

June 1996

# HONOR ROLL

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## 444th Session, Basic Law Enforcement Academy - February 8 - April 30, 1996

President: Officer Kevin P. Murphy - Kirkland Police Department  
 Best Overall: Officer Timothy A. Gower - Kelso Police Department  
 Best Academic: Officer Timothy A. Gower - Kelso Police Department  
 Best Firearms: Officer Curtis A. Evans - Lake Forest Park Police Department

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## Corrections Officer Academy - Class 229 - April 1 - 26, 1996

Highest Overall: Officer Richard E. Bauer - Washington State Penitentiary  
 Highest Academic: Officer Michael Royce Clark - Yakima County Corr./Deten. Center  
 Highest Practical Test: Officer Richard E. Bauer - Washington State Penitentiary  
 Highest in Mock Scenes: Officer Richard E. Bauer - Washington State Penitentiary  
 Officer Wesley A. Benson - Jefferson County Jail  
 Officer Melvin Purnell Butler - McNeil Island Correctional Center  
 Highest Defensive Tactics: Officer Richard E. Bauer - Washington State Penitentiary  
 Officer Christopher Jon English - Lincoln County Jail

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## Corrections Officer Academy - Class 230 - April 1 - 26, 1996

Highest Overall: Officer Francisco G. Magana - Pierce County Corrections Bureau  
 Highest Academic: Officer Carl G. Taylor - Washington State Penitentiary  
 Highest Practical Test: Officer Carl G. Taylor - Washington State Penitentiary  
 Highest in Mock Scenes: Officer Francisco G. Magana - Pierce County Corrections Bureau  
 Highest Defensive Tactics: Officer Francisco G. Magana - Pierce County Corrections Bureau

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## CRIME VICTIMS' COMPENSATION PROGRAM ALIVE AND WELL IN WASHINGTON

In 1974, Washington became one of the first states to enact a crime victims' compensation program. Benefits paid are patterned after worker compensation benefits, and for that reason, the

program is administered by the Department of Labor and Industries.

The program receives about 8,000 applications and pays approximately \$10 million in benefits each year. Benefits paid to injured victims include out-of-pocket medical and mental health counseling benefits, loss of wages, permanent disability and vocational rehabilitation benefits. Burial expenses, pensions or lump sums to spouses or children and grief counseling to family members are available to survivors of deceased victims.

Crime victims' compensation funds come from a portion of the revenues that are collected by the state's courts, from a federal grant, and from collections the program makes from offenders.

When emergency rooms conduct examinations of sexual assault victims for the purpose of gathering evidence for possible prosecution, those facilities are required to bill the costs of those examinations directly to the program. These costs are paid without the victim having to submit a claim to an insurance carrier or apply for other program benefits.

For other benefits, the program is secondary to other insurance that a victim has. Applications must be filed to obtain program benefits. Applications can be obtained from hospital emergency rooms, from any office of Labor and Industries, or from the victim/witness unit of any county prosecutor's office. While eligibility requirements are not always met, the program encourages law enforcement officers to inform victims of the program and to assist them in obtaining applications for benefits, when possible.

For more information, please call the program at 1-800-762-3716, or write: Crime Victims' Compensation, P.O. Box 44520, Olympia, WA 98504-4520.

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## **1996 WASHINGTON LEGISLATIVE ENACTMENTS-- PART ONE**

**LED EDITOR'S INTRODUCTORY NOTE:** This is Part One of what we expect to be a several-part update of 1996 Washington State legislative enactments to be provided in the next several **LED's**. Some of the text of our summaries has been adapted from the final bill reports prepared by legislative staff. We have tried to incorporate RCW references in our summaries, but where new sections or chapters are created, the State Code Reviser must assign appropriate code numbers, a process that likely will not be completed until early fall. As always, we remind our readers that any views that we express regarding the correct interpretation of legislation are solely our own and do not necessarily reflect the views of the Attorney General's Office or of the Criminal Justice Training Commission.

### **DRUG-FREE ZONES-- CIVIC CENTERS**

#### **CHAPTER 14 (SSB 5140)**

Effective Date: June 6, 1996

Amends RCW 69.50.435 to add publicly-owned and publicly-operated civic centers designated by a local governing authority as drug-free zones, thus adding a new category to the current list of places where the penalties for drug-related crimes are doubled. Local governing authorities may also designate a 1,000 foot perimeter around such facilities as drug-free zones. "Civic centers"

are defined in subsection (f) as publicly-owned or publicly-operated places and facilities used for recreational, educational or cultural activities.

## **BURGLARY FIRST DEGREE-- ASSAULT OUTSIDE THE BUILDING**

### CHAPTER 15 (SSB 5050)

Effective Date: June 6, 1996

In State v. Gilbert, 68 Wn. App. 379 (Div. I, 1993) April '93 LED:18, the Court of Appeals held that the phrase "assaults any person therein" in RCW 9A.52.020(1)(burglary first degree) referred only to assaults occurring inside the building, not assaults that occurred outside the building as the burglar was leaving. The Legislature has decided that the crime of burglary first degree should include instances where a burglar assaults the victim while fleeing the building. Accordingly, under chapter 15, Laws of 1996, the word "therein" is deleted from the above-quoted clause. First degree burglary is committed if a person enters a building with intent to commit a crime against a person or property in the building, and, while in the building or in immediate flight therefrom, the actor or another participant assaults any person.

## **GRAFFITI AS MALICIOUS MISCHIEF -- PUNISHMENT AND PARENTAL LIABILITY**

### CHAPTER 35 (SB 6115)

Effective Date: June 6, 1996

Under the third degree malicious mischief statute at RCW 9A.48.090, minimum penalties for placing graffiti on the property of another person are established. The minimum criminal penalty for unlawfully placing graffiti on another person's property is increased to a gross misdemeanor, even if the amount of damage is less than \$50. Also, the parental liability statute at RCW 4.24.190 is amended to specifically allow the parents of a child under the age of 18 to be held liable for the damages caused by the child's graffiti, up to a maximum of \$5,000.

## **BOATING HIT AND RUN, OTHER BOATING ACCIDENT REQUIREMENTS**

### CHAPTER 36 (2SHB 1289)

Effective Date: June 6, 1996

Adds a new subsection to RCW 88.12.155, the existing statute addressing "Duty of Operator involved in collision, accident, or other casualty." The new subsection establishes a new class C felony offense for the operator of a recreational vessel who leaves the scene of a "collision" that results in injury to a person. The new subsection provides as follows:

(3) An operator of a vessel is guilty of a class C felony and is punishable pursuant to RCW 9A.20.021 if the operator: (a) Is involved in a collision that results in injury to a person; (b) knew or reasonably should have known that a person was injured in the collision; and (c) leaves the scene of the collision without rendering all practical and necessary assistance to the injured person as required pursuant to subsection (1) of this section, under circumstances in which the operator could have rendered assistance without serious danger to the operator's own vessel or

persons aboard. This subsection (3) does not apply to vessels involved in commerce, including but not limited to tugs, barges, cargo vessels, commercial passenger vessels, fishing vessels, and processing vessels.

The amendments do not define "collision." The term probably includes any instance where a vessel strikes any object, animate or inanimate.

No change is made in the existing requirements under subsection (1) of RCW 88.12.155 that the operator of a vessel involved in a "collision, accident, or other casualty": (A) render assistance, and (B) complete a "Boating Accident Report" and submit the report to the law enforcement agency that has jurisdiction where the incident occurred. The existing criteria for reporting a collision, accident, or other casualty is specified in WAC 352-70, *Boating Accident and Casualty Reporting*. The criteria of WAC 352-70 meet national standards established by the United States Coast Guard.

No change is made in the existing "good samaritan" provisions under subsection (2) of RCW 88.12.155, providing civil liability protection for persons who offer assistance at the scene of a collision, accident, or other casualty.

## **MOTOR VEHICLE IMPOUND PROCEDURES**

### **CHAPTER 89 (HB 2595)**

Effective Date: June 6, 1996

RCW 46.55.113 is amended to become the single statute addressing police-directed impounds. (Beware: before relying on this statute to justify a vehicle impound policy, agencies should ask their legal advisor to review State v. Reynoso, 41 Wn. App. 113 (Div. III, 1985) Oct. '85 LED:06). By incorporating the substance of the repealed RCW 46.20.435 in RCW 46.55.113, the Legislature clarifies that, as in other impound situations addressed in RCW 46.55.113, when a police officer has ordered an impound for the operation of a motor vehicle without a valid driver's license, a license that has been expired for 90 days or more, or a suspended or revoked license, the registered tow-truck operator performing the impound, rather than the police officer ordering the impound, must give written notice of the opportunity for a hearing to persons redeeming impounded vehicles.

RCW 46.55.120 is amended to provide that, at a hearing to contest the validity of an impound or the amount of towing and storage fees, in lieu of the impounding officer's personal appearance, the court may consider a written report made under oath by the officer who authorized the impoundment.

## **SPEEDING IN SCHOOL AND PLAYGROUND ZONES**

### **CHAPTER 114 (SHB 2518)**

Effective Date: March 20, 1996

Amends RCW 46.61.440 to double the penalty assessed for the infraction of speeding in a school or playground zone, and precluding waiver, reduction or suspension of the penalty; 50% of all penalties under this section shall be paid into a special account to be "used by the Traffic Safety

Commission solely to fund projects in local communities to improve school zone safety."

## **PENALTY ASSESSMENTS-- CRIME VICTIM AND WITNESS PROGRAMS**

### **CHAPTER 122 (SHB 2358)**

Effective Date: June 6, 1996

Amends RCW 7.68.035 to increase penalty assessments in criminal and juvenile offender cases to help fund county crime victim and witness programs. Also, eligibility for the state crime victims' compensation program benefits is expanded under chapter 7.68. The time limit for applying for benefits is increased from one year to two years after the date the criminal act was reported to law enforcement. If good cause is shown, the time limit may be extended to five years. If a victim is killed as a result of a crime, the Department of Labor and Industries may no longer deny benefits to the spouse, child, or dependent of the victim on the basis that the victim's consent, provocation, or incitement was the cause of the injury. In addition, the maximum amount that may be paid by the crime victims' compensation fund for burial expenses is increased to the amount paid by the Department of Labor and Industries for a deceased worker under the Industrial Insurance Act (approximately \$4,340).

## **SERVICES FOR VICTIMS OF SEXUAL ABUSE**

### **CHAPTER 123 (SHB 2579)**

Effective Date: July 1, 1996

Amends chapter 70.14B RCW to transfer responsibilities from DSHS to CTED (Washington Department of Community, Trade and Economic Development) in relation to services for victims of sexual abuse.

Funding is made available to community sexual assault programs serviced by community-based social service agencies that provide "core services" to victims of sexual assault. Services include information and referral, crisis intervention, medical advocacy, legal advocacy, support, and system coordination. Permissible uses of grant funds are expanded to include supervision of victims' advocates, and assistance of victims and their families in the treatment process following a sexual assault. The definition of "sexual assault" under the act is expanded to include assault with intent to commit rape of a child, child molestation, sexual misconduct with a minor, and crimes with a sexual motivation.

The statement of the CTED Grant Program's objectives is amended to emphasize a victim-focused mission and adoption of consistent standards and policies. Grant funds will go to applicants that emphasize victim-focused sexual abuse services and are qualified to provide core services to victims of sexual assault. Grant applicants are required to demonstrate capacity to provide treatment services, and how the applicant will comply with service, data collection, and management standards established by the department.

The powers of DSHS to provide services and funding for services to sexually abused children are also transferred to CTED. CTED is required to provide services to the families of sexually abused children, as well as to the child victims.

## **AT-RISK YOUTH; "BECCA BILL" REVISIONS --"BECCA TOO" BILL**

### CHAPTER 133 (E2SHB 2217)

Effective Date: June 6, 1996

School personnel must notify parents within 48 hours of contacting an inpatient treatment facility for the purpose of referring a child for treatment.

Police officers are required to pick up those runaway children a court has found to be in violation of dependency orders; if requested by a parent, a police officer shall transport a child to a home of a family member, responsible adult, a CRC, or youth shelter, if the requested location is within a reasonable distance of the parent's home. If the child's parents are unavailable and a CRC is full, an officer shall release the child to DSHS, or, if DSHS declines to accept custody, place the child with a family member, responsible adult, or a youth shelter. If these alternatives are unavailable, the officer may release the child.

An officer must take a child to a detention facility if the officer knows the child is subject to a detention order. When a child is taken to a CRC by a police officer, the center must provide DSHS with a copy of the officer's report. The police officer may release an out-of-state child to DSHS and may no longer release the child to a "responsible adult." Police officers' immunity from civil and criminal liability is broadened.

DSHS must make good-faith attempts to notify parents of reports of unauthorized sheltering of a child. DSHS is required to offer reunification services to the parent. CRC administrators must notify DSHS when a child is placed at the center. DSHS or a supervising agency may remove a child from a CRC 24 hours after a child's placement, but only after considering the same criteria used for determining if a child may be transferred from a semi-secure facility to a secure facility.

The CRC administration must inform the parent and child of the right to obtain a mental health or chemical dependency evaluation and of the right to request treatment for behavioral difficulties in a staff secure facility.

The procedures for filing a child in need of services (CHINS) or dependency petition are clarified. A CHINS petition filed by a parent or child must be filed in the county where the parent resides. The court must notify DSHS of any CHINS petition filed by a child or parent.

CHINS and at-risk youth (ARY) fact-finding hearings must be held within five calendar days, unless the last day falls on a Saturday, Sunday, or holiday, in which case the hearing is on the preceding judicial day. If the child is at home or in an out-of-home placement, the hearing deadline is extended to 10 days. The court may continue the placement of a child at a CRC if space is available. Notifying parents of their rights is advanced from the disposition hearing to the fact-finding hearing.

In a CHINS proceeding, the court may order DSHS to submit a dispositional plan addressing the needs of the child. Copies of the plan must be provided to the parents and child. The court is required to provide a written statement of why a CHINS petition is granted or denied. The court's contempt powers for violation of placement orders are clarified.

A minor over the age of 13 who consents to receive chemical dependency inpatient treatment

needs parental permission unless DSHS determines the minor is a CHINS child. Similarly, it is unnecessary for a minor over the age of 13 to obtain parental consent to receive outpatient treatment. Parental permission for treatment of children under 13 is required. DSHS is allowed access to mental health records of children who are admitted to private facilities upon the application of their parents.

DSHS must, subject to funding, provide transitional living programs for dependent youth who are becoming emancipated under DSHS permanency plans.

## **TRUANCY**

CHAPTER 134 (ESHB 2640)

Effective Date: June 6, 1996

Chapter 28A.225 RCW provisions are extensively overhauled for both schools and courts in relation to enforcing the compulsory attendance laws.

## **PRIVILEGED COMMUNICATIONS INVOLVING SEX ASSAULT VICTIMS**

CHAPTER 156 (SSB 6188)

Effective Date: June 6, 1996

RCW 5.60.060 is amended to provide that confidential communications between a victim of sexual assault and his or her sexual assault advocate are qualifiedly privileged; therefore, a sexual assault advocate generally may not be examined to provide testimony for or against the victim without the victim's consent.

## **FIRE INVESTIGATION RESPONSIBILITY**

CHAPTER 161 (SB 6403)

Effective Date: June 6, 1996

RCW 48.48.060 is amended to assign responsibility for investigating the cause, circumstances, and extent of loss of all fires as follows: (a) within any city or town, the chief of the fire department; (b) within unincorporated areas of a county, the county fire marshal, or other fire official so designated by the county legislative authority. Interlocal agreements may be entered into to meet the responsibilities of this act.

If the cause of a fire is determined to be suspicious or criminal in nature, the person responsible for the fire investigation must immediately report the results of the investigation to the local law enforcement agency and the State Fire Marshal. Any law enforcement agency, sheriff, or chief of police may assist in the investigation of all fires within his or her jurisdiction. A fire marshal or other person is precluded from entering the scene of an emergency until permitted by the officer in charge of the emergency incident.

## **PRIVACY ACT-- RECORDING INMATE CONVERSATIONS IN STATE PRISONS**

## CHAPTER 197 (SHB 2195)

Effective Dates: March 28, 1996; June 6, 1996; August 1, 1996

The exception granted to the Washington State Department of Corrections (DOC) under the Privacy Act at RCW 9.73.095 is broadened to include other inmate conversations in addition to telephone conversations. DOC is authorized in state prisons to intercept, record, and divulge monitored conversations in inmate cells, living units, rooms, dormitories, and common spaces where inmates may be present.

Conditions governing DOC's access to recording and disclosure of recorded telephone conversations also apply to non-telephonic conversations. However, non-telephonic as well as telephonic conversations between inmates and attorneys must not be intercepted. DOC's policies and procedures implementing the expanded monitoring policy must also recognize the privileged nature of a confession made to a member of the clergy. (See RCW 5.60.060(3))

The provisions authorizing and placing conditions on the expanded monitoring policy go into effect August 1, 1996. DOC is required to notify all inmates, residents, and personnel of the expanded monitoring policy. Written notification to current inmates, residents, and personnel must be given by May 1, 1996. DOC must also post a conspicuous notice by July 1, 1996, to inform visitors of the monitoring policy. An emergency clause is included to enable these deadlines to be met.

## **FELONY TRAFFIC-- CLASSIFICATION, SENTENCING, AND REVOCATION**

### CHAPTER 199 (ESHB 2227)

Effective Date: June 6, 1996

Vehicular homicide (RCW 46.61.520) is increased in classification to a class A felony, and vehicular assault (RCW 46.61.522) is raised to a class B felony.

Also amends chapter 9.94A RCW to provide that the court must sentence an offender convicted of vehicular homicide or vehicular assault to community placement for up to two years, or up to the period of earned early release awarded, whichever is longer. All or a portion of that community placement may be spent in community custody in lieu of earned early release. If more than one victim is killed or injured in the same vehicle, the multiple deaths and/or assaults will no longer be counted as one crime for purposes of sentencing. Instead, each will count as a separate crime and will contribute to the offender's presumptive term of confinement.

The license revocation period for vehicular homicide and assault is tolled during the time period in which the defendant is in total confinement. DOL must develop procedures to implement this provision. DOL may not destroy records of convictions or adjudications for vehicular homicide and vehicular assault and must keep them on file permanently.

## **LAW ENFORCEMENT OFFICER TRAINING**

### CHAPTER 203 (2SHB 2323)

Effective Date: March 28, 1996

The Washington Association of Sheriffs and Police Chiefs is directed to assemble a study group to evaluate and make recommendations to the Legislature, by January 1, 1997, regarding the mission, duties, and administration of the Criminal Justice Training Commission. The study group is to be composed of 22 members representing law enforcement agencies, local jurisdictions, community colleges and universities, and the Legislature. The study group's responsibilities include: (1) evaluation the desirability and feasibility of providing law enforcement training to applicants for the position of law enforcement officer; (2) reviewing the adequacy of the basic law enforcement training program; (3) evaluating the status of supervisory, management, and advanced training programs; and (4) making recommendations regarding sources of funding.

## **UCSA-- EPHEDRINE, METHAMPHETAMINE-RELATED CRIME**

### **CHAPTER 205 (SHB 2339)**

Effective Date: June 6, 1996

Adds a new section to chapter 69.50 RCW to clarify that it is a crime for any person to possess ephedrine or pseudoephedrine with intent to manufacture methamphetamine. This offense is punishable by imprisonment for not more than 10 years, a fine of not more than \$25,000, or both. Possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine is classified at seriousness level VIII under the Sentencing Reform Act.

Amends RCW 69.50.401 to provide that any person who unlawfully manufactures, delivers, or possesses with intent to manufacture or deliver methamphetamine is guilty of a crime punishable by imprisonment for not more than 10 years and a fine of up to \$25,000 if the crime involves less than two kilograms; or, if the crime involves two kilograms or more, a fine of up to \$100,000 for the first two kilograms and \$50 for each gram in excess of two kilograms. Also amends the same section to provide that it is a crime to create, deliver, or possess counterfeit methamphetamine, which may be punished by imprisonment for not more than 10 years, a fine of not more than \$25,000, or both.

The unlawful manufacture, delivery, or possession with intent to deliver methamphetamine is added to the definition of "serious drug offense" for which the Department of Corrections must provide notification when a person convicted of a serious drug offense escapes or is released from incarceration.

For the purposes of juvenile dispositions, the offense category for the unlawful manufacture, delivery, or possession with intent to deliver methamphetamine is increased to seriousness level B+. The offense category for the unlawful manufacture, delivery, or possession with intent to deliver counterfeit methamphetamine is increased to seriousness level B.

Technical changes are also made to correct code references to certain drug crimes.

## **WILDLIFE VIOLATIONS**

### **CHAPTER 207 (EHB 2396)**

Effective Date: June 6, 1996

In State v. Bailey, 77 Wn. App. 732 (Div. III, 1995) Sept. '95 LED:12, the Court of Appeals ruled that a hunter who violated an antler point restriction was not guilty of a gross misdemeanor. The court ruled that RCW 77.16.020(1) prohibits hunting during a closed season for a species. In this instance, the season was open for mule deer but was limited as to the sex and size of the animal. Only male deer with a minimum of three antler points could be hunted. The court reasoned that, because an animal's sex or antler point count does not define whether it belongs to a certain species, the season was not closed to the species of mule deer, and therefore the hunter was not guilty of a violation of the statute. The court found that the hunter had instead violated a Fish and Wildlife Commission's WAC rule restriction, violation of which is a misdemeanor.

To reverse the effect of the Bailey decision, the Legislature revises the definitions of open and closed seasons in RCW 77.08.010 to clarify the Fish and Wildlife Commission's authority to open or close a season to hunting, fishing, or possessing a game animal, game bird, or game fish that conforms to certain special restrictions or physical descriptions. It is unlawful to hunt, fish, or possess a game animal, game bird, or game fish during the closed season. All reference to species is eliminated. It is also unlawful to exceed the bag limit for game animals, game birds, or game fish. Leg length and bill length may not be considered for Dusky Canada geese for the purposes of determining unlawful hunting, possessing, or bag limit.

RCW 77.16.020 is also amended to require a catch record card instead of the previously required punchcard to conduct certain activities.

## **SEX OFFENDER REGISTRATION, RELEASE NOTICES**

### CHAPTER 215 (SHB 2545)

Effective Date: June 6, 1996

Amends RCW 4.24.550 and 70.48.470 to provide that when an inmate is incarcerated in a county jail for a sex offense, the jail has a duty to learn from the inmate the county where the inmate will reside upon release. For any sex offender confined in a county jail who upon release will reside in another county, the jail's chief officer must notify the other county's chief law enforcement agency at least 14 days prior to the offender's release. If the county jail officials do not know a sex offender's release date at least 14 days in advance, the jail's chief officer shall provide the notice no later than the day after the release.

DOC is required to make all discretionary decisions regarding sex offender supervision and release plans based on assessment of public safety risks. Under amendments to RCW 72.09.340, DOC must implement a policy on sex offender release plans that: (a) creates a formal process for public input regarding the safety risks of particular offenders, and (b) provides for notification of certain people regarding a sex offender's proposed residence. For sex offenders who offended against minor victims, DOC must reject release addresses that would place the offender in the same home or within close proximity to minor victims or children of similar age and circumstance of previous victims who may be put at substantial risk of harm by the placement. Also, DOC may reject, for sex offenders who offended against minor victims, release addresses within close proximity to vulnerable populations. When requiring supervised contact as a condition of community placement, DOC must consider several specified criteria before approval.

## **LINE-OF-DUTY DEATH BENEFIT FOR LAW, FIRE PERSONNEL**

## CHAPTER 226 (E2SSB 5322)

Effective Date: March 28, 1996

A new section is added to chapter 41.04 RCW to provide a \$150,000 death benefit award where the following categories of personnel die "as a result injuries sustained in the course of employment:" [A] LEOFF I and II law enforcement officers and firefighters; [B] commissioned WSP officers in the WSP retirement system under chapter 43.43 RCW; [C] State Fisheries and Wildlife officers; and [D] volunteer fire fighters under chapter 41.24 RCW. The Director of the Department of Retirement Systems is required to adopt rules to implement the death benefit award.

## DOMESTIC VIOLENCE

### CHAPTER 248 (EHB 2472)

Effective Date: June 6, 1996

#### Mandatory Arrest For DV Assault -- Dating Relationships

The definition of "family or household members" at RCW 10.99.020(1) is amended to clarify that the statutory term includes **persons who are 16 years of age or older and are in a dating relationship with another person 16 years of age or older**. This change clarifies that the mandatory arrest provisions of RCW 10.31.100(2)(b) for DV assault do apply to this category of persons solely because of their "dating relationship", even if they have never been married or resided together. "Dating relationship" is defined at RCW 26.50.010 as follows:

"Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

#### Crime of Interfering with Reporting Domestic Violence

Under a new section in chapter 9A.36 RCW, a person commits the crime of interfering with the reporting of a crime of domestic violence if the person commits a crime of domestic violence and then prevents or attempts to prevent the victim of or a witness to the crime from calling 911, obtaining medical assistance, or reporting the crime to law enforcement. Interference with reporting domestic violence is a gross misdemeanor.

#### Definition of Crimes of Domestic Violence in Criminal Actions

The definition of domestic violence in RCW 10.99.020 is amended to include: (1) the new crime of interference with the reporting of domestic violence, and (2) the existing crime of violating a no-contact order issued after conviction of a domestic violence offense.

#### Penalties for Violating a No-Contact Order or a Protection Order

Under RCW 10.99.040, as amended, a violation of a no-contact order issued following a

conviction for a crime of domestic violence is a gross misdemeanor; a violation of a no-contact order issued in a criminal action or a violation of a protection order issued in a civil action is a class C felony if the defendant has at least two prior convictions for violating a no-contact order or protection order involving the same or a different victim.

#### Exceptional Sentences for Adult Offenders

Under amendments to RCW 9.94A.390, a judge may impose an exceptional sentence above the standard range if the offense involved domestic violence and one or more of the following circumstances was present:

- (1) the offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;
- (2) the offense occurred within the sight or sound of the victim's or batterer's children under age 18; or
- (3) the offense was committed with deliberate cruelty or intimidation of the victim.

#### Collection of Data on Incidents of Violations of No-Contact or Protection Orders

The Washington Association of Sheriffs and Police Chiefs is directed to collect data on incidents of violations of no-contact orders or protection orders.

#### Miscellaneous

Various sections in Title 10 and 26 RCW are amended to provide that protection orders, restraining orders, and no-contact orders may specify that the person being restrained may not enter the grounds of a building which the respondent is prohibited from entering, such as a home, school, workplace, or day care center. The mandatory arrest provision of RCW 10.31.100(2) is also amended to incorporate this new phrasing. Hence, entering the grounds or the building covered by an order will trigger mandatory arrest if the mandate of subsection (2) is otherwise met. Also, RCW 26.50.115 is clarified; an officer may enforce an unexpired, certified copy of a protection order if proof of service exists. If the officer serves the order on the respondent, the officer may then enforce subsequent violations of the order.

### **SEX OFFENDERS-- INCREASED SUPERVISION**

#### CHAPTER 275 (SSB 6274)

Effective Date: June 6, 1996

A number of changes (not addressed here) are made to the terms and conditions of sex offenders who are supervised in the community.

Defendants who are convicted of one of several sex offenses must be detained following conviction while awaiting sentencing. In addition, if the defendant files an appeal of one of those convictions, the court may not stay execution of the judgment. The offenses include the following:

- rape in the first or second degree;
- rape of a child in the first, second, or third degree;
- child molestation in the first, second, or third degree;
- sexual misconduct with a minor in the first or second degree;
- indecent liberties;
- incest;
- luring;
- any class A or B felony that is a sexually motivated offense;
- a felony conviction for communication with a minor for immoral purposes; and
- any offense that is an attempt to commit one of the above listed offenses.

RCW 9A.44.130 is amended to require that sex offenders who are subject to registration give local law enforcement 14 days' advance notice of moving (rather than notifying law enforcement within ten days after a move as provided in current law). An affirmative defense is established for offenders who can prove they did not know their new address 14 days prior to moving, provided they re-register with law enforcement no later than one day after establishing the new residence. Also, the crime of sexual misconduct with a minor in the second degree is added to the list of sex offenses for which offenders are required to register upon release from incarceration.

## **FRAUD IN SUBMITTING DRIVER'S LICENSE APPLICATION**

### CHAPTER 287 (ESHB 2150)

Effective Date: June 6, 1996

Amends RCW 46.20.091 to provide that making a false statement in a driver's license or driver's permit application is a gross misdemeanor under RCW 9A.72.040. Other sections of chapter 287 which would have authorized and enabled investigation of documents submitted with such applications and ID card applications were vetoed by Governor Lowry on privacy and due process grounds.

## **SEX OFFENDERS-- TWO STRIKES AND YOU'RE OUT**

### CHAPTER 289 (SHB 2320)

Effective Date: June 6, 1996

Amends RCW 9.94A.030 to adopt a "two strikes and you're out" rule under which a person will be sentenced as a persistent offender to life imprisonment without possibility of release if the person has been twice convicted, on separate trips through the judicial system, of any of the following

qualifying offenses, including attempts:

- (1) rape in the first degree;
- (2) rape in the second degree;
- (3) indecent liberties by forcible compulsion; or
- (4) any of the following offenses if they were specifically found to have been sexually motivated:
  - (a) murder in the first or second degree;
  - (b) kidnapping in the first or second degree;
  - (c) assault in the first or second degree; or
  - (d) burglary in the first degree.

The first qualifying conviction may have occurred in a jurisdiction other than Washington.

The existing "Three Strikes and You're Out" law is not supplanted or affected by this 1996 enactment. Accordingly a person may qualify as a persistent offender either (1) by committing three strikes under current law, or (2) by committing two of the offenses covered in the 1996 enactment.

## **FIREARMS**

CHAPTER 295 (SHB 2420)

Effective Date: June 6, 1996

**Disqualifying Offenses:** The list of criminal offenses which disqualify a person from possessing a firearm is changed by amendment to RCW 9.41.040. The list is expanded to include all felony offenses. The list is reduced to exclude some of the current law's misdemeanor offenses. Those misdemeanors that are retained as disqualifiers are assault in the fourth degree, coercion, stalking, reckless endangerment in the second degree, criminal trespass in the first degree, and violation of a protection order or no contact order. However, these misdemeanor offenses are disqualifiers only if committed by one family or household member against another on or after July 1, 1993. Possession of a firearm following a conviction for one of the disqualifying misdemeanors (or following involuntary commitment for mental health reasons) remains second-degree unlawful possession, which is a class C felony. A person convicted of one of these offenses may petition a court of record for restoration of rights only after three years in the community without being charged with or convicted of any criminal offense.

**Brady Law Compliance:** Changes were made to try to make Washington a "Brady-alternative" state. Out-of-state convictions that disqualify a person from possessing a firearm under federal law also disqualify a person under Washington law (RCW 9.41.010, 9.41.040 amended). A temporary/emergency concealed pistol license (CPL) must be readily distinguishable from a regular license and no longer allows a person to purchase a pistol without a background check (RCW 9.41.070 and RCW 9.41.090). A person who obtained a CPL before July 1, 1996, and did not have a criminal background check done at the time of issuance, must get a background check before purchasing a pistol (RCW 9.41.090).

**LED EDITOR'S NOTE:** With these changes, it appears that Washington will qualify as a "Brady-alternative" state. However, we did not have ATF confirmation at LED deadline.

**Brady-alternative status means that a person with (a) a regular CPL issued on or after July 1, 1996, or (b) a regular CPL issued before that date on which a background check was done, may obtain immediate delivery of a pistol on purchase without requirement under federal or state law for a further background check. We will revisit this question in a future LED when we learn of the formal ATF position.**

**Possession of a CPL:** Section 4 of chapter 295 amends RCW 9.41.050 to require that a person carry a CPL with him or her at all times during which the person possesses a pistol under circumstances for which a CPL is required. A licensee must also surrender the license upon demand of a law enforcement officer or other person when required by law to do so. Failure of a licensee to comply with these provisions is a civil infraction punishable by a fine of up to \$250.

**LED EDITOR'S NOTE:** We have advised the state code reviser's office of a technical error in that portion of section 4 of chapter 295 which amends RCW 9.41.050 to make it an infraction to not have the CPL license on one's person. We hope that the code reviser will place an explanatory note in the codified RCW's regarding the apparent legislative intent. The amended statute refers to infractions being issued under "chapter 7.84", but should instead refer to infractions being issued under "chapter 7.80." Chapter 7.84 applies only to "natural resources infractions," and does not have grades of infractions as referred to under the amendatory language in section 4. On the other hand, chapter 7.80 contains the applicable general infraction statutory scheme and does contain an infraction-grading scheme consistent with the pertinent amendatory language in section 4 of chapter 295. We would hope that law enforcement will be able to write citations based on the infraction scheme of chapter 7.80 RCW under this 1996 amendment, but law enforcement agencies will want to check with their respective prosecutors and city attorneys for guidance.

**Case and Carry:** Also by amendment to RCW 9.41.050, exemptions to the "case and carry" requirements are expanded and altered. The current law's exemption for "hunting or trapping under a valid license" is changed to an exemption for "a lawful outdoor recreational activity such as hunting, fishing, camping, hiking, or horseback riding." The exemption applies only if it is reasonable to conclude under all attendant circumstances that a person is engaged in a lawful outdoor activity or is traveling to or from a legitimate outdoor recreation area. The requirement that a firearm be "secured" in a gun rack in a vehicle is changed to a requirement that it be "placed" in the rack. A further exemption from the case and carry restriction is created for motor homes, which may be considered a "residence" when parked at a recreational park, campground, or other "temporary residential setting." An exemption from the case and carry requirement is also provided for licensed private security guards and private detectives.

**Involuntary Commitment:** Under amendments to RCW 9.41.047, procedures are changed for the restoration of a person's possession rights following an involuntary commitment for mental health reasons. The requirement that the person petition a court of record is retained, but the statement of what must be alleged in the petition is eliminated. Instead, the Secretary of the Department of Social and Health Services is directed to create by rule an "approval process." The rule must provide for the restoration of rights upon a showing in a court of competent jurisdiction that the person no longer needs treatment or medication and does not present a substantial danger to self or others.

**Alien Licenses:** Changes are made in RCW 9.41.170 with respect to the issuance of the licenses that are required of persons who are not U.S. citizens and who wish to possess firearms

while in the state. An alien must prove that he or she is in the country lawfully and must undergo a fingerprint check. The fee for an alien license is increased from \$25 to \$55, and background check charges from the federal government are to be passed on to the alien. The proceeds from the fee are to be distributed as follows: \$15 to the Department of Licensing (DOL); \$25 to the State Patrol; and \$15 to the local agency conducting the background check. The duration of an alien license is increased from four years to five years. The existing qualified exemption for Canadian citizens is not changed.

**Ammunition:** The selling of ammunition is deleted from the definition of firearms "dealer" at RCW 9.41.010. A person who sells firearms will continue to need a dealer's license and a separate license to sell ammunition, but a person who sells ammunition but does not sell firearms will not need a dealer's license or a separate license to sell ammunition.

**Retired Law Enforcement Officers:** An additional eligibility requirement is imposed on retired police officers before they are exempt from needing CPLs under RCW 9.41.060. Such a retired officer must not have been convicted of any crime that would make him or her ineligible for a CPL.

**Disposition of Forfeited Firearms:** A restriction in RCW 9.41.098 is removed on the ability of a local government to dispose of forfeited firearms. Local governments no longer must comply with a requirement that they either auction guns seized under prior law or pay the state for each pistol not so auctioned.

**Government Liability:** RCW 9.41.0975's civil liability immunity is expanded to give immunity from liability for good faith decisions regarding issuing or failing to issue a dealer's license.

**Delivery of Pistol:** Under amendment to RCW 9.41.090, a dealer is prohibited from delivering a pistol to a purchaser without first recording the manufacturer's number.

**Miscellaneous Provisions:** The following changes are also made:

- Fees for the renewal of CPLs under RCW 9.41.070 are explicitly made "nonrefundable." . . .
- A dealer must use "the state system" as well as the national instant criminal background check system when doing background checks under the Brady Bill (RCW 9.41.090). . . .
- A dealer must retain copies of pistol purchase records for six years RCW 9.41.090) . . . .
- Various additional changes to definitions in RCW 9.41.010 are made, including the way in which a pistol is defined in terms of measuring barrel length (a "pistol" is now a firearm with a barrel length 16 inches instead of former 12 inches and "barrel length" is defined as follows -- "the distance from the bolt face of a closed action down the length of the axis of the bore to the crown of the muzzle, or in the case of a barrel with attachments to the end of any legal device permanently attached to the end of the muzzle.

The definition of "loaded" is changed by substituting "cartridges" for "bullets," by addressing muzzle loaders, and by making another technical change not addressed here.

A new definition of "law enforcement officer" is provided, which pertains to the exemption from the

law's concealed pistol license requirement. The new term "includes a general authority Washington peace officer as defined in RCW 10.93.020, or a specially commissioned Washington peace officer as defined in RCW 10.93.020." "Law enforcement officer" also includes a limited authority Washington peace officer as defined in RCW 10.93.020 if such officer is duly authorized by his or her employer to carry a concealed pistol. A new definition is provided for the term "sell": "the actual approval of the delivery of a firearm in consideration of payment or promise of payment of a certain price in money".

## **NEGLIGENT DRIVING**

### CHAPTER 307 (ESSB 6204)

Effective Date: June 6, 1996

The crime of "**negligent driving in the first degree**" is created in an amendment to RCW 46.61.525. It is defined as operating a motor vehicle "in a manner that is both negligent and endangers or is likely to endanger any person or property" where the driver as "exhibits the effects of having consumed liquor or an illegal drug." It is a misdemeanor punishable by up to 90 days in jail and a \$1,000 fine.

"Exhibiting the effects" is defined as follows:

"Exhibiting the effects of having consumed liquor" means that a person has the odor of liquor on his or her breath, or that by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed liquor, and either:

- (i) Is in possession of or in close proximity to a container that has or recently had liquor in it; or
- (ii) Is shown by other evidence to have recently consumed liquor.

"Exhibiting the effects of having consumed an illegal drug" means that a person by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed an illegal drug and either:

- (i) Is in possession of an illegal drug; or
- (ii) Is shown by other evidence to have recently consumed an illegal drug.

"Illegal drug" is defined as follows:

[A] controlled substance under chapter 69.50 RCW for which the driver does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings, or a legend drug under chapter 69.41 RCW for which the driver does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings.

An affirmative defense is created for anyone who has a valid prescription for the drugs consumed, and is following directions on drug usage, if the charge is based on consumption of illegal drugs.

The current crime of negligent driving is renamed "**negligent driving in the second degree**" under RCW 46.61.525 and is made a traffic infraction with a penalty of \$250. Driving on private

property with the permission of the owner is made an affirmative defense to this charge, but not to "negligent driving in the first degree."

Driving is "negligent" for purposes of either degree if there is:

[T]he failure to exercise ordinary care, and is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do something that a reasonably careful person would do under the same or similar circumstances.

Under a separate section, the Office of the Administrator for the Courts is to report to the Legislature in two years on the number of charges and reduced charges under the new negligent driving law. . . . Under an amendment to RCW 46.61.5055, a conviction or deferred prosecution for first degree negligent driving is a "prior" for purposes of DUI sentencing, but only if it is the result of a plea down from a DUI, vehicular homicide, or vehicular assault. . . . Under an amendment to RCW 46.52.130, the DOL abstract provided to the insurance company must include all convictions for negligent driving, but must report them only as negligent driving without reference to whether they are for first or second degree negligent driving. . . . Under an amendment to RCW 46.20.021, the crime of driving without a valid license is reduced to an infraction if the driver produces acceptable identification or an expired license at the time of arrest and if the driver is not in violation of the suspended or revoked license laws; the fine for this infraction is \$250, except the fine will be reduced to \$50 if the driver timely submits proof to the court that he or she has obtained a valid license after being cited.

## **CITY-COUNTY AGREEMENTS RE MISDEMEANOR, GROSS MISDEMEANOR COSTS**

### **CHAPTER 308 (ESSB 6211)**

Effective Date: January 1, 1997

A new section is added to chapter 39.34 RCW, the Interlocal Cooperation Act to require each county, city or town to be responsible for the costs incident to misdemeanors and gross misdemeanor offenses committed by adults occurring in their respective jurisdictions. The only exception to this is by contract or interlocal agreement. The negotiation of the agreement must consider costs and revenues incident to the provision of these criminal justice services. If an agreement on the level of compensation cannot be reached, either party may invoke binding arbitration. The effective date is July 1, 1998 for cities or towns that have not adopted criminal codes; the effective date is January 1, 1997 for other cities and towns.

## **SOCIAL CARD GAMES**

### **CHAPTER 314 (SSB 6430)**

Effective Date: June 6, 1996

Under amendments to RCW 9.46.0281, a card room licensee may be allowed by the Gambling Commission to operate up to 15 separate card tables at an establishment. In addition, licensees are authorized to act as custodian of player-supported prize contests associated with card games. Licensees are authorized to collect a fee, including a percentage of a winner's prize, from card players.

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\*\*\*\*\*VETOED--PEN REGISTER AND LINE TRAP BILL\*\*\*\*\*

By votes of 86 to 8 in the House, and 36 to 12 in the Senate, the Legislature passed ESHB 2406, authorizing: (1) court-ordered installation of pen registers and line traps based on a "reason to believe" ( or "reasonable suspicion" ala Terry v. Ohio ) standard in certain listed investigation circumstances; and (2) extra-judicial installation of pen registers and line traps under certain narrowly limited emergency circumstances. The bill was modeled on federal legislation in this subject area, but contained greater limitations on law enforcement (or greater protections of citizen privacy) than are found in the federal legislation. Nonetheless, Governor Lowry vetoed the legislation in its entirety on asserted grounds that it was not sufficiently protective of privacy.

ESHB 2406 appeared to us to be a very reasonable compromise between the competing interests of (A) effective law enforcement, on the one hand, and (B) citizen privacy, on the other hand. The bill was the product of the combined efforts of the King County Prosecutor's Office, the Washington Association of Prosecuting Attorneys, and the Washington Association of Sheriffs and Police Chiefs, among others, with the lead role being taken by Pat Sainsbury of the King County Prosecutor's Office. We are very grateful to those legislators and all others who helped to move this necessary legislation to the Governor's desk in 1996, and we hope that the bill will be submitted again in similar form in 1997. We can be sure that Governor Lowry will not wield a veto pen in 1997.

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**WASHINGTON STATE COURT OF APPEALS**

**PAPER FOR AGENCY-AUTHORIZED RECORDING OF ILLEGAL DRUG CONVERSATIONS PER RCW 9.73.230 MUST SPECIFY LOCATION OF EXPECTED RECORDING ACTIVITY IF KNOWN**

State v. Smith, 80 Wn. App. 535 (Div. I, 1996)

Facts:

Members of the Eastside Task Force in King County did two agency-authorized "wires" on suspect, Tommy Quenton Smith. As to the first authorization issued in April 1993, the task force had information leading the task force to believe that the drug deal conversation that they sought to intercept and record would take place in Smith's apartment. However, the authorization form prepared under RCW 9.73.230 simply stated that the expected location of the conversation was "the greater Seattle-King County area." Undercover officers made a recording of a drug deal conversation at Smith's apartment, and the recording was later used at Smith's trial for delivery of a controlled substance.

As to the second authorization issued in June of 1993, the task force did not have any specific information about the likely location of the next impending drug deal conversation with Smith. Again, the written authorization for the interception and recording identified as the expected location of the conversation as "the greater Seattle-King County area." After the authorization

was issued, Smith identified a meeting place, and undercover officers subsequently made a recording of a drug deal conversation at that location. The recording was later admitted at Smith's trial for delivery of a controlled substance.

Proceedings:

Smith was charged with two counts of delivery of cocaine based on the two recorded drug deals. He lost a motion to suppress the tapes, stipulated to the State's evidence, and was found guilty by the court as charged.

ISSUE AND RULING: (1) Did either or both of the authorizations fail to satisfy the requirement of RCW 9.73.230 that the authorization specify, if known, the location of the interception activity? (ANSWER: The first authorization failed the statutory test, while the second authorization was lawful); (2) Should the trial court's erroneous decision to not suppress the recording under the first authorization be deemed "harmless error"? (ANSWER: No) Result: reversal of one count of two King County Superior Court convictions for delivery of cocaine; affirmance of the other count. STATUS: State's petition for review pending in the State Supreme Court.

ANALYSIS: (Excerpted from Court of Appeals' opinion)

(1) LOCATION INFORMATION IN AUTHORIZATION

Washington's privacy act generally prohibits the recording of private conversations without the consent of all parties to the conversations. The act does allow the recording of conversations concerning controlled substances without such consent, provided the conditions set forth in the act are met.

Law enforcement agencies may issue authorizations to record conversations as part of a bona fide criminal investigation. RCW 9.73.230(2) provides:

The agency's chief officer or designee . . . shall prepare and sign a written report at the time of authorization indicating:

. . .

(e) The details of the particular offense . . . and the *expected . . . location . . .* of the conversation or communication. . . [Emphasis by Court.]

There are no cases construing what is necessary to meet the statutory requirement to disclose the expected location of the conversation or communication to be recorded.

. . .

The [April 27] authorization . . . states the following:

Anticipated locations(s) [sic] of conversations or communications: To occur within an unknown area yet to be determined by the suspects or detectives; believed at this time to take place within the greater [S]eattle, [K]ing [C]ounty area.

Nowhere in the authorization is there any mention of the fact that the police then

expected to record the drug transaction in Smith's apartment. The April 27, 1993, authorization signed by the police official therefore fails to fulfill the statutory requirement to provide information as to the expected location of the communication to be recorded.

. . . The State appears to argue that because police do not know in advance exactly where suspected narcotics crimes are to occur, they need not provide any more information than the general geographical description given here.

The State's argument misses the point. If all that is required for specifying the expected location is to state the entire jurisdiction of the police agency issuing the authorization, the requirement to report the expected location is superfluous. That is an impermissible result in statutory construction. Thus, the use of the type of boiler-plate language used here to describe location is insufficient to meet the requirement of the statute.

We hold that the expected location required in the statutory report should reflect such information about the expected location of the communication to be recorded as is available to the police at the time they request the authorization. Accordingly, we reverse the portion of the judgment and sentence based on the April 27, 1993, authorization.

We next consider the application of these principles to the June 17, 1993, authorization. [The officer's] report on the June 17 sale indicates that he and Smith had several telephone conversations early that evening. The agency authorization reflects that it was issued at 9:05 p.m. The transcripts of the various tapes reflect that [the officer] did not know of the planned meeting place for the sale at a Jack-in-the-Box in Kirkland until 10:13 p.m., over an hour after the authorization was issued.

In contrast to the situation on April 27, here the police knew nothing more about the expected location at the time they applied for authorization of the body wire for this sale other than it was likely to be somewhere in King County. Thus, the description was sufficient under the statute for the June 17 authorization.

In both applications for the authorizations, the police included the same boilerplate language regarding the failure to give more detail about expected location. They stated:

Drug transactions and investigations such as these are not subject to exactness with respect to time, location and persons involved. [R]ather, they are spontaneous and generally involve communications with multiple individuals before the substantive crime is actually committed. There is a certain randomness to the location of the controlled buy(s). Thus, we [cannot] safely attempt to pinpoint the location of . . . any meetings without endangering the success of the investigation.

While it may be true that ultimate locations for drug transactions are often unknown, this does not excuse the failure to comply with the requirements of the statute. The statute requires no more information than that which is available to

the police when they apply for authorization to record conversation or communication. At oral argument, the State was unable to articulate why pinpointing an expected location might endanger the success of an investigation. The provision of the statute permitting authorizations to be valid statewide is sufficient to provide the police the flexibility to deal with the uncertainties they described in these two authorizations.

## (2) HARMLESS ERROR

We must next decide whether the court's denial of the motion to suppress the April 27, 1993, tapes was harmless error. For harmless nonconstitutional error, the test is whether, within reasonable probabilities, the outcome of the trial would have been materially affected if the error had not occurred. The State argues that the error was harmless because the plain language of the statute states that a witness to a drug transaction who heard the defendant's statements without having to rely on a recording or listening device may still testify. As a result, [the officer's] testimony about the April 27 transaction would have been admissible and sufficient to convict Smith, and the only evidence excluded would have been the tape itself. We disagree.

This court has held that "[i]f a police officer is party to an illegally recorded conversation, the officer cannot testify about the conversation or any visual observations or assertive gestures . . . . In [State v. Jimenez, 76 Wn. App. 647 (Div. I, 1995) **June '95 LED:18**] we made it clear that an invalid authorization was the same as no authorization at all. In State v. Salinas [128 Wn.2d 720 (1996) **May '96 LED:03**], the state Supreme Court held that the "unaided testimony" language of RCW 9.73.230(8) does not permit the officer to testify about the transaction if the authorization itself is not properly obtained. Thus, any evidence obtained in connection with the illegal recording, including testimony by any of the officers involved, is inadmissible.

Here, Smith stipulated to the State's evidence after the trial court ruled the recordings admissible. Without the recordings and the testimony of the detective and officers who were involved in making them, the State has essentially no evidence. Thus, it is at least reasonably probable that the outcome of the trial would be altered by suppression. The error was not harmless.

[Some citations and footnotes omitted.]

### LED EDITOR'S NOTE:

In State v. Jimenez, 128 Wn.2d 720 (1996) **May '96 LED:03** (addressing the requirement that officers participating in recording be named) the State Supreme Court overruled the Division I ruling in that case on the harmless error issue. The State Supreme Court holding thus partially overruled the Court of Appeals decision in that case by holding in Jimenez that, if police make a good faith but unsuccessful effort to comply with the authorization procedures of RCW 9.73.230, then, while the tape recording itself will be inadmissible, the officers participating in the conversations should be allowed to testify pursuant to subsection (8) of RCW 9.73.230 which provides:

In any subsequent judicial proceeding, evidence obtained through the interception or recording of a conversation or communication pursuant to this section shall be admissible only if:

(a) The court finds that the requirements of subsection (1) of this section were met . . .

. . .

Nothing in this subsection bars the admission of testimony of a party or eyewitness to the intercepted, transmitted, or recorded conversation or communication when that testimony is unaided by information obtained solely by violation of RCW 9.73.030.

See discussion regarding subsection (8) in May '96 LED at pages 4-5.

The prosecutor in the Tommy Quenton Smith case may be able to obtain a partial reversal of the ruling in that case as well. The Court of Appeals in Smith should have held under Jimenez that the tape recording is inadmissible but that the officers' independent testimony would be admissible. We will report further developments in the case.

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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 express the thinking of the writer and do 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.

