



Law Enforcement

August 1999

Digest

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1999 LEGISLATIVE UPDATE—PART TWO

LED Editor’s Introductory Notes: This is Part Two of a two-part update of 1999 Washington State legislative enactments of special interest to law enforcement. Part Two concludes with a cumulative index of 1999 enactments covered in the two parts. The text of the 1999 legislation, along with bill reports and other legislative history, is available on the Internet at the following address -- [http://www.leg.wa.gov] -- look under “bill info,” “house bill information/senate bill information,” and use bill numbers to access information.

We have tried to incorporate RCW references in our entries, but where new sections or chapters are created by the legislation, the State Code Reviser must assign the appropriate code numbers. That process will likely not be completed until early fall of this year. Finally, as always, we remind our readers that any legal interpretations that we express in the LED do not necessarily reflect the views of the Attorney General’s Office or of the Criminal Justice Training Commission.

DRIVERS’ LICENSE LAWS—TECHNICAL CLEANUP

CHAPTER 6 (SHB 1294) Effective Date: July 25, 1999

Makes purely technical edits to several statutes relating to driver’s licensing. The act expressly declares that the Legislature did not intend any substantive change in the law with this act.

MENTAL HEALTH EVALUATION—COURT DISAGREEMENT

CHAPTER 11 (SHB 5046) Effective Date: April 15, 1999

Amends RCW 71.05.235 regarding release of persons evaluated for mental health risk; act gives superior courts more authority to disagree with the professional opinion presented to the court.

FELONY CONVICTION PRECLUDES WORK FOR COUNTY TREASURER

CHAPTER 16 (SB 5202) Effective Date: July 25, 1999

Amends RCW 9.96A.020 to provide that a county treasurer may deny employment to a person with a prior guilty plea or conviction involving embezzlement or theft regardless of the length of time which has passed since the offense, plea, or conviction.

CRIMINAL RECORDS CHECKS ON PUBLIC SCHOOL VOLUNTEERS

CHAPTER 21 (ESSB 5668) Effective Date: July 25, 1999

Adds a section to chapter 28A.320 RCW to allow businesses, schools, organizations, criminal justice agencies, juvenile justice agencies, and certain state agencies to disseminate, primarily or secondarily, criminal history record information to public K-12 schools seeking information on volunteers under certain circumstances.

TRUCK SCALES STOPS—EXCEPTION ADDED

CHAPTER 23 (SB 5741) Effective Date: July 25, 1999

Amends RCW 46.44.105(5) to exempt from truck scales stop requirements vehicles weighing less than 16,000 pounds and not transporting hazardous materials.

ELECTRONIC STALKING AND HARASSING-- CLARIFICATION

CHAPTER 27 (HB 1011) Effective Date: July 25, 1999

Amends RCW 9A.46.020(1)(b), RCW 9A.46.110(4), and RCW 10.14.020(2) to clarify that the criminal harassment and stalking laws can be violated through electronic communications such as E-mail, and that civil anti-harassment orders can be obtained based on such communications.

STATE TOXICOLOGY LAB TO WSP

CHAPTER 40 (SHB 1560) Effective Date: July 1, 1999

Transfers all powers, duties, and functions of the state toxicology laboratory to the bureau of forensic laboratory services of the Washington State Patrol.

CRIMINAL RECORDS LAW CLEANUP

CHAPTER 49 (SSB 5573)

Effective Date: July 25, 1999

Makes what appear to be very minor cleanup amendments to RCW 10.97.030 and 10.98.050 to clarify certain matters relating to criminal records laws, in part to clarify that information relating to pending criminal charges may be disseminated as non-conviction data.

FACSIMILE STREET RODS

CHAPTER 58 (HB 1175)

Effective Date: July 25, 1999

Amends RCW 46.04.571 to include in the exemption for “street rods” vehicles that: 1) are assembled to resemble a vehicle manufactured before 1949, and 2) otherwise meet the requirements of that section.

NO “DURESS” DEFENSE IN “HOMICIDE BY ABUSE” CASES

CHAPTER 60 (HB 1394)

Effective Date: July 25, 1999

Amends RCW 9A.16.060’s defense of “duress” to clarify that the defense is unavailable to persons charged with “homicide by abuse” (currently the law bars the defense where the charge is “murder” or “manslaughter”—those bars to raising the defense are retained under the 1999 act).

NON-PHOTO ID CARDS FOR DISABLED PARKING

CHAPTER 136 (SSB 6009)

Effective Date: July 25, 1999

Amends RCW 46.16.381 to, among other things, allow DOL until July 1, 2001 to incorporate photos into the identification cards issued to disabled parking permit holders.

MULTIPLE DEATH INVESTIGATIONS

CHAPTER 142 (SHB 1069)

Effective Date: July 25, 1999

Amends RCW 43.103.090 to give the State Forensics Investigations Council the power to authorize expenditure of up to \$250,000 per biennium to assist local jurisdictions in “the investigation of multiple deaths involving unanticipated, extraordinary, and catastrophic events, or involving multiple jurisdictions.”

CRIMINAL LAW CLEANUP

CHAPTER 143 (HB 1142)

Effective Date: July 25, 1999

Amends numerous sections in Titles 9, 9A, and 10 RCW. All of the changes are purely technical (such as alphabetizing lists of definitions and correcting cross references); none of the changes affect the substance of the laws.

PROTECTING “VULNERABLE ADULTS” – MANDATORY REPORTING OF ABUSE: TO LAW ENFORCEMENT, DSHS; AND BY LAW ENFORCEMENT, DSHS, AND OTHERS

CHAPTER 176 (SHB 1620)

Effective Date: July 25, 1999

This act comprehensively overhauls provisions in chapters 26.44, 70.124 and 74.34 RCW relating to protection of “vulnerable adults” from physical, mental, and sexual abuse, as well as exploitation. The act does not directly amend the provisions of chapter 9A.42 RCW which criminalize “criminal mistreatment,” including criminal mistreatment of “vulnerable adults,” as redefined under this 1999 act.

Section 2 amends RCW 74.34.020 so that the section now defines the terms: “abandonment,” “abuse” (including separate subdefinitions of “sexual abuse,” “physical abuse,” “mental abuse,” and “exploitation”) “consent,” “Department (DSHS),” “financial exploitation,” “mandated reporter,” “neglect,” “permissive reporter,” “protective services,” “self-neglect,” and “vulnerable adult.”

“Vulnerable adult” is now defined for purposes of chapters 74.34 and 9A.42 RCW as follows:

(13) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

- (b) Found incapacitated under chapter 11.88 RCW; or
- (c) Who has a developmental disability as defined under RCW 71A.10.020; or
- (d) Admitted to any facility; or
- (e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or
- (f) Receiving services from an individual provider.

“Mandated reporter” is defined as follows:

(8) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

Section 5 establishes a new section in chapter 74.34 setting standards for mandated and permissive reporters, including the following:

(1) When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to the department. If there is reason to suspect that sexual or physical assault has occurred, mandated reporters shall immediately report to the appropriate law enforcement agency and to the department [DSHS].

...

(4) Each report, oral or written, must contain as much as possible of the following information:

- (a) The name and address of the person making the report;
- (b) The name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;
- (c) The name and address of the legal guardian or alternate decision maker;
- (d) The nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;
- (e) Any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;
- (f) The identity of the alleged perpetrator, if known; and
- (g) Other information that may be helpful in establishing the extent of abandonment, abuse, financial exploitation, neglect, or the cause of death of the deceased vulnerable adult.

Section 7 makes criminal: 1) the knowing failure of a “mandatory reporter” to make a report to the appropriate law enforcement agency and/or to DSHS, and 2) the making of bad faith reports. Section 7 thus adds a new section to chapter 74.34 RCW providing:

- (1) A person who is required to make a report under this chapter and who knowingly fails to make the report is guilty of a gross misdemeanor.
- (2) A person who intentionally, maliciously, or in bad faith makes a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult is guilty of a misdemeanor.

Section 8 adds a new section to chapter 74.34 RCW to establish responsibilities of DSHS and law enforcement to follow up on reports and to coordinate agency efforts. Section 9 adds a new section to chapter 74.34 RCW to add further responsibilities of DSHS in dealing with reports under the act.

The act provides further for confidentiality of reports, for civil actions to protect vulnerable adults, and for whistleblower protection. It also amends numerous pre-existing provisions in chapter 74.34. The act also amends a number of sections in chapter 26.44 RCW (the chapter relating to child abuse reporting) to

reflect that provisions on mandatory reporting and other provisions for protection of “vulnerable adults” previously found in chapter 26.44 RCW are now found in chapters 74.34 and 70.124 RCW.

RECORDS CHECKS OF PRIVATE SCHOOL EMPLOYEES

CHAPTER 187 (SSB 5213)

Effective Date: July 25, 1999

Adds a new section to chapter 28A.195 RCW to authorize private K-12 schools to conduct criminal records checks of employees.

LIQUOR LAW PENALTIES

CHAPTER 189 (SSB 5304)

Effective Date: July 25, 1999

Amends RCW 66.28.230 (keg furnishing crimes and penalties) to make all violations gross misdemeanors; adds a new section to chapter 66.28 RCW (collected keg registration laws) to make all violations gross misdemeanors; amends RCW 66.44.100 (opening or consuming liquor in public place) to make violation a “class 3 civil infraction under chapter 7.80 RCW;” and repeals RCW 66.44.320 (presumably, this repeal was done because the offense here, “sales of liquor to minors,” is already covered by RCW 66.44.270, which prohibits “furnishing liquor to minors”).

REPEALING “ANARCHY LAW;” AMENDING CRIMINAL “SABOTAGE” LAWS

CHAPTER 191 (SSB 5671)

Effective Date: July 25, 1999

Repeals a number of provisions in chapter 9.05 RCW referencing or relating to the crime of “anarchy.” Also amends RCW 9.05.030 and RCW 9.05.060 so that they now read as follows:

RCW 9.05.030 Whenever two or more persons assemble for the purpose of committing criminal sabotage, as defined in RCW 9.05.060, such an assembly is unlawful, and every person voluntarily and knowingly participating therein by his or her presence, aid or instigation, shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both.

RCW 9.05.060 (1) Whoever, with intent that his or her act shall, or with reason to believe that it may, injure, interfere with, interrupt, supplant, nullify, impair, or obstruct the owner's or operator's management, operation, or control of any agricultural, stockraising, lumbering, mining, quarrying, fishing, manufacturing, transportation, mercantile or building enterprise, or any other public or private business or commercial enterprise, wherein any person is employed for wage, shall willfully damage or destroy, or attempt or threaten to damage or destroy, any property whatsoever, or shall unlawfully take or retain, or attempt or threaten unlawfully to take or retain, possession or control of any property, instrumentality, machine, mechanism or appliance used in such business or enterprise, shall be guilty of criminal sabotage.

(2) Criminal sabotage is a felony.

CONSIDERING CHEMICAL DEPENDENCY IN SENTENCING; DRUG COURTS

CHAPTER 197 (E2SSHB 1006)

Effective Date: July 25, 1999

Amends various sentencing provisions to allow courts to take into account the need for treatment for chemical dependency in certain cases. Also authorizes the counties to establish “drug courts” as defined under the act.

HOV LANE VIOLATIONS

CHAPTER 206 (HB 1554)

Effective Date: July 25, 1999

Amends RCW 46.61.165 to clarify that violation of an HOV lane restriction created under that section is an infraction.

TRANSPORTATION OF EXPLOSIVES

CHAPTER 207 (SHB 1559)

Effective Date: July 25, 1999

Repeals RCW 46.37.460 restricting transporting explosives (the legislative bill reports state that this repealed law has been obsolete since 1975, when more stringent provisions were adopted in the Federal Code of Federal Regulations to govern transportation of hazardous materials).

TIRES ON FARM MACHINERY ON THE HIGHWAYS

CHAPTER 208 (HB 1561)

Effective Date: July 25, 1999

Amends RCW 46.37.420 to provide that it is permissible to operate farm machinery on a highway if the machinery is equipped with “pneumatic tires or solid rubber tracks having protuberances that will not injure the highway...”

DANGEROUS MENTALLY ILL OFFENDERS

CHAPTER 214 (SSB 5011)

Effective Date: July 25, 1999; later for some provisions

Amends various laws to attempt to improve the process for identifying and providing additional mental health treatment for dangerous mentally ill offenders.

LIGHTWEIGHT STUDED TIRES

CHAPTER 219 (SB 5384)

Effective Date: July 25, 1999 (subject to phase-in)

Beginning January 1, 2000, per new section in chapter 46.37 RCW, with the exception of existing inventory as of that date, tire wholesalers may sell to tire dealers only lightweight studs; beginning July 1, 2000, per another new section in chapter 46.37 RCW, no one may sell a studded tire, or sell a stud for installation, unless the tire qualifies as a lightweight studded tire or the stud qualifies as a “lightweight stud” as defined under the act.

DEATH FROM FIRE—REPORT TO WSP IN TWO DAYS

CHAPTER 231 (HB 1556)

Effective Date: July 25, 1999

Amends RCW 48.48.065 to require that chiefs of organized fire departments, or sheriffs or other designated county officials where pertinent, who are obligated to report to WSP all fires (but currently without express statutory time limits), now must make reports to the WSP “within two business days” whenever there is “any death resulting from fire.”

TECHNICAL AMENDMENTS TO FISH AND WILDLIFE CODE

CHAPTER 258 (SSB 5638)

Effective Date: July 25, 1999

Makes various minor, technical amendments to provisions in the Fish and Wildlife enforcement code.

OCCUPATIONAL DRIVERS’ LICENSES

CHAPTER 272 (SHB 1774)

Effective Date: January 1, 2000

Amends in substantial manner the provisions of RCW 46.20.391, expanding issuance of occupational driver’s licenses but under significantly limited circumstances and restrictions. Among other things, act amends RCW 46.20.394 to provide that, when an occupational license is issued, DOL will:

Set forth in detail the specific hours during which the person may drive to and from substance abuse treatment or meetings of a twelve-step group such as alcoholic’s anonymous, the days of the week during which the license may be used, and the general routes over which the person may travel.

WASHINGTON DRIVERS’ LICENSING STATUTES—TECHNICAL AMENDMENTS

CHAPTER 274 (SB 5374)

Effective Date: July 25, 1999

Makes minor, corrective amendments to various provisions of drivers’ licensing laws.

MOTORCYCLE HANDLEBAR HEIGHT

CHAPTER 275 (SB 5358)

Effective Date: July 25, 1999

Amends RCW 46.61.611 to increase from 15 inches to 30 inches the allowable gap between the height of motorcycle handlebars or grips and the height of the seat or saddle for the operator.

FALSE POLITICAL ADVERTISING

CHAPTER 304 (1673)

Effective Date: July 25, 1999

The Legislature responds to the Washington Supreme Court decision in State v. 119 Vote No! Committee, 135 Wn.2d 618 (1998), which held that free speech rights precluded the fining (by the Public Disclosure Commission) of an entity for alleged political campaign lies. The Legislature amends RCW 42.17.530(1)(a) to make it a civil violation for a person to sponsor with actual malice political advertising that contains a false statement of material fact about a candidate for political office. However, this subsection (1)(a) does not apply to statements made by a candidate or the candidate's agent about the candidate himself or herself.

EXTENDING DRIVERS' LICENSES TO FIVE YEARS IN DURATION

CHAPTER 308 (HB 2259)

Effective Date: July 1, 2000

Among other things, extends the duration of a Washington driver's license to 5 years.

CLEMENCY AND PARDONS

CHAPTER 323 (SHB 1068)

Effective Date: July 25, 1999

Amends several statutes to try to ensure that prosecutors and victims have notice and input in the deliberations process of the Governor's advisory board on clemency and pardons.

EXTRAORDINARY MEDICAL RELEASE FOR DOC PRISONERS

CHAPTER 324 (HB 1299)

Effective Date: July 25, 1999

Amends several statutory provisions to allow DOC to grant "extraordinary medical placement" outside the prison setting for certain low risk prisoners who have very serious medical problems and who can find a source to pay for their medical treatment. Even where the prisoners meet the threshold qualifications of the statute, DOC has discretion to deny the relief. Electronic monitoring is generally to be required for those released, and DOC has full discretion to revoke at any time.

ASSAULTING TRANSIT AND SCHOOL BUS EMPLOYEES

CHAPTER 328 (HB 1442)

Effective Date: July 25, 1999

RCW 9A.36.031 currently makes it "assault in the third degree" to assault a transit operator or school bus driver carrying out his or her duties. The 1999 act amends this statute to extend the same protection to supervisors, mechanics and security officers working for the entities employing the transit operators and school bus drivers.

EXPANDING THE POOL OF SEX OFFENDERS PLACED IN THE DNA DATABASE

CHAPTER 329 (HB 1757)

Effective Date: July 25, 1999

Amends RCW 43.43.754 to expand the class of sex offenders from whom blood will be taken for the purpose of providing a DNA database for identification analysis.

INCREASED USE OF IGNITION INTERLOCK FOR DUI

CHAPTER 331 (SSB 5399)

Effective Date: July 25, 1999

Among other things, amends various statutes to increase the use of court directives to install ignition interlocks as part of the sentence for some DUI's.

EXECUTION WITNESSES

CHAPTER 332 (SSB 5513)

Effective Date: July 25, 1999

Amends RCW 10.95.185 of the aggravated murder statute to, among other things, allow up to two law enforcement representatives (limited to investigating officers on the case) to witness an execution.

IDENTITY THEFT – PRIVACY OF FINANCIAL INFORMATION

CHAPTER 368 (SHB 1250)

Effective Date: January 1, 2000

Section 1 states legislative intent as follows:

The legislature finds that financial information is personal and sensitive information that if unlawfully obtained by others may do significant harm to a person's privacy, financial

security, and other interests. The legislature finds that unscrupulous persons find ever more clever ways, including identity theft, to improperly obtain and use financial information. The legislature intends to penalize unscrupulous people for improperly obtaining financial information.

Section 2 prohibits "attempts to improperly obtain financial information" as follows:

(1) No person may obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, financial information from a financial information repository:

(a) By knowingly making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial information repository with the intent to deceive the officer, employee, or agent into relying on that statement or representation for purposes of releasing the financial information;

(b) By knowingly making a false, fictitious, or fraudulent statement or representation to a customer of a financial information repository with the intent to deceive the customer into releasing financial information or authorizing the release of such information;

(c) By knowingly providing any document to an officer, employee, or agent of a financial information repository, knowing that the document is forged, counterfeit, lost, or stolen; was fraudulently obtained; or contains a false, fictitious, or fraudulent statement or representation, if the document is provided with the intent to deceive the officer, employee, or agent to release the financial information.

(2) No person may request another person to obtain financial information from a financial information repository and knows or should have known that the person will obtain or attempt to obtain the information from the financial institution repository in any manner described in subsection (1) of this section.

(3) As used in this section, unless the context clearly requires otherwise:

(a) "Financial information" means, to the extent it is nonpublic, any of the following information identifiable to the individual that concerns the amount and conditions of an individual's assets, liabilities, or credit:

(i) Account numbers and balances;

(ii) Transactional information concerning any account; and

(iii) Codes, passwords, social security numbers, tax identification numbers, driver's license or permit numbers, state identicaid numbers issued by the department of licensing, and other information held for the purpose of account access or transaction initiation.

(b) "Financial information repository" means any person engaged in the business of providing services to customers who have a credit, deposit, trust, stock, or other financial account or relationship with the person.

(c) "Person" means an individual, partnership, corporation, or association.

(4) No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, or any action of an agent of the financial information repository when working in conjunction with a law enforcement agency.

(5) This section does not apply to:

(a) Efforts by the financial information repository to test security procedures or systems of the financial institution repository for maintaining the confidentiality of customer information;

(b) Investigation of alleged employee misconduct or negligence; or

(c) Efforts to recover financial or personal information of the financial institution obtained or received by another person in any manner described in subsection (1) or (2) of this section.

(6) Violation of this section is a class C felony.

(7) A person that violates this section is liable for five hundred dollars or actual damages, whichever is greater, and reasonable attorneys' fees. If the person violating this section is a business that repeatedly violates this section, that person also violates the consumer protection act, chapter 19.86 RCW.

Section 3 prohibits "identity theft" as follows:

(1) No person may knowingly use or knowingly transfer a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity harming or intending to harm the person whose identity is used, or for committing any felony.

(2) For purposes of this section, "means of identification" means any information or item that is not describing finances or credit but is personal to or identifiable with any individual or other person, including any current or former name of the person, telephone number, and electronic address or identifier of the individual or any member of his or her family, including the ancestor of such person; any information relating to a change in name, address, telephone number, or electronic address or identifier of the individual or his or her family; any social security, driver's license, or tax identification number of the individual or any member of his or her family; and other information which could be used to identify the person, including unique biometric data.

(3) Violation of this section is a class C felony.

(4) A person that violates this section is liable for five hundred dollars or actual damages, including costs to repair the person's credit record, whichever is greater, and reasonable attorneys' fees. If the person violating this section is a business that repeatedly violates this section, that person also violates the consumer protection act, chapter 19.86 RCW.

This act will be codified in a new chapter in Title 9 RCW.

HEALTH CARE SETTINGS—KEEPING CRIME RECORDS, PREVENTING CRIME

CHAPTER 377 (SSB 5312)

Effective Date: July 25, 1999

Adds a new chapter to Title 49 RCW which, among other things, requires that, by July 1, 2000, entities in "health care settings" (as broadly defined under the act): (1) develop plans for prevention of violence; (2) develop related staff training; and (3) establish a formalized internal reporting system for all "violent acts" against employees, patients and visitors. Failure to comply is subject to DLI WISHA citation.

VEHICLE IMPOUND NOTICES, SECURITY AND AUCTIONS

CHAPTER 398 (ESB 5649)

Effective Date: July 25, 1999

This act makes several substantive changes in the law relating to vehicle impound notices, security, and auctions. The following sections in chapter 46.55 RCW are amended: 010, 080, 100, 111, 120, and 130. Also amended are RCW 46.61.625 and 46.70.180. In addition, a new section is added to chapter 46.55 RCW, reading as follows:

The Washington state patrol shall provide by rule a uniform impound authorization and inventory form. All law enforcement agencies must use this form for all vehicle impounds after June 30, 2001.

ENACTMENTS DIGESTED IN JULY LED

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REMINDER REGARDING "CJ'S LAW" ADOPTED IN 1998

We have been asked to remind **LED** readers of “CJ’s Law” adopted by the Washington Legislature in 1998 to require mirrors and/or back up devices for delivery trucks. Chapter 2, Laws of 1998, digested in the July 98 **LED** at page 2, amended RCW 46.37.400 such that subsections (3) and (4) of section 400 now read as follows:

(3) Every truck registered or based in Washington that is equipped with a cube-style, walk-in cargo box up to eighteen feet long used in the commercial delivery of goods and services must be equipped with a rear crossview mirror or back up device to alert the driver that a person or object is behind the truck.

(4) All mirrors and backup devices required by this section shall be maintained in good condition. Rear crossview mirrors and backup devices will be of a type approved by the Washington state patrol.

WSP has adopted regulations implementing CJ’s Law as follows:

WAC 204-46-030

Backup alert devices.

Backup alert devices means any type of motion detection device, laser device, camera, or television device mounted on a truck with a cube-style, walk-in cargo box up to eighteen feet long, which will warn the driver of the detection of a person or object at a minimum of six feet to the rear of the vehicle and also encompass the width of the area of the vehicle.

Wac 204-46-030

Rear crossview mirrors.

Rear crossview mirrors means any type of mirrors which, when mounted, will allow the driver of a truck with a cube-style, walk-in cargo box up to eighteen feet long, to view a minimum distance of six feet to the rear and encompass the width of the rear of the vehicle in order to be able to detect an object or person. These crossview mirrors shall be installed in a manner that will satisfy the above requirements.

The Supreme Court’s Infraction Rules for Courts of Limited Jurisdiction (IRLJ 6.2) establish a base penalty of \$35 for violation of RCW 46.37.400 (under the catch-all, “other equipment violation”).

BRIEF NOTES FROM THE U.S. SUPREME COURT

(1) LAW ENFORCEMENT AGENCIES CARRYING OUT THEIR DUTIES MAY NOT ROUTINELY TAKE MEDIA INTO PRIVATE RESIDENCES WITHOUT CONSENT OF RESIDENTS – In Wilson v. Layne, 119 S. Ct. 1692 (1999), a unanimous U.S. Supreme Court rules, in two consolidated cases, that the Fourth Amendment of the U.S. Constitution does not give law enforcement agencies general authority to allow media representatives to go along when law enforcement agencies enter private residences to carry out law enforcement duties. The majority opinion declares specifically:

We hold that it is a violation of the Fourth Amendment for police to bring members of the media or other third parties into a home during the execution of a warrant when the presence of the third parties in the home was not in aid of the execution of the warrant.

The majority opinion goes on from there, however, to hold that the law in this area was not “clearly established” in 1992 when the U.S. Marshal’s officers took the media with them and entered a

private home hoping to execute an arrest warrant on a resident of the home. Accordingly, the majority declares that the officers were entitled to “qualified immunity” for their actions meeting the immunity test of “objective legal reasonableness.”

In a footnote, the majority opinion declares that the Court is not addressing, and reserves for future consideration the question of whether the Exclusionary Rule would apply where police violate this rule. Also, the question of possible media liability in these circumstances is not addressed.

Media ride-a-longs or other presence in other factual contexts (traffic stops, street contacts, etc.) may be ok, the Supreme Court opinion implies, because there is no Fourth Amendment privacy intrusion in these contexts.

Result: Affirmance of decision of the U.S. Court of Appeals for the Fourth Circuit granting qualified immunity from federal civil rights liability to the law enforcement officers involved in the action.

(2) NO WARRANT NEEDED UNDER FOURTH AMENDMENT TO SEIZE VEHICLE WHICH IS SUBJECT TO SEIZURE UNDER STATE DRUG FORFEITURE STATUTE - In Florida v. White, 119 S.Ct 1555 (1999) , a 7-2 majority of the U.S. Supreme Court rules that a search warrant was not required under the Fourth Amendment in order for law enforcement officers to lawfully seize a vehicle which was subject to forfeiture under Florida drug laws.

Two months after officers observed defendant using his car to deliver cocaine, they arrested him at his workplace on unrelated charges. At that time, the arresting officers seized his car without securing a warrant because they had probable cause to believe that it was subject to forfeiture under the Florida Contraband Forfeiture Act (Act). During a subsequent inventory inspection of the vehicle, the police discovered cocaine in the car’s ashtray. Defendant was then charged with a state drug violation.

At his trial on the drug charge, White moved to suppress the evidence discovered during the search, arguing that the car’s warrantless seizure violated the Fourth Amendment, thereby making the cocaine the “fruit of the poisonous tree.” After the jury returned a guilty verdict, the court denied the motion. However, on appeal, the Florida Supreme Court held that the search was unlawful because it did not fit within any of the well-established and limited exceptions to the Fourth Amendment search warrant requirement.

The U.S. Supreme Court majority opinion reversing the Florida Supreme Court suppression ruling relies in large part on what has come to be known federally as the “Carroll Doctrine.” Under Carroll v. U.S., 267 U.S. 132 (1925) and cases following it over the past 74 years, the U.S. Supreme Court has held that -- because the mobility of the vehicle inherently creates exigent circumstances, and because the expectation of privacy associated with the public use of a vehicle is limited -- when officers have probable cause to believe a vehicle located in a public place contains contraband, the Fourth Amendment does not require them to obtain a warrant prior to searching the vehicle and seizing the contraband.

The White majority analogizes the circumstances of this case to the Carroll doctrine cases, as well as to a case where IRS agents made a warrantless seizure of a car which was subject to income tax assessments. See G.M. Leasing Corp. v. U.S., 429 U.S. 338 (1977). Based primarily on Carroll and G.M. Leasing, the White majority rules that no search warrant was required prior to searching or inventorying the contents of White’s car. The officers had probable cause to believe the car was subject to seizure and forfeiture under Florida’s drug laws, and it was seized from a public area; those facts justified a warrantless seizure of the car under the Fourth Amendment.

In dissent, Justice Stevens and Justice Ginsburg argue that none of the well-defined search warrant exceptions apply to justify the warrantless seizure of White's car.

Result: Reversal of Florida Supreme Court suppression ruling and reinstatement of conviction of White for possession of cocaine.

LED EDITOR'S COMMENT: Beware of two problematic "independent grounds" precedents from the Washington State Supreme Court.

In State v. Hendrickson, 121 Wn.2d 61 (1996) July 96 LED:11, the Washington Supreme Court held that a vehicle seized for forfeiture purposes may not be subjected to a full investigatory search without a warrant (*Footnote: the Hendrickson case involved a full, investigatory search and did not involve a lawful impound-inventory; the Hendrickson ruling does not limit a properly conducted inventory inspection in the instance of a lawful impound of a car seized for drug forfeiture action.*)

And in State v. Ringer, 100 Wn.2d 686 (1983) Feb 84 LED:01, the Washington Supreme Court held, in another "independent grounds" ruling, that the Carroll doctrine of the federal constitution's Fourth Amendment does not apply under article 1, section 7 of the Washington Constitution; hence, Ringer holds that mere mobility of a vehicle does not establish exigent circumstances. Therefore, a warrantless investigatory search of a mobile vehicle is not justified by mere probable cause to search. To this day, the "Carroll Doctrine" does not apply to justify searches by Washington law enforcement officers.

Putting the Washington Supreme Court opinions in Hendrickson and Ringer together, we feel that a word of caution is in order about the U.S. Supreme Court's White decision digested here this month. Washington law enforcement agencies should consult their legal advisors and/or prosecutors whether a warrant is needed to: (A) seize and hold a vehicle which is subject to seizure and forfeiture for probable cause under RCW 69.50.505; as well as (B) conduct an investigatory search. In our view, the answer is "No" to question (A) and "Yes" to question (B). On question (A) then, we think seizing and holding a vehicle does not require a warrant under Washington law. In other words, we think the Florida v. White ruling would hold up under article 1, section 7 analysis. However, we are virtually certain on question (B) that there is no leeway in the Hendrickson decision, and hence that officers wishing to conduct an investigatory search of a vehicle impounded for forfeiture generally will need consent or a search warrant before proceeding.

Again, we think that a strong argument can be made that the majority opinion upholding the warrantless seizure in Florida v. White is consistent with Washington law. Washington case law recognizes that seizures are less intrusive on privacy and liberty than are searches. And RCW 69.50.505(b)(4), which expressly authorizes a warrantless seizure of personal property on probable cause, was upheld on Fourth Amendment analysis in Lowery v. Nelson, 43 Wn. App. 747 (1987). For these reasons, we believe that the Washington courts will likely hold that Washington officers can lawfully make warrantless probable cause seizures of vehicles subject to forfeiture based on the express authority to do so in RCW 69.50.505(b)(4). Again, however, we believe officers should not search such vehicles without a search warrant (unless, of course, some other well-established exception to the warrant requirement clearly applies).

(3) **CHICAGO'S GANG-LOITERING ORDINANCE STRUCK DOWN FOR VAGUENESS** – In City of Chicago v. Morales, 1999 WL 373152, a 6-3 majority of the U.S. Supreme Court strikes down the City of Chicago's ordinance which authorizes police to give dispersal orders to prohibit gang members from loitering in public places with other persons. A primary focus of the decision

was the ordinance's definition of "loitering" as "to remain in any one place with no apparent purpose."

The majority justices in Morales agree that the Chicago gang-loitering ordinance is unconstitutional because it does not place sufficient limits on police discretion to restrain the personal liberties of citizens. However, four separate opinions are issued by those in the Morales majority, so it is not easy to determine the effect of the majority's ruling. It appears that the majority view in Morales does not undercut ordinances which have been developed to prohibit drug-loitering or prostitution-loitering, because the latter types of ordinances generally contain clearer guidelines for police and the citizenry regarding what behavior triggers application of the ordinances. See, e.g., Tacoma v. Luvene, 118 Wn.2d 826 (1992) **August 92 LED:09** (Washington Supreme Court decision upholding Tacoma's ordinance prohibiting loitering with a purpose to engage in drug-related activities). In addition, there appears to be room in the concurring opinions in Morales for the City of Chicago to salvage its ordinance against gang-loitering. Relatively minor clarifying amendments might satisfy a majority of the U.S. Supreme Court.

Result: Affirmance of Illinois Supreme Court decision: a) striking down the City of Chicago's gang-loitering ordinance; and b) reversing the gang-loitering convictions of Jesus Morales and other defendants.

BRIEF NOTES FROM THE WASHINGTON STATE SUPREME COURT

(1) **NO PC ESTABLISHED IN AFFIDAVIT A) DESCRIBING SUSPECT'S DRUG-DEALING ACTIVITIES AND B) STATING OFFICER'S GENERAL EXPERIENCE THAT DRUG DEALERS COMMONLY KEEP CERTAIN TYPES OF EVIDENCE AT HOME** – In State v. Thein, ___ Wn.2d ___ (1999) [977 P.2d 582], the Washington Supreme Court holds unanimously on Fourth Amendment grounds that an affidavit for a drug search warrant did not establish probable cause for the search.

Seattle narcotics officers developed threshold probable cause to believe Steve Thein was supplying marijuana for another person to sell, but they knew very little about Thein or his illegal activities. Officers prepared an affidavit for a warrant to search Thein's home. The officers had no direct evidence linking Thein's suspected drug-dealing to his home. However, the affidavit set forth the affiant-officer's experience and training to link Thein's residence to his suspected drug-dealing activity by asserting the following:

Based on my experience and training, as well as the corporate knowledge and experience of other fellow law enforcement officers, I am aware that it is generally a common practice for drug traffickers to store at least a portion of their drug inventory and drug related paraphernalia in their common residences. It is generally a common practice for drug traffickers to maintain in their residences records relating to drug trafficking activities, including records maintained on personal computers. Because drug traffickers will in many instances "front" (i.e., sell on consignment) controlled substances in full or partial quantities to their distributors or from their suppliers, such record keeping is necessary to keep track of amounts paid and owed. Those records will also be maintained close at hand so as to readily ascertain current balances. Telephone/address listings of clients must be maintained and immediately available in order to efficiently conduct their drug trafficking business. Moreover, it is generally a common practice for traffickers to conceal at their residences large sums of money, either the proceeds of drug sales or to utilized [sic] to purchase controlled substances. In this vein, drug traffickers typically make use of currency, wire transfers, cashiers

checks and money orders to pay for controlled substances. Evidence of such financial transactions and records related to incoming expenditures of money and wealth in connection with drug trafficking would also typically be maintained in residences.

I know from previous training and experiences that it is common practice for drug traffickers to maintain firearms, other weapons and ammunition in their residences for purposes of protecting their drug inventory and drug proceeds[.] I am aware from my own experience and training that it is common practice for [sic] from law enforcement, but more commonly, from other drug traffickers who may attempt to “rip them off.” Firearms and ammunition have been recovered in the majority of residence searches in the drug investigations in which I have been involved.

A warrant was issued authorizing a search of Thein’s residence. A marijuana grow operation was found in the ensuing search. Before trial, Thein moved unsuccessfully to suppress evidence obtained in the search. Thein was convicted of manufacturing marijuana. The Court of Appeals subsequently affirmed. 91 Wn. App 476 (1998) **Jan 99 LED:13**. Now the State Supreme Court has reversed.

In lengthy analysis, the Supreme Court addresses case law here and elsewhere regarding the extent to which police officers’ statements about their experience and training in relation to habits of drug dealers will be sufficient to connect a suspect’s residence to evidence of drug dealing. The Supreme Court concludes that without evidence directly tying a suspected drug-dealer’s residence to his drug-dealing activities, a search warrant for his residence based solely on the officers’ experience and training will be insufficient.

Result: Reversal of Steve Thein’s King County Superior Court conviction for manufacturing marijuana; case remanded for suppression of evidence and dismissal of charges.

LED EDITOR’S COMMENT: We will revisit the Thein opinion at some point in the coming months as we try to get a feel for the breadth of the holding and its ramifications. It may be limited to its facts, i.e., threshold PC that a suspect is a marijuana wholesaler, but very little information about the suspect’s illegal activities. At this point, we believe that the ruling should not have much effect on search warrant practice other than in drug-dealing investigations of the sort at issue in Thein. Officers should continue to incorporate in their supporting affidavits PC-linkage statements about their experience and training. The State Supreme Court’s Fourth Amendment ruling in Thein does not find “experience and training” statements to be improper or even to be generally unhelpful. Thus, we believe that at most Thein merely limits use of such statements by themselves to establish PC to search a residence.

(2) CLERGY-PENITENT PRIVILEGE OF RCW 5.60.060(3) DOESN’T REQUIRE THAT PENITENT HAVE RELIGION – In State v. Martin, 137 Wn.2d 774 (1999), the State Supreme Court unanimously affirms a decision by Division Two of the Court of Appeals broadly interpreting the clergy-penitent privilege under RCW 5.60.060(3).

The statute provides:

A member of the clergy or a priest shall not, without the consent of a person making the confession, be examined as to any confession made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

After defendant Scott Anthony Martin’s infant child died, possibly from being shaken violently, Martin’s mother contacted a preacher to counsel her son. The preacher and the son met and talked. However, for at least some part of the clergy-defendant communication, Martin’s mother was present.

Prior to Martin’s trial for second degree murder, the trial court held hearings in relation to the preacher’s communications. Ultimately, the trial court held, based in large part on the Buss decision, that the priest-penitent privilege did not apply in Martin’s case. The trial court then ordered the preacher to be

held in contempt for refusing to disclose the communications. Based on a Division One Court of Appeals decision in State v. Buss, 76 Wn. App. 780 (Div. I, 1995) **Aug 95 LED:22**, the trial court had applied a three part test: 1) Was the clergy member ordained? 2) Were the statement made in a confession which was in the course of discipline enjoined by the church? and 3) Was the penitent (i.e., Martin) constrained by religious obligation to make the confession? The trial court in Martin ruled that his confession did not come within the privilege, primarily because Martin did not meet the third element. Martin appealed this ruling, and the trial was continued to sort out the privilege question.

The Court of Appeals reversed the trial court ruling, holding that only the first two parts of the trial court's three-part test actually apply under RCW 5.60.060(3). See **December 98 LED:20**. The penitent need not have any religious affiliation or even any religious conviction, the Court of Appeals held. As long as the clergy member is ordained and the statements are made in a confession, sanctioned by the church, then any confidential communications are protected under RCW 5.60.060(3), even though the penitent has no religious affiliation or belief.

The Court of Appeals went on to note that the presence of Martin's mother might have destroyed the confidentiality of the clergy-penitent communications. For that reason, the Court of Appeals remanded the case to the trial court for hearings to determine the parts at which Martin's mother was present during the clergy-penitent conversations, and to determine whether her presence destroyed the privilege. The prosecutor then obtained review in the State Supreme Court.

Now the State Supreme Court has affirmed the Court of Appeals decision in all respects. The Supreme Court summarizes its interpretation of RCW 5.60.060(3)'s clergy-penitent privilege as follows:

- (1) the phrase "in the course of discipline enjoined by the church to which he or she belongs" refers to the member of the clergy and not to the penitent;
- (2) "confession" is defined by the religion of the clergy;
- (3) confidential communications between the member of the clergy and the penitent are privileged and the presence of a third person may vitiate the privilege unless that person is another member of the clergy or the person's presence is necessary for the communication; and
- (4) the penitent is the holder of the privilege and the only person who can waive it.

Result: Affirmance of Court of Appeals decision reversing Pierce County Superior Court contempt order against preacher Rich Hamlin; case remanded for trial of Scott Anthony Martin.

(3) QUARLES' "PUBLIC SAFETY" EXCEPTION TO MIRANDA WARNINGS REQUIREMENT APPLIED TO POLICE COMMUNICATIONS WITH BARRICADED MURDERER; ALSO, "PREMEDITATION" EVIDENCE HELD SUFFICIENT; BUT SHACKLING OF POTENTIALLY VIOLENT DEFENDANT AT TRIAL HELD IMPROPER AND PREJUDICIAL AS TO DEATH SENTENCE – In State v. Finch, 137 Wn.2d 792 (1999), the State Supreme Court reverses a murderer's death sentence – but not his underlying convictions of aggravated murder (two counts) and unlawful imprisonment (two counts) – based on Court's determination by 6-3 vote that the trial court should not have ordered the defendant to be shackled during his trial.

LED EDITOR'S NOTE: *We will not review in detail the State Supreme Court majority's analysis in support of its ruling that defendant should not have been shackled for his jury trial for murdering a blind man and a police officer, other than to note: 1) that this ruling creates difficult problems of courtroom security which will likely plague those tasked with providing courtroom security for years to come; and 2) that Justice Talmadge writes an excellent critique of the majority ruling on the shackling issue. Rather than addressing the shackling issue, we will briefly address two pro-state rulings by the Supreme Court: 1) that the "public safety" exception to Miranda requirements applied to police negotiations with the barricaded defendant; and 2) that evidence of "premeditation" was sufficient to support his first degree murder conviction.*

1) Miranda. The State Supreme Court explains as follows why Miranda warnings were not necessary prior to communications with the barricaded defendant, Finch:

In New York v. Quarles, 467 U.S. 649 (1984) **Aug 84 LED:01**, the U.S. Supreme Court, in response to concerns for police and public safety, created a “public safety exception” to the Miranda requirement.

In Quarles, the Court concluded “that the need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment’s privilege against self-incrimination.” There, the defendant was arrested in a supermarket and police believed that just before the arrest the defendant had discarded a loaded firearm inside the supermarket in a place where a third party could gain access. Without first administering Miranda warnings, police questioned the defendant about the location of the gun and the defendant responded with an inculpatory statement. Based on public safety concerns, the Supreme Court concluded that the statement need not be suppressed. Recognizing that handling emergencies requires split-second decisions, the Supreme Court

decline[d] to place officers ... in the untenable position of having to consider, often in a matter of seconds, whether it best serves society for them to ask the necessary questions without the Miranda warnings and render whatever probative evidence they uncover inadmissible, or for them to give the warnings in order to preserve the admissibility of evidence they might uncover by possibly damaging or destroying their ability to ... neutralize the volatile situation confronting them.

The Supreme Court has noted that the public safety exception created by the Court in Quarles reflects the reality that the Constitution “is not a suicide pact.”

To determine whether the public safety exception applies, the court asks whether there was “an objectively reasonable need to protect the police or the public from any immediate danger...” Other jurisdictions have applied the public safety exception in circumstances similar to this case.

Requiring the Miranda warnings in the present case could have further upset Mr. Finch and eroded the potential for a peaceful resolution. The Miranda warnings are intended to “warn” a suspect that the police have interests that are antagonistic to his, and that his statements can be used against him in court. This type of warning would erode the atmosphere of trust necessary to convince Mr. Finch to surrender peacefully.

In this case, the defendant shot and killed two people, one of whom was a police officer, without provocation. Mr. Finch barricaded himself in the trailer and indicated an intent to shoot other police officers. After Sgt. Kinard was shot, two or maybe three more shots were fired from the trailer and during a phone conversation with the negotiator he stated that he could see a “guy by a tree” and that he was “fixing to fire” at him. Additionally, as the evening progressed it was apparent that the defendant’s life could also be at risk. He indicated that he was suicidal and that he had a self-inflicted gunshot wound in his foot and another to his shoulder. [*Court’s Footnote: When Mr. Finch was taken into custody, he did not have any gunshot wounds.*]

In a case such as this, establishing telephone contact with the armed, barricaded suspect is important not only to calm the agitated suspect but also to help the police to control a volatile situation. Establishing telephone contact keeps the individual’s mind focused on the conversation at hand and not on committing another act of violence. Moreover, it was important to keep the Defendant on the phone so the

SWAT team would know exactly where he was when they entered to place him under arrest. Keeping a defendant on the line when the SWAT team enters distracts the defendant and makes injury less likely. An objectively reasonable need to protect the police and the defendant from immediate danger existed in this case and thus Miranda warnings were not required.

2) Premeditation. The State Supreme Court has little difficulty concluding that there was substantial evidence that defendant premeditated both of his intentional killings. The Court points to testimony supporting the jury's finding that defendant thought about each killing before he did it. Defendant's statements before and after the killings, along with his obvious motives and his actions before and during the murders clearly evidenced the premeditated nature of both killings, the Supreme Court concludes.

Result: Reversal of death penalty sentence of Charles B. Finch but affirmance of his convictions by Snohomish County Superior Court jury: a) for aggravated murders of Ron Modlin and Sgt. James Kinard, as well as b) for second degree assault of Thelma Finch and unlawful imprisonment of Thelma Finch and Margaret Elizares; case remanded for another sentencing proceeding at which murderer Finch presumably will not be shackled.

(4) ACCOMPLICE LIABILITY IN CHILD ASSAULT CASE CANNOT BE BASED ON OMISSION OR FAILURE OF FOSTER PARENT TO CARRY OUT CIVIL DUTY TO PROTECT CHILD – In State v. Jackson, 137 Wn.2d 712 (1999), the State Supreme Court by a 7-2 vote agrees with a Court of Appeals reversal of felony-murder convictions for two foster parents. The Jackson majority finds instructional error which impermissibly allowed the jury to find accomplice liability for assault based on two foster parents' failure to carry out their legal duty to prevent harm to their foster child.

A three-year-old foster child died under circumstances which strongly indicated that the child had suffered physical abuse by one or both of the foster parents in the time period shortly before her death. Both foster parents were tried for felony-murder with assault on the child as the predicate felony. In instructing the jury on accomplice liability, the trial judge instructed that one can be an accomplice if, among other things, one "aids" a person in committing a crime under the following definition of "aid":

The word "aid" means all assistance whether given by words, acts, encouragement, support or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. Unless there is a legal duty to act, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice; **a legal duty exists for a parent to come to the aid of their small children if physically capable of doing so.**

[Bolding by LED Editor]

The jury convicted, but on appeal Division One of the Court of Appeals reversed by a 2-1 vote. See 87 Wn. App. 801 (Div. I, 1997) **March 98 LED:20**. The Supreme Court majority now has agreed with Division One, holding that there is no basis in the definition of "accomplice" liability at RCW 9A.08.020 to make "omission to act" a basis for accomplice liability in the factual context of this case. Thus, although a parent clearly has a civil law responsibility not to knowingly fail to protect a child from harm by the other parent or by others, a parent or other guardian cannot be held criminally liable as an accomplice for failing to meet this duty. Accordingly, because the bolded language in the jury instruction set out above incorrectly stated the law, the Jackson majority affirms the Court of Appeals reversal of the second degree felony-murder convictions of the Jacksons. Justice Talmadge dissents, joined by Justice Durham.

Result: Affirmance of Court of Appeals decision which reversed the King County Superior Court second-degree murder convictions of Michael A. Jackson and Laurinda J. Jackson; case remanded for re-trial.

(5) CONSTITUTIONALLY, OFFICER MAY TESTIFY TO DUI DEFENDANT'S REFUSAL TO PERFORM FST'S – In City of Seattle v. Stalsbrotten, ___ Wn.2d ___ (1999) [1999 WL 395985], the State Supreme Court rules 5-4 that it does not violate a DUI defendant's right against self incrimination for an officer to testify that the defendant refused to perform field sobriety tests during a DUI stop.

Finding no testimonial element in a refusal of FST's, the Stalsbrotten majority disagrees with a Court of Appeals opinion in this case. See 91 Wn. App. 226 (Div. I, 1998) **Nov 98 LED:17**. The Court of Appeals had ruled that evidence of FST refusal is testimonial in nature, but that the evidence of defendant's extreme intoxication rendered harmless the trial court error in admitting the evidence. The Supreme Court majority, however, finds no testimonial element in a refusal of FST's. The Supreme Court majority does point out, however, that there may be cases, to be reviewed on a case by case basis, where a trial court may, in its discretion, exclude FST-refusal evidence, not on constitutional grounds but on relevancy grounds, i.e., that its prejudicial impact outweighs its probative value.

Result: Affirmance of Seattle Municipal Court DUI conviction of Loyd Stalsbrotten (the conviction had previously been affirmed by the King County Superior Court and by the Court of Appeals, Division One).

BRIEF NOTE FROM THE WASHINGTON STATE COURT OF APPEALS

“NO CONTACT” ORDER ISSUED PRE-TRIAL UNDER CHAPTER 10.99 RCW CEASES TO HAVE EFFECT WHEN UNDERLYING CRIMINAL CHARGES DISMISSED – In State v. Anaya, ___ Wn. App. ___ (Div. I, 1999) [976 P.2d 1251], the Court of Appeals for Division One holds that where a “no contact” order is issued pre-trial in a domestic violence case under chapter 10.99 RCW, the order does not continue to be in effect if the underlying criminal charges are subsequently dismissed.

Ruben Anaya had been arrested and charged with fourth degree assault against his girlfriend in September 1996. At arraignment the district court entered a no-contact order which by its express terms was valid for one year or until modified by the court. Two months later, the underlying assault charge was dismissed, but neither the prosecutor nor Anaya took any action to modify the no-contact order.

Several months after the assault charge had been dismissed, police got a DV call on a new incident involving Anaya and the girlfriend. After confirming the existence of the no-contact order, officers arrested Anaya for violating the order. The district court convicted him of the violation, and the superior court confirmed the conviction.

Now the Court of Appeals has reversed. The Anaya Court holds that, even though RCW 10.99.040(5) expressly authorizes trial courts to issue no-contact orders with a one-year duration, the statute as a whole implies that the order expires automatically upon the dismissal of the underlying DV charge.

Result: Reversal of Ruben Anaya's Whatcom County Superior Court conviction under RCW 10.99.040 for violation of no-contact order.

LED NEXT MONTH TO INCLUDE PRETEXT STOP AND FRESH PURSUIT CASES

The September **LED** will include, among other items, entries on two recent decisions:

(1) State v. Ladson, 1999 WL 439067 Ladson is an ominous 5-4 decision issued by the Washington Supreme Court on July 1, 1999. Ladson holds on “independent grounds” under article 1, section 7 of the Washington Constitution: a) that “pretextual traffic stops” are unlawful, and b) that both the “subjective intent of the officer” and the “objective reasonableness of the officer's behavior” must be reviewed to determine reasonableness. One Ladson question we will address next month is whether

State v. Davis, 35 Wn. App. 724 (1983), which held that “pretext” can never be an issue where the stop and arrest are on an arrest warrant, is still good law after Ladson.

(2) City of Tacoma v. Durham, ___ Wn. App. ___ (Div. II, 1999) [978 P.2d 514] The Court of Appeals makes an expansive reading of “fresh pursuit” provisions of chapter 10.93 RCW.

INTERNET ACCESS TO COURT DECISIONS, STATUTES, AND COURT RULES

The Washington office of the Administrator for the Courts maintains web sites with appellate court information, including recent court opinions by the Court of Appeals and State Supreme Court. One address provides just decisions which have been issued within the preceding 14 days [<http://www.wa.gov/courts/opinpage/recent.htm>]. Two other addresses provide more court information and also include decisions issued within the preceding 90 days [<http://www.wa.gov/courts/home/htm>] and [<http://www.wa.gov/courts/opinpage/home.htm>].

United States Supreme Court opinions can be accessed at [<http://supct.law.cornell.edu/supct>]. This web site contains all U.S. Supreme Court opinions issued since 1990 and most significant opinions of the Court issued before 1990.

A good source for easy access to relatively current Washington state agency administrative rules (including WSP equipment rules at Title 204 WAC) can be found at [<http://slc.leg.wa.gov/WACBYTitle.htm>]. Washington Legislation and other state government information can be accessed at [<http://access.wa.gov/>] clicking on “L” and then “legislation” or other topical entries in the “Access Washington Home Page “Index.”

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