



Law Enforcement

JUNE 2011

Digest

Law enforcement officers: Thank you for your service, protection and sacrifice.

HONOR ROLL

671st Basic Law Enforcement Academy – December 7, 2010 through April 21, 2011

President:	Garth M. Corner, Kent PD
Best Overall:	Nickolas M. Blake, Everett PD
Best Academic:	Eric M. Doherty, Kent PD
Best Firearms:	Harry E. Cilk, Washington Department of Fish & Wildlife
Patrol Partner Award:	Joshua E. Bell, Washington State Parks
Tac Officer:	Officer Raphael Park, Bellevue PD

JUNE 2011 LED TABLE OF CONTENTS

PART ONE OF THE 2010 WASHINGTON LEGISLATIVE UPDATE..... 1

WASHINGTON STATE SUPREME COURT 21

MAJORITY OF COURT CONCLUDES THAT A SEARCH WARRANT IS NOT NEEDED FOR LAW ENFORCEMENT OFFICERS TO LOOK AT MOTEL REGISTRY WITH MOTEL STAFF'S OK, SO LONG AS OFFICERS HAVE RELEVANT REASONABLE INDIVIDUALIZED SUSPICION OF CRIMINAL ACTIVITY BY THE SUBJECT OF THEIR INQUIRY

In re Personal Restraint of Nichols, ___Wn.2d ___, 2011 WL 1598634 (2011) 21

NEXT MONTH 25

PART ONE OF THE 2011 WASHINGTON LEGISLATIVE UPDATE

LED INTRODUCTORY EDITORIAL NOTE: This is Part One of what will be at least a two-part compilation of 2011 State of Washington legislative enactments of interest to law enforcement.

Note that unless a different effective date is specified in the legislation (which will be shown with bolding in this update), acts adopted during the 2011 regular session take

effect on July 22, 2011 (90 days after the end of the regular session). For some acts, different sections have different effective dates within the same act. We will generally indicate the effective date(s) applicable to the sections that we believe are most critical to law enforcement officers and their agencies.

Consistent with our past practice, our legislative updates will for the most part not digest legislation in the subject areas of sentencing, consumer protection, retirement, collective bargaining, civil service, tax, budget, and workers' compensation.

Text of each of the 2011 Washington acts and of their bill reports is available on the Internet at [<http://apps.leg.wa.gov/billinfo/>]. Use the 4-digit bill number for access to the act and bill reports.

We will include some RCW references in our entries, but where new sections or chapters are created by the legislation, the State Code Reviser must assign the appropriate code numbers. Codification by the Code Reviser likely will not be completed until early fall of this year.

Thank you to the staff of the Washington Association of Prosecuting Attorneys (WAPA), Washington Association of Sheriffs and Police Chiefs (WASPC) and the Washington State Patrol for assistance in our compiling of acts of interest to Washington law enforcement.

We remind our readers that any legal interpretations that we express in the LED regarding either legislation or court decisions: (1) do not constitute legal advice, (2) express only the views of the editor, and (3) do not necessarily reflect the views of the Attorney General's Office or of the Criminal Justice Training Commission.

FIREARM NOISE SUPPRESSORS

Chapter 13 (HB 1016)

Effective date: July 22, 2011

Amends RCW 9.41.250(1)(c) to authorize the use firearm noise suppressors when the "suppressor is legally registered and possessed in accordance with federal law. "

USING STATE CORRECTIONAL FACILITY POPULATIONS TO DETERMINE THRESHOLDS FOR CERTAIN LOCAL GOVERNMENT PURPOSES

Chapter 14 (EHB 1028)

Effective date: July 22, 2011

Authorizes certain noncharter code cities to include or exclude the population of any state correctional facility located within its jurisdiction in calculating the population thresholds relevant to determining the number of city council members, and the city's ability to remain a noncharter city. Also authorizes any city or town to include or exclude the population of any state correctional facility located within its jurisdiction in calculating the population thresholds relevant to eligibility for funding from the Small City Pavement and Sidewalk Account.

BICYCLE AND PEDESTRIAN TRAFFIC SAFETY CURRICULUM

Chapter 17 (HB 1129)

Effective date: July 22, 2011

Adds a new section to chapter 46.68 RCW which requires:

Any jurisdiction conducting a traffic school or traffic safety course in connection with a condition of a deferral, sentence, or penalty for a traffic infraction or traffic-

related criminal offense listed under RCW 46.63.020 shall include, as part of its curriculum, the curriculum for driving safely among bicyclists and pedestrians that has been approved by the department of licensing for driver training schools. This curriculum requirement does not require that more than thirty minutes be devoted to the bicycle and pedestrian curriculum.

STAFFING OF SECURE COMMUNITY TRANSITION FACILITIES

Chapter 19 (SHB 1247)

Effective date: April 11, 2011

Establishes minimum staffing levels and training for the secure sexually violent predator (SVP) transition facility on McNeil Island and the community SVP transition facility in Seattle.

REQUIRING INFORMATION TO BE FILED BY THE PROSECUTING ATTORNEY FOR CERTAIN VIOLATIONS UNDER DRIVING WHILE LICENSE SUSPENDED OR REVOKED PROVISIONS

Chapter 46 (SSB 5195)

Effective date: July 22, 2011

Amends RCW 10.37.015 to read as follows:

(1) No person shall be held to answer in any court for an alleged crime or offense, unless upon an information filed by the prosecuting attorney, or upon an indictment by a grand jury, except in cases of misdemeanor or gross misdemeanor before a district or municipal judge, or before a court martial, except as provided in subsection (2) of this section.

(2) Violations of RCW 46.20.342(1)(c)(iv) may be required by the prosecuting attorney to be referred to his or her office for consideration of filing an information or for entry into a precharge diversion program.

LED EDITORIAL COMMENT: Violating RCW 46.20.342(1)(c)(iv) is one way to commit DWLS 3. Specifically, a person violates this section by driving while their license or privilege to drive is suspended or revoked because they have failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or failed to comply with the terms of a notice of traffic infraction or citation. Because RCW 10.37.015(2) is permissive in that a prosecutor may require that all DWLS 3 citations for violation of this section be referred to the prosecutor for filing, officers should check with their local prosecutors as practices will vary from county to county and city to city.

MOTORCYCLE PROFILING

Chapter 49 (ESB 5242)

Effective date: July 22, 2011

Adds a new section to chapter 43.101 RCW to read as follows:

(1) The criminal justice training commission shall ensure that issues related to motorcycle profiling are addressed in basic law enforcement training and offered to in-service law enforcement officers in conjunction with existing training regarding profiling.

(2) **Local law enforcement agencies shall add a statement condemning motorcycle profiling to existing policies regarding profiling.**

(3) For the purposes of this section, "motorcycle profiling" means the illegal use of the fact that a person rides a motorcycle or wears motorcycle-related paraphernalia as a factor in deciding to stop and question, take enforcement

action, arrest, or search a person or vehicle with or without a legal basis under the United States Constitution or Washington state Constitution.

[Emphasis added.]

CHILD FATALITY REVIEW IN CHILD WELFARE CASES – AMENDING RCW 68.50.105 (AUTOPSY STATUTE) AMONG OTHER STATUTES

Chapter 61 (SHB 1105)

Effective date: July 22, 2011

This bill significantly revises RCW 74.13.640 to require the Department of Social and Health Services (DSHS) to conduct child fatality reviews in any case where the fatality of a minor is suspected to be caused by child abuse or neglect and the minor is in the care, or has been within the preceding year, of DSHS or a supervising agency, or the child has been receiving services under chapter 74.13 RCW. It makes the final child fatality review report public, but allows DSHS to make redactions.

The bill also amends RCW 68.50.105 to allow autopsy and post mortem reports to be provided to the secretary of DSHS or his or her designee in cases being reviewed under RCW 74.13.640.

BEER AND WINE TASTING AT FARMERS MARKETS

Chapter 62 (SHB 1172)

Effective date: July 22, 2011

Directs the Liquor Control Board to establish a pilot project for beer and wine tasting at farmers markets. Directs the selection of a designated number of farmers markets and imposes restrictions.

PUBLIC EMPLOYEES' ATTENDANCE AT INFORMATIONAL OR EDUCATIONAL MEETINGS REGARDING LEGISLATIVE ISSUES

Chapter 63 (HB 1179)

Effective date: July 22, 2011

Adds a new section to chapter 42.52 RCW (state ethics laws) to clarify that public employees may attend informational or educational meetings regarding legislative issues. Specifically, the section provides:

This chapter does not prohibit state employees from attending informational or educational meetings regarding legislative issues with a legislator or other elected official. It is not a violation of this chapter to hold such meetings in public facilities, including state-owned or leased buildings. This section is not intended to allow the use of state facilities for a political campaign or for the promotion of or opposition to a ballot proposition.

HARASSMENT AGAINST CRIMINAL JUSTICE PARTICIPANTS – PARTIAL VETO

Chapter 64 (ESSHB 1206)

Effective date: July 22, 2011

Amends RCW 9A.46.020 (harassment statute) to specifically address harassment against "criminal justice participants," making it a class C felony, and amends RCW 40.24.030 to allow harassed criminal justice participants and their families to utilize the Secretary of State's address confidentiality program. This law is in response to State v. Montano, 169 Wn.2d 872 (2010) **Nov 10 LED:09** (holding that post-arrest threats made to arresting officer did not constitute the crime of intimidating a public servant). The amendment to RCW 9A.46.020 reads as follows:

- (1) A person is guilty of harassment if:
- (a) Without lawful authority, the person knowingly threatens:
 - (i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or
 - (ii) To cause physical damage to the property of a person other than the actor; or
 - (iii) To subject the person threatened or any other person to physical confinement or restraint; or
 - (iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and
 - (b) The person by words or conduct places the person threatened in 2 reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.
- (2)(a) Except as provided in (b) of this subsection, a person who harasses another is guilty of a gross misdemeanor.
- (b) A person who harasses another is guilty of a class C felony if any of the following apply: (i) The person has previously been convicted in this or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order; (ii) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person; (iii) the person harasses a criminal justice participant who is performing his or her official duties at the time the threat is made; or (iv) the person harasses a criminal justice participant because of an action taken or decision made by the criminal justice participant during the performance of his or her official duties. For the purposes of (b)(iii) and (iv) of this subsection, the fear from the threat must be a fear that a reasonable criminal justice participant would have under all the circumstances. Threatening words do not constitute harassment if it is apparent to the criminal justice participant that the person does not have the present and future ability to carry out the threat.
- (3) Any criminal justice participant who is a target for threats or harassment prohibited under subsection (2)(b)(iii) or (iv) of this section, and any family members residing with him or her, shall be eligible for the address confidentiality program created under RCW 40.24.030.
- (4) For purposes of this section, a criminal justice participant includes any (a) federal, state, or local law enforcement agency employee; (b) federal, state, or local prosecuting attorney or deputy prosecuting attorney; (c) staff member of any adult corrections institution or local adult detention facility; (d) staff member of any juvenile corrections institution or local juvenile detention facility; (e) community corrections officer, probation, or parole officer; (f) member of the indeterminate sentence review board; (g) advocate from a crime victim/witness program; or (h) defense attorney.
- (5) The penalties provided in this section for harassment do not preclude the victim from seeking any other remedy otherwise available under law.

CRIMES AGAINST LIVESTOCK BELONGING TO ANOTHER PERSON

Chapter 67 (SHB 1243)

Effective date: July 22, 2011

Adds a new section to chapter 16.52 RCW which reads as follows:

- (1) It is unlawful for a person to, with malice, kill or cause substantial bodily harm to livestock belonging to another person.
- (2) A violation of this section constitutes a class C felony.
- (3) For the purposes of this section, "malice" has the same meaning as provided in RCW 9A.04.110, but applied to acts against livestock.

Amends RCW 4.24.320 to provide for a civil action for damages against the responsible person for "exemplary damages up to three times the actual damages sustained, plus attorney's fees." "Livestock" is defined in RCW 16.52.011 to include, but not be limited to, horses, mules, cattle, sheep, swine, goats, and bison.

INTRASTATE MUTUAL AID IN THE EVENT OF EMERGENCIES

Chapter 79 (SHB 1585)

Effective date: July 22, 2011

Adds a new chapter to Title 38 RCW creating the Intrastate Mutual Aid System, addressing membership, requests for assistance, reciprocity of professional qualifications (licensing), liability for injuries, reimbursement, immunity, and establishing an Interstate Mutual Aid System Oversight Committee. The Final House Bill Report provides the following summary:

The Intrastate Mutual Aid System is established to provide mutual assistance in an emergency among political subdivisions and federally recognized Indian tribes that choose to participate in the system. Mutual assistance may be requested by any member jurisdiction for: (1) response, mitigation, or recovery activities related to an emergency; or (2) participation in drills or exercises in preparation for an emergency.

LIMITING LIABILITY FOR UNAUTHORIZED PASSENGERS IN (EMPLOYER OWNED) VEHICLES

Chapter 82 (SHB 1719)

Effective date: July 22, 2011

This law is intended to overrule the Washington Supreme Court decision in Rahman v. State, 170 Wn.2d 810 (2011) (holding that the state may be held vicariously liable for injuries suffered by a third-party passenger in a state vehicle driven by a state employee for work purposes even though the third-party passenger was not authorized to ride in the vehicle), by modifying the legal doctrine of respondeat superior. The Substitute House Bill Report provides the following brief summary:

Makes state and local government employers, as well as private employers, immune from liability for injuries suffered by unauthorized third-party occupants of vehicles owned, leased, or rented by those employers.

Offers employers immunity only when the injured, unauthorized third-party occupants are riding in or on a vehicle with an employee who has expressly acknowledged in writing the employer's policy on use of such vehicles.

VICTIMIZATION OF HOMELESS PERSONS

Chapter 87 (SB 5011)

Effective date: July 22, 2011

Adds the following new aggravating circumstance justifying a sentence beyond the standard range to RCW 9.94A.535(3)(cc):

The offense was intentionally committed because the defendant perceived the

victim to be homeless, as defined in RCW 9.94A.030.

"Homelessness" or "homeless" is defined by RCW 9.94A.030(29) as:

A condition where an individual lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence that is:

- (a) A supervised, publicly or privately operated shelter designated to provide temporary living accommodations;
- (b) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or
- (c) A private residence where the individual stays as transient invitee.

SUBPOENA AUTHORITY OF THE DEPARTMENT OF FINANCIAL INSTITUTIONS (DFI)

Chapter 93 (SB 5076)

Effective date: July 22, 2011

In response to State v. Miles, 160 Wn.2d 236 (2007) **Nov 07 LED:07** (holding that a judicially approved warrant or subpoena was required for DFI investigators to obtain banking records) the legislature provides a process for DFI to apply for court approval of agency investigative subpoenas.

CONDITIONAL RELEASE OF PERSONS COMMITTED AS CRIMINALLY INSANE TO THEIR COUNTY OF ORIGIN

Chapter 94 (ESSB 5105)

Effective date: July 22, 2011

Provides that the secretary of DSHS "may not support a conditional release application to a location outside the person's county of origin unless it is determined by the secretary that the person's return to his or her county of origin would be inappropriate considering any court-issued protection orders, victim safety concerns, the availability of appropriate treatment, negative influences on the person, or the location of family or other persons or organizations offering support to the person."

REDUCING MAXIMUM SENTENCES FOR GROSS MISDEMEANORS BY ONE DAY

Chapter 96 (SSB 5168)

Effective date: July 22, 2011

Reduces the maximum sentence for gross misdemeanors by one day to 364 days in an effort to prevent aliens convicted of misdemeanors from being deported.

Amends RCW 9.94A.190 to require that sentences of 365 days or more be served in department of corrections custody instead of a county correctional facility.

NOTIFICATION TO SCHOOLS REGARDING THE RELEASE OF CERTAIN [JUVENILE] OFFENDERS

Chapter 107 (SSB 5428)

Effective date: July 22, 2011

Adds a new section to chapter 72.09 RCW which reads as follows:

(1) At the earliest possible date and in no event later than thirty days before an offender is released from confinement, the department [of corrections] shall provide notice to the school district board of directors of the district in which the offender last attended school if the offender:

- (a) Is twenty-one years of age or younger at the time of release;
- (b) Has been convicted of a violent offense, a sex offense, or stalking; and

- (c) Last attended school in this state.
- (2) This section applies whenever an offender is being released from total confinement, regardless if the release is to parole, community custody, work release placement, or furlough.

AUTHORIZING EXISTING FUNDING TO HOUSE VICTIMS OF HUMAN TRAFFICKING AND THEIR FAMILIES

Chapter 110 (SB 5482)

Effective date: July 22, 2011

Extends rental housing assistance and other housing programs designed for low income families to victims of human trafficking.

THE CRIME OF HUMAN TRAFFICKING

Chapter 111 (SSB 5546)

Effective date: July 22, 2011

Amends the crime of trafficking in the first degree, RCW 9A.40.100, to read as follows:

- (1)(a) A person is guilty of trafficking in the first degree when:
 - (i) Such person:
 - (A) Recruits, harbors, transports, transfers, provides, obtains, or receives by any means another person knowing that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, or a commercial sex act; or
 - (B) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i)(A) of this subsection; and
 - (ii) The acts or venture set forth in (a)(i) of this subsection:
 - (A) Involve committing or attempting to commit kidnapping;
 - (B) Involve a finding of sexual motivation under RCW 9.94A.835;
 - (C) Involve the illegal harvesting or sale of human organs; or
 - (D) Result in a death.
- (b) Trafficking in the first degree is a class A felony.
- (2)(a) A person is guilty of trafficking in the second degree when such person:
 - (i) Recruits, harbors, transports, transfers, provides, obtains, or receives by any means another person knowing that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, or a commercial sex act; or
 - (ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) of this subsection.
- (b) Trafficking in the second degree is a class A felony.

Adds definitions of "commercial sex act," "forced labor," "involuntary servitude," and "substantial harm" to RCW 9A.40.010.

Also provides that defendants convicted of human trafficking in the first or second degree and promoting commercial sexual abuse of a minor must be detained pending sentencing and cannot have their sentences stayed pending appeal.

STREET ROD AND CUSTOM VEHICLES

Chapter 114 (ESSB 5585)

Effective date: October 1, 2011

Defines "street rod vehicle" and "custom vehicle," provides a procedure for applying for a certificate of title for these vehicles, requires inspections, provides an exclusion from emissions

tests, addresses equipment, and specifies that these vehicles are not to be driven for general daily use.

AUTHORIZING THE USE OF MODIFIED OFF-ROAD MOTORCYCLES ON PUBLIC ROADS
Chapter 121 (SSB 5800) **Effective date: January 1, 2012**

Adds a new section to chapter 46.04 RCW defining "off-road motorcycle" as: "a motorcycle as defined in RCW 46.04.330 that is labeled by the manufacturer's statement or certificate of origin as intended for 'off-road use only' or a similar message stamped into the frame of the motorcycle, contained in the owner's manual, or affixed to any part of the motorcycle. "

Adds a new section to chapter 46.61 RCW prescribing the following for operating an off-road motorcycle, as well as adding a number of equipment related requirements, and making it an infraction to violate the new section. The new section reads as follows:

- (1) A person may operate an off-road motorcycle upon a public road, street, or highway of this state if the person:
 - (a) Files a motorcycle highway use declaration, as provided under section 3 of this act, with the department [of licensing] certifying conformance with all applicable federal motor vehicle safety standards and state standards;
 - (b) Obtains and has in full force and effect a current and proper [off road vehicle] ORV registration or temporary ORV use permit under chapter 46.09 RCW; and
 - (c) Obtains a valid driver's license and motorcycle endorsement issued to Washington residents in compliance with chapter 46.20 RCW for a motorcycle.

Subsection (5) of section 2 requires that "accidents must be recorded and tracked in compliance with chapter 46.52 RCW. An accident report must indicate and be tracked separately when any of the vehicles involved are an off-road motorcycle."

LED EDITORIAL COMMENT: The separate tracking should occur automatically as a result of off-road motorcycles now being classified separately.

COSTS FOR THE COLLECTION OF DNA SAMPLES
Chapter 125 (SSHB 1153) **Effective date: July 22, 2011**

Amends RCW 43.43.7541 to specify when an offender must pay the \$100 DNA collection fee, thus extending the fee to qualifying juvenile adjudications and qualifying convictions in courts of limited jurisdiction.

UNLAWFUL HUNTING OF BIG GAME
Chapter 133 (HB 1340) **Effective date: July 22, 2011**

Amends the crime of unlawful hunting of big game in the first degree and defines the "same course of events." Amended RCW 77.15.410 reads as follows:

- (1) A person is guilty of unlawful hunting of big game in the second degree if the person:
 - (a) Hunts for, takes, or possesses big game and the person does not have and possess all licenses, tags, or permits required under this title;
 - (b) Violates any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possession of big game; or

(c) Possesses big game taken during a closed season for that big game or taken from a closed area for that big game.

(2) A person is guilty of unlawful hunting of big game in the first degree if the person commits the act described in subsection (1) of this section and:

(a) The person hunts for, takes, or possesses three or more big game animals within the same course of events; or

(b) The act occurs within five years of the date of a prior conviction under this title involving unlawful hunting, killing, possessing, or taking big game.

[Subsection 3 addresses hunting license implications.]

(4) For the purposes of this section, "same course of events" means within one twenty-four hour period, or a pattern of conduct composed of a series of acts that are unlawful under subsection (1) of this section, over a period of time evidencing a continuity of purpose.

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

Chapter 135 (SHB 1438)

Effective date: July 22, 2011

The Final Bill Report provides the following summary:

The Legislature has determined that it is necessary to examine patterns related to the exchange of out-of-state offenders needing supervision.

. . . [A]t the next meeting of the [Interstate] Commission, Washington's representatives on the Commission must seek a resolution regarding any inequitable distribution of costs, benefits, and obligations affecting Washington under the Interstate Compact.

TERMINATION OR MODIFICATION OF DOMESTIC VIOLENCE PROTECTION ORDERS

Chapter 137 (SHB 1565)

Effective date: July 22, 2011

Provides a procedure for terminating domestic violence protection orders that are permanent or issued for a fixed period of time in response to In re Marriage of Freeman, 169 Wn.2d 664 (2010) (finding that the modification statute failed to establish grounds, factors, or standards authorizing modification of permanent protection orders and failed to state which party bore the burden, and coming up with its own factors). A court may not terminate such an order unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent is not likely to resume acts of domestic violence against the petitioner or those persons protected by the protection order if the order is terminated. The petitioner bears no burden of proving that he or she has a current reasonable fear of imminent harm.

Sheriffs, municipal police officers or process servers are authorized to effect service and the respondent may be required to reimburse the agency for service.

CLARIFYING THAT MANURE IS AN AGRICULTURAL PRODUCT FOR THE PURPOSES OF COMMERCIAL DRIVERS' LICENSES

Chapter 142 (SHB 1966)

Effective date: July 22, 2011

Amends RCW 46.25.050(1)(a)(ii) to clarify that "animal manure" and "animal manure compost" are agricultural products such that an operator of a farm vehicle transporting manure is exempt from commercial drivers' licensing requirements (so long as the operator is also: a farmer within 150 miles of his or her farm and not using the vehicle in the operation of a common or contract

motor carrier).

TRIAGE FACILITIES

Chapter 148 (SHB 1170)

Effective date: April 22, 2011

Authorizes the creation of triage facilities for the purpose of assessing and stabilizing individuals or determining the need for involuntary commitment under chapter 71.05 RCW. The Substitute House Bill Report provides the following brief summary:

Adds triage facilities to the types of facilities to which a law enforcement officer may take a person [under RCW 71.05.153 and 10.31.110] who is suffering from a mental disorder for short term detention and evaluation.

Defines "triage facility" as a short-term facility designed to assess and stabilize a Person or determine the need for involuntary commitment of the person.

Requires the Department of Social and Health Services to certify triage facilities And adopt rules on certification standards in consultation with specified entities.

MAIL THEFT

Chapter 164 (SHB 1145)

Effective date: July 22, 2011

Creates new state crimes of mail theft and possession of stolen mail. New sections are added to chapter 9A.56 RCW:

Mail Theft

(1) A person is guilty of mail theft if he or she: (a) Commits theft of mail addressed to three or more different addresses; and (b) commits theft of a minimum of ten separate pieces of mail.

(2) Each set of ten separate pieces of stolen mail addressed to three or more different mail boxes constitutes a separate and distinct crime and may be punished accordingly.

(3) Mail theft is a class C felony.

Possession of Stolen Mail

(1) A person is guilty of possession of stolen mail if he or she: (a) Possesses stolen mail addressed to three or more different mail boxes; and (b) possesses a minimum of ten separate pieces of stolen mail.

(2) "Possesses stolen mail" means to knowingly receive, retain, possess, conceal, or dispose of stolen mail knowing that it has been stolen, and to withhold or appropriate to the use of any person other than the true owner, or the person to whom the mail is addressed.

(3) The fact that the person who stole the mail has not been convicted, apprehended, or identified is not a defense to the charge of possessing stolen mail.

(4) Each set of ten separate pieces of stolen mail addressed to three or more different mail boxes constitutes a separate and distinct crime and may be punished accordingly.

(5) Possession of stolen mail is a class C felony.

UNIT OF PROSECUTION FOR TAMPERING WITH OR INTIMIDATING A WITNESS

Chapter 165 (HB 1182)

Effective date: July 22, 2011

In response to State v. Hall, 168 Wn.2d 726 (2010) (holding that under former RCW 9A.92.120 the unit of prosecution for witness tampering was the ongoing act rather than each individual call made by the defendant), the legislature clarifies that each instance of an attempt to intimidate or tamper with a witness constitutes a separate offense for purposes of determining the unit of prosecution under RCW 9A.72.110 and .120.

CRIMES AGAINST PERSONS INVOLVING SUFFOCATION OR DOMESTIC VIOLENCE

Chapter 166 (SHB 1188)

Effective date: July 22, 2011

Amends RCW 9A.36.021(1)(g) to make assault by strangulation assault in the second degree.

Defines "suffocation" in RCW 9A.04.110(27) as "to block or impair a person's intake of air at the nose and mouth, whether by smothering or other means, with the intent to obstruct the person's ability to breathe. "

MANDATING A TWELVE-HOUR IMPOUND HOLD ON MOTOR VEHICLES USED BY PERSONS ARRESTED FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR BEING IN PHYSICAL CONTROL OF A VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS – "HAILEY'S LAW"

Chapter 167 (ESSSB 5000)

Effective date: July 1 and 22, 2011

This bill adds new sections to chapter 46.55 RCW and amends RCW 46.55.113 (impound statute) to remove officer discretion and mandate a twelve-hour impound for vehicles driven by persons arrested for DUI or physical control.

The intent section includes the following:

(2) The legislature intends by this act:

(a) To change the primary reason for impounding the vehicle operated by a person arrested for driving or controlling a vehicle under the influence of alcohol or drugs. The purpose of impoundment under this act is to protect the public from a person operating a vehicle while still impaired, rather than to prevent a potential traffic obstruction; and

(b) To require that officers have no discretion as to whether or not to order an impound after they have arrested a vehicle driver with reasonable grounds to believe the driver of the vehicle was driving while under the influence of alcohol or drugs, or was in physical control of a vehicle while under the influence of alcohol or drugs.

The new section mandating the twelve-hour impound reads as follows:

(1)(a) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504, the vehicle is subject to summary impoundment and except for a commercial vehicle or farm transport vehicle under subsection (3)(c) of this section, the vehicle must be impounded. With the exception of the twelve-hour hold mandated under this section, the procedures for notice, redemption, storage, auction, and sale shall remain the same as for other impounded vehicles under this chapter.

(b) If the police officer directing that a vehicle be impounded under this section

has:

(i) Waited thirty minutes after the police officer contacted the police dispatcher requesting a registered tow truck operator and the tow truck responding has not arrived, or

(ii) If the police officer is presented with exigent circumstances such as being called to another incident or due to limited available resources being required to return to patrol, the police officer may place the completed impound order and inventory inside the vehicle and secure the vehicle by closing the windows and locking the doors before leaving.

(c) If a police officer directing that a vehicle be impounded under this section has secured the vehicle and left it pursuant to (b) of this subsection, the police officer and the government or agency employing the police officer shall not be liable for any damages to or theft of the vehicle or its contents that occur between the time the officer leaves and the time that the registered tow truck operator takes custody of the vehicle, or for the actions of any person who takes or removes the vehicle before the registered tow truck operator arrives.

(2)(a) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 and the driver is a registered owner of the vehicle, the impounded vehicle may not be redeemed within a twelve-hour period following the time the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log, unless there are two or more registered owners of the vehicle or there is a legal owner of the vehicle that is not the driver of the vehicle. A registered owner who is not the driver of the vehicle or a legal owner who is not the driver of the vehicle may redeem the impounded vehicle after it arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log.

(b) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 and the driver is a registered owner of the vehicle, the police officer directing the impound shall notify the driver that the impounded vehicle may not be redeemed within a twelve-hour period following the time the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log, unless there are two or more registered owners or there is a legal owner who is not the driver of the vehicle. The police officer directing the impound shall notify the driver that the impounded vehicle may be redeemed by either a registered owner or legal owner, who is not the driver of the vehicle, after the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log.

(3)(a) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 and the driver is not a registered owner of the vehicle, the impounded vehicle may be redeemed by a registered owner or legal owner, who is not the driver of the vehicle, after the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log.

(b) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 and the driver is not a registered owner of the vehicle, the police officer directing the impound shall notify the driver that the impounded vehicle may be redeemed by a registered owner or legal owner, who is not the driver of the vehicle, after the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log.

(c) If the vehicle is a commercial vehicle or farm transport vehicle and the driver

of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest.

(d) The registered tow truck operator shall notify the agency that ordered that the vehicle be impounded when the vehicle arrives at the registered tow truck operator's storage facility and has been entered into the master log starting the twelve-hour period.

(4) A registered tow truck operator that releases an impounded vehicle pursuant to the requirements stated in this section is not liable for injuries or damages sustained by the operator of the vehicle or sustained by third parties that may result from the vehicle driver's intoxicated state.

(5) For purposes of this section "farm transport vehicle" means a motor vehicle owned by a farmer and that is being actively used in the transportation of the farmer's or another farmer's farm, orchard, aquatic farm, or dairy products, including livestock and plant or animal wastes, from point of production to market or disposal, or supplies or commodities to be used on the farm, orchard, aquatic farm, or dairy, and that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more.

If an impoundment arising from a violation of RCW 46.61.502 or 46.61.504 is determined to be in violation of chapter 46.55 RCW, then the police officer directing the impoundment and the government employing the officer are not liable for damages for loss of use of the vehicle if the officer had reasonable suspicion to believe that the driver of the vehicle was driving while under the influence of intoxicating liquor or any drug, or was in physical control of a vehicle while under the influence of intoxicating liquor or any drug.

Section 6 amends RCW 46.55.113(3) to require that when officers make an arrest for DWLS and the vehicle is a "farm transport vehicle" that before impounding the vehicle the "officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest and the owner has not received a prior release under this subsection or RCW 12 46.55.120(1)(a)(ii). " (The existing statute makes the same provision for commercial vehicles.)

Section 6 also deletes references to RCW 46.61.502 and 46.61.504 (DUI and physical control) from RCW 46.55.113(1)'s summary impoundment provisions. **This section takes effect on July 1, 2011, the date on which current RCW 46.55.113 expires.**

LED EDITORIAL COMMENT: 1. Mandatory Impounds. We have set out most of the text of the new law, even though it is lengthy, because it is important for officers to be familiar with this law given the amount of litigation, and potential liability, surrounding vehicle impounds. In All Around Underground, Inc. v. Washington State Patrol, 148 Wn.2d 145 (2002) Feb 03 LED:02, the Washington State Supreme Court found the WSP's mandatory impound policy invalid holding that the use of the language "shall be subject to impoundment" in former RCW 46.55.113 did not authorize adoption of a mandatory impound policy and thus, officers were required to exercise discretion, considering reasonable alternatives, in determining whether or not to impound a vehicle. The court went on to question whether a clear statement by the legislature requiring mandatory impounds would withstand constitutional scrutiny under article I, section 7 of the Washington State Constitution. Subsequent to All Around the legislature amended

the language of RCW 46.55.113 to "shall be subject to summary impoundment", however, most law enforcement agencies agreed that this language was not sufficiently clear in mandating impounds under the statute.

Chapter 167 is clear that the legislature's intent is that whenever the driver of a non-commercial or non-farm transport vehicle is arrested for DUI or physical control the vehicle must be impounded, and it must be held for twelve hours (unless redeemed under the criteria enumerated in the statute).

It will remain to be seen whether the courts will find that a narrowly tailored short term mandatory impound requirement is constitutional.

2. **Notification by law enforcement.** Note that sections 2(b) and 3(b) require that the police officer directing the impound must provide notice to the arrested driver regarding who may lawfully redeem the vehicle and when they may do so.

3. **Discrepancy in Effective Dates.** Finally, as noted above, section 6, which deletes the existing reference to summary impoundment of a vehicle when a driver is arrested for DUI or physical control, is effective on July 1, 2011 (this is necessary because the current statute expires on July 1, 2011). However, section 3, which requires mandatory impoundment of a vehicle when a driver is arrested for DUI or physical control, does not take effect until July 22, 2011.

RCW 46.55.113(2)(d) authorizes officers to "take custody of a vehicle, at his or her discretion, and provide for its prompt removal to a place of safety under any of the following circumstances: . . . (d) Whenever the driver of a vehicle is arrested and taken into custody by a police officer." Accordingly, except in the rare case where a suspect is not arrested for DUI or physical control, this section should provide authority to impound during the 21 days between July 1 and July 22, 2011. As always officers should seek specific guidance for their agency legal advisors.

PROTECTION OF VULNERABLE ADULTS

Chapter 170 (SSB 5042)

Effective date: July 22, 2011

Adds a definition of "financial exploitation" to RCW 74.34.020(6) which reads as follows:

- (a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;
- (b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or
- (c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

Also adds a person who "self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW" to the definition of vulnerable adult under RCW 74.34.020(16).

PREVENTION OF ANIMAL CRUELTY

Chapter 172 (SSB 5065)

Effective date: July 22, 2011

Makes amendments to animal cruelty laws. The Final Bill Report provides the following summary

Animal cruelty in the second degree is a gross misdemeanor. If a person is convicted of animal cruelty in the second degree and the court orders forfeiture of the person's animal, then the person is prohibited from owning, caring for, or residing with any similar animals for a set period of time.

If a person has no more than two convictions for animal cruelty in the second degree, the person may petition the sentencing court for a restoration of his or her right after five years, and the court may consider, among other things, whether the person complied with the prohibition on owning, caring for, or residing with similar animals. If a person violates the prohibition, that person must pay a \$1,000 civil penalty for the first violation and a \$2,500 penalty for the second violation. The third and any subsequent violations will result in gross misdemeanors.

...

Also adds definitions of "food, " "necessary water, " and "similar animal" to RCW 16.52.011, and amends RCW 16.52.015 to authorize animal control officers to issue civil infractions for violations of chapter 16.52 RCW, RCW 9.08.070 through RCW 9.08.078, and RCW 81.48.070 (they currently have the authority to issue misdemeanor citations under these statutes).

EXEMPTING PERSONAL INFORMATION FROM INSPECTION AND COPYING

Chapter 173 (ESSB 5098)

Effective date: July 22, 2011

Adds the following exemption from public disclosure for information relating to children involved in children's programs to RCW 42.56.230(2):

Personal information, including but not limited to, addresses, telephone numbers, personal electronic mail addresses, social security numbers, emergency contact and date of birth information for a participant in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs. Emergency contact information may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;

HARASSMENT, INTIMIDATION, AND BULLYING PREVENTION

Chapter 185 (SSHB 1163)

Effective date: July 22, 2011 and July 12, 2012

The Second Substitute House Bill Report provides the following summary:

Requires the Office of the Superintendent of the Public Instruction (OSPI) and the Office of the Education Ombudsman to establish a workgroup to develop, recommend, and implement strategies to improve school climate and create respectful learning environments in public schools.

...

Beginning July 1, 2012, issues of mental health and suicide prevention education are included in health and fitness learning standards for purposes of classroom based assessments. The OSPI is directed to work with other agencies to develop pilot projects to assist schools in implementing youth suicide prevention activities.

WHERE AN INDIVIDUAL MAY PETITION TO RESTORE FIREARM RESTORATION RIGHTS

Chapter 193 (HB 1455)

Effective date: July 22, 2011

Amends RCW 9.41.040(4)(a) and 9.41.047(3)(b) to require that a petition for restoration of firearm rights must be brought in the superior court in either the county that ordered the firearm prohibition, or the county in which the petitioner resides.

INTRASTATE BUILDING SAFETY MUTUAL AID IN THE EVENT OF EMERGENCIES AND OTHER SITUATIONS THAT TEMPORARILY RENDER A JURISDICTION INCAPABLE OF PROVIDING REQUIRED BUILDING SAFETY SERVICES

Chapter 215 (ESSHB 1406)

Effective date: July 22, 2011

Adds a new chapter to Title 24 RCW creating the Intrastate Building Safety Mutual Aid (IBSMA) System, addressing membership, requests for assistance, reimbursement, reciprocity of professional qualifications (licensing), liability for injuries, immunity, and establishing the Intrastate Building Safety Mutual Aid Oversight Committee. The Final Bill Report provides the following summary:

The Intrastate Building Safety Mutual Aid (IBSMA) System is established to provide mutual assistance among member jurisdictions in the case of a building safety emergency or to aid in training exercises. A building safety emergency means a situation that temporarily renders a building safety department incapable of providing building safety services. Mutual assistance may include immediate response to a building safety emergency, effort to help or mitigate or prevent further damages, or recovery activities.

ARCHAEOLOGICAL INVESTIGATIONS ON PRIVATE LAND

Chapter 219 (EHB 1177)

Effective date: July 22, 2011

Amends RCW 27.53.070 to clarify that statutes in chapter 27.53 RCW relating to field investigations on privately owned lands by professional archaeologists should not be construed as authorizing trespassing on private property.

RESTRICTIONS ON LEGAL CLAIMS INITIATED BY PERSONS SERVING CRIMINAL SENTENCES IN CORRECTIONAL FACILITIES

Chapter 220 (SHB 1037)

Effective date: July 22, 2011

Limits an inmate's ability to bring civil actions without paying the court filing fee if the inmate has previously had three or more lawsuits dismissed as frivolous. Exceptions are for actions which, if successful, would affect the duration of the inmate's confinement or in cases where the court determines the inmate is in imminent danger of serious physical injury.

INCLUDING CORRECTIONAL EMPLOYEES WHO HAVE COMPLETED GOVERNMENT-SPONSORED LAW ENFORCEMENT FIREARMS TRAINING ON THE LISTS OF LAW ENFORCEMENT PERSONNEL THAT ARE EXEMPT FROM CERTAIN FIREARM RESTRICTIONS

Chapter 221 (ESHB 1041)

Effective date: July 22, 2011

Amends RCW 9.41.060(1) 's exemption form the firearms restrictions of RCW 9.41.050 as follows:

The provisions of RCW 9.41.050 shall not apply to:

(1) Marshals, sheriffs, prison or jail wardens or their deputies, correctional personnel and community corrections officers as long as they are employed as such who have completed government-sponsored law enforcement firearms training and have been subject to a check through the national instant criminal background check system or an equivalent background check within the past five years, or other law enforcement officers of this state or another state, Correctional personnel and community corrections officers seeking the waiver provided for by this section are required to pay for any background check that is needed in order to exercise the waiver;

Also amends RCW 9.41.300, which prohibits firearms in jails, courthouses, mental health facilities, bars, and airports, to add an exemption for correctional personnel except that the exemption does not apply to bars and does not apply to courthouses if the correctional employee is there as a party to a party to an action under chapter 10.14, 10.99, or 26.50 RCW, or an action under Title 26 RCW where any party has alleged the existence of domestic violence as defined in RCW 26.50.010.

Adds an immunity provision for state and local governments from claims based on the provision of government-sponsored law enforcement firearms training to correctional personnel or officers.

VOLUNTEER FIREFIGHTER SPECIAL LICENSE PLATES

Chapter 225 (SHB 1136)

Effective date: January 1, 2012

Requires the department of licensing to issue volunteer firefighter special license plates to eligible applicants. If the volunteer firefighter is convicted of a DUI or a felony, the special license plate must be surrendered upon conviction.

"MUSIC MATTERS" SPECIAL LICENSE PLATES

Chapter 229 (SHB 1329)

Effective date: January 1, 2012

Requires the department of licensing to issue "Music Matters" special license plates.

RELATING TO COMBINATION VEHICLES

Chapter 230 (HB 1358)

Effective date: July 22, 2011

Amends RCW 46.44.037 to bring Washington state into compliance with federal regulations for saddlemount combination vehicles.

RELATING TO TRAFFIC INFRACTIONS

Chapter 233 (SHB 1483)

Effective date: July 22, 2011

Amends RCW 46.63.060 to require that notices of traffic infraction printed after July 22, 2011 include a statement that the person may be able to enter into a payment plan with the court under RCW 46.63.110.

BACKGROUND INVESTIGATIONS FOR PEACE OFFICERS AND RESERVE OFFICERS

Chapter 234 (SHB 1567)

Effective date: July 22, 2011

Amends RCW 43.101.095(2)(a) to require that background investigations including criminal history checks are administered to all peace officer applicants who have been extended a conditional offer of employment, amends RCW 43.101.080(19) to give the criminal justice training commission authority to require that agencies administer such background checks, and amends RCW 43.101.105(2) to require that certification must be denied when an applicant has lost certification as a result of a break in service of more than twenty-four consecutive months if that applicant failed to comply with the background check requirement, as well as the polygraph and psychological examinations previously required.

Amended RCW 43.101.095(2)(a) reads as follows:

As a condition of continuing employment for any applicant who has been offered a conditional offer of employment as a fully commissioned peace officer or a reserve officer after July 24, 2005, including any person whose certification has lapsed as a result of a break of more than twenty-four consecutive months in the officer's service as a fully commissioned peace officer or reserve officer, the applicant shall submit to a background investigation including a check of criminal history, a psychological examination, and a polygraph or similar assessment as administered by the county, city, or state law enforcement agency, the results of which shall be used to determine the applicant's suitability for employment as a fully commissioned peace officer or a reserve officer.

(i) The background investigation including a check of criminal history shall be administered by the county, city, or state law enforcement agency that made the conditional offer of employment in compliance with standards established in the rules of the commission.

(ii) The psychological examination shall be administered by a psychiatrist licensed in the state of Washington pursuant to chapter 18.71 RCW or a psychologist licensed in the state of Washington pursuant to chapter 18.83 RCW, in compliance with standards established in rules of the commission.

(iii) The polygraph test shall be administered by an experienced polygrapher who is a graduate of a polygraph school accredited by the American polygraph association and in compliance with standards established in rules of the commission.

(iv) Any other test or assessment to be administered as part of the background investigation shall be administered in compliance with standards established in rules of the commission.

REQUIRING BUSINESSES WHERE FOOD FOR HUMAN CONSUMPTION IS SOLD OR SERVED TO ALLOW PERSONS WITH DISABILITIES TO BRING THEIR SERVICE ANIMALS ONTO THE BUSINESS PREMISES

Chapter 237 (SHB 1728)

Effective date: July 22, 2011

Adds a new section to chapter 49.60 RCW (law against discrimination) relating to the use of service animals by persons with a disability. Prohibits restaurants from discriminating on the basis of the use of a "service animal" as defined under current federal regulations.

ADDING COURT-RELATED EMPLOYEES TO ASSAULT IN THE THIRD DEGREE STATUTE
Chapter 238 (HB 1794) Effective date: July 22, 2011

Amends RCW 9A.36.031(1) to read as follows:

A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

...

(j) Assaults a judicial officer, court-related employee, county clerk, or county clerk's employee, while that person is performing his or her official duties at the time of the assault or as a result of that person's employment within the judicial system. For purposes of this subsection, "court-related employee" includes bailiffs, court reporters, judicial assistants, court managers, court managers' employees, and any other employee, regardless of title, who is engaged in equivalent functions.

POLICE INVESTIGATIONS OF COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN AND HUMAN TRAFFICKING; AUTHORIZING ONE-PARTY CONSENT RECORDING
Chapter 241 (SHB 1874) Effective date: August 1, 2011

Amends RCW 9.73.230(1)(b) and 9.73.210(1) (part of the privacy act) to provide for authorization of one party consent audio-recording where there is probable cause to believe that the conversation or communication involves a party engaging in the commercial sexual abuse of a minor under RCW 9.68A.100, or promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102. (Existing statutes provide for authorization of one party consent recording in narcotics investigations.)

Also amends RCW 9.68A.110 to authorize participation of a minor in an investigation authorized under the above statutes where the minor is also the victim and the participation involves only telephone or electronic communication, and provides that in cases where no probable cause existed no notice may be given under RCW 9.73.230(7)(b) where the confidential informant was a minor or an alleged victim of commercial sexual abuse of a minor at the time of the investigation.

REQUIRING CERTAIN VEHICLES TO STOP AT A WEIGH STATION FOR INSPECTION AND WEIGHT MEASUREMENT
Chapter 242 (ESSB 1922) Effective date: July 22, 2011

Adds a new section to chapter 46.44 RCW that requires any vehicle or combination of vehicles with a gross vehicle weight rating of more than forty thousand pounds and transporting cattle must immediately stop at a port of entry, which is operated by the Washington state patrol.

The requirement applies only in counties located east of the crest of the Cascade mountains with a population of at least four hundred fifty thousand and in adjacent counties with a population of at least thirteen thousand but less than fifteen thousand. Additionally, the requirement does not apply to the operator of a vehicle in possession of a pasture permit or cattle consigned to a public auction or sales yard.

The WSP must provide a one time written notice to known carriers in the designated counties by August 1, 2001. Lack of notification is not a defense.

CERTAIN COLLECTOR VEHICLE LICENSE PLATE PROVISIONS

Chapter 243 (SHB1933)

Effective date: August 1, 2011 and January 1, 2012

Section 1 amends RCW 46.18.220 to expand the collector vehicle license plates that may be transferred from one vehicle to another upon application to the department of licensing (DOL) to include an actual Washington state issued license plate designated for general use in the year of the vehicle's manufacture. It also makes it a traffic infraction to knowingly provide a false or facsimile license plate under this subsection (RCW 46.18.220(2)(b)).

Section 2 requires DOL to "provide a method by which law enforcement officers may readily access vehicle information for collector vehicles by using the collector vehicle license plate number. In the event duplicate license plate numbers have been issued to more than one collector vehicle, [DOL] must provide a method for law enforcement officers to identify the correct vehicle. "

SKIING IN AN AREA CLOSED TO THE PUBLIC

Chapter 276 (ESSB 5186)

Effective date: July 22, 2011

Adds a new section to chapter 79A.45 RCW which makes it a misdemeanor to ski in an area closed to the public. The new section reads as follows:

A person is guilty of a misdemeanor if the person knowingly skis in an area or on a ski trail, owned or controlled by a ski area operator, that is closed to the public and that has signs posted indicating the closure.

CIVIL JUDGMENTS FOR ASSAULT

Chapter 282 (HB 1334)

Effective date: July 22, 2011

Requires the Department of Corrections (DOC) to deduct 15 to 20 percent of an inmate's wages or gratuities for the payment of a civil judgment for assault that has been awarded as monetary damages to a correctional officer or a DOC employee.

"Civil judgment for assault" is defined as "a civil judgment for monetary damages awarded to a correctional officer or department employee entered by a court of competent jurisdiction against an inmate that is based on, or arises from, injury to the correctional officer or department employee caused by the inmate while the correctional officer or department employee was acting in the course and scope of his or her employment."

WASHINGTON STATE SUPREME COURT

MAJORITY OF COURT CONCLUDES THAT A SEARCH WARRANT IS NOT NEEDED FOR LAW ENFORCEMENT OFFICERS TO LOOK AT MOTEL REGISTRY WITH MOTEL STAFF'S OK, SO LONG AS OFFICERS HAVE RELEVANT REASONABLE INDIVIDUALIZED SUSPICION OF CRIMINAL ACTIVITY BY THE SUBJECT OF THEIR INQUIRY

In re Personal Restraint of Nichols, ___ Wn.2d ___, 2011 WL 1598634 (2011)

Facts: (Excerpted from lead opinion for the Supreme Court)

On February 26, 2004, a police informant went to the home of Toreka Ativalu

intending to make a controlled purchase of cocaine with \$50 of prerecorded Seattle Police Department buy money. Ativalu advised the informant that she had no cocaine at the time but was on her way to obtain some from her supplier. The informant and Ativalu, together with another person known only as "Robert," drove to a nearby Travelodge motel in south Seattle. At the motel, Ativalu asked Robert to call "O.G." on his cell phone to determine the motel room O.G. was occupying. After the telephone call was made, the informant observed Ativalu enter room 56 at the Travelodge. Approximately five minutes later, Ativalu returned with cocaine, some of which was provided to the informant. The trio then returned to Ativalu's home.

Shortly thereafter, the informant told detectives of the Seattle Police Department what he had observed at the Travelodge. About two hours later, Seattle police officers went to the front desk of the Travelodge and asked who was registered in room 56. In response, the desk clerk provided the officers with a registration form, which showed that the registrant of room 56 was Glenn Nichols. The desk clerk also presented the officers with a photocopy of Glenn Nichols's driver's license. After looking at the registration form and the driver's license, which contained a photograph of the licensee, the officers obtained information via a computer in the police officers' car that Nichols's driver's license had been suspended. Shortly after obtaining this information, the detectives observed Nichols drive into the motel parking lot. When Nichols exited the car he had been driving, the police officers asked him if he was Glenn Nichols. He responded affirmatively. The officers then placed him under arrest for the offense of driving while license suspended. A search of Nichols's person, incident to his arrest, yielded cocaine, marijuana, and \$470 in cash, including "\$10 of SPD [Seattle Police Department] buy money."

Proceedings below:

Nichols was charged with possession of cocaine with intent to deliver and possession of less than 40 grams of marijuana. Following a denial of Nichols's motion to suppress the evidence seized incident to his arrest, Nichols was found guilty of both charges. After he was sentenced, he appealed his convictions to the Court of Appeals. Nichols did not, however, raise an issue relating to the motel registry. He later raised the motel registry issue in a "personal restraint" petition after the Supreme Court decided the case of State v. Jorden, 160 Wn.2d 121 (2007) **July 07 LED:18**. [**LED NOTE:** A personal restraint petition is a collateral attack on a conviction that is subject to special review standards. Under analysis not addressed in this LED entry, the Supreme Court rules that the collateral attack is permissible, and that the Court must address the motel registry issue.]

ISSUE AND RULING: Where the officers possessed reasonable individualized suspicion of criminal activity by a motel guest, was it lawful under article I, section 7 of the Washington constitution for the officers to request and obtain from a willing motel clerk registry information identifying a motel guest? (ANSWER BY SUPREME COURT: Yes, rules a 5-4 majority)

Result: Affirmance of King County Superior Court conviction of Glenn Gary Nichols for possession of cocaine with intent to deliver and possession of less than 40 grams of marijuana.

ANALYSIS IN LEAD OPINION:

Three justices (Charles Johnson, James Johnson and Debra Stephens) join an opinion authored by Justice Alexander stating the view that individualized reasonable suspicion justifies warrantless acquisition by officers of motel/hotel registry information voluntarily provided by motel/hotel staff. The key analysis in the lead opinion is as follows:

Nichols contends that the Seattle police officers' warrantless examination of the Travelodge motel registry was improper under our decision in [State v. Jorden, 160 Wn.2d 121 (2007) **July 07 LED:18**] and that any evidence seized as a consequence of the examination should not have been admitted into evidence. The State responds that Jorden is inapplicable to a case like the instant [case] where the law enforcement officers had an individualized and particularized suspicion regarding the subject of the search. *[Court's footnote: It appears from the record that the Travelodge desk clerk voluntarily disclosed the requested information regarding the occupant of room 56. We, therefore, make no pronouncement as to the standing or right of the motel corporation to assert that its private affairs were violated.]*

In Jorden, we were called upon to consider the lawfulness of a search that flowed from a program that had been instituted by the Lakewood Police Department. The record showed that police officers of that city were encouraged to regularly review guest registries at motels in high crime areas in order to ascertain if there were outstanding arrest warrants for any of the persons registered there. Timothy Jorden, whose presence at a Lakewood motel was discovered via warrantless and random examination of a motel guest registry, was taken into custody under this program.

Because cocaine was found in his possession following a search incident to his arrest, he was charged with unlawful possession of the substance. Jorden contended that Lakewood's practice of randomly viewing motel registries violated his rights under article I, section 7 of the state constitution. The State's response in Jorden was that there was no violation of the state constitution because the motel registration information was not a "private affair." Although we concluded that the activity engaged in by the Lakewood police officers was an intrusion on Jorden's private affairs, we went on to imply that our decision was limited to the type of suspicionless search that occurred in that case:

We hesitate to allow a search of a citizen's private affairs where the government cannot express at least an individualized or particularized suspicion about the search subject or present a valid exception to a warrantless search. A random, suspicionless search is a fishing expedition, and we have indicated displeasure with such practices on many occasions.

A fair reading of our opinion in Jorden is that motel guest registries are "private affairs" only to a limited extent. Indeed, in Jorden we recognized that in prior cases we have recognized that hotel or motel guest registries were not historically considered private when police officers had an individualized and particularized suspicion regarding a guest. Such a tiered understanding of what is a private affair under article I, section 7 of our state constitution is not without precedent. In a number of cases we have expressed displeasure at random and suspicionless searches, "fishing expeditions," while at the same time recognizing

that searches of the same person or property with individualized suspicion can pass constitutional muster.

In that regard, see, e.g., City of Seattle v. Mesiani, 110 Wn.2d 454 (1988), in which this court held that a program involving "random" road block sobriety checkpoints violated article I, section 7 because it lacked particularized and individualized suspicion, and York v. Wahkiakum School District No. 200, 163 Wn.2d 297 (2008), in which we struck down a school district's program of urinalysis drug testing of student athletes where the testing was done without any individualized suspicion of drug use.

. . . .

In sum, we conclude that because the questioning of the desk clerk at the Travelodge was not random and was conducted only because the police officers had individualized suspicion that drug selling activity had taken place in room 56 of that motel, the examination of the registry that took place shortly thereafter did not violate article I, section 7 of our state constitution.

[Footnote, some citations omitted]

Chief Justice Madsen's Concurring Opinion

Chief Justice Madsen writes a one-sentence concurring opinion declaring: "I agree with the result the lead opinion reaches for the reasons I discussed at length in State v. Jordan. . . ."

With this concurring vote and opinion by Justice Madsen, there is a five-Justice majority view in Nichols that, under article I, section 7 of the Washington constitution, individualized reasonable suspicion without a search warrant will support law enforcement officers gaining, with the voluntary permission of motel/hotel staff, registry information about guests.

Note also that there is no question that the Fourth Amendment of the U.S. Constitution does not bar such checking of motel/hotel registries.

Justice Fairhurst's Dissenting Opinion

Justice Fairhurst authors a dissenting opinion that is joined by Justices Chambers, Owens and Sanders (Justice Sanders is sitting in a temporary capacity on cases on which he heard oral argument before Justice Wiggins was sworn into office on the Supreme Court on January 7, 2011). The dissent summarizes the two main points of its criticism of the lead opinion and majority result as follows:

By allowing individualized and particularized suspicion alone to diminish the privacy interest in motel registry information, the lead opinion effectively creates an exception to the warrant requirement. Under this new exception, an individualized and particularized suspicion gives officers authority of law to search an individual's private affairs for purely investigatory purposes despite a complete lack of need for immediate action. This exception threatens to swallow the rule. It also unnecessarily undermines the warrant requirement's purpose of reducing the risk of erroneous searches "by interposing a neutral and detached magistrate between the citizen and the officer engaged in the 'often competitive enterprise of ferreting out crime.'"

LED EDITORIAL COMMENT: 1. Is the registry-look standard a "reasonable suspicion" standard or is it the higher standard of "probable cause"? The lead Opinion in Nichols does not provide clear guidance on what it means when it states that "individualized suspicion" is the standard being applied. The Court is apparently leaving it to future decisions in future cases to explain the meaning of the phrase. In light of the evidence in this case, however, it seems clear to us that the standard is no greater than reasonable suspicion. The facts that the officers possessed at the time that they asked the motel workers for the registry information added up to "reasonable suspicion" but not to the higher standard of "probable cause." Also, we think that if the lead opinion had intended to use the more common standard of probable cause, the lead opinion would have expressly said so. Thus, we are interpreting the phrase "individualized suspicion" to mean "reasonable suspicion," a standard that is equivalent to the Terry stop "reasonable suspicion" standard. Accordingly, we believe that before asking for the registry information, officers must have objective information that supports a reasonable belief that the motel/hotel room registrant-suspect is committing, has committed, or is about to commit a crime.

2. Will our Supreme Court apply Nichols' middle-ground approach to Washington constitutional privacy protection in other subareas of search and seizure law? In State v. Dearman, 92 Wn. App. 630 (Div. I, 1998) Nov 98 LED:06, Division One of the Washington Court of Appeals held under article I, section 7 of the Washington constitution that use of a drug-sniffing dog at a home required a search warrant, even though the dog had been taken by officers along an usual, open route used by visitors going to the front door of the home; the Dearman Court focused on the heightened privacy protection afforded homes, and the Court thus distinguished prior decisions that held that it is lawful for drug-sniffing dogs to sniff packages-in-transit.

In Dearman, the State's primary argument was that use of the dog was not a search; the State made an alternative argument that the Court of Appeals ignored. The State's alternative argument was that a search warrant should not be required if officers have reasonable suspicion – at the time of the use of the dog along a usual access route to the front door – that unlawful drug activity is ongoing in the home. This alternative argument may be resurrected in a future drug-dog-at-the-house case in light of the novel approach of Nichols, which is that constitutional privacy protection of certain activities or interests is not necessarily an all-or-nothing proposition under which a search warrant is always required if an area or interest is constitutionally protected. Similarly, the reasonable-suspicion-is-enough argument might be made as a fallback position on the as-yet-unresolved issue of whether the Washington constitution's article I, section 7 bars use of a drug dog outside a car at a traffic stop. (Note that the Fourth Amendment apparently does not restrict such use of drug dogs at traffic stops – see Illinois v. Caballes, 534 U.S. 405 (2005) March 05 LED:03, April 05 LED:02 – and we doubt that the Fourth Amendment supports the result reached in Dearman, though to date the U.S. Supreme Court has not taken up the issue of drug dog usage at or near homes.)

NEXT MONTH

The July 2011 LED will include the Washington State Supreme Court's opinion in State v. Williams, ___ Wn.2d ___, 2011 WL 1834259 (May 12, 2011) where the Court held that the obstruction statute, RCW 9A.76.020(1), requires some conduct in addition to making false statements.

INTERNET ACCESS TO COURT RULES & DECISIONS, TO RCWS, AND TO WAC RULES

The Washington Office of the Administrator for the Courts maintains a website with appellate court information, including recent court opinions by the Court of Appeals and State Supreme Court. The address is [<http://www.courts.wa.gov/>]. Decisions issued in the preceding 90 days may be accessed by entering search terms, and decisions issued in the preceding 14 days may be more simply accessed through a separate link clearly designated. A website at [<http://legalwa.org/>] includes all Washington Court of Appeals opinions, as well as Washington State Supreme Court opinions. The site also includes links to the full text of the RCW, WAC, and many Washington city and county municipal codes (the site is accessible directly at the address above or via a link on the Washington Courts' website). Washington Rules of Court (including rules for appellate courts, superior courts, and courts of limited jurisdiction) are accessible via links on the Courts' website or by going directly to [http://www.courts.wa.gov/court_rules].

Many United States Supreme Court opinions can be accessed at [<http://supct.law.cornell.edu/supct/index.html>]. This website contains all U.S. Supreme Court opinions issued since 1990 and many significant opinions of the Court issued before 1990. Another website for U.S. Supreme Court opinions is the Court's own website at [<http://www.supremecourtus.gov/opinions/opinions.html>]. Decisions of the Ninth Circuit of the U.S. Court of Appeals since September 2000 can be accessed (by date of decision or by other search mechanism) by going to the Ninth Circuit home page at [<http://www.ca9.uscourts.gov/>] and clicking on "Decisions" and then "Opinions." Opinions from other U.S. circuit courts can be accessed by substituting the circuit number for "9" in this address to go to the home pages of the other circuit courts. Federal statutes are at [<http://www.law.cornell.edu/uscode/>].

Access to relatively current Washington state agency administrative rules (including DOL rules in Title 308 WAC, WSP equipment rules at Title 204 WAC, and State Toxicologist rules at WAC 448-15), as well as all RCW's current through 2007, is at [<http://www.leg.wa.gov/legislature>]. Information about bills filed since 1991 in the Washington Legislature is at the same address. Click on "Washington State Legislature," "bill info," "house bill information/senate bill information," and use bill numbers to access information. Access to the "Washington State Register" for the most recent proposed WAC amendments is at this address too. In addition, a wide range of state government information can be accessed at [<http://access.wa.gov>]. The internet address for the Criminal Justice Training Commission (CJTC) LED is [<https://fortress.wa.gov/cjtc/www/led/ledpage.html>], while the address for the Attorney General's Office home page is [<http://www.atg.wa.gov>].

The Law Enforcement Digest is edited by Assistant Attorney General Shannon Inglis of the Washington Attorney General's Office. Questions and comments regarding the content of the LED should be directed to AAG Inglis at Shannon.Inglis@atg.wa.gov. Retired AAG John Wasberg provides assistance to AAG Inglis on the LED. LED editorial commentary and analysis of statutes and court decisions express the thinking of the editor and do not necessarily reflect the views of the Office of the Attorney General or the CJTC. The LED is published as a research source only. The LED does not purport to furnish legal advice. LEDs from January 1992 forward are available via a link on the CJTC Home Page [<https://fortress.wa.gov/cjtc/www/led/ledpage.html>]
