (b) detain him for WSP as suspected non-Indian DWI. State v. Schmuck, 121 Wn.2d 373 (1993) Nov. '93:07

#### **INFANCY DEFENSE (RCW 9A.04.080)**

Evidence insufficient to overcome presumption that eight-year-old not capable of crime. State v. K.R.L., 67 Wn. App. 721 (Div. II, 1992) June '93:11

## INSANITY DEFENSE (RCW 9A.12.010)

"Irresistible impulse" variation on insanity defense rejected. State v. Potter, 68 Wn. App. 134 (Div. II, 1992) April '93:20

## INTERROGATIONS AND CONFESSIONS

Miranda -- Post-conviction, pre-sentence confession by jailed defendant to his probation officer was tainted by lack of Miranda warnings. State v. Sargent, 111 Wn.2d 641 (1988) Jan. '89:04

"I'll talk to ya but I don't wanna waive my rights" does not constitute a Miranda waiver. State v. Grieb, 52 Wn. App. 573 (Div. III, 1988) Jan. '89:18

Counsel assignment/request at arraignment triggers Edwards rights on unrelated crimes. State v. Stewart, 53 Wn. App. 150 (Div. II, 1989) April '89:05 The Appeals Court ruling in Stewart was reversed by the State Supreme Court on October 26, 1989. See Jan. '90:03

No Miranda warnings required in roadside questioning of DWI suspect. Pennsylvania v. Bruder, 488 U.S. 9 (1988) May '89:05

Sixth Amendment allows contact with charged defendant after he consults counsel. State v. Petitclerc, 53 Wn. App. 419 (Div. I, 1989) May '89:07. Later case law has impliedly overruled Petitclerc.

NOTE: Results of survey of prosecutors re: interrogations law. May '89:10

Article: "Initiation of Contact" Rules Under The Fifth and Sixth Amendments. June '89:1-7

"If and when you go to court" language in Miranda warning not violative of Fifth Amendment. Duckworth v. Eagan, 492 U.S. 195 (1989) Sept. '89:14

Probable cause/focus standard rejected as trigger to Miranda warnings requirement. State v. Short, 113 Wn.2d 35 (1989) Oct. '89:13

Request for counsel at arraignment on one charge does not, under the Fifth or the Sixth Amendment, trigger "initiation of contact" rule on unrelated, uncharged

crimes. State v. Stewart, 113 Wn.2d 462 (1989) Jan. '90:03

Miranda warnings support waiver of Sixth Amendment rights. State v. Visitacion, 55 Wn. App. 166 (Div. I, 1989) Jan. '90:13

Miranda waiver issue resolved against defendant who wanted to be "off the record." State v. Heggins, 55 Wn. App. 591 (Div. I, 1989) Jan. '90:15

No express waiver requirement for extrajudicial questioning of juvenile. State v. Blair, 56 Wn. App. 209 (Div. I, 1989) March '90:15

Where otherwise valid waiver of rights obtained, fruits of interrogation in violation of Jackson's Sixth Amendment "initiation of contact" rule may be used to impeach defendant. Michigan v. Harvey, 494 U.S. 344 (1990) May '90:07

Probable cause arrest which violates Payton rule does not require suppression of incriminating statements made at station house if statements voluntary and Miranda satisfied. New York v. Harris, 495 U.S. 15 (1990) June '90:06

Undercover officer need not Mirandize jailed suspect before engaging him in talk about uncharged crime. Illinois v. Perkins, 496 U.S. 292 (1990) Aug. '90:04

Issue of what constitutes "interrogation" of DWI arrestee addressed; most field sobriety tests are not "interrogation.". Pennsylvania v. Muniz, 496 U.S. 582 (1990) Aug. '90:06

Miranda waiver valid even though defendant refused to make a written statement. State v. Manchester, 57 Wn. App. 765 (Div. I, 1990) Sept. '90:14

Detective may testify about volunteered statements in inmate-initiated call; telephone conversations between police and suspects are generally not "custodial." State v. Denton, 58 Wn. App. 251 (Div. I, 1990) Oct. '90:01

Frisk, questioning without Miranda warnings in Terry stop held to be lawful. State v. Wilkinson, 56 Wn. App. 812 (Div. I, 1990) Oct. '90:03

Words "without charge" need not be part of Miranda

warning to indigent. State v. Hutton, 57 Wn. App. 537 (Div. I, 1990) Oct. '90:06

Statements volunteered by arrestee while officer trying to Mirandize him admissible. State v. Worl, 58 Wn. App. 443 (Div. III, 1990) Oct. '90:14

Jailed defendant's admission excluded because detective initiated contact with him after he had exercised his Sixth Amendment rights at arraignment. State v. Royer, 58 Wn. App. 778 (Div. II, 1990) Nov. '90:05

Juvenile Miranda warning with brief declination explanation just passes muster. State v. Spearman, 59 Wn. App. 323 (Div. I, 1990) Jan. '91:15

Psychologist's institutional interview should have been preceded by Miranda warnings. State v. Post, 59 Wn. App. 389 (Div. I, 1990) Jan. '91:19

Edwards "initiation of contact" rule violated by officer's reinitiation of contact with arrestee who had consulted counsel after asserting right to counsel. Minnick v. Mississippi, 498 U.S. 146 (1990) Feb. '91:01

Sixth Amendment confrontation clause bars admission of confessions of murder co-participants who refused to testify at defendant's trial. State v. Welchel, 115 Wn.2d 708 (1990) March '91:03

13-year-old of borderline IQ had capacity to waive his Miranda rights. State v. Massey, 60 Wn. App. 131 (Div. II, 1990) April '91:07

Law enforcement interrogators need not tell custodial suspect of attorney's phone call before obtaining Miranda waiver or continuing an interrogation in progress. State v. Earls, 116 Wn.2d 364 (1991) May '91:02

"Harmless error" rule applies where trial court erroneously admits coerced confession. Arizona v. Fulminante, 113 L.Ed.2d 302 (1991) June '91:02

Sixth Amendment "initiation of contact" bar doesn't apply to uncharged crimes. McNeil v. Wisconsin, 115 L.Ed.2d 158 (1991) Sept. '91:10

Officer's statement to suspect that invocation of Miranda rights ill-advised taints suspect's subsequent initiation of contact with officer. Collazo v.

Estelle, 49 CrL 1391 (9th Cir. 1991) Nov. '91:02

Using potential co-defendant as interpreter unlawful under Miranda. State v. Cervantes, 62 Wn. App. 695 (Div. III, 1991) Jan. '92:16

"Go f. . . yourself" is assertion of Miranda right to silence and subsequent questioning is unlawful; harmless error rule applies, however. State v. Reuben, 62 Wn. App. 620 (Div. III, 1991) Jan. '92:16

No "interrogation" occurred in officers' bedside vigil at hospital. State v. Peerson, 62 Wn. App. 755 (Div. I, 1991) Feb. '92:03

Request for attorney in post-arrest, pre-appearance screening by public defender may invoke right to counsel under Washington court rules, even through request wouldn't trigger constitutional protections. State v. Greer, 62 Wn. App. 779 (Div. I, 1991) Feb. '92:05

Juvenile's Miranda waiver invalid due to officer's unwitting deception. State v. Allen, 63 Wn. App. 623 (Div. III, 1991) April '92:06

Miranda Update: Arrest -- not Terry seizure, not focus -- is sole trigger to warnings requirement. May '92:02

Statement to responding officer volunteered. State v. McWatters, 63 Wn. App. 911 (Div. III, 1992) July '92:11

Miranda: We repeat -- functional equivalent of arrest sole trigger to warnings requirement. July '92:21

Article: More on Miranda "custody" trigger. Sept. '92:02

No Miranda warnings required where reasonable officer would not expect incriminating response to question as to who had called police. State v. Richmond, 65 Wn. App. 541 (Div. I, 1992) Sept. '92:12

Premeditated and extended unlawful custodial interrogation of suspect after he requests an attorney may result in Civil Rights Act liability. Cooper v. Dupnik, 963 F.2d 1220 (9th Cir. 1992) Nov. '92:02

Court almost gets it right on Miranda trigger issue; neither focus, nor mere temporary restriction on freedom, triggers warnings need. On issue of

sufficiency of MIP evidence, Court holds that odor of intoxicants plus admission of recent drinking are sufficient support for MIP conviction. State v. Walton (Jeffrey), 67 Wn. App. 127 (Div. I, 1992) Jan. '93:09

No Fifth Amendment violation where police declare to interrogation suspect that they will talk to prosecutor, but then make no other promises. State v. Putnam, 65 Wn. App. 606 (Div. II, 1992) Jan. '93:15

State wins on Miranda "interrogation" issue where question of "current address" asked in booking process; no "interrogation" in ordinary booking address request. State v. Walton (Bobby Gene), 64 Wn. App. 410 (Div. III, 1992) Jan. '93:15

Miranda Note: Miranda custody test revisited -- Muniz is irrelevant to custody issue. Feb. '93:03

Miranda Note: No special field sobriety test warnings requirement. March '93:02

Psychologist's post-conviction interview at prison not subject to Miranda. State v. Post, 118 Wn.2d 596 (1992) March '93:03

Article: "Initiation of Contact" rules under Fifth and Sixth Amendments. April '93:02

Wyoming deputy's Miranda warnings satisfy federal constitution; out-of-state officer's actions need not satisfy Washington constitution. State v. Koopman, 68 Wn. App. 514 (Div. III, 1992) May '93:15

Flowchart to "Initiation of Contact" article. May '93:19-21

Miranda warnings required where CCO talks to parolee at jail. State v. Willis, 64 Wn. App. 634 (Div. III, 1992) June '93:10

Mentally disabled defendant held to have voluntarily waived Miranda rights. State v. Cushing, 68 Wn. App. 388 (Div. I, 1993) June '93:13

Duration of "initiation of contact" bar under Fifth Amendment remains unresolved. U.S. v. Green, 53 CrL 2001 (1993) July '93:05

Federal prosecutor's meeting with charged defendant ruled violative of ethics rule but not a reason to

dismiss case absent prejudice to defendant. U.S. v. Lopez, 52 CrL 1545 (9th Cir. 1993) July '93:06

No "cat out of the bag" rule under Miranda? State v. Allenby, 68 Wn. App. 657 (Div. I, 1992) Oct. '93:18

Sixth Amendment confrontation clause -- non-testifying co-defendant's hearsay statements to girlfriend meet very restrictive Sixth Amendment "reliability" test, but admissions to detective during custodial interrogation by detective do not. State v. Rice, 120 Wn.2d 549 (1993) Nov. '93:02

#### **INTIMIDATING A JUDGE (RCW 9A.72.160)**

"Intimidating a judge" statute construed. State v. Kepiro, 61 Wn. App. 116 (Div. I, 1991) Nov. '91:19

Indirect threat toward judge sufficient to support conviction for intimidating a judge. State v. Hansen, 67 Wn. App. 511 (Div. I, 1992) Feb. '93:15. Affirmed by State Supreme Court. 122 Wn.2d 712 (1993).

#### **INTIMIDATING A WITNESS (RCW 9A.72.110)**

"Intimidating a witness" can't be charged where neither official proceeding nor criminal investigation is pending at time that threat is made. State v. Wiley, 57 Wn. App. 533 (Div. I, 1990) Sept. '90:11. The statute has since been amended to cover pre-investigation situations.

#### **INTOXICATION DEFENSE**

Voluntary intoxication resulting in "blackout" is no defense to a statutory rape charge, because crime of statutory rape has no mental state element. State v. Swagerty, 60 Wn. App. 830 (Div. II, 1991) Dec. '91:16

Defendant charged with attempted rape not entitled to assert defense of voluntary intoxication because he failed to show how intoxicants affected his mental state. State v. Gallegos, 65 Wn. App. 230 (Div. I, 1992) May '93:17

Voluntary intoxication defense applies to all drugs, not just alcohol. State v. Hackett, 64 Wn. App. 780 (Div. I, 1992) May '93:18

#### **JURISDICTION OF FEDERAL, STATE COURTS**

Premeditation, abduction occurring within the state's territorial jurisdiction gives state authority to prosecute capital murder even though killing took place at Fort Lewis. State v. Lane, 112 Wn.2d 464 (1989) Oct. '89:16

U.S. Federal court has jurisdiction to try defendant abducted from Mexico at behest of feds. U.S. v. Alvarez-Machain, 119 L.Ed.2d 441 (1992) Sept. '92:05

## **JUVENILE JUSTICE**

Statute mandating HIV testing of all persons convicted of sexual offenses applies to both juvenile and adult sexual offenders and is constitutionally valid. In Re A, B, C, D, E, 121 Wn.2d 80 (1993) July '93:16

## **KIDNAPPING (Chapter 9A.40 RCW)**

"Substantial step" evidence supports attempted kidnapping conviction. State v. Billups, 62 Wn. App. 122 (Div. I, 1991) Feb. '92:15

## **LABOR LAW**

Correctional officers are not "uniformed personnel" under binding arbitration law. Yakima County Deputy Sheriff's Assoc. v. Yakima County, 111 Wn.2d 854 (1989) March '89:01

## **LEGISLATION**

Washington Legislation -- 1989 -- Part One: July: 3-20; Part Two: August: 1-14; Part Three: September: 2-13; Part Four: October: 1-13

Washington Legislation -- 1990 -- List of 1990 enactments: June '90:19; Part One: July '90:11; Part Two: Aug. '90:20; Part Three: Sept. '90:14; Part Four: Oct. '90:18

Washington Legislation -- 1991 -- Part One: Aug. '91:01; Part Two: Sept. '91:01; Part Three: Oct. '91:02;; Further Notes: Nov. '91:19

Washington Legislation -- 1992 -- Part One: June '92: 1-20; Part Two: July '92:1-11

Article: 1992 DV amendments did not change mandatory arrest. Sept. '92:04

Washington Legislation -- 1993 -- Part One: July '93:03; Part Two: Aug. '93:1-22; Part Three: Sept. '93:1-15; Part Four (includes complete LED index of 1993 legislation): Oct. '93:2-8

#### **LIMITATIONS PERIODS**

Limitation period for failure to appear one year; offense is not continuing. State v. Klump, 61 Wn. App. 911 (Div. III, 1991) March '92:12

#### **LINEUPS, PHOTO IDENTIFICATIONS AND SHOWUPS**

State may force lawfully jailed prisoner into lineup relating to "other crimes." State v. Doleshall, 53 Wn. App. 69 (Div. I, 1988) March '89:17

Photo montage identification procedure ok even when suspect presently in custody. State v. Royer, 58 Wn. App. 778 (Div. II, 1990) Nov. '90:05

Identification procedure where single photograph shown to witness was "impermissibly suggestive" but did not violate due process. State v. Maupin, 63 Wn. App. 887 (Div. III, 1992) Sept. '92:20

#### **LOSS, DESTRUCTION OR FAILURE TO PRESERVE EVIDENCE**

"Bad faith" standard established for police failure to preserve evidence. Arizona v. Youngblood, 488 U.S. 51 (1988) Feb. '89:01

Defendant's claim of "failure to preserve evidence fails because evidence (a) never existed and (b) would have been cumulative anyway. State v. Wasson, 54 Wn. App. 156 (Div. III, 1989) Nov. '89:18

Toxicologist's datamaster breath test protocols need not be WAC'd; invalid sample code messages did not have to be preserved. State v. Straka, 116 Wn.2d 859 (1991) Nov. '91:04

State's failure to preserve evidence, court's admission of human-tracker's testimony, do not taint murder conviction; premeditation proven. State v. Ortiz, 119 Wn.2d 294 (1992) Sept. '92:06

#### **LOST PROPERTY, CLAIMS TO**

Airport luggage x-ray operator loses claim to seized drug money. Farrare v. City of Pasco, 68 Wn. App. 459

(Div. III, 1992) May '93:17

**MALICIOUS MISCHIEF (Chapter 9A.48 RCW)**

Destruction of community property may result in malicious mischief conviction. State v. Webb, 64 Wn. App. 480 (Div. I, 1992) Jan. '93:12

**MINOR IN POSSESSION (RCW 66.44.270)**

County ordinance prohibiting minors from appearing in public after consuming liquor invalidated. State v. Truong, 117 Wn.2d 63 (1991) Aug. '91:17

MIP conviction supported by beer breath, empty beer bottles, admissions. State v. Preston, 66 Wn. App. 494 (Div. II, 1992) Oct. '92:08

ISSUE 1: Court almost gets it right on Miranda trigger issue; neither focus nor mere temporary restriction on freedom triggers warnings need. ISSUE 2: Odor of intoxicants plus admission of recent drinking sufficient support for MIP conviction. State v. Walton (Jeffrey), 67 Wn. App. 127 (Div. I, 1992) Jan. '93:09

**MILITARY LEAVE**

Public employees on annual active duty military training leave entitled to 15 working days leave. Washington Federation of State Employees v. State Personnel Board, 54 Wn. App. 305 (Div. II, 1989) Sept. '89:18

**MISAPPROPRIATION OF RECORD (RCW 40.16.020)**

Title 9A definition of "officer" applies to "misappropriation of record" charge under RCW 40.16.020. State v. Korba, 66 Wn. App. 666 (Div. II, 1992) June '93:10

**MURDER (Chapter 9A.32 RCW)**

Premeditation evidence supports first degree murder conviction. State v. Woldegiorgis, 53 Wn. App. 92 (Div. I, 1988) Nov. '89:11

Firefighter's death caused "in furtherance of" arson: first degree felony murder conviction reinstated. State v. Leech, 114 Wn.2d 700 (1990) Sept. '90:03

Premeditation, Payton issues among many addressed in

case involving murder of tribal police officer. State v. Hoffman, 116 Wn.2d 51 (1991) April '91:04

Charge of attempted First Degree Murder cannot be based on extreme indifference killing because attempt charge requires proof of intent. State v. Dunbar, 117 Wn.2d 587 (1991) April '92:05

State's failure to preserve evidence, court's admission of human-tracker's testimony, do not taint murder conviction; premeditation proven. State v. Ortiz, 119 Wn.2d 294 (1992) Sept. '92:06

Murderer loses on theory that hospital's termination of life support, not him, caused death of his victim. State v. Yates, 64 Wn. App. 345 (Div. II, 1992) Feb. '93:16

Evidence of substantial step sufficient to support attempted murder convictions. State v. Hale, 65 Wn. App. 752 (Div. III, 1992) June '93:14

#### **MUTUAL AID PEACE OFFICER POWERS ACT**

Peace officer powers act (Ch. 10.93 RCW) given narrow reading in SPD-TPD search; tag-along on other agency's warrant search not justified by MAPOPA. State v. Bartholomew, 56 Wn. App. 617 (Div. I, 1990) April '90:03

Article: Issues arise under Mutual Aid Peace Officer Powers Act of 1985. May '90:09

Vehicle lawfully forfeited to city even though task force seizure occurred outside city limits -- officers of seizing agency had consent letter from sheriff giving them extraterritorial powers. Lynnwood v. \$128 Cash, 61 Wn. App. 505 (Div. I, 1991) Jan. '92:12

Mutual Aid Peace Officer Powers Act upheld; court also holds that existence of MAPOPA consent letter may be proven without documentary evidence. Ghaffari v. DOL, 62 Wn. App. 870 (Div. I, 1991) Feb. '92:17

Washington Mutual Aid Peace Officer Powers Act -- County not liable in assist action because its officers were subject to "direction and control" by city police command staff. Sheimo v. Bengston, 64 Wn. App. 545 (Div. III, 1992) Jan. '93:18

#### **OBSTRUCTING (RCW 9A.76.020)**

Flight from Terry stop constitutes "obstructing".  
State v. Hudson, 56 Wn. App. 490 (Div. I, 1990) April  
'90:16

#### **OPEN CONTAINER LAW (Non-traffic)**

Open container law (non-traffic -- see RCW 66.44.100)  
applies to container in car parked in public place  
which is not a highway. State v. Vriezema, 62 Wn. App.  
437 (Div. I, 1991) Jan. '92:07

#### **PAWNBROKERS (Chapter 19.60 RCW)**

Pawnbroker's multiple fees add up to excessive interest  
under 19.60 RCW. Wenatchee v. Johnston, 68 Wn. App.  
697 (Div. III, 1993) Nov. '93:13

#### **PERJURY, FALSE SWEARING (Chapter 9A.72 RCW)**

Oath under insurance policy not "authorized by law" for  
purposes of false swearing statutes. State v. Hovrud,  
60 Wn. App. 573 (Div. II, 1991) Oct. '91:19

#### **POLICE DOGS**

Evidence sufficient to support conviction for harming a  
police dog. State v. Kisor, 68 Wn. App. 610 (Div. II,  
1993) Nov. '93:18

#### **POLYGRAPH**

Note re case addressing constitutionality of polygraph  
statute. April '89:01

Polygraph stipulation must be in writing to be  
admissible in criminal prosecution. State v. Trader,  
54 Wn. App. 479 (Div. II, 1989) Nov. '89:20

Statute authorizing polygraph testing of applicants for  
law enforcement word-processing positions upheld  
against privacy challenge. O'Hartigan v. Dept. of  
Personnel, 118 Wn.2d 111 (1991) March '92:02

#### **PREEMPTION**

No conflict between state malicious mischief statute  
and Seattle's property destruction ordinance. Seattle  
v. Barrett, 58 Wn. App. 698 (Div. I, 1990) Dec. '90:17

#### **PRIVATE SECURITY GUARD, PRIVATE DETECTIVE REGULATION**

Article: Criminal violations of private security guard and private detective licensing laws -- Part I. May '93:02

Article: Criminal violations of private security guard and private detective licensing laws -- Part II. June '93:02

#### **PROSTITUTION AND RELATED OFFENSES**

There need be no "prostitution" for there to be "permitting prostitution". State v. Johnson, 61 Wn. App. 235 (Div. I, 1991) Oct. '91:16

State need not prove act of prostitution to prove crime of permitting prostitution; sting upheld. State v. Johnson (Janice Ann), 119 Wn.2d 167 (1992) Oct. '92:05

#### **PUBLIC RECORDS, ACCESS TO COURT RECORDS AND PROCEEDINGS**

Public records disclosure act does not exempt factual questionnaire responses. Yacobellis v. City of Bellingham, 55 Wn. App. 706 (Div. I, 1989) March 90:21

"Work product", performance evaluations get protection under Public Disclosure Act, chapter 42.17 RCW. Dawson v. Daly, 120 Wn.2d 782 (1993) May '93:10

Public Disclosure Act does not require that police disclose unsubstantiated report of child abuse. City of Tacoma v. Tacoma News, 65 Wn. App. 140 (Div. II, 1992) June '93:17

Law to protect ID of child sexual assault victims violates state constitutional mandate for open access to courts. Allied Daily Newspapers v. Eikenberry, 121 Wn.2d 205 (1993) July '93:16

#### **RAPE AND OTHER SEX OFFENSES (Chapter 9A.44 RCW)**

Statutory rape defendant's reasonable belief that victim's age between 14 and 16 didn't bar criminal conviction; it just lowered the classification of his crime. State v. Dodd, 53 Wn. App. 178 (Div. I, 1989) Oct. '89:17

No mental state element for third degree rape. State v. Elmore, 54 Wn. App. 54 (Div. I, 1989) Nov. '89:12

Sleeping person is "physically helpless" for purposes

of indecent liberties statute. State v. Puapuaga, 54 Wn. App. 857 (Div. I, 1989) Feb. '90:19

Sexual activity with a child by means of an instrumentality constitutes "sexual contact" under indecent liberties statute. State v. Brown, 55 Wn. App. 738 (Div. II, 1989) Feb. '90:19

"Communication with minor for immoral purposes" doesn't apply to adult's request for sex to 16 year-old. State v. Danforth, 56 Wn. App. 133 (Div. I, 1989) March '90:21

Sex criminal loses argument for 1988 "window" period in limitations statute. State v. Horn, 59 Wn. App. 664 (Div. II, 1990) April '91:15

Proving "sexual contact" element of child molesting law requires more than mere evidence of touching intimate parts through victim's clothing. State v. Powell, 62 Wn. App. 914 (Div. III, 1991) Feb. '92:09

"Substantial step" evidence supports attempted rape conviction. State v. Jackson, 62 Wn. App. 53 (Div. I, 1991) Feb. '92:15

Child molesting is not a lesser included crime in rape of a child. State v. Saiz, 63 Wn. App. 1 (Div. II, 1991) Feb. '92:18

Indecent liberties -- sexual touching alone not "forcible compulsion". State v. Ritola, 63 Wn. App. 252 (Div. II, 1991) March '92:08

"Forcible compulsion" evidence supports rape conviction. State v. Soderquist, 63 Wn. App. 144 (Div. III, 1991) March '92:10

"Forcible compulsion" element of second degree rape statute not met by evidence. State v. Weisberg, 65 Wn. App. 721 (Div. II, 1992) June '93:16

#### **RENDERING CRIMINAL ASSISTANCE (Chapter 9A.76 RCW)**

First degree rendering criminal assistance does not require that assisting party have knowledge of degree of principal's underlying crime. State v. Anderson, 63 Wn. App. 257 (Div. I, 1991) April '92:12

#### **RES JUDICATA/COLLATERAL ESTOPPEL**

State may criminally prosecute after failing to meet its burden of proof in a dependency proceeding. State v. Cleveland, 58 Wn. App. 634 (Div. I, 1990) Dec. '90:17

#### **RESTITUTION**

Sentencing court may not order that defendant's property in police custody be sold to meet restitution obligation. State v. Nelson, 53 Wn. App. 128 (Div. I, 1988) Nov. '89:15

Juvenile court may require assailant to pay for victims' psychological counseling. State v. Landrum, 66 Wn. App. 779 (Div. I, 1992) Feb. '93:21

#### **RICO/ANTI-PROFITEERING**

There is no right under forfeiture laws or federal constitution for defendant to use forfeitable funds to retain criminal defense counsel. U.S. v. Monsanto, 45 Cr 3133 (1989) and Caplin Drysdale v. U.S., 45 CrL 3143 (1989) Sept. '89:15

Source of attorney fees not protected from disclosure as state seeks special inquiry proceedings in criminal profiteering case. State v. Sheppard, 52 Wn. App. 707 (1988) Nov. '89:13

#### **ROBBERY (Chapter 9A.56 RCW)(See also Theft)**

Using force to retain previously stolen property is "robbery"; Miranda waiver adequate despite defendant's refusal to make a written statement. State v. Manchester, 57 Wn. App. 765 (Div. I, 1990) Sept. '90:14

Use of force to retain property previously stolen without force is robbery. State v. Handburgh, 119 Wn.2d 284 (1992) Sept. '92:10

#### **SEARCH AND SEIZURE**

##### Anticipatory Warrants

Article in FBI Bulletin addresses issue of anticipatory search warrants. Sept. '90:21

Note: anticipatory warrants revisited. Prior note re: July 1990 FBI Law Enforcement Bulletin discussed. Dec. '91:13

Anticipatory search warrants revisited. July '92:20

### Booking Search

Booking inventory search of purse following arrest on warrant with \$25 bail provision invalidated because officers failed to give arrestee an opportunity to post bail. State v. Gloria Smith, 56 Wn. App. 145 (Div. III, 1989) March '90:12; see also Feb. '91:18

Booking inventory lawful because opportunity to post bail provided. State v. Ward, 65 Wn. App. 900 (Div. III, 1992) Nov. '92:16

Gloria Smith rule against booking searches of persons arrested on bail warrants given "holding cell exception"; failure to obtain written supervisor authorization for strip search per RCW 10.79 does not require exclusion of evidence if verbal authorization given. State v. Harris, 66 Wn. App. 636 (Div. I, 1992) Jan. '93:13

### Border Search Exception To Warrant Requirement

Customs officers' search of ferry travelers doesn't qualify as border search. State v. Quick, 59 Wn. App. 228 (Div. I, 1990) Jan. '91:10

### Carroll Doctrine

"Bright line" rule continues for container searches under Carroll Doctrine's car search exception to warrant requirement; however, because of Ringer precedent, state and local officers in Washington will not be directly affected by precedent. California v. Acevedo, 114 L.Ed.2d 619 (1991) Sept. '91:14

### Confidential Informant Protection

Trial court order to disclose identity of confidential informant reversed. State v. Vargas, 58 Wn. App. 391 (Div. III, 1990) Nov. '90:13

No Franks hearing is necessary where defendant merely alleges police informant's actions were instigated by police. State v. Moore, 54 Wn. App. 211 (Div. I, 1989) Dec. '90:18

Informant credibility established but defense claim that warrant affiant made false statements requires that record be made of in camera hearing. State v.

Selander, 65 Wn. App. 134 (Div. II, 1992) Nov. '92:17

No need for in camera hearing re identity of CI where entrapment claim unsupported. State v. Vazquez, 66 Wn. App. 573 (Div. II, 1992) Feb. '93:13

Even if defendant correctly guesses ID of CI, court need not tell him of CI's in camera testimony if CI not a police agent or a guilt witness. State v. Stansbury, 64 Wn. App. 601 (Div. I, 1992) Feb. '93:14

#### Consent Search Exception To Warrant Requirement

"Head of household" may lawfully consent to search of dependent child's room. State v. Summers, 52 Wn. App. 767 (Div. I, 1988) Feb. '89:07

If present, a co-tenant must be asked for consent to search jointly occupied premises. State v. Leach, 113 Wn.2d 735 (1989) Feb. '90:03

Consent to police entry not implied where occupant merely walks away from a conversation with officers and enters his apartment. U.S. v. Shaibu, 46 CrL 1470 (9th Cir. 1990) May '90:09

Third party consent to search may be valid based on "apparent authority" of consenting party. Illinois v. Rodriguez, 497 U.S. 177 (1990) Aug. '90:08

Consent to search may be voluntary even if it follows a forcible arrest. State v. Flowers, 57 Wn. App. 636 (Div. I, 1990) Sept. '90:12

Request for consent to search prefaced by explanation that vehicle would be secured and a warrant sought was proper. State v. Lesley Wayne Smith, 115 Wn.2d 775 (1990) March '91:06

Consent to search vehicle is consent to search containers in vehicle as well. Florida v. Jimeno, 114 L.Ed.2d 297 (1991) Aug. '91:14

Asking seated bus passenger for consent to search luggage not a "seizure" per se. Florida v. Bostick, 115 L.Ed.2d 389 (1991) Sept. '91:06

Officer's request for consent after deciding not to cite driver held unlawful "seizure." State v. Tijerina, 61 Wn. App. 626 (Div. III, 1991) Oct. '91:12

Consent to search car is consent to search containers in car. State v. Mueller, 63 Wn. App. 720 (Div. I, 1991) May '92:17

House guest could not consent to police entry to arrest resident. State v. Ryland, 65 Wn. App. 806 (Div. I, 1992) Oct. '92:12. Court of Appeals' decision reversed by State Supreme Court -- see next entry.

Overnight guest may have had authority to admit police to residence. State v. Ryland (Supreme Court No. 59, 466-0) Department II of the Washington Supreme Court reverses a decision of the Court of Appeals reported at 65 Wn. App. 806 (Div. I, 1992) Oct. '92:10. Court remands for new suppression hearing. Jan. '93:09

Note: re "Validity of Consent". Nov. '92:20

Landlord's consent to police entry of house invalid as lease not expired. State v. Birdsong, 66 Wn. App. 534 (Div. I, 1992) Jan. '93:14

Intoxicated suspect's demand that police come inside while he refused to step outside constituted consent to entry. State v. Cyrus, 66 Wn. App. 502 (Div. I, 1992) Jan. '93:14

Building inspector's non-consenting entry into house ruled an unlawful search. State v. Browning, 67 Wn. App. 93 (Div. I, 1992) Feb. '93:11

Consent to enter home not valid where given: (1) after officers state they'll "go get a search warrant if consent to enter is denied," and (2) PC for a warrant absent. State v. Apodaca, 67 Wn. App. 736 (Div. III, 1992) March '93:13

Officer's deception as to purpose of entry request destroys consent. State v. McCrorey, 70 Wn. App. 103 (Div. I, 1993) Oct. '93:12

Court disapproves officer's request for consent to search after traffic stop completed. State v. Cantrell, 70 Wn. App. 340 (Div. II, 1993) Oct. '93:21. Review pending in State Supreme Court.

### Death Scene Searches

Warrantless murder scene search survives scrutiny under plain view rationale. State v. Stevenson, 55 Wn. App. 725 (Div. II, 1989) Feb. '90:13

## DNA Data Bank Blood Draws

Statute mandating blood draw, DNA testing for violent offenders and sexual offenders upheld. State v. Olivas, et. al., 122 Wn.2d 73 (1993) Dec. '93:18

## Entry to Arrest -- Payton Rule

Search warrant required to execute arrest warrant for "temporary guest" in home. Perez v. Simmons, 859 F.2d 1411 (9th Cir. 1988) Jan. '89:01

In non-exigent situation, forcibly entering house to secure it while seeking search warrant unlawful; "independent source" saves search under warrant. State v. Hall, 53 Wn. App. 296 (Div. III, 1989) April '89:12

"Hot pursuit" of traffic violator did not justify entry of his home to arrest him. Seattle v. Altschuler, 53 Wn. App. 317 (Div. I, 1989) April '89:17; May '89:19; See also Altschuler v. Seattle, 63 Wn. App. 389 (Div. I, 1991), not reported in LED. In Altschuler II, a different panel of Division I of the Court of Appeals criticizes the restrictive view of "hot pursuit" authority taken in Altschuler I.

Overnight guest has privacy interest under Payton rule. Minnesota v. Olson, 495 U.S. 91 (1990) June '90:02

Probable cause arrest which violates Payton rules does not require suppression of incriminating statements made at station house. New York v. Harris, 495 U.S. 14 (1990) June '90:06

Premeditation, Payton issues among many addressed in case involving murder of tribal police officer. State v. Hoffman, 116 Wn.2d 51 (1991) April '91:04

Exigencies justify arrest of fleeing DWI suspect in her doorway. State v. Giffith, 61 Wn. App. 35 (Div. III, 1991) Sept. '91:18

Payton/Steagald Rule: A search warrant is a good idea but a search warrant is not required to enter a person's own residence to arrest him; an arrest warrant plus reason to believe the person is present is the standard. A search warrant is necessary for entry of a 3rd party residence to arrest a non-resident. Aug. '92:19

Warrantless arrest on unenclosed porch declared to be violation of Payton's-entry-to-arrest rule. State v. Solberg, 66 Wn. App. 66 (Div. I, 1992) Nov. '92:10. The Court of Appeals' ruling regarding the porch arrest was subsequently reversed by the State Supreme Court, which held that the porch is a "public" area, and therefore the warrantless arrest was lawful. 122 Wn.2d 688 (1993) Jan. '94 LED:03

Intoxicated suspect's demand that police come inside while he refuses to step outside constitutes consent to entry. State v. Cyrus, 66 Wn. App. 502 (Div. I, 1992) Jan. '93:14

Consent to enter home not valid where given: (1) after officers state they'll "go get a search warrant if consent to enter is denied," and (2) PC for a warrant absent. State v. Apodaca, 67 Wn. App. 736 (Div. III, 1992) March '93:13

Note: Evidence of (1) hit-run, car-bicycle accident, (2) alcohol use, and (3) erratic driving may justify forcible entry of home to arrest. Nov. '93:19

#### Execution: Time Limits On Serving Search Warrant

Search warrants for controlled substances are subject to same 10-day execution rule as other warrants. State v. Thomas, 121 Wn.2d 504 (1993) Aug. '93:22 Note: this decision affirmed a Court of Appeals decision reported at 65 Wn. App. 347 (Div. I, 1992) and appearing in the Oct. '92 LED at 16.

#### Exigent Circumstances/Emergency Search/Community Caretaking Function

Strong smell of ether justifies warrantless entry of home under "exigency" exception. State v. Downey, 53 Wn. App. 543 (Div. I, 1989) June '89:12

Warrantless car search upheld based on "exigent circumstances"; court leaves "probable cause car search" restrictions of Ringer intact. State v. Patterson, 112 Wn.2d 731 (1989) Sept. '89:15

911 "hang-up call," responding officer's observation justify warrantless entry of premises to search for domestic violence victim. State v. Lynd, 54 Wn. App. 18 (Div. I, 1989) Nov. '89:07

Marijuana plants were in "plain view" when officer saw

them while responding to domestic violence call. State v. Yoder, 55 Wn. App. 632 (Div. II, 1989) Jan. '90:19

Exigency justifies warrantless search for domestic violence suspect. State v. Raines, 55 Wn. App. 459 (Div. I, 1989) Jan. '90:10

"Community care-taking function" justifies search of clothing of man in effort to assist man found unconscious; search ok despite officer's belief that no medical emergency presently existed. State v. Hutchison, 56 Wn. App. 863 (Div. II, 1990) May '90:16

Emergency entry of house to look for suspects meets objective and subjective standards for lawfulness. State v. Barboza, 57 Wn. App. 822 (Div. I, 1990) Oct. '90:17

Entry of house to investigate possible burglary fails to meet objective exigency test as officers did not have reasonable basis for believing anyone presently in house. State v. Morgavi, 58 Wn. App. 733 (Div. II, 1990) Nov. '90:10

Door of residence left open on a summer night does not provide objective justification for warrantless police entry; entry meets subjective, but not objective, test for exigent circumstances and hence is unlawful. State v. Swenson, 59 Wn. App. 586 (Div. I, 1990) Feb. '91:16

EMT search qualifies as emergency search; no doctor-patient privilege applies to communications between EMT and person being assisted; even if privileged, the privilege rules would not apply in testing the validity of a search warrant affidavit. State v. Cahoon, 59 Wn. App. 606 (Div. III, 1990) March '91:09

Exigencies justify arrest of fleeing DWI suspect in her doorway. State v. Griffith, 61 Wn. App. 35 (Div. III, 1991) Sept. '91:18

No exigency, no emergency where officers testified that they had no reason to believe anyone was still inside just-burgled residence. State v. Muir, 67 Wn. App. 149 (Div. I, 1992) Feb. '93:08

Note: Evidence of (1) hit-run, car-bicycle accident, (2) alcohol use, and (3) erratic driving may justify forcible entry of home to arrest. Nov. '93:19

#### Impound, Inventory Exception to Warrant Requirement

Inventory of vehicle seized under drug forfeiture law upheld. State v. McFadden, 63 Wn. App. 435 (Div. I, 1991) April '92:07 (This is not a true "impound" case, but the law governing the inventory following seizure was analogized by the Court to Impound-Inventory law.)

Inventory search of closed container invalid where police agency has no vehicle inventory policy; court would allow such inventory where agency policy authorizes. Florida v. Wells, 495 U.S. 1 (1990) July '90:02

Custodial arrest of unlicensed driver, impoundment of car invalidated. State v. Barajas, 57 Wn. App. 556 (Div. III, 1990) July '90:05

Officer's knowledge of continuing license violations justifies vehicle impound under RCW 46.20.435(1). State v. Clifford, 57 Wn. App. 124 (Div. III, 1990) July '90:07

#### Incident to Arrest (Non-vehicle Search)

Search is "incident to arrest" if PC for custodial arrest is present, despite lack of formal arrest and officer's lack of subjective intent to make arrest. State v. Brantigan, 59 Wn. App. 481 (Div. I, 1990) Feb. '91:05

Delayed post-arrest search of fanny pack held not "incident to arrest". State v. Smith (Clayton Donald), 61 Wn. App. 482 (Div. III, 1991) Sept. '91:16. The State Supreme Court subsequently reversed the Court of Appeals' decision -- see entry below.

Lawfulness of search incident to arrest determined by facts at time of arrest; some containers seized at arrest may have greater privacy protection than others. State v. Gammon, 61 Wn. App. 858 (Div. I, 1991) Oct. '91:09. Gammon has since been overruled; see the entries immediately below regarding State v. Clayton Donald Smith and State v. Lowrimore.

Delayed search of fanny pack detached during arrest was "incident to arrest". State v. Clayton Donald Smith, 119 Wn.2d 675 (1992) Nov. '92:04

Correction note regarding State v. Clayton Donald Smith, reported in November '92 LED at 16, explaining that the fanny pack search in that case was held by the

State Supreme Court to be lawful. Jan. '93:20

Mental disorder statute justifies emergency detention and limited search of large handbag; PC arrest justifies search of small pouch inside larger bag as a search incident to arrest. State v. Lowrimore, 67 Wn. App. 949 (Div. I, 1992) March '93:15

#### Incident To Arrest (Vehicle Search)

Search of purse seized from vehicle incident to driver's arrest upheld under Stroud. State v. Fladebo, 53 Wn. App. 116 (Div. I, 1988) May '89:16; Court of Appeals' ruling affirmed by State Supreme Court at 113 Wn.2d 388 (1989) Jan. '90:04.

Officers may search nearby car incident to arrest of very recent occupants of car. State v. Fore, 56 Wn. App. 329 (Div. III, 1989) March '90:05

Warrantless search of vehicle permitted incident to arrest of passenger. State v. Cass, 62 Wn. App. 793 (Div. II, 1991) Nov. '92:06

Custodial arrest lawful per se for traffic offenses listed in RCW 10.31.100(3); search of vehicle incident to arrest for these crimes also per se lawful. State v. Reding, 119 Wn.2d 685 (1992) Dec. '92:17

Informant's undisclosed pending charges don't negate probable cause; 9.73 requirements met; search of recently occupied vehicle incident to arrest near the vehicle lawful. State v. Lopez, 70 Wn. App. 259 (Div. III, 1993) Nov. '93:15

#### Intentional or Reckless Omission of Facts by Affiant-officer

Omission of certain facts from affidavit not fatal to search warrant. State v. Garrison, 118 Wn.2d 870 (1992) Oct. '92:02

Informant's credibility established but claim that warrant affiant made false statements requires that record be made of in camera hearing. State v. Selander, 65 Wn. App. 134 (Div. II, 1992) Nov. '92:17

#### Jail, Prison Searches

Department of Corrections' cross gender pat-search policy meets constitutional challenge. Jordan v. Gardner, 953 F.2d 1137 (9th Cir. 1992) May '92:05. The

full court subsequently reversed the three-judge panel's decision, declaring the cross-gender patdowns in the prison setting to be "cruel and unusual." 986 F.2d 1521 (9th Cir. 1993) July '93:09

#### Knock And Announce Rule

Where occupant of home opens door to knock of uniformed officers, and the officers announce that they have a search warrant, the officers may lawfully enter the premises without waiting for the occupant to grant or refuse admission. State v. Shelly, 58 Wn. App. 908 (Div. II, 1990) Dec. '90:13

Five-second wait after knock-and-announce satisfies RCW 10.31.040 under totality of the circumstances. State v. Garcia-Hernandez, 67 Wn. App. 492 (Div. I, 1992) Feb. '93:09

#### Parolee/Probationer Searches

Convicted defendant released pending appeal has reduced privacy expectation. State v. Lucas, 56 Wn. App. 236 (Div. I, 1989) May '90:17

#### Particularity Requirement

Warrant did not authorize outbuildings search for marijuana grow operation; affidavit did not support house search. State v. Kelley, 52 Wn. App. 581 (Div. II, 1988) Jan. '89:12

Warrant description satisfies particularity rule; good faith exception to exclusionary rule would have saved the search warrant anyway. State v. Salazar, 59 Wn. App. 202 (Div. I, 1990) Jan. '91:12

Child pornography search warrant survives PC, overbreadth challenge -- after severance of invalid portions of warrant. State v. Perrone, 59 Wn. App. 687 (Div. I, 1990) May '91:16. State Supreme Court subsequently reversed Court of Appeals and invalidated the warrant; see next entry.

"Child pornography" warrant fails 4th Amendment particularity test. State v. Perrone, 119 Wn.2d 538 (1992) Nov. '92:04

Use of "line trap" for source of phone calls not restricted in any way by Chapter 9.73 privacy law; however, computer hacker search warrant fails

particularity test. State v. Riley, 121 Wn.2d 22 (1993) July '93:10

#### Plain View Doctrine/Open View Doctrine

Marijuana plants were in "plain view" when officer saw them while responding to domestic violence call. State v. Yoder, 55 Wn. App. 632 (Div. II, 1989) Jan. '90:19

"Open view" observation during Terry stop is not a "search". State v. Grover, 55 Wn. App. 252 (Div. I, 1989) March '90:20

Inadvertent discovery not an element of "plain view" doctrine. Horton v. California, 496 U.S. 128 (1990) Aug. '90:02

Open view of open beer cans lying on their sides in vehicle doesn't justify entry of vehicle to investigate "open container" law violation. State v. Sistrunk, 57 Wn. App. 210 (Div. III, 1990) Sept. '90:10

Evidence seen by officer filming crime scene per warrant in plain view. State v. Wright, 61 Wn. App. 819 (Div. I, 1991) Jan. '92:14

Pretext, plain view, exigent circumstances issues resolved in favor of state; no "inadvertence" requirement for plain view seizure. State v. Goodin, 67 Wn. App. 623 (Div. II, 1992) March '93:17

#### Pretext

Pretext, plain view, exigent circumstances issues resolved in favor of state; no "inadvertence" requirement for plain view seizure. State v. Goodin, 67 Wn. App. 623 (Div. II, 1992) March '93:17

#### Prisoner Searches

State DOC's "cell tag" rule constitutionally applied to inmate. In re Anderson, 112 Wn.2d 546 (1989) Sept. '89:18

#### Privacy Expectations, Scope of Protection

Helicopter surveillance at 400 feet is not a Fourth Amendment "search." Florida v. Riley, 488 U.S. 445 (1989) May '89:03

Temporary seizure and K-9 sniff of mailed package based

on informant's report upheld. State v. Stanphill, 53 Wn. App. 623 (Div. III, 1989) June '89:14

Constitutional protection of privacy prohibits officer's look over toilet stall door. Tukwila v. Nalder, 53 Wn. App. 746 (Div. I, 1989) Sept. '89:17

No federal or state constitutional privacy protection for garbage at curbside. State v. Boland, 55 Wn. App. 657 (Div. II, 1989) Jan. '90:04. See entry below re: State Supreme Court reversal of Court of Appeals decision.

LSD seized in strip search by job corps supervisors excluded. State v. Sweeney, 56 Wn. App. 42 (Div. III, 1989) March '90:21

Sobriety checkpoint program held reasonable under Fourth Amendment. Michigan Department of State Police v. Sitz, 496 U.S. 414 (1990) Aug. '90:08

Closed gate at entrance to long driveway establishes privacy right for homeowner. State v. Ridgway, 57 Wn. App. 915 (Div. II, 1990) Sept. '90:04

Ruse entry into crack house lawful because occupants had no privacy interest in house which was open for business. State v. Hastings, 57 Wn. App. 836 (Div. I, 1990) Sept. '90:06

Garbage at curbside protected by Washington constitution's Article 1, Section 7. State v. Boland, 115 Wn.2d 571 (1990) Jan. '91:02

Search of alien's foreign residence not covered by Fourth Amendment. U.S. v. Verdugo-Urquidez, 494 U.S. 259 (1990) March '91:02

Privacy protections of state and federal constitutions do not preclude warrantless seizure of blood from vehicular homicide arrestee under authority of RCW 46.20.308. State v. Curran, 116 Wn.2d 174 (1991) April '91:03

Privacy protections violated in search for marijuana patch. State v. Ferro, 64 Wn. App. 181 (Div. III, 1992) July '92:17

Expectation of privacy non-existent or at least very limited in open commercial crack house; undercover officers' use of ruse to gain consent to entry not

subject to threshold reasonable suspicion requirement.  
State v. Hastings, 119 Wn.2d 229 (1992) Aug. '92:07

No privacy protection for trespassing camper. State v. Pentecost, 64 Wn. App. 656 (Div. III, 1992) Aug. '92:16

Apartment dumpster search does not violate privacy right of visitor. State v. Rodriguez, 65 Wn. App. 409 (Div. III, 1992) Oct. '92:06

Film lab manager was not a police agent in delivering photo negatives to police; no constitutional privacy protection for negatives given to commercial developer anyway. State v. Walter, 66 Wn. App. 862 (Div. I, 1992) Feb. '93:12

No privacy protection for suspect where phone company gave police billing information identifying the man and giving his address -- the phone number was listed, but without address, and under another's name. State v. Faydo, 68 Wn. App. 621 (Div. III, 1993) Oct. '93:09

Monitoring of numbers coming to lawfully seized pager withstands statutory and constitutional challenges. State v. Wojtyna, 70 Wn. App. 689 (Div. I, 1993) Dec. '93:20

#### Private Citizen Search

Paramedic's search was a private citizen search; injured person's statement to responding officer volunteered. State v. McWatters, 63 Wn. App. 911 (Div. III, 1992) July '92:01

Film lab manager not police agent in delivering photo negatives to police; no constitutional privacy protection for negatives given to commercial developer anyway. State v. Walter, 66 Wn. App. 862 (Div. I, 1992) Feb. '93:12

#### Probable Cause To Search

Affidavit fails to establish confidential citizen informant's credibility. State v. Mickle, 53 Wn. App. 39 (Div. III, 1988) March '89:08

"Controlled" drug buy through unidentified "middleman" establishes probable cause. State v. Mejia, Preciado, 111 Wn.2d 892 (1989) April '89:01

Affidavit's recitation of information from unidentified

"citizen" satisfies two-pronged Aguilar-Spinelli probable cause standard. State v. Payne, 54 Wn. App. 240 (Div. III, 1989) Sept. '89:18

Eyewitness report provides probable cause to support search warrant. State v. Rodriguez, 53 Wn. App. 571 (Div. III, 1989) Sept. '89:18

Confidential "citizen informant" shown to be credible in search warrant affidavit. State v. Dice, 55 Wn. App. 489 (Div. I, 1989) Dec. '89:15

Confidential ten-year-old "citizen" informant shown to be credible. State v. Wilke, 55 Wn. App. 470 (Div. I, 1989) Dec. '89:17

Affiant's failure to note informant's recantation in prior case addressed; recantation destroys PC. State v. Jones, 55 Wn. App. 343 (Div. II, 1989) Jan. '90:07

Affidavit for search of suspected "grow house" establishes probable cause; electrical usage information lawfully included in affidavit despite violation of RCW 42.17.314. State v. Maxwell, 55 Wn. App. 446 (Div. III, 1989) Jan. '90:17 (reversed at 114 Wn.2d 761 (1990) Sept. '90:03

Marijuana grow case: "Citizen informant" status found, staleness argument rejected. State v. Dobyms, 55 Wn. App. 609 (Div. I, 1989) Jan. '90:18

Inadvertent misrepresentation in affidavit doesn't require suppression. State v. Morse, 55 Wn. App. 188 (Div. III, 1989) Feb. '90:08

Controlled buy plus corroboration provides probable cause to search for drugs; inaccuracy in address does not destroy warrant under "particularity" requirement. State v. Lane, 56 Wn. App. 286 (Div. III, 1989) April '90:11

Probable cause: reliability of canine, human information sources established. State v. Gross, 57 Wn. App. 549 (Div. I, 1990) Aug. '90:13

Affidavit based on report of child victim of attack meets probable cause standard. State v. Medcalf, 58 Wn. App. 817 (Div. II, 1990) Nov. '90:08

EMT search qualifies as emergency search; no doctor-patient privilege applies to conversations between EMT

and person being assisted; even if privileged, the privilege rules would not apply in testing the validity of a search warrant affidavit. State v. Cahoon, 59 Wn. App. 606 (Div. III, 1990) March '91:09

"Spontaneity" of child hearsay statement, "staleness" of probable cause information addressed. State v. Young, 60 Wn. App. 95 (Div. I, 1991) April '91:13

Statement against penal interest establishes PC veracity of informant. State v. Estorga, 60 Wn. App. 298 (Div. II, 1991) May '91:07

Child porn search warrant affidavit fails probable cause test because information stale and because government fails to match its pedophile profile to the suspect. State v. Roger D. Smith, 60 Wn. App. 592 (Div. I, 1991) June '91:18

CI credibility established; strip search during warrant execution reasonable. State v. Colin, 61 Wn. App. 111 (Div. III, 1991) Oct. '91:14

Affidavit recounting confidential citizen informant's story fails to establish PC. State v. Ibarra, 61 Wn. App. 695 (Div. II, 1991) Nov. '91:06

Court of Appeals interprets state constitution; applies two-pronged test for informant-based probable cause; declines to apply good faith exception to exclusionary rule. State v. Crawley, 61 Wn. App. 29 (Div. III, 1991) Nov. '91:09

Affidavit information regarding nude photos of minor not "stale" for probable cause purposes. State v. Bohannon, 62 Wn. App. 462 (Div. II, 1991) Dec. '91:19

Motel manager's observation of bindles, smell of diesel fuel key to PC. State v. Garcia, 63 Wn. App. 868 (Div. III, 1992) July '92:13

PC based in part on officer smelling growing marijuana. State v. Remboldt, 64 Wn. App. 505 (Div. III, 1992) Aug. '92:12

Informant credibility established but defense claim that warrant affiant made false statements requires that record be made of in camera hearing. State v. Selander, 65 Wn. App. 134 (Div. II, 1992) Nov. '92:17

Report by informant that "friend" had made one purchase

of drugs at residence did not establish PC to search residence. State v. Bittner, 66 Wn. App. 534 (Div. I, 1992) Jan. '93:13

No need for in camera hearing re identity of CI where entrapment claim unsupported. State v. Vazquez, 66 Wn. App. 573 (Div. II, 1992) Feb. '93:13

Informant's undisclosed pending charges don't negate probable cause; 9.73 requirements met; search of recently occupied vehicle incident to arrest near the vehicle lawful. State v. Lopez, 70 Wn. App. 259 (Div. III, 1993) Nov. '93:15

### Protective Sweeps

"Protective sweep" of residence following arrest ok if supported by individualized "reasonable suspicion" of danger. Maryland v. Buie, 494 U.S. 325 (1990) May '90:02

Motor vehicle trunk checks in "high risk felony stops" -- what are the limits? May '90:04

### School Administrator Searches

LSD seized in strip search by job corps supervisors excluded. State v. Sweeney, 56 Wn. App. 42 (Div. III, 1989) March '90:21

Warrantless trunk search of student's vehicle by high school authorities upheld. State v. Slattery, 56 Wn. App. 820 (Div. I, 1990) May '90:13

### Scope Of Search Under A Warrant

Court addresses issues of what to do with evidence and charges where officers greatly exceed search warrant authorization. State v. Marks, 114 Wn.2d 724 (1990) Sept. '90:02

Evidence seen by officer filming crime scene per warrant in plain view. State v. Wright, 61 Wn. App. 819 (Div. I, 1991) Jan. '92:14

Storage locker held next door to apartment unit within scope of warrant authorizing search of apartment. State v. Llamas-Villa, 67 Wn. App. 448 (Div. I, 1992) Feb. '93:06

Search of occupant's pants during narcotics warrant

execution unlawful. State v. Lee, 68 Wn. App. 253 (Div. I, 1992) April '93:10 (Note "correction notice" re Lee in June '93 LED at 20). Case is now on review in State Supreme Court, but is now captioned "State v. Hill."

#### Securing Premises While Search Warrant Is Sought

Court upholds securing premises from the outside while a search warrant based on PC is sought. State v. Solberg, 66 Wn. App. 66 (Div. I, 1992) Nov. '92:10

#### Standing to Challenge Search

No standing to challenge search of vehicle where defendant had denied any connection to vehicle at the time of arrest. State v. Foulkes, 63 Wn. App. 643 (Div. I, 1991) Sept. '92:19

Automatic standing doctrine in limbo. State v. Zakel, 119 Wn.2d 563 (1992) Nov. '92:06

#### Strip Search

CI credibility established; strip search during warrant execution reasonable. State v. Colin, 61 Wn. App. 111 (Div. III, 1991) Oct. '91:14

Gloria Smith rule against booking searches of persons arrested on bail warrants given "holding cell exception"; failure to obtain written supervisor authorization for strip search per RCW 10.79 does not require exclusion if verbal strip search authorization given. State v. Harris, 66 Wn. App. 636 (Div. I, 1992) Jan. '93:13

#### Telephonic Warrant

Officer's testimony alone can't save telephonic warrant affidavit where recording was either not made or was erased. State v. Myers, 117 Wn.2d 332 (1991) Nov. '91:03

#### **SELF DEFENSE/DEFENSE OF OTHERS**

Self-defense reimbursement statute requires separate proceeding which is to be conducted under civil law standards. State v. Watson, 55 Wn. App. 320 (Div. II, 1989) May '90:19

Doctrine of "imperfect self-defense" does not apply in

Washington. State v. Bergeson, 64 Wn. App. 355 (Div. II, 1992) Feb. '93:16

## SENTENCING

Trial court has limited authority to modify sentence imposed under SRA. State v. Shove, 113 Wn.2d 83 (1989) Nov. '89:07

Defendant's knowledge that co-participant armed not necessary for sentencing enhancement under RCW 9.94A.125. State v. Bilal, 54 Wn. App. 778 (Div. I, 1989) May '90:19

Michigan law mandating sentence of life without parole for possessing significant quantity of cocaine held not "cruel and unusual" punishment. Harmelin v. Michigan, 59 LW 4839 (1991) Sept. '91:15

"Victim impact" evidence may be admissible in death penalty cases. Payne v. Tennessee, 59 LW 4814 (1991) Sept. '91:15

Enhanced penalty for drug delivery near schools upheld, but enhancement for delivery near school bus route stops invalidated. State v. Lua, 62 Wn. App. 34 (Div. III, 1991), State v. Coria, 62 Wn. App. 44 (Div. III, 1991) Nov. '91:19. The State Supreme Court subsequently reversed the Court of Appeals on the sentence enhancement issue, upholding the constitutionality of the law. 120 Wn.2d 156 (1992) Feb. '93:05

LED Editor's note explains that most decisions interpreting the sentencing laws are not digested in the LED. Dec. '91:11

Vehicular homicide restitution order upheld - deceased victim's child support payment obligation must be paid. State v. Young, 63 Wn. App. 324 (Div. II, 1991) April '92:19

Bank surveillance costs may be included in burglary restitution order. State v. Smith (Joseph D.), 119 Wn.2d 385 (1992) Oct. '92:05

Evidence sufficient to support conviction for conspiracy to deliver controlled substance. State v. Smith, 65 Wn. App. 468 (Div. I, 1992) June '93:15

Statute mandating HIV testing of all convicted of

sexual offenses applies to both juvenile and adult sexual offenders and is constitutionally valid. In Re A, B, C, D, E, 121 Wn.2d 80 (1993) July '93:16

Sexual motivation sentence enhancement for juvenile offenders upheld. State v. Halstein, 122 Wn.2d 109 (1993) Dec. '93:20

#### **SEX OFFENDER REGISTRATION STATUTE**

Sex offender registration statute not violative of ex post facto provision of constitution. State v. Taylor, 67 Wn. App. 350 (Div. I, 1992) June '93:10

Community Protection Act's provisions for commitment of sex predators upheld. In re Young and In re Cunningham, 122 Wn.2d 1 (1993) Dec. '93:17

#### **SEXUAL EXPLOITATION OF CHILDREN (Chapter 9.68A RCW)**

Laws prohibiting sexual exploitation of children and patronizing of juvenile prostitutes upheld; compelled HIV test of convicted defendant ruled unlawful. State v. Farmer, 116 Wn. 2d 414 (1991) May '91:04

#### **SIXTH AMENDMENT AND RELATED STATE LAW PROVISIONS (See also Interrogations and Confessions)**

Violation of attorney contact rule justifies trial court's dismissal of charges. Seattle v. Orwick, 53 Wn. App. 53 (Div. I, 1988) March '89:14. See entry below re: State Supreme Court reversal of Court of Appeals' decision.

Sixth Amendment allows officer's contact with charged defendant after defendant consults counsel. State v. Petitclerc, 53 Wn. App. 419 (Div. I, 1989) May '89:07. Petitclerc has since been impliedly overruled.

DWI arrestee's phone call to attorney need not be afforded complete privacy. Seattle v. Koch, State v. Hanson, 53 Wn. App. 352 (Div. I, 1989) May '89:14

In non-DWI case, wrongful police denial of access to counsel does not warrant dismissal of charges absent showing of actual prejudice to defendant's ability to present defense. Seattle v. Orwick, 113 Wn.2d 823 (1989) March '90:03

No Sixth Amendment violation in asking jailed burglar about uncharged crimes. State v. Stone, 56 Wn. App.

153 (Div. III, 1989) March '90:16

Jailed defendant's admission excluded because detective initiated contact with him after he had exercised his Sixth Amendment rights at arraignment. State v. Royer, 58 Wn. App. 778 (Div. II, 1990) Nov. '90:05

Sixth Amendment confrontation clause bars admission of confessions of murder co-participants who refused to testify at defendant's trial. State v. Welchel, 115 Wn.2d 708 (1990) March '91:03

Dismissal of DWI charges not appropriate remedy where police unlawfully deny telephonic attorney contact in pre-breath test situation. Spokane v. Kruger, 116 Wn.2d 135 (1991) April '91:04

Sixth Amendment "initiation of contact" bar doesn't apply to uncharged crimes. McNeil v. Wisconsin, 115 L.Ed.2d 158 (1991) Sept. '91:10

Co-defendant's out-of-court confession admissible under reliability standard. State v. Hutcheson, 62 Wn. App. 282 (Div. I, 1991) Feb. '92:18

Confrontation clause challenge fails -- established hearsay exceptions support admission of child hearsay even though no showing by state of "unavailability" of the child witness to testify. White v. Illinois, 116 L.Ed.2d 848 (1992) May '92:04

Sixth Amendment confrontation clause -- non-testifying co-defendant's hearsay statements to girlfriend meet very restrictive Sixth Amendment reliability test, but admissions to detective during custodial interrogation by detective do not. State v. Rice, 120 Wn.2d 549 (1993) Nov. '93:02

#### **"SMALL ANIMAL" ORDINANCE**

Seattle "small animal" ordinance withstands constitutional challenge. Ramm v. City of Seattle, 66 Wn. App. 15 (Div. I, 1992) June '93:20

#### **SPEEDY TRIAL**

Speedy trial rule -- release of defendant during initial 60-day period extends speedy trial period to 90 days. State v. Kelley, 60 Wn. App. 921 (Div. I, 1991) April '92:18

## STANDING

Appeals Court declines to follow Simpson plurality on "automatic standing". State v. Zakel, 61 Wn. app. 805 (Div. II, 1991) Nov. '91:13

No standing to challenge search of vehicle where defendant had denied any connection to vehicle at the time of arrest. State v. Foulkes, 63 Wn. App. 643 (Div. I, 1991) Sept. '92:19

Automatic standing doctrine in limbo. State v. Zakel, 119 Wn.2d 563 (1992) Nov. '92:06

## TAMPERING WITH A WITNESS (RCW 9A.72.120)

Attempting to get complainant to "drop the charges" may constitute witness tampering. State v. Rempel, 53 Wn. App. 799 (Div. I, 1989) Oct. '89:16. Court of Appeals' ruling subsequently reversed; see next entry.

"Tampering with a witness" statute gets narrowing construction. State v. Rempel, 114 Wn.2d 77 (1990) Aug. '90:10

## THEFT AND RELATED OFFENSES (Chapter 9A.56 RCW) (See also Robbery)

Intent to deprive under theft statute need not be intent to permanently deprive. State v. Komok, 54 Wn. App. 110 (Div. I, 1989) Nov. '89:13

"Joyriding" statute does not apply to taking of motorboat. State v. Martin, 55 Wn. App. 275 (Div. I, 1989) Feb. '90:18

Proof of intent to permanently deprive not required for "theft" conviction. State v. Komok, 113 Wn.2d 810 (1989) March '90:04

Welfare fraud statute does not contain element of "intent to deprive". State v. Delcambre, 55 Wn. App. 681 (Div. I, 1989) May '90:19

Under theft statute, value of stolen forged check not equal to face value on check as it would be with an un-forged check; only third degree theft conviction possible where person steals forged check. State v. Skorpen, 57 Wn. App. 144 (Div. II, 1990) Sept. '90:10

Using force to retain previously stolen property is "robbery"; Miranda waiver adequate despite defendant's

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Price tag is evidence of "value" in theft prosecution if proper foundation is laid. State v. Farrer, 57 Wn. App. 207 (Div. III, 1990) Oct. '90:09

Attorney charged with theft of client funds may testify that deceased loaned or gave him money; "state of mind" testimony not hearsay, deadman statute not applicable. State v. Hamilton, 58 Wn. App. 229 (Div. III, 1990) Jan. '91:08

Arranging return of leased property negates knowledge element of RCW 9A.45.062. State v. Alexander, 59 Wn. App. 900 (Div. I, 1990) April '91:11

"Intent to deprive" not an element of welfare fraud. State v. Delcambre, 116 Wn.2d 444 (1991) May '91:04

#### **THREATS AGAINST THE GOVERNOR (RCW 9A.36.090)**

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Proximate cause element of vehicular assault statute explained. State v. Neher, 52 Wn. App. 298 (Div. I, 1988) Feb. '89:17; 112 Wn.2d 347 (1989) Nov. '89:06

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Vehicular homicide statute (RCW 46.61.520) interpreted to require causal relationship between alcohol consumption and fatal accident. State v. MacMaster, 113 Wn.2d 226 (1989) Dec. '89:14

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Evidence establishes PC to arrest for vehicular  
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Felony-eluder who presented no evidence of lack of  
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#### **TRIAL COURT'S INHERENT AUTHORITY**

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57 Wn. App. 861 (Div. II, 1990) Oct. '90:13

## TRESPASS (Chapter 9A.52 RCW) AND RELATED LAWS

Statute defining crime of disobeying a valid order by school official to leave school property does not preclude charge for criminal trespass in trespass at school. State v. Shelby, 61 Wn. App. 214 (Div. I, 1991) Feb. '92:16

## UNIFORM CONTROLLED SUBSTANCES ACT (Chapter 69.50 RCW) AND OTHER DRUG LAWS

Article: "Ice Storm Is Coming" Nov. '89:01

Appeals court purports to change evidence standard for forfeiture hearings, then withdraws opinion. Rozner v. City of Bellevue, 55 Wn. App. 213 (Div. I, 1989) Jan. '90:19

Vehicle owner challenging forfeiture under RCW 69.50.505 has burden of proof. State v. Michel, 55 Wn. App. 841 (Div. III, 1989) Feb. '90:16

Government has burden of proof under preponderance standard in personal property forfeiture proceedings under RCW 69.50.505. Rozner v. City of Bellevue, 56 Wn. App. 525 (Div. I, 1990) May '90:18. Decision subsequently reversed by State Supreme Court; see entry below.

State fails to show corpus delicti of possession of marijuana with intent to deliver. State v. Cobelli, 56 Wn. App. 921 (Div. I, 1990) June '90:17

Presence, proximity to drugs, fingerprint on plate don't prove "possession". State v. Spruell, Hill, 57 Wn. App. 383 (Div. I, 1990) Aug. '90:17

Evidence sufficient to support UCSA conviction under constructive possession theory. State v. Adame, 56 Wn. App. 803 (Div. III, 1990) Sept. '90:09

Specific identity of counterfeit substance need not be proved under "burn" law. State v. Anderson, 58 Wn. App. 135 (Div. I, 1990) Oct. '90:12

Sixth Amendment right to compulsory process not applicable in civil forfeiture actions under RCW 69.50.505. Kinder v. Mangan, 57 Wn. App. 840 (Div. I, 1990) Oct. '90:18

"Manufacture" of controlled substances includes packaging a substance for one's own use. State v. Stearns, 59 Wn. App. 445 (Div. I, 1990) Jan. '91:19. Court of Appeals' decision subsequently affirmed on different grounds by State Supreme Court. 119 Wn.2d 247 (1992).

Constructive transfer of cocaine supports "delivery" conviction under UCSA. State v. Campbell, 59 Wn. App. 61 (Div. I, 1990) Feb. '91:09

Terry stop based on citizen's report of "shots fired" upheld. State v. Rice, 59 Wn. App. 23 (Div. I, 1990) Feb. '91:10

Probable cause standard of drug forfeiture law resurrected. Rozner v. City of Bellevue, 116 Wn.2d 342 (1991) March '91:02

Certified copy of drug lab report lawfully admitted into evidence. State v. Sosa, 59 Wn. App. 678 (Div. I, 1990) March '91:13

RCW 69.53.010(1) does not criminalize behavior of landlord who discovers tenant's "marijuana grow" and merely permits his tenant to continue the illegal activity. State v. Sigman, 60 Wn. App. 1 (Div. II, 1990) April '91:08. This Court of Appeals ruling was subsequently reversed by the State Supreme Court; see entry below.

Attempted transfer of drugs is "delivery" under controlled substances act. State v. Clyde E. Johnson, 59 Wn. App. 867 (Div. III, 1990) April '91:17

Legislative Note: USCA vehicle forfeiture for use of vehicle to facilitate receipt of illegal drugs. April '91:18

Attorney General's Opinion declares that coroner may not use vehicle forfeited by sheriff under RCW 69.50.505. May '91:19

Constructive possession established by proof of dominion and control of premises. State v. Bradford, 60 Wn. App. 857 (Div. I, 1991) July '91:15

Enhanced penalty for drug delivery near schools upheld, but enhancement for delivery near school bus route stops invalidated. State v. Lua, 62 Wn. App. 34 (Div. III, 1991), State v. Coria, 62 Wn. App. 44 (Div. III,

1991) Nov. '91:19. The Court of Appeals' decision was subsequently reversed by the State Supreme Court; see entry below.

No "procuring agent defense" under Uniform Controlled Substances Act. State v. Grace, 61 Wn. App. 787 (Div. I, 1991) Jan. '92:10

Drug paraphernalia usage statute and drug possession statute are not concurrent statutes. State v. Williams, 62 Wn. App. 748 (Div. I, 1991) Feb. '92:14

Conviction for possession of cocaine with intent to deliver upheld. State v. Zamora, 63 Wn. App. 220 (Div. III, 1991) March '92:07

Drug law does criminalize behavior of landlord who discovers tenant's grow operation and permits that tenant to continue illegal activity. State v. Sigman, 118 Wn.2d 442 (1992) May '92:05

Tacoma's drug loitering law withstands constitutional challenge. Tacoma v. Luvenc, 118 Wn.2d 826 (1992) Aug. '92:09

Defendant not entitled to entrapment instruction; evidence sufficient to support VUCSA conviction on theory that he was accomplice to drug deal. State v. Galisia, Norgard, 63 Wn. App. 833 (Div. I, 1992) Sept. '92:14

Search warrant for controlled substances may be executed in 10 days. State v. Thomas, 65 Wn. app. 347 (Div. I, 1992) Oct. '92:16

Real property forfeiture provision of Controlled Substances Act upheld against constitutional attack. Tellevik et. al. v. Real Property Known As 31641 West Rutherford Street, Carnation, etc. et. al., 120 Wn.2d 68 (1992) and Tellevik et. al. v. 9209 218th N.E., Redmond, etc. et. al., 120 Wn.2d 68 (1992) Jan. '93:08

Officer's expert testimony re: significance of lack of drug paraphernalia in residence admissible to support UCSA "intent to deliver" element. State v. Sanders, 66 Wn. App. 380 (Div. I, 1992) Jan. '93:16

Drug law's enhanced penalty for drug-related crime near school bus route survives vagueness, equal protection challenges. State v. Coria, 120 Wn.2d 156 (1992) Feb. '93:05

Needle exchange program not violative of Drug Paraphernalia Act. Health District v. Brockett, 120 Wn.2d 140 (1992) Feb. '93:06

Factual impossibility in sting situation no defense to charge of attempted possession of controlled substance, RCW 69.50.407. State v. Lynn, 67 Wn. App. 339 (Div. I, 1992) Feb. '93:17

Evidence re: testing of random sample of seized drug supports finding that entire quantity seized was cocaine. State v. Caldera, 66 Wn. App. 548 (Div. I, 1992) Feb. '93:20

Secured party loses security interest in vehicle if secured party ignores vehicle forfeiture notice under RCW 69.50.505. Key Bank of Puget Sound v. City of Everett, 67 Wn. App. 914 (Div. I, 1992) March '93:19

Mere possession of 20 rocks of crack not sufficient evidence alone of "intent to deliver." State v. Brown, 68 Wn. App. 480 (Div. I, 1993) May '93:11

Charges of attempt to obtain controlled substance from doctor based on use of false name does not require proof that doctor actually relied on false name. State v. Donald, 68 Wn. App. 543 (Div. III, 1993) May '93:13

Evidence sufficient to support conviction for conspiracy to deliver controlled substance. State v. Smith, 65 Wn. App. 468 (Div. I, 1992) June '93:15

Evidence in undercover sting sufficient to support conviction for attempted possession of drugs even though undercover officers actually had no drugs; "factual impossibility" no defense to charge. State v. Roby, 67 Wn. App. 741 (Div. III, 1992) June '93:18

Trace amount of coke in baggies does not support charge of possession with intent to deliver without other evidence of delivery intentions. State v. Robbins, 68 Wn. App. 873 (Div. II, 1993) Nov. '93:12

Civil forfeiture laws subject to "excessive fines" challenge under the Eighth Amendment. Austin v. United States, 125 L.Ed.2d 488 (1993) Dec. '93:15

#### **VAGUENESS DOCTRINE**

Seattle's phone harassment ordinance upheld. Seattle

v. Dale B. Huff, 111 Wn.2d 923 (1989) Nov. '89:06

Yakima's "pit bull" ordinance survives constitutional "vagueness" and "overbreadth" attacks. American Dog Owners v. City of Yakima, 113 Wn.2d 213 (1989) Dec. '89:14

Right to resist unlawful arrest limited; "lawfully arresting" phrase in "resisting" ordinance not void for vagueness. Seattle v. Cadigan, 55 Wn. App. 30 (Div. I, 1989) Feb. '90:19

Seattle's "prostitution" loitering ordinance meets constitutional standards. Seattle v. Slack, 113 Wn. 2d 850 (1989) March '90:04

Seattle's pedestrian interference ordinance survives constitutional challenge. Seattle v. Webster, 115 Wn.2d 635 (1990) March '91:04

Criminal statute regulating prearrangement contracts for cemetery goods or services not vague. State v. Hanson, 59 Wn. App. 651 (Div. II, 1990) April '91:16

Tacoma drug loitering law not void-for-vagueness. Tacoma v. Luvane, 118 Wn.2d 826 (1992) Aug. '92:09

Statute making intentional exposure to HIV second degree assault is not void-for-vagueness. State v. Stark, 66 Wn. App. 423 (Div. II, 1992) Feb. '93:16

Drug law's enhanced penalty for drug crimes near school bus routes not void-for-vagueness. State v. Coria, 120 Wn.2d 156 (1992) Feb. '93:05

## **WILDLIFE PROTECTION**

Dog stamp requirement of RCW 77.32.350 requires that all in hunting party have a dog stamp. State v. Essex, 57 Wn. App. 411 (Div. III, 1990) Oct. '90:15

Killing a doe deer during buck season prohibited by RCW 77.16.020(1) despite imprecise language of statute. State v. Rhodes, 58 Wn. App. 913 (Div. II, 1990) Jan. '91:19

State hunting law may proscribe hunting authorized by treaty if state law is necessary conservation measure. State v. McCormack, 117 Wn.2d 141 (1991) Nov. '91:05

"Innocent owner" defense of game forfeiture statute

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(b) no consent; J.M.S. Farms could show neither.  
J.M.S. Farms v. Dept. of Wildlife, 68 Wn. App. 150  
(Div. III, 1992) April '93:21

#### **WORKPLACE SAFETY REGULATIONS**

Article regarding hepatitis, HIV protection for  
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P.B. Nicholls, SPD: "Bloodborne pathogens' protection  
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