

August, 1993

HONOR ROLL

403rd Session, Basic Law Enforcement Academy - April 6 through June 25, 1993

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Best Academic: Officer Robert T. Vandormolen - Tacoma Police Department
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Corrections Officer Academy - Class 184 - June 4 through July 2, 1993

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Officer Tracie A. Winslow - Washington Correction Center for Women
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Highest in Mock Scenes: Officer Clifton N. Byars - Island County Jail/Work Release
Highest Defensive Tactics: Officer Gary L. Bailey - Thurston County Jail

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1993 WASHINGTON LEGISLATIVE ENACTMENTS - PART II

LED EDITOR'S INTRODUCTORY NOTE: This is the second of what will be either a three-or-four-part update digesting 1993 state legislative enactments of interest to Washington law enforcement officers and their agencies. Part I last month consisted only of a relatively complete listing of the enactments to be covered. Part II this month will consist of the enactments which we believe to be of the greatest significance from an enforcement and investigation perspective. Part III next month will contain all remaining enactments which we have identified, along with an index of the enactments digested in Parts II and III. Part IV, if there is a need for a Part IV, will contain follow-up comments on legislation digested in Parts II and III.

Officers wishing to have their own copies of the five-volume, soft-bound set of the session

laws may order a set by writing to "Code Reviser, Legislative Building, P.O. Box 40552, Olympia, WA 98504-0551" and sending a check for \$5.40 made out to "Code Reviser".

MALICIOUS HARASSMENT

CHAPTER 127 (ESHB 1569)

Effective Date: July 25, 1993

Section 1 adds a new section to chapter 9A.36: (a) explaining the purpose and scope of the malicious harassment law, and (b) explaining that certain discrete words and symbols (swastika's, burning crosses, etc) are indicators of the hate bias at which the statute is aimed.

Section 2 amends RCW 9A.36.080 to read in part as follows:

(1) A person is guilty of malicious harassment if her or she maliciously and intentionally commits one of the following acts because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap:

(a) Causes physical injury to the victim or another person;

(b) Causes physical damage to or destruction of the property of the victim or another person; or

(c) Threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property. The fear must be a fear that a reasonable person would have under all the circumstances. For purposes of this section, a "reasonable person" is a reasonable person who is a member of the victim's race, color, religion, ancestry, national origin, gender or sexual orientation, or who has the same mental, physical, or sensory handicap as the victim. Words alone do not constitute malicious harassment unless the context or circumstance surrounding the words indicate the words are a threat. Threatening words do not constitute malicious harassment if it is apparent to the victim that the person does not have the ability to carry out the threat.

(2) In any prosecution for malicious harassment, unless evidence exist which explains to the trier of fact's satisfaction that the person did not intend to threaten the victim or victims, the trier of fact may infer that the person intended to threaten a specific victim or group of victims because of the person's perception of the victim's sexual orientation, or mental, physical, or sensory handicap if the person commits one of the following acts:

(a) Burns a cross on property of a victim who is or whom the actor perceives to be of African American heritage; or

(b) Defaces property of a victim who is or whom the actor perceives to be of Jewish heritage by defacing the property with a swastika.

This subsection only applies to the creation of a reasonable inference for evidentiary purposes. This subsection does not restrict the state's ability to prosecute a person under subsection (1) of this section when the facts of a particular case do not fall within (a) or (b) of this subsection.

(3) It is not a defense that the accused was mistaken that the victim was a member of a certain race, color, religion, ancestry, national origin, gender, or sexual orientation, or had a mental, physical, or sensory handicap.

(4) Evidence of expressions or associations of the accused may not be introduced as substantive evidence at trial unless the evidence specifically relates to the crime charged. Nothing in this chapter shall affect the rules of evidence governing impeachment of a witness.

(5) Every person who commits another crime during the commission of a crime under this section may be punished and prosecuted for the other crime separately.

(6) "Sexual orientation" for the purposes of this section means heterosexuality, homosexuality, or bisexuality.

(7) Malicious harassment is a class C felony.

...

Note that the coverage of this statute now covers hate crimes directed at a victim's gender or sexual orientation, as well as hate crimes directed at previously protected categories.

Section 3 provides for a civil cause of action for malicious harassment with punitive damages and reasonable attorney fees. Section 4 requires reporting of hate crimes covered by chapter 9A.36 to the Washington Association of Sheriff and Police Chiefs (WASPC), which must then synthesize and summarize such information and report on it annually to the governor and various Legislative entities. (Because no funding was provided for this purpose, there is some question whether and when such reports will be required.)

Section 5 requires that the Washington Criminal Justice Training Commission provide training to law enforcement officers in identifying, responding to, and reporting violations of RCW 9A.36.080.

INTERFERENCE WITH ACCESS TO HEALTH CARE

CHAPTER 128 (ESHB 1338)

Effective Date: April 26, 1993

Section 1 declares that "seeking or obtaining health care is fundamental to public health and safety", and section 2 provides statutory definitions for the terms, "health care facility", "health care provider," and "aggrieved."

Section 3 adds a new section to a new chapter in Title 9A RCW (chapter number to be provided this fall by the state code reviser) establishing a new crime as follows:

It is unlawful for a person except as otherwise protected by state or federal law, alone or in concert with others, to willfully or recklessly interfere with access to or from a health care facility or willfully or recklessly disrupt the normal functioning of such facility by:

- (1) Physically obstructing or impeding the free passage of a person seeking to enter or depart from the facility or from the common area of the real property upon which the facility is located;
- (2) Making noise that unreasonably disturbs the peace within the facility;
- (3) Trespassing on the facility or the common areas of the real property upon which the facility is located;
- (4) Telephoning the facility repeatedly, or knowingly permitting any telephone under his or her control to be used for such purpose; or
- (5) Threatening to inflict injury on the owners, agents, patients, employees, or property of the facility or knowingly permitting any telephone under his or her control to be used for such purpose.

Section 4 establishes that the violation of section 3 under any of the alternative act elements is a gross misdemeanor; section 4 also establishes punishment for the crime, which varies depending on whether the crime is a "first", "second" or "third or subsequent" offense.

Section 5 amends RCW 10.31.100 to add a subsection which will allow a law enforcement officer to make a discretionary arrest (presumably a custodial arrest if the officer chooses) for a section 3 violation. The new subsection in RCW 10.31.100 reads as follows:

Any police officer having probable cause to believe that a person has, within twenty-four hours of the alleged violation, committed a violation of section 3 of this act may arrest such person.

Sections 6 through 9 authorize civil actions (with significant punitive damages) for violations of section 3 and empower to courts to grant injunctive relief to prevent violations. Section 10 amends RCW 10.97.070 of the Criminal Records Privacy Act to require of every police agency that:

Unless the agency determines release would interfere with an ongoing criminal investigation, in any action brought pursuant to this chapter, criminal justice agencies shall disclose identifying information including photographs of suspects, if the acts are alleged by the plaintiff or victim to be a violation of section 3 of this act.

This records release requirement applies to both civil and criminal litigation under this new act. Before a police agency declines to provide the information addressed in section 10, legal counsel should be consulted. Costly civil sanctions (daily fines plus "reasonable" attorney fees, and court costs) could follow refusal to release the covered records.

VEHICLES ENTERING OCCUPIED PEDESTRIAN CROSSWALKS

CHAPTER 153 (HB 1111)

Effective Date: July 25, 1993

Amends RCW 46.61.235(1) to modify the rule for vehicles entering crosswalks so that it now reads as follows:

The operator of an approaching vehicle shall stop and remain stopped to allow a pedestrian to cross the roadway within an unmarked or marked crosswalk when the pedestrian is upon or within one lane of the half of the roadway upon which the vehicle is traveling or onto which it is turning. For purposes of this section "half of the roadway" means all traffic lanes carrying traffic in one direction of travel, and includes the entire width of a one-way roadway.

Also amends RCW 46.61.055 and RCW 46.61.060 to require throughout those sections that vehicle operators obey RCW 46.61.235(1)'s requirements for approaching pedestrian crosswalks.

PROBABLE CAUSE ARRESTS FOR WEAPONS IN K-12 SCHOOLS -- PUBLIC OR PRIVATE

CHAPTER 209 (SB 5107)

Effective Date: July 25, 1993

Amends RCW 10.31.100 to add a subsection which will allow a law enforcement officer to make a discretionary probable cause arrest for certain weapons law violations committed on the grounds of K-12 schools. The new subsection of RCW 10.31.100 reads as follows:

A police officer having probable cause to believe that a person illegally possesses or illegally has possessed a firearm or other dangerous weapon on private or public elementary or secondary school premises shall have the authority to arrest the person.

For purposes of this subsection, the term "firearm" has the meaning defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning defined in RCW 9.41.250 and 9.41.280 (1) (c) through (e).

Note that RCW 9.41.280 referred to in the amendment to RCW 10.31.100 set forth above, was itself amended by chapter 347, Laws of 1993. The entry on chapter 347 is set forth below at pages 11-13 of this LED.

LOCAL OPTION FOR DISPOSAL OF FORFEITED FIREARMS

CHAPTER 243 (ESHB 1259)

Effective Date: May 7, 1993

Amends RCW 9.41.098 to allow local law enforcement agencies considerable discretion in disposing of forfeited firearms on or after July 1, 1993, if the local agencies, as of June 30, 1993 or thereafter, have prepared a complete inventory of all forfeitable firearms in their possession on

that date. RCW 9.41.098(2) as amended, provides for the disposition of forfeited firearms and of proceeds of sale or trade of such weapons as follows:

(a) Upon order of forfeiture, the court in its discretion shall order destruction of any firearm that is illegal for any person to possess. A court may temporarily retain forfeited firearms needed for evidence. Except provided in (b), (c), (d), of this subsection, firearms that are: (i) Judicially forfeited and no longer needed for evidence; or (ii) forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010; may be disposed of in any manner determined by the local legislative authority. The proceeds of an auction or trade may be retained by the legislative authority. This subsection (2)(a) applies only to firearms that come into the possession of the law enforcement agency after June 30, 1993, and applies only if the law enforcement agency has complied with (b) of this subsection.

By midnight, June 30, 1993, every law enforcement agency shall prepare an inventory, under oath, of every firearm that has been judicially forfeited, has been seized and may be subject to judicial forfeiture, or that has been, or may be, forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010.

(b) Except as provided in (c) of this subsection, of the inventoried firearms a law enforcement agency shall destroy illegal firearms, may retain a maximum of ten percent of legal forfeited firearms for agency use, and shall either:

(i) Comply with the provisions for the auction of firearms in RCW 9.41.098 that were in effect immediately preceding the effective date of this act; or

(ii) Trade, auction, or arrange for the auction of, rifles and shotguns. In addition, the law enforcement agency shall either trade, auction, or arrange for the auction of, short firearms, or shall pay a fee of twenty-five dollars to the state treasurer for every short firearm neither auctioned nor traded, to a maximum of fifty thousand dollars. The fees shall be accompanied by an inventory, under oath, of every short firearm listed in the inventory required by (a) of this subsection, that has been neither traded nor auctioned. The state treasurer shall credit the fees to the firearms range account established in RCW 77.12.720. All trades or auctions of firearms under this subsection shall be to commercial sellers. Proceeds of any auction less costs, including actual costs of storage and sale, shall be forwarded to the firearms range account established in RCW 77.12.720.

(c) Antique firearms as defined by RCW 9.41.150 and firearms recognized as curios, relics, and firearms of particular historical significance by the United States treasury department bureau of alcohol, tobacco, and firearms are exempt from distribution and shall be disposed of by auction or trade to commercial sellers.

(d) Firearms in the possession of the Washington state patrol on or after the effective date of this act that are judicially forfeited and no longer needed for evidence, or forfeited due to a failure to make a claim under RCW 63.35.020, must be disposed of as follows: (i) Firearms illegal for any person to possess must be destroyed; (ii) the Washington state patrol may retain a maximum of ten percent of legal firearms for agency use; and (iii) all other legal firearms must be auctioned or traded to commercial sellers. The Washington state patrol may retain any

proceeds of an auction or trade.

We have received several questions on the meaning of this 1993 amendment to RCW 9.41.098, and, after seeking the thoughts of several other legal advisors, our best guesses in response to the questions are as follows:

QUESTION 1: Must the June 30 inventory of pre-July 1, 1993 firearms be filed with any state agency?

ANSWER: Yes, but only if some weapons subject to auction are instead destroyed, in which case the inventory will accompany the check paying the fine of \$25 per weapon sent to the State Treasurer. Otherwise, the agency need only keep the inventory in its own files.

QUESTION 2: Must an agency dispose of all pre-July 1, 1993 firearms before disposing of any post-June 30, 1993 firearms.

ANSWER: No, this would not be a reasonable requirement in light of the fact that some old weapons will be in court evidence files for years to come; however, the spirit of the legislation would be best effectuated by first disposing of all "old" firearms which can be disposed of before disposing of any "new" firearms.

QUESTION 3: Are there any time deadlines for the disposition of old (pre-July 1, 1993) firearms?

ANSWER: No, but it would be politically expedient for agencies to move as quickly as practicable in disposing of the old firearms.

QUESTION 4: May an agency trade pre-July 1, 1993 weapons for law enforcement equipment, ammunition, weapons, etc. and thereby avoid the sale-by-auction and destruction-pay-fine-to-state options under the statute.

ANSWER: Yes, trading is permitted as an alternative to sale-by-auction or destruction, and no proceeds need be paid the State Treasurer where a trade is made.

ADDITIONAL INFORMATION: In late June, Tim Schellberg, attorney and legislative consultant to the Washington Association of Sheriffs and Police Chiefs (WASPC), sent materials explaining chapter 243 through a WASPC mailing to all chiefs and sheriffs in the state.

OVERHAUL OF "VESSEL" SAFETY LAWS INCLUDES PARTIAL DECRIMINALIZATION

CHAPTER 244 (SHB 1318)

Effective Date: July 25, 1993

This enactment makes a major overhaul of the many sections of the boating safety laws in chapter 88.12 RCW. Substantive changes are made in the provisions relating to negligent and reckless boating and boating under the influence. Substantive changes are also made in the provisions regarding white water activity, water ski safety and personal watercraft safety, and required equipment generally.

The text of each of the changes should be carefully studied by park rangers, wildlife agents,

fisheries officers, state troopers, other state law enforcement officers, and local law enforcement officers, all of whom have authority to enforce the provisions of the chapter (see RCW 88.12.330, as amended). We will provide only a brief overview of this omnibus legislation.

Among other changes, section 5 consolidates the definitions of the chapter and adds numerous new definitions, including that of "vessel", which is now the term used throughout the chapter instead of such terms as "boat", "watercraft", etc. previously used. Mufflers are now required on vessel motors under section 39 of this new enactment, with violations classified as infractions.

Many violations of the statute and of Parks and Recreation Commission rules previously classified as misdemeanors will become infractions as soon as the State Supreme Court includes them in a civil infraction monetary schedule as authorized under this enactment and chapter 7.84 RCW. However, a third violation of the same infraction provision within any 365-day period will be a misdemeanor.

Among those offenses remaining or newly established as misdemeanors are: (a) RCW 88.12.100(2), as amended--operating a vessel under the influence of alcohol or any drug; (b) RCW 88.12.050, as amended--passenger-for-hire vessels without adequate floatation devices; (c) RCW 88.12.080, as amended -- water ski activities after dark or reckless water ski activities; (d) most personal watercraft violations, as set forth under section 17, a new section added to chapter 88.12 RCW; (e) almost all of the whitewater activity prohibitions at RCW 88.12.250 through 88.12.320; and (f) a new offense in section 11 -- dangerous "showing, masking, extinguishing, altering or removing" of any light or signal or dangerous exhibiting of "any false light or signal" (the Code Reviser will assign a new section number in chapter 88.12 RCW to this section 11 offense).

PASSENGER RESTRAINT SYSTEM REQUIREMENT FOR CHILDREN UNDER SIX

CHAPTER 274 (ESB 5879)

Effective Date: July 25, 1993

Amends RCW 46.61.687 to read as follows:

Whenever a child who is less than six years of age is being transported in a motor vehicle that is in operation and that is required by RCW 46.37 to be equipped with

a safety belt system in a passenger seating position, the driver of the vehicle shall keep the child properly restrained as follows:

(a) If the child is less than two years of age, the child shall be properly restrained in a child restraint system that complies with standards of the United States department of transportation and that is secured in the vehicle in accordance with instructions of the manufacturer of the child restraint system;

(b) If the child is less than six but at least two years of age, the child shall be restrained either as specified in (a) of this subsection or with a safety belt properly adjusted and fastened around the child's body. [Emphasis added]

FORFEITING PROPERTY USED IN THE COMMISSION OF A FELONY

CHAPTER 288/SHB 1069

Effective Date: July 25, 1993

A summary of this legislation will be provided in next month's LED.

UNLAWFUL USE OF EXPLOSIVES

CHAPTER 293 (SHB 1118)

Effective Date: July 25, 1993

Section 1 amends RCW 70.74.010, the definitions section of the "explosives" chapter, making minor changes in the definition of "explosives," and defining a new term, "improvised device," as follows:

(7) The term "improvised device" means a device which is fabricated with explosives or destructive, lethal, noxious, pyrotechnic, or incendiary chemicals and which is designed to disfigure, destroy, distract, or harass.

Section 2 amends RCW 70.74.022 to read in part as follows:

(1) It is unlawful for any person to manufacture, purchase, sell, offer for sale, use, possess, transport, or store any explosive, improvised device, or components that are intended to be assembled into an explosive or improvised device without having a validly issued license from the department of labor and industries, which license has not been revoked or suspected. Violation of this section is a class C felony.

...

Section 3 amends RCW 70.74.160 to read as follows:

No person, except the director of labor and industries or the director's authorized agent, the owner, the owner's agent, or a person authorized to enter by the owner or owner's agent, or a law enforcement officer acting within his or her official

capacity, may enter any explosive manufacturing building, magazine or car, vehicle or other common carrier containing explosives in this state. Violation of this section is a gross misdemeanor punishable under chapter 9A.20 RCW.

Section 4 is a new section in chapter 70.74 RCW reading as follows:

Unless otherwise allowed to do so under this chapter, a person who exhibits a device designed, assembled, fabricated, or manufactured, to convey the appearance of an explosive or improvised device, and who intends to, and does, intimidate or harass a person, is guilty of a class C felony.

Section 6 amends RCW 70.74.270 to read as follows:

Every person who maliciously places any explosive or improvised device in, upon, under, against, or near any building, car, vessel, railroad track, airplane, public utility transmission system, or structure, in such manner or under such circumstances as to destroy or injure it if exploded, shall be punished as follows:

- (1) If the circumstances and surroundings are such that the safety of any person might be endangered by the explosion, by imprisonment in a state correctional facility for not more than twenty years;
- (2) In every other case by imprisonment in a state correctional facility for not more than five years.

Section 7 amends RCW 70.74.295 to read as follows:

It shall be unlawful for any person to abandon explosives or improvised devices. Violation of this section is a gross misdemeanor punishable under chapter 9A.20 RCW.

Section 8 is a new section allowing for seizure and forfeiture by law enforcement agencies of devices covered by chapter 70.74 RCW. Section 9 is a new section in chapter 70.74 RCW reading:

A person who knows of a theft or loss of explosives for which that person is responsible under this chapter shall report the theft or loss to the local law enforcement agency within twenty-four hours of discovery of the theft or loss. The local law enforcement agency shall immediately report the theft or loss to the department of labor and industries.

DWI, PHYSICAL CONTROL BASED ON BAC WITHIN TWO HOURS OF DRIVING

CHAPTER 328 (SB 5245)

Effective Date: July 25, 1993

Amends RCW 46.61.502 as follows (set out in bill-draft form to show changes):

- (1) A person is guilty of driving while under the influence of intoxicating liquor or

any drug if the person drives a vehicle within this state (~~while~~):

~~((4))~~ (a) And the person has 0.10 grams or more of alcohol per two hundred ten liters of breath within two hours after driving, as shown by analysis of the person's breath made under RCW 46.61.506; or

~~((2))~~ (b) ~~And the~~ person has 0.10 percent or more by weight of alcohol in the person's blood within two hours after driving, as shown by analysis of the person's blood made under RCW 46.61.506; or

~~((3))~~ (c) While the person is under the influence of or affected by intoxicating liquor or any drug; or

~~((4))~~ (d) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section.

(3) It is an affirmative defense to a violation of subsection (1) (a) and (b) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.10 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had 0.10 grams or more of alcohol per two hundred ten liters of breath or 0.10 percent or more of alcohol in the person's blood, pursuant to subsection (1) (a) and (b) of this section and may be used as evidence that a person was under the influence of or affected by intoxicating liquors or any drug pursuant to subsection (1) (c) and (d) of this section.

Identical changes are made in RCW 46.61.504, the physical control statute, thus establishing that one is guilty of "physical control" if one has a .10 BAC or blood alcohol reading "within two hours after being in actual physical control of a motor vehicle," and incorporating the same affirmative defense and admissibility of evidence provisions as are shown above.

WEAPONS RESTRICTIONS AT K-12 SCHOOLS -- PUBLIC AND PRIVATE

CHAPTER 347 (ESSB 5307)

Effective Date: July 25, 1993

Amends RCW 9.41.280 to read as follows:

(1) It is unlawful for a person to carry onto public or private elementary or secondary school premises, school-provided transportation, or areas of facilities while being used exclusively by public or private schools:

(a) Any firearm; or

(b) Any dangerous weapons as defined in RCW 9.41.250; or

(c) Any device commonly known as "nun-chu-ka sticks", consisting of two or more lengths of wood, metal, plastic, or similar substance connected with wire, rope, or other means; or

(d) Any device, commonly known as "throwing stars", which are multi-pointed, metal objects designed to embed upon impact from any aspect; or

(e) Any air gun, including any air pistol or air rifle, designed to propel, a BB, pellet, or other projectile by the discharge of compressed air, carbon dioxide, or other gas.

(2) Any such person violating subsection (2) of this section is guilty of a gross misdemeanor.

Any violation of subsection (1) of this section by elementary or secondary school students constitute grounds for expulsion from the state's public schools in accordance with RCW 28A.600.010. However, any violation of subsection (1) (a) of this section by an elementary or secondary school student shall result in expulsion in accordance with RCW 28A.600.010. An appropriate school authority shall promptly notify law enforcement and the student's parent or guardian regarding any allegation or indication of such violation.

(3) Subsection (1) of this section does not apply to:

(a) Any student or employee of a private military academy when on the property of the academy;

(b) Any person engaged in military law enforcement or school district security activities;

(c) Any person who is involved in a convention, showing, demonstration, lecture, or firearms safety course authorized by school authorities in which the firearms of collectors or instructors are handled or displayed;

(d) Any person who possesses nun-chu-ka sticks, throwing stars, or other dangerous weapons to be used in martial arts classes authorized to be conducted on the school premises;

(e) Any person while the person is participating in a firearms or air gun competition approved by the school or school district;

(f) Any person who has been issued a license under RCW 9.41.070, while picking

up or dropping off a student;

(g) Any person legally in possession of a firearm or dangerous weapon that is secured within an attended vehicle or concealed from view within a locked unattended vehicle while conducting legitimate business at the school:

(h) Any person who is in lawful possession of an unloaded firearm, secured in a vehicle while conducting legitimate business at the school.

(i) Any law enforcement officer of the federal, state, or local government agency.

(4) Except as provided in subsection (3)(b), (c), (e), and (i) of this section, firearms are not permitted in a public or private school building.

(5) "GUN-FREE ZONE" signs shall be posted around school facilities giving warning of the prohibition of the possession of firearms on school grounds.

UNIFORM PROCEDURES FOR DOMESTIC VIOLENCE COURT ORDERS; POLICE NOTIFICATION OF RIGHTS TO ALL VICTIMS OF VIOLENT OFFENSES AND SEX OFFENSES

CHAPTER 350 (SSB 5360)

Effective Date: July 25, 1993

Amends RCW 26.50.035 to require that the Administrator For the Courts develop standard forms to be used statewide, effective September 1, 1994, for processing domestic violence no-contact orders (chapter 10.99 RCW), DVPA protection orders (chapter 26.50 RCW), dissolution restraining orders (chapter 26.09 RCW) and civil anti-harassment protection orders (chapter 10.14 RCW).

Amends RCW 10.99.030 to require, effective January 1, 1994, that the Criminal Justice Training Commission (CJTC) amend its contract with the Washington Association of Sheriffs and Police Chiefs (WASPC) for collecting crime statistics, and that WASPC collect records regarding domestic violence incidents from Washington law enforcement agencies. No funding was provided to CJTC or WASPC for this purpose, so it is unclear at this time whether, or to what extent, this directive will be implemented.

Amends RCW 7.69.030 to require that law enforcement officers responding to sex crimes or crimes of violence against adult victims make a reasonable effort to contemporaneously give to the victims a written statement of the victims' 15 specific rights as enumerated in RCW 7.69.030. Amends RCW 7.69A.030 to require that law enforcement officers responding to sex crimes or crimes of violence against child victims make a reasonable effort to contemporaneously give to the child victims a written statement of the victims' 11 specific rights as enumerated in RCW 7.69A.030. The required written statement under both the adult and child victims' rights statutes must also include: "the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county."

Other amendments to RCW 7.69.030 (adult victims' rights) and 7.69A.030 (child victims' rights) require that victims of violent crimes and sex crimes be provided crime victims' advocates at prosecutorial or defense interviews. This requirement applies only if it is practical, and, only if the

advocate can be provided without unnecessarily delaying the investigation or prosecution of the case.

RESTRICTION ON WEAPONS IN COURTROOMS, OTHER COURT PREMISES

CHAPTER 396 (ESHB 1059)

Effective Date: July 25, 1993

Amends RCW 9.41.300, which previously was limited to restricting the possession of "firearms" in certain areas, to restrict the possession of "weapons" in those same areas, defining "weapon" as follows:

"Weapon" as used in this section means any firearm, explosive as defined in RCW 70.74.010, or instrument or weapon listed in RCW 9.41.250.

Changes the existing restriction in 9.41.300 on possessing a weapon in a courtroom or judge's chamber to restrict possession of the weapon as follows:

Those areas in any building which are used in connection with court proceedings, including courtrooms, jury rooms, judge's chambers, offices and areas used to conduct court business, waiting areas, and corridors adjacent to areas used in connection with court proceedings. The restricted areas do not include common areas of ingress and egress to the building that is used in connection with court proceedings, when it is possible to protect court areas without restricting ingress and egress to the building. The restricted areas shall be the minimum necessary to fulfill the objective of this subsection (1)(b).

In addition, the local legislative authority shall provide either a stationary locked box sufficient in size for short firearms and key to a weapon owner for weapon storage, or shall designate an official to receive weapons for safekeeping, during the owner's visit to restricted areas of the building. The locked box or designated official shall be located within the same building used in connection with court proceedings. The local legislative authority shall be liable for any negligence causing damage to or loss of a weapon either placed in a locked box or left with an official during the owner's visit to restricted areas of the building.

The local judicial authority shall designate and clearly mark those areas where weapons are prohibited, and shall post notices at each entrance to the building of the prohibition against weapons in the restricted areas.

This enactment also strikes the existing statutory exception which has allowed possession of a weapon by a judge or court employee and other persons under certain circumstances. It appears that it is now unlawful for a judge to be armed in the judge's chambers or courtroom.

SPECIAL RULES FOR HANDLING SUSPECTED "SEXUALLY AGGRESSIVE YOUTH"

CHAPTER 402 (EHB 1110)

Effective Date: July 25, 1993

Establishes special procedures for law enforcement prosecutors, judges, and DSHS in the handling of complaints of possible sex offenses by youth under age 12. Section 2 thus establishes the following requirements in chapter 26.44 RCW:

(1) If a law enforcement agency receives a complaint that alleges that a child under age twelve has committed a sex offense as defined in RCW 9.94A.030, the agency shall investigate the complaint. If the investigation reveals that probable cause exists to believe that the youth may have committed a sex offense and the child is at least eight years of age, the agency shall investigate the complaint. If the investigation reveals that probable cause exists to believe that the youth may have committed a sex offense and the child is at least eight years of age, the agency shall refer the case to the proper county prosecuting attorney for appropriate action to determine whether the child may be prosecuted or is a sexually aggressive youth. If the child is less than eight years old, the enforcement agency shall refer the case to the department (DSHS).

(2) If the prosecutor or a judge determines the child cannot be prosecuted for the alleged sex offense because the child is incapable of committing a crime as provided in RCW 9A.04.050 and the prosecutor believes that probable cause exists to believe that the child engaged in acts that would constitute a sex offense, the prosecutor shall refer the child as a sexually aggressive youth to the department (DSHS). The prosecutor shall provide the department with an affidavit stating that the prosecutor has determined that probable cause exists to believe that the juvenile has committed acts that could be prosecuted as a sex offense but the case is not being prosecuted because the juvenile is incapable of committing a crime as provided in RCW 9A.04.050.

(3) The department (DSHS) shall investigate any referrals that allege that a child is a sexually aggressive youth. The purpose of the investigation shall be to determine whether the child is abused or neglected, as defined in this chapter, and whether the child or the child's parents are in need of services or treatment. The department may offer appropriate available services and treatment to a sexually aggressive youth and his or her parents or legal guardians as provided in RCW 74.13.075 and may refer the child and his parents to appropriate treatment and services available within the community. If the parents refuse to accept or fail to obtain appropriate treatment or services under circumstances that indicate that the refusal or failure is child abuse or neglect, as defined in this chapter, the department may pursue a dependency action as provided in chapter 13.34 RCW.

(4) Nothing in this section shall affect the responsibility of a law enforcement agency to report incidents of abuse or neglect as required in RCW 26.44.030(5).

The term "sexually aggressive youth" is defined under RCW 74.13.075 in part as follows:

- (1) . . . the term "sexually aggressive youth" means those juveniles who:
 - (a) Are in the care and custody of the state and:
 - (i) Have been abused; and

(ii) Have committed a sexually aggressive or other violent act that is sexual in nature;
or

(b) Cannot be detained under the juvenile justice system due to being under age twelve and incompetent to stand trial for acts that could be prosecuted as sex offenses as defined by RCW 9.94A.030 if the juvenile was over twelve years of age, or competent to stand trial if under twelve years of age.

CRIMINALIZATION PER SE OF IMPERSONATION OF A LAW ENFORCEMENT OFFICER

CHAPTER 457 (HB 1689)

Effective Date: July 25, 1993

Adds subsections (3) and (4) to RCW 9A.60.040 reading as follows:

(3) A person is guilty of criminal impersonation in the second degree if the person:

(a) Claims to be a law enforcement officer or creates an impression that he or she is a law enforcement officer; and

(b) Under circumstances not amounting to criminal impersonation in the first degree, does an act with intent to convey the impression that he or she is acting in an official capacity and a reasonable person would believe the person is a law enforcement officer.

(4) Criminal impersonation in the second degree is a misdemeanor.

What used to be simply "criminal impersonation" under RCW 9A.60.040 is now "criminal impersonation in the first degree," a gross misdemeanor.

SEX WITH PATIENTS AS RAPE 2, INDECENT LIBERTIES

CHAPTER 477 (SB 5577)

Effective Date: July 25, 1993

Amends RCW 9A.44.010 to add definitions of "mentally disordered person," "chemically dependent person," "health care provider" and "treatment," and amends RCW 9A.44.050(1) to make it rape in the second degree to engage in "sexual intercourse" (a term which by express definition does not include sexual penetration done "for medically recognized treatment or diagnostic purposes") with another person under the following circumstances:

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance to the evidence that the client or patient consented of the sexual intercourse with the knowledge that the sexual intercourse was not for the purpose of treatment; or

(e) When the victim is a resident of a facility for mentally disordered or chemically dependent persons and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim.

Amends RCW 9A.44.100(1) to make it indecent liberties to engage in "sexual contact" (which is defined as "any touching of the sexual or intimate parts of a person done for the purposes of gratifying sexual desire of either party") with another person under the follow circumstances:

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment; or

(e) When the victim is a resident of a facility for mentally disordered or chemically dependent persons and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim.

UNLAWFUL FACTORING OF CREDIT CARD TRANSACTIONS

CHAPTER 484 (SSB 5704)

Effective Date: July 25, 1993

Adds two new sections to chapter 9A.56 RCW creating the crime of unlawful factoring of a credit card transaction. Section 1 adds the following new definitions in a yet-to-be-codified new section in 9A.56:

As used in sections 1 and 2 of this act, unless the context requires otherwise:

(1) "Cardholder" means a person to whom a credit card is issued or a person who otherwise is authorized to use a credit card.

(2) "Credit card" means a card, plate, booklet, credit card number, credit card account number, or other identifying symbol, instrument, or device that can be used to pay for, or to obtain on credit, goods or services.

(3) "Credit card transaction" means a sale or other transaction in which a credit card issued to pay for, or to obtain on credit, goods or services.

(4) "Credit card transaction record" means a record or evidence of a credit card transaction, including, without limitation, a paper, sales draft, instrument or other writing and an electronic or magnetic transmission or record.

(5) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized under state or federal law to do business and accept deposits in Washington.

(6) "Merchant" means a person authorized by a financial institution to honor or accept credit cards in payment for goods or services.

(7) "Person" means an individual, partnership, corporation, trust, or unincorporated association, but does not include a financial institution or its authorized employees, representatives, or agents.

Section 2 creates the new crime in chapter 9A.56 as follows:

(1) A person commits the crime of unlawful factoring of a credit card transaction if the person, with intent to commit fraud or theft against a cardholder, credit card issuer, or financial institution, causes any such party or parties to suffer actual monetary damages that in the aggregate exceed one thousand dollars, by:

(a) Presenting to or depositing with, or causing another to present to or deposit with, a financial institution for payment a credit card transaction record that is not the result of a credit card transaction between the cardholder and the person;

(b) Employing, soliciting, or otherwise causing a merchant or an employee, representative, or agent of a merchant to present to or deposit with a financial institution for payment a credit card transaction record that is not the result of a credit card transaction between the cardholder and the merchant; or

(c) Employing, soliciting, or otherwise causing another to become a merchant for purposes of engaging in conduct made unlawful by this section.

(2) Normal transactions conducted by or through airline reporting corporation-appointed travel agents or cruise-only travel agents recognized by passenger cruise lines are not considered factoring for the purposes of this section.

(3) Unlawful factoring of a credit card transaction is a class C felony.

UCSA FORFEITURE LAW CLEANUP; DWI VEHICLE FORFEITURE

CHAPTER 487 (ESSB 5815)

Effective Date: July 25, 1993

Amends RCW 69.50.505, the controlled substances seizure and forfeiture statute in two ways. First, notice of seizure in the case of property subject to a perfected secured interest must now be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. And second, a person may now move any matter out of agency administrative hearings and into the courts; there is no longer a \$500 threshold; however, a person only has 45 days to request removing the case to the courts from the time the person makes a claim of ownership.

Adds new sections to chapters 46.61 and 46.12 RCW, which new sections allow for DWI vehicle forfeiture. Under these new provisions, a law enforcement agency has discretion to seize and forfeit a vehicle upon the owner's second DWI or physical control conviction within a five-year period. The forfeiture procedures used are identical to those used for drug forfeiture.

A seizure may not take place until after the DWI or physical control conviction. However, it is a misdemeanor for the owner of the car to transfer or sell the car prior to the time that the outcome of the DWI or physical control case is determined.

EDITOR'S NOTE: At LED deadline, we were hearing that questions had been raised regarding possible serious drafting errors in the DWI-forfeiture legislation. We will digest this enactment further next month after we have had an opportunity to review the questions being raised.

SCOFFLAWS FACE LICENSE REVOCATION BUT NO MORE FAILURE TO APPEAR, COMPLY

CHAPTER 501 (SHR 1744)

Effective Date: July 25, 1993

This Act repeals RCW 46.64.020 (failure to appear) and RCW 46.64.027 (failure to comply). It does not replace these offenses with equivalent offenses.

Section 1 also adds a new section to chapter 46.20 RCW reading:

The department [DOL] shall suspend all driving privileges of a person when the department receives notice from court under RCW 46.63.070(5) or 46.64.025 that the person has 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 has failed to comply with the terms of a notice of traffic infraction or citation, other than for a notice of a standing, stopping, or parking violation. A suspension under this section takes effect thirty days after the date the department mails notice of the suspension, and remains in effect until the department has received a certificate from the court showing that the case has been adjudicated, and until the person meets the requirements of RCW 46.20.311. A suspension under this section does not take effect if, prior to the effective date of the suspension, the department receives a certificate from the court showing that the case has been adjudicated.

Other provisions clarify that those who attempt to renew their driver licenses will not be able to do so until outstanding infraction notices, FTA's and failures to comply have been taken care of.

RESTRICTING MINORS' ACCESS TO TOBACCO PRODUCTS

CHAPTER 507 (ESHB 2071)

Effective Date: July 25, 1993

Establishes a new chapter in Title 70 RCW (the "public health and safety" title). Section 2 provides definitions, and section 3 requires that those licensed to sell cigarettes must post a sign concerning the prohibition of tobacco sales to "minors" (defined under the act as persons under age 18). Section 4 restricts the location of cigarette machines so that minors won't have access to them. Section 5 prohibits the sale of cigarettes not in the original unopened package or container (unpackaged single cigarettes may not be sold).

Sections 6 and 7 establish license requirements for distribution of cigarette samples, and place strict limits on where samples may be distributed. Section 8 limits coupons to in-person redemption. Section 9 makes it a class 3 civil infraction under chapter 7.80 RCW for a person under age 18 to purchase or attempt to purchase or obtain or attempt to obtain cigarettes or tobacco products. Section 10 sets forth the types of identification which retailers may rely on in selling tobacco products. Section 11 authorizes the Liquor Control Board to impose fines and to suspend and revoke retailers' licenses to sell tobacco products for violations of sections 3, 4, 5, 6, 7, 8 and 10, as well as for violations of RCW 26.28.080(4) (which makes it a gross misdemeanor to sell or give tobacco products to persons under age 18).

Section 12 places enforcement power in the Liquor Control Board, along with peace officers, as follows:

The liquor control board and the board's authorized agents or employees shall have full power and authority to enter any place of business where tobacco products are sold for the purpose of enforcing the provisions of this chapter.

For the purpose of enforcing the provisions of this chapter and RCW 26.28.080(4) and 82.24.500, a peace officer or enforcement officer of the liquor control board who has reasonable grounds to believe a person observed by the officer purchasing, attempting to purchase, or in possession of tobacco products is under the age of eighteen years of age, may detain such person for a reasonable period of time and in such a reasonable manner as is necessary to determine the person's true identify and date of birth. Further, tobacco products possessed by persons under the age of eighteen years of age are considered contraband and may be seized by a peace officer or enforcement officer of the liquor control board.

The liquor control board may work with local county health departments or districts and local law enforcement agencies to conduct random, unannounced, inspections to assure compliance.

Section 14 preempts in some respects local ordinances licensing or regulating tobacco products sales or promotions.

"LURING" A NEW CRIME; PROTECTS CHILDREN UNDER 16, SOME DISABLED ADULTS

CHAPTER 509 (ESSB 5186)

Effective Date: July 25, 1993

Adds a new section to chapter 9A.40 RCW making "luring" a crime as follows:

A person commits the crime of luring if the person:

(1)(a) Orders, lures, or attempts to lure a minor or developmentally disabled person into a structure that is obscured from or inaccessible to the public or into a motor vehicle;

(b) Does not have the consent of the minor's parent or guardian or the developmentally disabled person's guardian; and

(c) Is unknown to the child or developmentally disabled person.

(2) It is a defense to luring, which the defendant must prove by a preponderance of the evidence, that the defendant's actions were reasonable under the circumstances and the defendant did not have any intent to harm the health, safety, or welfare of the minor or developmentally disabled person.

(3) For purposes of this section:

(a) "Minor" means a person under the age of sixteen;

(b) "Developmentally disabled person" means a person with a developmental disability as defined in RCW 71A.10.020.

(4) Luring is a class C felony.

CRIMINALIZING MINORS WHO APPEAR IN PUBLIC UNDER THE EFFECT OF LIQUOR

CHAPTER 513 (SHB 1183)

Effective Date: July 25, 1993

Amends RCW 66.44.270(1) and (2) to read as follows:

(1) It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. For the purposes of this subsection, "premises" includes real property, houses, buildings, and other structures, and motor vehicles and watercraft.

(2)(a) It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor.

(b) It is unlawful for a person under the age of twenty-one years to be in a public place, or to be in a motor vehicle in a public place, while exhibiting the effects of having consumed liquor. For purposes of this subsection, exhibiting the effects of having consumed liquor means that a person has the odor of liquor on his or her breath and either: (i) Is in possession of or close proximity to a container that has or recently had liquor in it; or (ii) by speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor. This subsection (2)(b) does not apply if the person is in the presence of a parent or guardian or has consumed or is consuming liquor under circumstances described in subsection (4) or (5) of this section.

Note that the last sentence of subsection (1) and all of subsection (2)(b) are new language. Also note that because the new crime under subsection (2)(b) involves the "acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270," law enforcement officers apparently have "discretionary authority under RCW 10.31.100(1) to make an arrest on probable cause for the new crime under subsection (2)(b). The previously

existing crime of MIP remains separately chargeable under the unchanged provisions of (2)(a).

BRIEF NOTE FROM THE WASHINGTON STATE SUPREME COURT

SEARCH WARRANTS FOR CONTROLLED SUBSTANCES ARE SUBJECT TO SAME 10-DAY EXECUTION RULE AS OTHER WARRANTS -- In State v. Thomas, 121 Wn.2d 504 (1993), the State Supreme Court interprets RCW 69.50.509 and its own Court Rules -- CrR 2.3 (Superior Court rule) and CrRLJ 2.3 (rule for courts of limited jurisdiction) ruling that under CrR 2.3 and CrRLJ 2.3, the time limit for execution of a search warrant for controlled substances is the same for search warrants for other evidence -- 10 days; the warrant need not be executed with 3 days, as many had thought was directed by RCW 69.50.509. The Supreme Court holds that the statutory 3-day rule set forth in RCW 69.50.509 requires only that after lawful execution of the controlled substances search warrant within the 10-day period, the warrant must be returned to the superior court within 3 days of its execution.

Result: Affirmance of Court of Appeals ruling at 65 Wn. App. 347 (Div. I, 1992) (Oct. '92 LED:16) which had reversed a Snohomish County Superior Court suppression order.

Status: This is the last word on this question. Unless the Supreme Court amends its Court Rules or the State Legislature amends chapter 69.50 RCW (neither is likely in the foreseeable future), the 10-day rule for execution of search warrants will apply to all warrant searches, including narcotics searches.

The Law Enforcement Digest is edited by Assistant Attorney General, John Wasberg, Office of the Attorney General. Editorial comment and analysis of statutes and court decisions expresses the thinking of the writer and does not necessarily reflect the opinion of the Office of the Attorney General or the Washington State Criminal Justice Training Commission. The LED is published as a research source only and does not purport to furnish legal advice.

