



Law Enforcement

MAY 2012

Digest

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

HONOR ROLL

679th Basic Law Enforcement Academy – November 19, 2011 through May6, 2012

| | |
|-----------------------|--|
| President: | Skye C. Ortiz, Ferndale PD |
| Best Overall: | Kristin L. McCall, West Richland PD |
| Best Academic: | Kristin L. McCall, West Richland PD |
| Best Firearms: | William O. Smith, Wash. Dept. of Fish & Wildlife |
| Patrol Partner Award: | Ottis S. Buzzard, Okanogan County |
| Tac Officer: | Allen Gill, WSCJTC |

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WASHINGTON LAW ENFORCEMENT MEDAL OF HONOR & PEACE OFFICERS MEMORIAL CEREMONY IS SET FOR FRIDAY, MAY 4, 2012 IN OLYMPIA AT 1:00 P.M.

In 1994, the Washington Legislature passed chapter 41.72 RCW, establishing the Law Enforcement Medal of Honor. The medal honors those law enforcement officers who have been killed in the line of duty or who have distinguished themselves by exceptional meritorious conduct. This year’s Medal of Honor ceremony for Washington will take place Friday, May 4,

2012, starting at 1:00 PM, at the Law Enforcement Memorial site in Olympia on the Capitol Campus. The site is adjacent to the Supreme Court Temple of Justice.

This ceremony is a very special time, not only to honor those officers who have been killed in the line of duty and those who have distinguished themselves by exceptional meritorious conduct, but also to recognize all officers who continue, at great risk and peril, to protect those they serve. This ceremony is open to all law enforcement personnel and all citizens who wish to attend. A reception will follow the ceremony.

PART ONE OF THE 2012 WASHINGTON LEGISLATIVE UPDATE

LED INTRODUCTORY EDITORIAL NOTE: This is Part One of what will be a two-part compilation of 2012 State of Washington legislative enactments of interest to law enforcement. We believe that we have covered all of the legislation passed during the 2012 regular session that is of interest to law enforcement. In order to include all of the legislation in a single LED issue, we are opting not to include any cases except the recent Washington State Supreme Court opinion in State v. Snapp/Wright. Part Two will include any regular session legislation that we may have missed, any special session legislation, and the 2012 Legislative Index.

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 2012 regular session take effect on June 7, 2012 (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 2012 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 Sheriffs and Police Chiefs (WASPC), Washington Association of Prosecuting Attorneys (WAPA) 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.

BAIL FOR FELONY OFFENSES

Amends Laws of 2010 chapter 254 section 2 (which is uncodified) to read as follows: "Bail for the release of a person arrested and detained for a class A or B felony offense must be determined on an individualized basis by a judicial officer." Also provides that this section will be added to chapter 10.19 RCW.

The Final Bill Report summarizes the background in part as follows:

The Washington Supreme Court has held that whether to promulgate a bail schedule is a question best left to the counties. In counties that have a bail schedule, a defendant may post bail without a judicial officer's determination. The availability and amount of bail for the particular offense are specified in the bail schedule. Most counties have a bail schedule for misdemeanors, and prior to January 1, 2011, seven counties had a bail schedule for felonies.

House Bill 2625, which was enacted during the 2010 legislative session, required that a judicial officer make a bail determination on an individualized basis for a person arrested and detained for a felony. This requirement went into effect January 1, 2011, and expired August 1, 2011.

ELECTRONIC IMPERSONATION

Chapter 9 (SSHB 1652)

Effective Date: June 7, 2012

Adds a new section to chapter 4.24 RCW specifically providing that a person may be civilly liable, based on a theory of invasion of privacy, for electronic impersonation. The statute does not apply when "[p]erformed by a law enforcement agency as part of a lawful criminal investigation."

EXTENDING THE AGE FOR SERVICE IN THE WASHINGTON STATE GUARD

Chapter 12 (SHB 2181)

Effective Date: June 7, 2012

Adds a subsection to RCW 38.16.015 which provides:

[T]he adjutant general may extend the service age upon request by an active member of the Washington state guard if the adjutant general determines the member's extension would be in the best interest of the Washington state guard. Extensions under this subsection have a one-year duration and may be renewed until the member attains the age of sixty-eight.

The current mandatory retirement age is 64.

ALLOWING REGISTERED TOW TRUCK OPERATORS TO PASS THE COSTS OF TOLLS AND FERRY FARES TO THE IMPOUNDED VEHICLE'S REGISTERED OWNER

Chapter 18 (HB 2274)

Effective Date: June 7, 2012

Amends 46.55.035(2) to read as follows: "This section does not prohibit the registered tow truck operator from collecting the costs of towing, storage, tolls or ferry fares paid, or other services rendered during the course of towing, removing, impounding, or storing of an impounded vehicle as provided by RCW 46.55.120."

SERVICE MEMBERS' CIVIL RELIEF

Chapter 24 (SSB 5627)

Effective Date: June 7, 2012

Amends RCW 38.42.010 and .050 to extend protection against default judgments to national guard members (and their dependents) called to service by the Governor for at least 30 days.

LICENSE SUSPENSION CLERICAL ERRORS

Chapter 28 (SB 6030)

Effective Date: June 7, 2012

Amends RCW 46.61.5055(9) to address the situation where a clerical error by a court results in the Department of Licensing not being notified of a conviction requiring a mandatory license suspension. The Final Bill Report summarizes the bill as follows:

“If a court finds that the required notice to DOL has been delayed for three years or more due to a clerical or court error, the court may order that the person’s driver license not be revoked, suspended, or denied for that offense. Upon receipt of the order, DOL must not revoke, suspend, or deny the license, permit, or nonresident privilege of the person for that offense.”

CLARIFYING THE LOCATION AT WHICH THE CRIME OF THEFT OF RENTAL, LEASED, LEASE-PURCHASED, OR LOANED PROPERTY OCCURS

Chapter 30 (SB 6108)

Effective Date: June 7, 2012

Amends RCW 9A.56.096 by adding a new subsection providing:

(6) The crime of theft of rental, leased, lease-purchased, or loaned property may be deemed to have been committed either at the physical location where the written agreement for the rental, lease, lease-purchase, or loan of the property was executed under subsection (1) of this section, or at the address where proper notice may be mailed to the renter, lessee, or borrower under subsection (3) of this section.

FINANCING THE INTERSTATE 5 COLUMBIA RIVER CROSSING PROJECT

Chapter 36 (ESSB 6445)

Effective Date: June 7, 2012

Adds a new section to chapter 47.56 RCW authorizing tolling on the “Columbia river crossing project,” the “bistate, multimodal corridor improvement program between the state route number 500 interchange in Vancouver, Washington and the Victory Boulevard interchange in Portland, Oregon.” Tolls must be charged only for travel on the existing and replacement Interstate 5 Columbia river bridges and may not be charged for travel on any portion of Interstate 205.

BLUE ALERT SYSTEM

Chapter 37 (ESHB 1820)

Effective Date: June 7, 2012

Adds a new chapter to title 10 RCW that requires the development of a Blue Alert system (similar to the Amber Alert system) to quickly notify the public about an offender suspected of injuring or killing a law enforcement officer. The system must be developed using existing resources.

Section 3, subsection (2) provides that the investigating law enforcement agency may request activation of the Blue Alert system when it believes that:

(a) A suspect has not been apprehended;

- (b) A suspect may be a serious threat to the public;
- (c) Sufficient information is available to disseminate to the public that could assist in locating and apprehending the suspect;
- (d) Release of the information will not compromise the investigation; and
- (e) Criteria to ensure that releasing the victim information is proper, as to avoid improper next of kin notification.

“Law enforcement officer” is defined broadly to include:

[P]olice officers, the attorney general and the attorney general’s deputies, sheriffs and their regular deputies, corrections officers, tribal law enforcement officers, park rangers, state fire marshals, municipal fire marshals, sworn members of the city fire departments, county and district firefighters, and agents of the department of fish and wildlife. “Law enforcement officer” also includes an employee of a federal governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and who has statutory powers of arrest.

BEING UNDER THE INFLUENCE WITH A CHILD IN THE VEHICLE

Chapter 42 (ESHB 2302)

Effective Date: June 7, 2012

Amends RCW 46.61.507 to read as follows:

(1) In every case where a person is arrested for a violation of RCW 46.61.502 or 46.61.504, the law enforcement officer shall make a clear notation if a child under the age of sixteen was present in the vehicle.

(2) A law enforcement officer shall promptly notify child protective services whenever a child is present in a vehicle being driven by his or her parent, guardian, ((or)) legal custodian, or sibling or half-sibling and that person is being arrested for a drug or alcohol-related driving offense. This section does not require law enforcement to take custody of the child unless there is no other responsible person, or an agency having the right to physical custody of the child that can be contacted, or the officer has reasonable grounds to believe the child should be taken into custody pursuant to RCW 13.34.050 or 26.44.050.

(3) For purposes of this section, “child” means any person under ((thirteen)) sixteen years of age.

Also establishes enhanced sentencing penalties for DUI related misdemeanors and felonies committed with a passenger under 16 years old in the vehicle, and increases the amount of time a DUI offender must have an ignition interlock.

CRIMINAL IDENTIFICATION SYSTEM INFORMATION FOR ENTITIES PROVIDING EMERGENCY SHELTER, INTERIM HOUSING, OR TRANSITIONAL HOUSING

Chapter 44 (SSB 6167)

Effective Date: June 7, 2012

Amends RCW 43.43.832 to require the Washington State Patrol to provide:

A prospective client’s or resident’s conviction record [at no cost], upon the request of a business or organization that qualifies for exemption under section 501(c)(3) of the internal revenue code . . . and that provides emergency shelter

or transitional housing for children, persons with developmental disabilities, or vulnerable adults.

“Client” or “resident” means a child, person with developmental disabilities, or vulnerable adult applying for housing assistance from a business or organization. RCW 43.43.880(4).

CREATING A PROCEDURE FOR THE STATE’S RETROCESSION OF CIVIL AND CRIMINAL JURISDICTION OVER INDIAN TRIBES AND INDIAN COUNTRY

Chapter 48 (ESHB 2233)

Effective Date: June 7, 2012

The bill creates a three step procedure in which the Governor is granted plenary power to approve or deny a proposed retrocession.

The state will retain civil jurisdiction for the civil commitment of sexually violent predators.

SPECIAL LICENSE PLATES

Chapter 65 (SHB 2299)

Effective Date: January 1, 2013

Amends RCW 46.18.200 (and other sections) and adds new sections to chapter 46.04 RCW, creating “4-H” and Washington State flower license plates.

The 4-H and state flower license plates, as well as the music matters and volunteer firefighter license plates created last session, are exempted from the present moratorium on special license plates which is in effect through July 1, 2013. See section 6 of the bill; RCW 46.18.060.

MILITARY SERVICE AWARD EMBLEMS

Chapter 69 (SHB 2312)

Effective Date: January 1, 2013

Amends RCW 46.18.295 to allow veterans discharged under honorable conditions and individuals serving on active duty in the United States armed forces to purchase military service award emblems (in addition to veterans remembrance emblems and campaign medal emblems) for display on license plates. Available emblems are: (a) Distinguished Service Cross; (b) Navy Cross; (c) Air Force Cross; (d) Silver Star medal; and (e) Bronze Star medal.

CONFISCATION OF COMMERCIAL MOTOR VEHICLE LICENSE PLATES WHEN OPERATED WITH A REVOKED REGISTRATION

Chapter 70 (HB 2459)

Effective Date: June 7, 2012

Amends RCW 46.32.100(2) to add language providing that “The Washington state patrol or other law enforcement agency must confiscate and may recycle or destroy the license plates from a motor carrier who operates a commercial motor vehicle while the vehicle registration is revoked, suspended, or canceled. The confiscation of license plates under this subsection only applies to trucks, truck tractors, and tractors.”

SPECIAL LICENSE PLATES WITH A SPECIAL YEAR TAB FOR PERSONS WITH DISABILITIES

Chapter 71 (SHB 2574)

Effective Date: January 1, 2013

Amends RCW 46.19.040 to make special year tabs for persons with disabilities available for any special license plate, except the collector vehicle, horseless carriage, and ride share special license plates.

USE OF ALTERNATIVE TRACTION DEVICES ON TIRES UNDER CERTAIN CONDITIONS

Chapter 75 (SSB 6112)

Effective Date: June 7, 2012

Amends RCW 46.37.420 to authorize the use of alternative traction devices, in addition to tire chains and metal studs, so long as they conform to rules adopted by the Washington State Patrol, when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.

MAXIMUM VEHICLE LENGTHS

Chapter 79 (SSB 6138)

Effective Date: June 7, 2012

Amends RCW 46.44.030 to add an exemption to the prohibition against operating a vehicle with an overall length in excess of forty feet, for auto recycling carriers up to forty-two feet in length if manufactured prior to 2005.

SUPPORTING THE DRIVER'S LICENSE, PERMIT, AND IDENTICARD SYSTEM, INCLUDING THE ADMINISTRATION OF A FACIAL RECOGNITION MATCHING SYSTEM

Chapter 80 (ESSB 6150)

Effective Date: June 7, 2012

(Sections 5-13 October 1, 2012)

The Final Bill Report summarizes the bill in part as follows:

Facial recognition matching system is defined as a system that compares the biometric template derived from an image of an applicant or holder of a driver license, permit, or identicard with the biometric templates derived from the images in [the Department of Licensing] DOL's negative file.

DOL is authorized to implement a facial recognition matching system for all driver licenses, permits, and identicards to determine whether the person has been issued identification under a different name or names.

The results from the system are not available for public inspection and copying and may only be disclosed: (1) pursuant to a valid court order; (2) to a federal government agency, if specifically required under federal law; or (3) to a government agency, including a court or law enforcement agency, for use in carrying out its functions if the DOL has determined that person has committed certain prohibited practices and this determination has been confirmed by a hearings examiner. The results from the facial recognition matching system are not available for public inspection and copying under the Public Records Act.

DOL must provide specified public notices at driver licensing offices and on DOL's website that address how the facial recognition matching system works, all ways in which DOL may use the results, how an investigation based on results from the system would be conducted, and a person's right to appeal any determination made.

DOL must develop procedures to handle incidents when the facial recognition matching system fails to verify the identity of an applicant for a renewal or duplicate driver license or identicard. The procedures must allow the applicant to prove identity without using the facial recognition matching system.

...

Beginning July 1, 2013, a Washington State driver license, endorsement, or identicard is valid for up to six years. From July 1, 2013, until June 30, 2021, DOL may issue a driver license or identicard for a period of other than six years in order to evenly distribute the yearly renewal rate. DOL may also issue a driver license that includes a hazardous materials endorsement for a period of other than six years in order to match the validity of certification from the federal transportation security administration.

...

REFORMING WASHINGTON'S APPROACH TO CERTAIN NONSAFETY CIVIL TRAFFIC INFRINGEMENTS BY AUTHORIZING A CIVIL COLLECTION PROCESS FOR UNPAID TRAFFIC FINES AND REMOVING THE REQUIREMENT FOR LAW ENFORCEMENT INTERVENTION FOR THE FAILURE TO APPEAR AND PAY A TRAFFIC TICKET

Chapter 82 (ESSSB 6284)

Effective Date: June 1, 2013

Amends several statutes relating to failure to appear and/or failure to pay infractions. The Final Bill Report summarizes the bill as follows:

Whenever any person served with a traffic citation willfully fails to respond to a notice of traffic infraction for a moving violation, fails to appear at a requested hearing for a moving violation, violates a written promise to appear in court for a notice of a moving violation, or fails to comply with the terms of a moving violation, the court in which the defendant failed to appear promptly gives notice of such fact to the department [of licensing]. Whenever the same happens for a non-moving violation, the court in which the defendant failed to appear is no longer required to give notice of such fact to the department.

Whenever a monetary penalty or other monetary obligation is imposed, it is immediately payable and is enforceable as a civil judgment. If a payment required to be made under the payment plan is delinquent, the court may refer the unpaid monetary penalty or other monetary obligation for civil enforcement until all monetary obligations have been paid. For those infractions (moving violations) subject to suspension under the department's authority, the court notifies the department of the person's failure to meet the conditions of the plan, and the department suspends the person's driver's license or driving privileges.

...

The department in consultation with the Administrative Office of the Courts must adopt and maintain rules by November 1, 2012, that define a moving violation pursuant to Title 46 RCW. . . .

Except for the section of the act pertaining to adopting and maintaining rules, the rest of the act takes effect June 1, 2013. If specific funds for the purposes of this act, referencing this act by bill or chapter number, are not provided by June 30, 2012 in the transportation appropriations act, this act is null and void.

ELIGIBLE TOLL FACILITIES

Chapter 83 (SSB 6444)

Effective Date: June 7, 2012

Adds a new section to chapter 47.56 RCW authorizing tolling "on the portion of state route number 99 that is the deep bore tunnel under First Avenue from the vicinity of the sports stadiums in Seattle to Aurora Avenue north of the Battery Street tunnel."

HARMONIZING CERTAIN TRAFFIC CONTROL SIGNAL PROVISIONS RELATIVE TO YELLOW CHANGE INTERVALS, CERTAIN FINE AMOUNT LIMITATIONS, AND CERTAIN SIGNAGE AND REPORTING REQUIREMENTS

Chapter 85 (5188)

Effective Date: June 7, 2012

Adds a new section to chapter 47.36 RCW and amends 46.63.170 relating to automated traffic control cameras. The Final Bill Report summarizes the changes as follows:

All traffic control signals (stoplights) must have yellow light change intervals that are at least as long as the minimum intervals identified in the federal Manual of Uniform Traffic Control Devices (MUTCD).

If an automated, traffic-safety camera is used to detect stoplight violations, it must be installed on a stoplight that has a yellow change interval duration that meets the standards identified in MUTCD, and the yellow change interval duration may not be reduced after placement of the camera.

The fine issued for a stoplight violation that is detected through the use of an automated, traffic-safety camera may not exceed the monetary penalty for a violation of the requirement to follow official traffic control devices – currently \$124.

The following provisions are added to the automated traffic safety camera law:

- requires the applicable jurisdiction to conduct an analysis of the proposed camera locations;
- requires annual reports regarding traffic accident rates where a camera is located and the number of infractions issued for each camera;
- requires signage regarding the location of a camera to be posted at least 30 days before activation of the camera; and
- standardizes the signage requirements for camera locations.

LAW ENFORCEMENT CRIME PREVENTION EFFORTS REGARDING SECURITY ALARM SYSTEMS AND CRIME WATCH PROGRAMS FOR RESIDENTIAL AND COMMERCIAL LOCATIONS

Chapter 88 (EHB 1234)

Effective Date: June 7, 2012

Adds a new Public Records Act exemption to RCW 42.56.240 which reads as follows:

(9) Personally identifying information collected by law enforcement agencies pursuant to local security alarm system programs and vacation crime watch programs. Nothing in this subsection shall be interpreted so as to prohibit the legal owner of a residence or business from accessing information regarding his or her residence or business.

POLICE DOGS

Chapter 94 (SHB 2191)

Effective Date: June 7, 2012

Amends RCW 16.08.040 (owner liable for damages for dog bite) to provide that the statute does not apply to the “lawful application of a police dog, as defined in RCW 4.24.410.”

Also amends RCW 9A.76.200 to authorize a civil penalty of up to \$5,000 for harming a police dog, and require a civil penalty of at least \$5,000, which may be increased to up to \$10,000, for killing a police dog. Provides that money collected must be distributed to the jurisdiction that owns the police dog.

UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT

Chapter 95 (HB 2195)

Effective Date: June 7, 2012

Adopts the Uniform Interstate Depositions and Discovery Act. The Final Bill Report provides the following Summary:

The Uniform Interstate Depositions and Discovery Act (Act) is adopted. A litigant in a foreign action may present a subpoena issued in the trial state to the clerk of the court in the Washington county in which discovery is sought. The clerk of the Washington court must then issue a Washington subpoena for service upon the person to be deposed or from whom discovery materials are sought. The Washington subpoena must contain all of the relevant terms of the subpoena from the trial state and the contact information for all counsel of record or unrepresented parties. In issuing the subpoena, the Washington court acts in accordance with its own procedure.

Service of the subpoena and discovery procedures must follow the Washington Superior Court Civil Rules. All applications to the court for a protective order or to enforce, quash, or modify a subpoena issued through the Act's procedures must comply with Washington court rules and applicable statutes.

BOXING, MARTIAL ARTS, AND WRESTLING

Chapter 99 (ESHB 2301)

Effective Date: June 7, 2012

Amends several sections in chapter 67.08 RCW relating to amateur boxing, martial arts and wrestling, including extending the scope of regulations to "mixed martial arts."

ADDING TRAFFICKING IN STOLEN PROPERTY IN THE FIRST AND SECOND DEGREES TO THE SIX-YEAR STATUTE OF LIMITATIONS PROVISIONS

Chapter 105 (SHB 2354)

Effective Date: June 7, 2012

Amends RCW 9A.04.080 to extend the statute of limitations for trafficking in stolen property in the first or second degree under chapter 9A.82 RCW in which the stolen property is a motor vehicle or major component part of a motor vehicle as defined in RCW 46.80.010 to six years.

PERSONAL VEHICLE SHARING PROGRAMS

Chapter 108 (ESHB 2384)

Effective Date: January 1, 2013

Adds a new chapter to Title 48 RCW addressing insurance and liability for personal vehicle sharing programs.

The bill applies to policies issued or renewed on or after January 1, 2013.

JUVENILE DETENTION INTAKE STANDARDS FOR JUVENILES WHO ARE DEVELOPMENTALLY DISABLED

Chapter 120 (SB 6157)

Effective Date: June 7, 2012

Amends RCW 13.40.038(2) to require county juvenile detention facilities to develop and implement, by December 31, 2012, detention intake standards and risk assessment standards to determine whether a juvenile is developmentally disabled, and if detention is warranted.

ESTABLISHING A GOVERNMENT-TO-GOVERNMENT RELATIONSHIP BETWEEN STATE GOVERNMENT AND FEDERALLY RECOGNIZED INDIAN TRIBES

Chapter 122 (SB 6175)

Effective Date: June 7, 2012

Adds a new chapter to title 43 RCW. The Final Bill Report summarizes the bill as follows:

In establishing a government-to-government relationship with tribes, state elected officials and agencies must:

- make reasonable efforts to collaborate with tribes in developing policies and agreements and in implementing programs affecting tribes;
- develop a consultation process for issues involving tribes;
- designate a tribal liaison reporting to the head of the agency;
- ensure that tribal liaisons and agency directors receive training through [Governor's Office of Indian Affairs] GOIA or another provider that includes effective communication, collaboration, and cultural competency; and
- annually report to the Governor on activities involving tribes and implementation of these requirements.

Tribal liaisons must:

- the agency in developing and implementing policies promoting effective communication and collaboration;
- serve as a contact person with tribal governments;
- maintain communication; and
- coordinate training of agency employees.

At least annually, the Governor and other statewide elected officials must meet with tribal leaders to address issues of mutual concern.

The Governor must maintain a publicly-available, updated list of tribal liaisons and tribal leaders with contact information.

BACKGROUND CHECKS

Chapter 125 (ESB 6296)

Effective Date: June 7, 2012

Amends several sections in chapter 10.97 RCW and chapter 43.43 RCW, including:

Amends RCW 10.97.030(1) to exclude "intelligence, analytical, or investigative reports and files" from the definition of criminal history record information (CHRI).

Amends RCW 10.97.080 to allow nonconviction data to be retained or mechanically reproduced by the subject of the record, removing the requirement that it must be for the purpose of challenging the accuracy of the record. The bill also allows the criminal justice agency to verify the identity of the person seeking to inspect the record and allows agencies to "impose such additional restrictions, including fingerprinting, as are reasonably necessary both to assure the record's security and to verify the identities of those who seek to inspect them. The criminal

justice agency may charge a reasonable fee for fingerprinting or providing a copy of the personal nonconviction data information pursuant to this section.”

LED EDITORIAL COMMENT: The amendment to RCW 10.97.030 is intended to exclude police reports from the definition of CHRI and should put to rest Hudgens v. City of Renton, 49 Wn. App. 842 (1987) and the argument that police reports can constitute nonconviction data. Chapter 10.97 RCW applies only to RAP sheet-type information.

DEFINITION OF FARM VEHICLE

Chapter 130 (SSB 6423)

Effective Date: June 7, 2012

Amends the definition of “farm vehicle” in RCW 46.04.081 to read as follows:

[A]ny vehicle other than a farm tractor or farm implement which is: (1) Designed and/or used primarily in agricultural pursuits on farms for the purpose of transporting machinery, equipment, implements, farm products, supplies and/or farm labor thereon and is only incidentally operated on or moved along public highways for the purpose of going from one farm to another; or (2) for purposes of RCW 46.25.050, used to transport agricultural products, farm machinery, farm supplies, or any combination of these materials to or from a farm.

INCREASING FEE ASSESSMENTS FOR PROSTITUTION AND TRAFFICKING CRIMES AND REQUIRING SEX OFFENDER REGISTRATION FOR SECOND AND SUBSEQUENT CONVICTIONS OF PROMOTING PROSTITUTION IN THE FIRST OR SECOND DEGREE

Chapter 134 (ESHB 1983)

Effective Date: June 7, 2012

The bill increases the fees imposed for promoting prostitution, permitting prostitution, patronizing a prostitute and trafficking crimes. The Final Bill Report summarizes the restrictions on the revenue as follows:

The revenue raised from these fees is collected by the clerk of the court and remitted to the county where the offense occurred for the county general fund, except if the offense occurred within a city or town which provides for its own law enforcement, in which case the funds will be deposited in the city or town general fund.

The funds must be used for local efforts to reduce the commercial sale of sex including prevention and increased enforcement of commercial sex laws. Specifically, at least half of the funds must be spent on prevention, including education programs for offenders, such as john schools, and rehabilitative services such as: mental health and substance abuse counseling, parenting skills training, housing relief, education, vocational training, drop-in centers, and employment counseling, to help individuals transition out of the commercial sex industry.

Additionally, the bill amends RCW 9A.44.128(10) to make a violation of RCW 9A.88.070 (promoting prostitution in the first degree) or RCW 9A.88.080 (promoting prostitution in the second degree) a “sex offense,” requiring registration, if the person has a prior conviction for one of these offenses.

PROTECTING CHILDREN FROM SEXUAL EXPLOITATION

Chapter 135 (SHB 2177)

Effective Date: June 7, 2012

Amends RCW 9.68A.001 and adds new sections to chapter 9.68A RCW. The Final Bill Report summarizes the bill in part as follows:

Defendant's Access to Child Pornography.

Any material depicting a minor engaged in sexually explicit conduct must remain in the care, custody, and control of either a law enforcement agency or the court. Despite any request by the defendant or prosecution, any property or material that constitutes a depiction of a minor engaged in sexually explicit conduct must not be copied, photographed, duplicated, or otherwise reproduced, so long as the property or material is made reasonably available to the parties.

...

Production of Mirror Imaged Hard Drive for Expert Analysis.

If the defendant has retained an expert to conduct a forensic examination of the material, the court may direct that a mirror image of a computer hard drive be produced. The mirror imaged hard drive will remain in the care, custody, and control of a law enforcement agency or the court, unless the defendant makes a substantial showing that the expert's analysis cannot be accomplished under those terms. In that case, the court may order the release of the mirror imaged hard drive to the expert for analysis, subject to a protective order. The protective order must contain terms and conditions necessary to protect the rights of the victims, document the chain of custody, and protect physical evidence.

...

The bill also provides for the storing, sealing and destruction of court exhibits containing child pornography.

For violations of the law relating to sexual exploitation of children committed after December 31, 2012, it is not a defense that the initial receipt of the materials occurred legally through discovery.

LED EDITORIAL COMMENT: This is a Legislative response to the Washington State Supreme Court decisions in State v. Boyd, 160 Wn.2d 424 (2007) Oct 07 LED:10, and State v. Grenning, 169 Wn.2d 47 (2010) Sept 10 LED:15, which required prosecutors to duplicate and distribute depictions of a minor engaged in sexually explicit conduct ("child pornography") as part of the discovery process in a criminal prosecution.

REDUCTION OF THE COMMERCIAL SALE OF SEX

Chapter 136 (ESHB 2692)

Effective Date: June 7, 2012

Amends RCW 9A.88.130 to add the requirement that first time offenders who are convicted or receive a deferred sentence or deferred prosecution for patronizing a prostitute or commercial sexual abuse of a minor attend a program designated by the sentencing court, designed to educate offenders about the negative costs of prostitution.

Partial Veto: The Governor vetoed section 1 of the bill because it would have amended the same statute that is amended by section 3 of Chapter 134 (ESHB 1983).

ADVERTISING COMMERCIAL SEXUAL ABUSE OF A MINOR

Chapter 138 (ESSB 6251)

Effective Date: June 7, 2012

Creates a new crime of advertising commercial sexual abuse of a minor, class C felony, in chapter 9.68A RCW:

(1) A person commits the offense of advertising commercial sexual abuse of a minor if he or she knowingly publishes, disseminates, or displays, or causes directly or indirectly, to be published, disseminated, or displayed, any advertisement for a commercial sex act, which is to take place in the state of Washington and that includes the depiction of a minor.

It is not a defense that the defendant did not know the age of the minor.

It is a defense, which the defendant must prove by a preponderance of the evidence, that the defendant made a reasonable attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper of the minor and did not rely solely on oral or written representations. In order to invoke the defense, the defendant must produce for inspection by law enforcement a record of the identification used to verify the age of the person depicted in the advertisement.

COMMERCIAL SEXUAL ABUSE OF A MINOR, PROMOTING COMMERCIAL SEXUAL ABUSE OF A MINOR, AND PROMOTING PROSTITUTION IN THE FIRST DEGREE

Chapter 139 (ESSB 6252)

Effective Date: June 7, 2012

Amends 9A.82.010(4) and RCW 9A.82.100 to add commercial sexual abuse of a minor and promoting commercial sexual abuse of a minor to the offenses that may constitute a pattern of criminal profiteering. A single act of commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, or promoting prostitution may trigger the criminal profiteering act remedies.

SEIZURE AND FORFEITURE RELATED TO CERTAIN COMMERCIAL SEX CRIMES

Chapter 140 (SSB 6253)

Effective Date: June 7, 2012

Adds a new section to chapter 9A.88 RCW authorizing the seizure and forfeiture of real and personal property or proceeds used to facilitate the crimes of commercial sexual abuse of a minor, promoting sexual abuse of a minor, or promoting prostitution in the first degree. The statute sets out procedural requirements patterned after the drug forfeiture laws.

PROMOTING PROSTITUTION

Chapter 141 (ESB 6254)

Effective Date: June 7, 2012

Amends RCW 9A.88.070 to add an alternative means of committing promoting prostitution in the first degree (class B felony):

(1) A person is guilty of promoting prostitution in the first degree if he or she knowingly advances prostitution:

(a) By compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force; or

(b) By compelling a person with a mental incapacity or developmental disability that renders the person incapable of consent to engage in prostitution or profits from prostitution that results from such compulsion.

VICTIMS OF HUMAN TRAFFICKING AND PROMOTING PROSTITUTION

Adds a new section to chapter 9A.88 RCW creating an affirmative defense to a prosecution for prostitution, that the defendant committed the offense as a result of being a victim of trafficking, RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq.

Also amends RCW 9.96.060 to allow defendants convicted of prostitution who committed the offense as a result of being a victim of trafficking, promoting prostitution in the first degree, or trafficking in persons under the trafficking victims protection act of 2000 to have their misdemeanor convictions vacated, so long as they have no pending criminal charges, no subsequent convictions, and have not had any other prostitution convictions vacated.

ADDING COMMERCIAL SEXUAL ABUSE OF A MINOR TO THE LIST OF CRIMINAL STREET GANG-RELATED OFFENSES

Chapter 143 (SB 6256)

Effective Date: June 7, 2012

Amends RCW 9.94A.040(14) to add promoting commercial sexual abuse of a minor to the list of criminal street gang-related offenses.

SEXUALLY EXPLICIT ACT

Chapter 144 (ESB 6257)

Effective Date: June 7, 2012

Amends RCW 9.68A.010(3) (commercial sexual abuse of a minor) and RCW 9A.40.100 (trafficking) to add sexually explicit acts. The Final Bill Report summarizes the bill in part as follows:

A sexually explicit act, with regard to promoting the sexual abuse of a minor, is a public, private, or live [] photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons and for which something of value is given or received. A sexually explicit act, with regard to trafficking, is a public, private, or live [] photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.

LURING UNACCOMPANIED PERSONS

Chapter 145 (SSB 6258)

Effective Date: January 1, 2013

Amends RCW 9A.40.090(1), luring, to read in part as follows:

A person commits the crime of luring if the person:

- (1)(a) Orders, lures, or attempts to lure a minor or a person with a developmental disability into any area or structure that is obscured from or inaccessible to the public, or away from any area or structure constituting a bus terminal, airport terminal, or other transportation terminal, or into a motor vehicle;
- (b) Does not have the consent of the minor's parent or guardian or of the guardian of the person with a developmental disability; and
- (c) Is unknown to the child or developmentally disabled person.

CREATING A JUVENILE GANG COURT

Chapter 146 (HB 2535)

Effective Date: June 7, 2012

Authorizes counties to create juvenile gang courts. Defines juvenile gang court as:

[A] court that has special calendars or dockets designed to achieve a reduction in gang-related offenses among juvenile offenders by increasing their likelihood for successful rehabilitation through early, continuous, and judicially supervised and integrated evidence-based services proven to reduce juvenile recidivism and gang involvement or through the use of research-based or promising practices identified by the Washington state partnership council on juvenile justice.

REMOVING FINANCIAL BARRIERS TO PERSONS SEEKING VULNERABLE ADULT PROTECTION ORDERS

Chapter 156 (SSB 6403)

Effective Date: June 7, 2012

Amends RCW 74.34.140 and adds a new section to chapter 74.34 RCW providing that vulnerable adults seeking relief from abandonment, abuse, financial exploitation, or neglect may not be charged a fee for filing or service of process for protection orders and must be provided the necessary number of certified copies at no charge.

VEHICULAR HOMICIDE SENTENCES

Chapter 162 (SSHB 2216)

Effective Date: June 7, 2012

Amends RCW 9.94A.515 to increase the seriousness level, for purposes of sentencing, of vehicular homicide, by being under the influence of intoxicating liquor or any drug. RCW 46.61.520.

The Final Bill Report summarizes the bill as follows: “The seriousness level ranking for the crime of Vehicular Homicide while driving under the influence of alcohol or drugs is increased from a level IX to a level XI offense, resulting in a standard sentence range of 78-102 months for a person with no prior offenses.”

MODIFYING THE USE OF FUNDS IN THE FIRE SERVICE TRAINING ACCOUNT

Chapter 173 (ESHB 2747)

Effective Date: June 7, 2012

Amends RCW 43.43.944(2) to authorize the use of funds in the fire service training account for (b) school fire prevention activities within the Washington state patrol; and (c) the maintenance, operations, and capital projects of the state fire training academy in addition to fire service training (subsection (a)). However, expenditures for purposes of (b) and (c) may only be made to the extent that they do not adversely affect expenditures for the purpose of (a).

ENFORCEMENT OF FISH AND WILDLIFE VIOLATIONS

Chapter 176 (SSB 6135)

Effective Date: June 7, 2012

Amends numerous provision relating to fish and wildlife enforcement. Those of particular interest to law enforcement include (excerpted from the Final Bill Report’s summary):

[Washington Department of Fish and Wildlife] WDFW Law Enforcement. Peace Officers Given Authority to Briefly Detain a Person Being Issued a Notice of Infraction (NOI). Peace officers are allowed, when issuing an NOI, to detain a person long enough to identify the person, check for outstanding warrants, and complete and issue NOI. The person receiving NOI must also provide the officer

with his or her name, address, and date of birth, including reasonable identification upon officer request. Failure to identify oneself is an infraction.

Ex Officio Officers Defined and Given Authority to Check Licenses and Equipment. The definition of an ex officio fish and wildlife officer is expanding, thereby adding new options for satisfying the requirements for becoming an ex officio officer for the purposes of enforcing fish and wildlife laws. In addition to being a commissioned general law enforcement officer, a person may become an ex officio officer by:

- being a limited authority officer with another state or federal agency that is operating under a mutual law enforcement assistance agreement with WDFW;
- being a qualified fish and wildlife officer from another state if the other state's agency is operating under a mutual law enforcement assistance agreement with WDFW; or
- being a tribal police officer in Washington who successfully meets the state's requirements for law enforcement certification if there is a mutual law enforcement assistance agreement with WDFW and the employing tribe and the tribe's law enforcement meets the state's requirements for general authority law enforcement status.

Additionally, ex officio officers, such as park rangers and [Department of Natural Resources] DNR officers, have authority to temporarily stop people engaged in fishing, harvesting, or hunting activity to check for valid licenses, tags, permits, stamps, catch record cards, and to inspect people's fish, shellfish, seaweed, wildlife, equipment, and watercraft for compliance.

Minimum Qualifications for WDFW Officers Defined. WDFW officers must pass a psychological and polygraph exam.

WDFW Crimes in the Courts. *The Sentencing Reform Act is Amended to Rank Certain WDFW Felonies.* . . .

. . .
Activities not Involving High Stakes Resources are Decriminalized. Fifteen new infractions are added to the current three based on activities that do not involve protected or endangered species, big game, or other high stakes resources. . . .

The Definition of Conviction is Clarified, and Other Statutes are Amended to Reflect the Change. In order to reflect a recent court decision, the definition of "conviction" is changed from including unvacated paid bail forfeitures to final conviction.

Penalties for Unlawful Trafficking are Strengthened. Separate counts of unlawful trafficking transactions may be aggregated under one count if those transactions are part of a common scheme or plan. First and second degree unlawful trafficking are ranked as class B and C felonies, respectively.

. . .
Wildlife Issues. *Penalties for Taking Protected Birds are Strengthened.* Criminal wildlife penalty assessments and two-year license revocations are created for a person convicted of unlawfully taking protected fish or wildlife. . . .

Unlawful Hunting On, or Retrieving Wildlife From, the Property of Another is a New Crime. This new crime, prosecutable as a misdemeanor, applies if a person knowingly enters onto or remains unlawfully on the premises of another for the purpose of hunting or retrieving hunted wildlife. A person cited for this violation may use a defense that the premises in question was open to the public when the hunting occurred, that the person reasonably believed the landowner would have allowed the access, or the person reasonably believed that the lands in question were public lands. A person cited for this violation may also use a defense that the intent was to retrieve wildlife in order to avoid a violation of the unlawful waste of fish or wildlife statute. In addition to prosecution for a misdemeanor, a person convicted of this new crime faces license revocation and the suspension of hunting privileges for two years.

The Crime of Unlawful Use of a Dog is Expanded. The crime includes using a dog to harass, kill, or attack wildlife, in addition to pursuing. The species protected from unlawful dog use is expanded from just deer and elk to include moose, caribou, and mountain sheep. . . .

Hunting Licenses may be Revoked for Shooting a Person or Livestock While Hunting. If a hunter shoots another person or domestic livestock with a firearm, bow, or crossbow in a manner likely to injure or kill – or who does injure or kill – another person or domestic livestock, the director of WDFW must revoke the hunting privileges of the shooter for three years for a shooting that could or does result in an injury. The privilege revocation must be extended to ten years if the shooting results in a human death. . . .

Unlawful Possession of a Rifle or Shotgun in a Motor Vehicle is Amended. Unlawful possession of a rifle or shotgun in a motor vehicle includes unlawful possession of a rifle or shotgun upon an off-road vehicle and allows for a rifle or shotgun to be discharged upon a motor vehicle or an off-road vehicle if the engine is turned off and not parked on or beside the maintained portion of a public road.

Unlawful Intentional or Negligent Feeding of a Large Wild Carnivore is Added as a New Crime. A civil infraction is created for any person whom a WDFW enforcement officer or local animal control authority has probable cause to believe is negligently feeding; attempting to feed; or attracting bears, cougars, or wolves by placing food, food waste, or any other substance in a manner that may cause a public safety risk. Similar activity done intentionally is a misdemeanor. It is also a misdemeanor to fail to correct an issue giving rise to a negligent civil infraction within 24 hours.

. . . .
Fisheries Issues. *A New Act is Added to the Crime of Unlawful Recreational Fishing in the First Degree.* The new act, which can trigger prosecution, is possession of a salmon or steelhead during a closed season. The same crime in the second degree can be prosecuted if a person pursues fish without first obtaining the proper license and catch reporting documentation.

The Crime of Unlawful Use of Fish Buying and Dealing Licenses is Renamed. The new name is unlawful fish and shellfish catch accounting. In addition to the new name, a new act is added to the list of prosecutable acts. The new act is the

failure to sign a fish receiving ticket or failure to provide the required information on the ticket.

...
Resident Orca Whales. Distance Requirements and Exemptions are Amended to Match Federal Law. It is unlawful to cause a vessel or other object to approach within 600 feet (200 yards) of a southern resident orca or to position a vessel to be in the path of a whale within 1200 feet (400 yards). . . . Vessel is defined and includes aircraft, canoes, fishing vessels, kayaks, tour boats, and whale watching boats among others. It is also unlawful to feed a southern resident orca.

There are several exemptions to the distance requirement, including the following: a federal government or state, tribal, or local vessel engaged in official duties involving law enforcement, search and rescue, or public safety; operation of a vessel in conjunction with a vessel traffic service under federal law; lawful engagement in a treaty Indian or commercial fishery; emergency situations that pose an imminent threat to persons, the vessel, or the environment; or engaging in activity pursuant to a permit, including scientific research and rescue or cleanup efforts overseen, coordinated, or authorized by a volunteer stranding network.

...

ORDERS OF DISPOSITION FOR JUVENILES

Chapter 177 (SSB 6240)

Effective Date: June 7, 2012

Amends several statutes relating to juvenile deferred dispositions.

Amends RCW 13.40.137(10)(a) to add:

- (i) Any time the court vacates a conviction pursuant to subsection (9) of this section, if the juvenile is eighteen years of age or older and the full amount of restitution ordered has been paid, the court shall enter a written order sealing the case.
- (ii) Any time the court vacates a conviction pursuant to subsection (9) of this section, if the juvenile is not eighteen years of age or older and full restitution ordered has been paid, the court shall schedule an administrative sealing hearing to take place no later than thirty days after the respondent's eighteenth birthday, at which time the court shall enter a written order sealing the case. The respondent's presence at the administrative sealing hearing is not required.
- (iii) Any deferred disposition vacated prior to the effective date of this section is not subject to sealing under this subsection.

Amends RCW 13.50.050(12) to add:

- (c) Notwithstanding the requirements in (a) or (b) of this subsection, the court shall grant any motion to seal records of any deferred disposition vacated under RCW 13.40.127(9) prior to the effective date of this section if restitution has been paid and the person is eighteen years of age or older at the time of the motion.

POSSESSION OF SPRING BLADE KNIVES

Chapter 179 (ESHB 2347)

Effective Date: June 7, 2012

Amends RCW 9.41.250 and adds a new section to chapter 9.41 RCW. The Final Bill Report summarizes the bill as follows:

The exemption allowing law enforcement officers to possess, transfer, and store spring blade knives for purposes of official duty is expanded to include firefighters and other rescue members, Washington State Patrol (WSP) officers, and military members, and to facilitate actual use of spring blade knives. Spring blade knives may also be manufactured, sold, transported, transferred, distributed, or possessed pursuant to contracts with these actors' agencies. Manufacturer contracts with other manufacturers and commercial distributors are exempt from the prohibition against spring blade knives. Trials, testing, and other uses related to evaluation and assessment of spring blade knives by permitted users, companies, and agencies are also exempt.

The general term "spring blade knife" is to be used to describe the various kinds of knives prohibited in the dangerous weapons statute. Knives with a mechanism designed to create a bias toward closure of the blade that must be overcome by physical exertion are not spring blade knives.

REQUIRING CERTAIN HEALTH PROFESSIONALS TO COMPLETE EDUCATION IN SUICIDE ASSESSMENT, TREATMENT, AND MANAGEMENT

Chapter 181 (ESHB 2366)

Effective Date: June 7, 2012

Adds new sections to chapter 43.70 RCW requiring designated health care professionals to complete training in suicide assessment, treatment, and management every six years as part of their continuing education requirements.

INCREASING ACCOUNTABILITY OF PERSONS WHO DRIVE IMPAIRED

Chapter 183 (SSHB 2443)

Effective Date: August 1, 2012

Makes numerous changes to DUI related laws. Of particular interest to law enforcement are changes to the implied consent law, the definition of "drugs," negligent driving in the first degree, and emergency response costs.

The bill amends 46.20.308(3)(implied consent) to allow a test of breath or blood to be administered without consent when an individual is under arrest for felony DUI or felony physical control.

The bill amends RCW 46.61.540 to read as follows: "The word 'drugs', as used in RCW 46.61.500 through 46.61.535, shall include but not be limited to those drugs and substances regulated by chapters 69.41 and 69.50 RCW and any chemical inhaled or ingested for its intoxicating or hallucinatory effects."

The bill amends RCW 46.61.5249 by amending certain subsections as follows:

(1)(a) A person is guilty of negligent driving in the first degree if he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and exhibits the effects of having consumed liquor or an illegal drug or exhibits the effects of having inhaled or ingested any chemical, whether or not a legal substance, for its intoxicating or hallucinatory effects.

...

(2)(d) “Exhibiting the effects of having inhaled or ingested any chemical, whether or not a legal substance, for its intoxicating or hallucinatory effects” means that a person by speech, manner, appearance, behavior, or lack of coordination or otherwise exhibits that he or she has inhaled or ingested a chemical and either: (i) Is in possession of the canister or container from which the chemical came; or (ii) Is shown by other evidence to have recently inhaled or ingested a chemical for its intoxicating or hallucinatory effects.

The bill also amends RCW 38.52.430 to read in part as follows:

A person whose intoxication causes an incident resulting in an appropriate emergency response, and who, in connection with the incident, has been found guilty of or has had their prosecution deferred for (1) driving while under the influence of intoxicating liquor or any drug, RCW 46.61.502; (2) operating an aircraft under the influence of intoxicants or drugs, RCW 47.68.220; (3) use of a vessel while under the influence of alcohol or drugs, [RCW 79A.60.040]; (4) vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a); or (5) vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), is liable for the expense of an emergency response by a public agency to the incident. The expense of an emergency response is a charge against the person liable for expenses under this section. The charge constitutes a debt of that person and is collectible by the public agency incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied. Following a conviction of an offense listed in this section, and prior to sentencing, the prosecution may present to the court information setting forth the expenses incurred by the public agency for its emergency response to the incident. Upon a finding by the court that the expenses are reasonable, the court shall order the defendant to reimburse the public agency. The cost reimbursement shall be included in the sentencing order as an additional monetary obligation of the defendant and may not be substituted for any other fine or cost required or allowed by statute. The court may establish a payment schedule for the payment of the cost reimbursement, separate from any payment schedule imposed for other fines and costs.

In no event shall a person’s liability under this section for the expense of an emergency response exceed ~~((one))~~ two thousand five hundred dollars for a particular incident.

The Final Bill Report summarizes the remaining changes in key part as follows:

Superior Court Jurisdiction.

Superior courts have jurisdiction for up to five years over a defendant convicted of DUI whose sentence has been suspended. A defendant who has a suspended sentence and who fails to appear for any hearing to address the defendant’s compliance with the terms of probation will have the term of probation tolled until the defendant makes his or her presence known to the court.

Ignition Interlock Licenses (IIL) and Requirements.

Courts must require a DUI defendant to comply with the rules and requirements of the [Department of Licensing] DOL regarding the installation of an IID, rather

than requiring the defendant to apply for an IIL. Courts are given discretion to order the defendant to submit to alcohol monitoring.

A person convicted of reckless driving, when the original charge was DUI, may apply for an IIL. . . .

A person who has never been licensed by the DOL, but who would otherwise be eligible to apply for an IIL, may apply for an IIL. . . .

A person required to have an IID installed after reinstatement of his or her driver's license must pay an additional fee of \$20 per month to be deposited into the Ignition Interlock Device Revolving Account. The Washington State Patrol (WSP) must create a fee schedule by rule and collect fees from IID manufacturers, technicians, providers, and users. Fees must be set at a level to support the effective operation of the Ignition Interlock Device Program And [sic] report back to the Transportation committees and the Office of Financial Management annually on the fees adopted. Fees are to be deposited into the Highway Safety Account.

When reasonably available in the area, IIDs must include technology capable of taking a photo identification of the person giving the breath sample.

Vacating Records of Convictions.

A record of conviction for felony DUI may not be vacated. A record of conviction for a gross misdemeanor that is a "prior offense" may not be vacated if the person has had a subsequent alcohol or drug violation within 10 years of the date of arrest for the prior offense.

. . .

Other Changes.

Other changes are made, including:

- specifying that courts may impose jail time in lieu of mandatory [electronic home monitoring] EHM at a ratio of no less than one day in jail for 15 days of EHM;
- providing that plea agreements and sentences for felony DUI must be kept as public records;
- providing that a deferred prosecution for DUI granted in another state is a "prior offense" if the out-of-state deferred prosecution is equivalent to Washington's deferred prosecution;
- specifying that the employer exception does not apply if the employer's vehicle is used exclusively by the defendant solely for commuting to and from work; and
- allowing municipalities to enter into cooperative agreements with counties that have DUI courts to provide DUI court services.

SPECIAL MEETINGS

Chapter 188 (SSSB 5355)

Effective Date: June 7, 2012

Amends RCW 42.30.080 relating to special meetings of governing bodies. The Final Bill Report summarizes the bill as follows:

Notices of special meetings under the [Open Public Meetings Act] OPMA are modified. Meeting notices must be prominently displayed at the main entrance of the agency's principal location, as well as at the meeting site, if different. The notices must be posted on an agency's website except under the following conditions: the agency does not have a website; the agency employs fewer than ten full-time equivalent employees; or the agency does not employ personnel whose duty, as defined by a job description or existing contract, is to maintain or update the website.

REMOVING THE REQUIREMENT THAT CORRECTIONAL OFFICERS OF THE DEPARTMENT OF CORRECTIONS PURCHASE UNIFORMS FROM CORRECTIONAL INDUSTRIES

Chapter 220 (HB 2346)

Effective Date: June 7, 2012

The Final Bill Report provides the following summary of the bill:

Incarcerated offenders under the custody of the [Department of Corrections] DOC are prohibited from making or assembling uniforms worn by correctional officers employed by the DOC.

Effective July 1, 2012, the DOC is exempt from the statutory provisions that require state agencies to purchase goods and services from class II inmate work programs as it relates to uniforms for correctional officers.

However, section 3 of the bill provides that "If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2012, in the omnibus appropriations act, this act is null and void."

USAGE-BASED AUTOMOBILE INSURANCE AND EXEMPTING CERTAIN USAGE-BASED INSURANCE INFORMATION FROM PUBLIC INSPECTION

Chapter 222 (ESHB 2361)

Effective Date: June 7, 2012

Amends RCW 48.19.040(5) to define "Usage-based insurance" as follows:

[P]rivate passenger automobile coverage that uses data gathered from any recording device as defined in RCW 46.35.010, or a system, or business method that records and preserves data arising from the actual usage of a motor vehicle to determine rates or premiums. Information in a filing of usage-based insurance about the usage-based component of the rate is confidential and must be withheld from public inspection.

Adds a public records exemption to RCW 42.56.400 which exempts "[i]nformation in a filing of usage-based insurance about the usage-based component of the rate pursuant to RCW 48.19.040(5)(b)."

Adds a new section to chapter 48.18 RCW:

- (1) For the purposes of this section, "usage-based insurance" has the same meaning as defined in RCW 48.19.040.
- (2) Location data may not be collected without:
 - (a) Disclosure to the insured that such information is being collected as required by RCW 46.35.020; and

- (b) The insured's consent.
- (3) Individually identifiable usage information retrieved from a recording device may only be used and/or retained:
 - (a) For purposes of determining premiums; or
 - (b) As allowed by law in RCW 46.35.030.
- (4) Individually identifiable usage information retrieved from a recording device may not be disclosed to any third party except as allowed by RCW 46.35.030.

PROTECTING VICTIMS OF DOMESTIC VIOLENCE AND HARASSMENT

Chapter 223 (ESHB 2363)

Effective Date: June 7, 2012

Makes a number of changes to laws relating to domestic violence and anti-harassment, including:

Amends RCW 9A.46.040 and .080 to increase a willful violation of a court order issued under either section from a misdemeanor to a gross misdemeanor.

Amends RCW 10.99.040 to provide that as long as there is probable cause, a judge may issue or extend a no contact order even if the defendant fails to appear at arraignment, and removes the language that provided that pre-charging no contact orders did not need to be entered into the criminal intelligence information system.

Amends RCW 26.09.013 to provide that in cases where the court has made a finding of domestic violence or child abuse, the court may not require the victim or custodial parent to "disclose to the other party information that would reasonably be expected to enable the perpetrator of domestic violence or child abuse to obtain previously undisclosed information regarding the name, location, or address of a victim's residence, employer, or school at an initial hearing, and shall carefully weigh the safety interests of the victim before issuing orders which would require disclosure in a future hearing." In cases where domestic violence or child abuse is alleged but no finding has been made, "the court shall provide the party alleging domestic violence or child abuse with the opportunity to prove the allegations before ordering the disclosure of information disclosed."

Adds a new section to chapter 26.12 RCW requiring courts to act in accordance with the requirements of the Secretary of State's address confidentiality program pursuant to chapter 40.24 RCW.

Adds a new section to chapter 26.50 RCW that prohibits a court or administrative body from compelling disclosure of the name, address, or location of any domestic violence program, including a shelter or transitional housing facility location, in any civil or criminal case or in any administrative proceeding unless the court finds by clear and convincing evidence that disclosure is necessary for the implementation of justice after consideration of safety and confidentiality concerns of the parties and other residents of the domestic violence program, and other alternatives to disclosure that would protect the interests of the parties. Requires a hearing and prohibits further dissemination in any case where dissemination is allowed. It is a gross misdemeanor to intentionally and maliciously release confidential information about the location of a domestic violence program for any purpose other than required by a court proceeding.

METAL PROPERTY THEFT

Chapter 233 (ESHB 2570)

Effective Date: June 7, 2012

Amends RCW 9A.56.030 and RCW 9A.56.040 to make theft of “metal wire, taken from a public service company, as defined in RCW 80.04.010, or a consumer-owned utility, as defined in RCW 19.280.020” theft in the first degree where the costs of the damage to the public service company's or consumer-owned utility's property exceed five thousand dollars in value, and theft in the second degree where the costs exceed seven hundred fifty dollars but does not exceed five thousand dollars in value.

Partial Veto: The Governor vetoed section 1 of the bill which would have created a task force on commercial and nonferrous metal property theft.

HEALTH CARE CLAIMS AGAINST STATE AND GOVERNMENTAL HEALTH CARE PROVIDERS ARISING OUT OF TORTIOUS CONDUCT

Chapter 250 (SSB 6187)

Effective Date: June 7, 2012

Amends RCW 4.92.100 and RCW 4.96.020 to provide that claims resulting from health care are now subject to the tort claim filing procedures.

FRAUD IN STATE ASSISTANCE PROGRAMS

Chapter 253 (SSB 6386)

Effective Date: June 7, 2012

Amends several statutes with the stated purpose being “to significantly reduce fraud and to ensure that public assistance dollars reach the intended populations in need.” Creates a new misdemeanor in chapter 74.08 RCW:

A person who has in his or her possession or under his or her control electronic benefit cards issued in the names of two or more persons and who is not authorized by those persons to have any of the cards in his or her possession is guilty of a misdemeanor.

IMPROVING TIMELINESS, EFFICIENCY, AND ACCOUNTABILITY OF FORENSIC RESOURCE UTILIZATION ASSOCIATED WITH COMPETENCY TO STAND TRIAL

Chapter 256 (SSB 6492)

Effective Date: May 1, 2012

Amends several statutes with the stated purpose being “to sustainably improve the timeliness of services related to competency to stand trial by setting performance expectations, establishing new mechanisms for accountability, and enacting reforms to ensure that forensic resources are expended in an efficient and clinically appropriate manner without diminishing the quality of competency services, and to reduce the time defendants with mental illness spend in jail awaiting evaluation and restoration of competency.”

A new section is added to chapter 70.48 RCW which provides that “a jail may not refuse to book a patient of a state hospital solely based on the patient’s status as a state hospital patient, but may consider other relevant factors that apply to the individual circumstances in each case.”

BRIEF NOTE FROM THE WASHINGTON STATE SUPREME COURT

WASHINGTON SUPREME COURT HOLDS: (1) WASHINGTON CONSTITUTION’S SEARCH INCIDENT RULE DOES NOT AUTHORIZE SEARCH OF VEHICLE AFTER ARRESTEE-OCCUPANT HAS BEEN SECURED DESPITE PROBABLE CAUSE AS TO EVIDENCE OF CRIME OF ARREST BEING IN THE VEHICLE; (2) DEFENDANT WRIGHT WAS LAWFULLY STOPPED ON REASONABLE SUSPICION OF TRAFFIC INFRACTION; AND (3) THE STOP OF WRIGHT WAS NOT PRETEXTUAL – In the consolidated cases of State v. Snapp, and

State v. Wright, ___ Wn.2d ___, 2012 WL 1134130 (April 5, 2012), the Washington Supreme Court reverses Court of Appeals decisions and rules 8-1 that searches of vehicle passenger areas in the two cases were not lawful searches under the rule of article I, section 7 of the Washington constitution for searches of vehicle passenger areas incident to arrest. The Court also addresses two alternative arguments of defendant Wright, rejecting his arguments that the initial vehicle stop was not justified by sufficient cause or was pretextual.

1) Vehicle search incident to arrest

In State v. Patton, 167 Wn.2d 379 (2009) **Dec 09 LED:17**, State v. Valdez, 167 Wn.2d 761 (2009) **Feb 10 LED:11**, and State v. Afana, 169 Wn.2d 169 (2010) **Aug 10 LED:09**, the Washington Supreme Court held the car searches were not justified under the search-incident-to-arrest rule of the Washington constitution, article I, section 7. In each of those cases, the officers conducting the car search did not have probable cause or reason to believe that evidence of the crime of arrest would be found in the car. Dicta (i.e., language not necessary to decide those three cases on their particular facts) in those decisions stated that, under article I, section 7 of the Washington constitution – contrary to the second prong of the Fourth Amendment rule stated by the U.S. Supreme Court in Arizona v. Gant, 556 U.S. 332 (2009) **June 09 LED:13** – law enforcement officers lack authority to search the passenger compartment of a car, incident to the arrest of an occupant who has already been secured in a police vehicle, even if the officers have reason to believe or probable cause to believe the compartment contains evidence of the crime for which the suspect was arrested.

In 2010, the Washington Supreme Court granted discretionary review in the Snapp and Wright cases, where officers had probable cause to believe that the passenger compartment of vehicles of arrestee-occupants contained evidence of the crime of arrest (defendants Snapp and Wright were arrested, at least in part, for possession of illegal drugs or drug paraphernalia). In those two cases, Divisions One and Two of the Court of Appeals upheld car searches incident to arrest by applying Gant's second prong, i.e., the search-for-evidence-of-the-crime-of-arrest rationale of Arizona v. Gant, 556 U.S. 332 (2009) **June 09 LED:13**. The Court of Appeals decisions reviewed by the Supreme Court are State v. Snapp, 153 Wn. App. 485 (Div. II, 2009) **Jan 10 LED:06**, and State v. Wright, 155 Wn. App. 537 (Div. I, 2010) **June 10 LED:12**.

The Washington Supreme Court majority opinion in Snapp-Wright asserts that part of the rationale for the U.S. Supreme Court's second prong ruling in Arizona v. Gant is that, separate from the search incident rule, the Fourth Amendment's Carroll Doctrine permits searches of mobile vehicles based on probable cause to search the vehicle (and a legal fiction of exigency). On the other hand, the Washington constitution does not contain the Carroll Doctrine rule and requires actual exigent circumstances to justify a search of a vehicle based on probable cause to search. See State v. Tibbles, 169 Wn.2d 364 (2010) **Sept 10 LED:09**.

For this and other reasons, the majority opinion in Snapp-Wright rejects second prong of the vehicle-search-incident rule of Arizona v. Gant. Once an occupant-arrestee has been secured in a police vehicle, the Washington rule is that the vehicle may not be searched without a search warrant unless another exception (e.g., exigent circumstances, consent, impound-inventory, etc) to the search warrant requirement rule applies.

Justice James Johnson authors a lone dissent, arguing the searches should have been upheld under the search-incident doctrine of the Washington constitution.

2) Reasonable suspicion justification for stop of defendant Wright's car for traffic infraction

In the Wright case, the officer stopped the car based on his suspicion that the car was in violation of RCW 46.37.020, which requires that headlights must be turned on beginning one-half hour after sunset or "at any other time when, due to insufficient light or unfavorable

atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand feet ahead.” The stop of Wright occurred only 24 minutes after sunset, but it was a dark and rainy evening. The Supreme Court rejects Wright’s argument that probable cause, as opposed to reasonable suspicion, is required for a traffic stop. The Court then goes on to conclude that the officer had reasonable suspicion of a violation of RCW 46.37.020 under the circumstances.

3) Stop not pretextual

The key part of the majority opinion’s analysis of the pretext issue is as follows:

[The officer making the stop] testified that he routinely stopped vehicles with headlights off, and he was on routine patrol at the time of the stop.

Wright points out, however, that [the officer] identified the area as a “hot spot” known for burglaries and car prowls. He also says that although he was alone in the vehicle, [the officer] called for backup.

The State explains, however, that the fact that [the officer] was aware that the area was known for burglaries and vehicle prowls should not convert a stop into a pretext, because an officer should not be expected to be unaware of such circumstances in the area in which he patrols. Further, the State says that [the officer] was justified in calling for backup because he had decided to stop a vehicle with an unknown number of occupants (since he could not see inside the vehicle), the vehicle drove away from the officer when the patrol car came into view, and the area was known for criminal activity.

Wright next says that [the backup officer] wrote in his report that he was summoned because of “a suspicious vehicle stop,” reporting nothing about headlights that were not on. According to [the backup officer’s] testimony, a suspicious vehicle stop would mean instances like a vehicle sitting in an area for an undetermined amount of time, people sitting in the vehicle in high drug and high crime areas, or driving slowly through areas in a blacked out vehicle. [The officer] also wrote in his report that he responded as a backup on both a traffic infraction and a suspicious vehicle stop.

Wright notes that the first reason that [the backup officer] for the stop in the affidavit of probable cause that [the backup officer] prepared was that the area was a hot spot for car prowls. This is not irrelevant, and it could help support a conclusion that a pretextual stop occurred, depending on other evidence. But it was [the officer making the stop] who saw the vehicle without lights, who watched it appear to abruptly change direction when the patrol car appeared, and who almost immediately stopped it, not [the backup officer].

Mr. Wright says that when [the officer making the stop] approached him the officer said he pulled him over because he thought he was in a stolen car. [The officer] testified, however, that he had not told Wright that he stopped him because he believed the vehicle was stolen, but that during the conversation with Mr. Wright he had indicated that the area was a hot spot for stolen cars, burglaries, and car prowls.

The evidence supports the trial court's determination that the stop was not pretextual. [The officer making the stop] first saw the vehicle when he noticed it without headlights on. He promptly pulled toward the vehicle, whereupon it turned around and drove away. The officer did not follow it to see if he could observe an infraction occurring but instead stopped it within seconds. Under these circumstances, we affirm the Court of Appeals' holding that the stop was not pretextual.

Result: Reversal of Division Two Court of Appeals decision that affirmed the Pierce County Superior Court convictions of Daniel Gerald Snapp for six counts of second degree identity theft; reversal of Division One Court of Appeals decision that affirmed the King County Superior Court convictions of Roger Sinclair Wright for 1) possession of marijuana, 2) possession of marijuana with intent to distribute, and 3) possession of Ecstasy.

LED EDITORIAL COMMENT: In our comments on Valdez, Feb 10 LED:11, and Afana, Aug 10 LED:09, we set out as follows what appeared under these decisions to be the Washington rule: “After officers have made a custodial arrest of a motor vehicle occupant – including searching the arrestee’s person – and have secured the arrestee in handcuffs in a patrol car, and while the vehicle is still at the scene of the arrest, they may automatically search the vehicle – without a search warrant and without need for justification under any other exception to the search warrant requirement – NEVER.” This is clearly the Washington rule now that the Washington Supreme Court in Snapp-Wright has squarely rejected search-incident of a vehicle under the second prong of Gant.

We will revisit the Snapp-Wright ruling in next month’s LED to address the Supreme Court opinion and its ramifications. As search warrant exceptions continue over time to shrink under the Washington Supreme Court’s interpretations of article I, section 7 of the Washington constitution, search warrant procedures are becoming the only viable option for vehicle searches for Washington officers in more and more circumstances.

NEXT MONTH

The June 2012 LED will include Part Two of the 2012 Legislative Update as well as the 2012 Washington Legislative Update Subject Matter Index.

The June 2012 LED will also include the United States Supreme Court opinions in Messerschmidt v. Millender, ___ U.S. ___, 2012 WL 555206 (Feb. 21, 2012) where the Court reverses the Ninth Circuit and holds that detectives are entitled to qualified immunity for a search warrant application, and Howes v. Fields, ___ U.S. ___, 2012 WL 538280 (Feb. 21, 2012) where the Court holds that a jail inmate was not in custody for purposes of Miranda when he was questioned about uncharged offenses allegedly committed prior to his incarceration. Although we indicated in last month’s LED that these two cases would likely be included in this May LED, we opted to omit them and instead provide a Legislative Update that is complete through the regular session. We apologize for any inconvenience.

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.supremecourt.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>]
