



Law Enforcement

July 2003

Digest

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2003 LEGISLATIVE UPDATE – PART THREE

LED Introductory Editorial Notes: This is Part Three of a four-part update of 2003 Washington legislative enactments of interest to law enforcement. Part Four will appear next month and will include an index of all legislation covered in our four-part update. At this point in our review, we do not have additional enactments to cover in Part Four.

Note that, unless a different effective date is specified in the legislation, enactments adopted during the 2003 regular session take effect on July 27, 2003, i.e., 90 days after the end of the regular session.

Thank you to Tom McBride and Pam Loginsky of the Washington Association of Prosecuting Attorneys for providing us with helpful information.

Consistent with our past practice, our legislative updates will for the most part not digest legislation in the subject areas of sentencing, consumer protection, retirement, collective bargaining, civil service, tax, budget, and worker benefits. We will include in next month’s LED a cumulative index of enactments covered in the 2003 legislative update.

Text of the 2003 legislation is available on the Internet, chapter by chapter, at [http://www.leg.wa.gov/pub/billinfo/2003-04/chapter_to_bill_table.htm]. We will include some RCW references in our entries, but where new sections or chapters are created by the legislation, the State Code Reviser must assign the appropriate code numbers. Codification will likely not be completed until early fall of this year.

We remind our readers that any legal interpretations that we express in the LED are the views of the editors and do not necessarily reflect the views of the Attorney General's Office or of the Criminal Justice Training Commission.

Correction to June 03 LED: THREE WHEELED MOTORCYCLES – ENDORSEMENTS AND EDUCATION CHAPTER 41 (ESSB 5229); Effective Date: January 1, 2004

BASING JAIL BOOKING FEES ON ACTUAL COST

CHAPTER 99 (SHB 1232)

Effective Date: July 27, 2003

Amends RCW 70.48.390 to increase jail booking fees from \$10 to the actual cost or \$100, whichever is less.

REPLACING “APPROPRIATELY MARKED” POLICE VEHICLE WITH “EQUIPPED WITH LIGHTS AND SIRENS” IN ATTEMPT-TO-ELUDE STATUTE, AND CREATING AN AFFIRMATIVE DEFENSE

CHAPTER 101 (ESHB 1076)

Effective Date: July 27, 2003

Amends RCW 46.61.024 to read as follows:

(1) Any driver of a motor vehicle who willfully fails or refuses to immediately bring his vehicle to a stop and who drives his vehicle in a reckless manner (~~((indicating a wanton or wilful disregard for the lives or property of others))~~) while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class C felony. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such a signal shall be in uniform and ~~((his))~~ the vehicle shall be ~~((appropriately marked showing it to be an official police vehicle))~~ equipped with lights and sirens.

(2) It is an affirmative defense to this section which must be established by a preponderance of the evidence that: (a) A reasonable person would not believe that the signal to stop was given by a police officer; and (b) driving after the signal to stop was reasonable under the circumstances.

(3) The license or permit to drive or any nonresident driving privilege of a person convicted of a violation of this section shall be revoked by the department of licensing.

In State v. Argueta, 107 Wn. App. 532 (2001) **Nov 01 LED:10**, the Court of Appeals held that the police vehicle had to bear some insignia that identified it as an official police vehicle in order to be “appropriately marked” under the former version of this statute. It was not sufficient for the court that the police vehicle in question was equipped with lights and sirens, which were being used while pursuing the defendant’s vehicle. The current amendment removes the requirement that the vehicle be “appropriately marked,” replaces it with the requirement that the vehicle be equipped with lights and sirens, and creates an affirmative defense. It also substitutes the mental state of “reckless” for the prior “willful and wanton disregard” mental state.

CREATION OF STATEWIDE FIRST RESPONDER BUILDING-MAPPING INFORMATION SYSTEM CREATED AND OPERATED BY WASPC

CHAPTER 102 (ESHB 1218)

Effective Date: July 27, 2003

Requires WASPC to create and operate a statewide first responder building-mapping system to be utilized by all state agencies and local governments. All state and local government buildings must be mapped using software consistent with that developed by WASPC.

REQUIRING IGNITION INTERLOCK DEVICE FOR INDIVIDUALS CONVICTED OF DRIVING UNDER THE INFLUENCE WITH CHILDREN UNDER 16 IN THE VEHICLE

CHAPTER 103 (SHB 1619)

Effective Date: July 27, 2003

Amends the DUI sentencing provisions of RCW 46.61.5055 to require installation and use of an ignition interlock device for at least 60 days for every person convicted of DUI or physical control where the offense was committed while a passenger under age 16 was in the vehicle.

CREATING A STATEWIDE JUSTICE INFORMATION NETWORK

CHAPTER 104 (SHB 1605)

Effective Date: July 27, 2003

Creates a statewide justice information network under RCW 10.98 to enable the sharing and integrated delivery of criminal justice information maintained in independent information systems.

NEW REQUIREMENTS RELATING TO THE PROHIBITION AGAINST THE MAILING, SHIPPING, OR DELIVERY OF CIGARETTES TO MINORS AND PROVIDING FOR THE SEIZURE OF CIGARETTES SOLD OR DELIVERED IN VIOLATION THEREOF

CHAPTER 113 (SHB 2027)

Effective Date: July 27, 2003

Adds a new section to chapter 70.155 RCW making it unlawful for sellers of cigarettes to fail to verify that the cigarettes are not mailed, shipped, or otherwise delivered to persons under 18. Shipping cigarettes without first verifying proof of age is a felony. It is a gross misdemeanor for a delivery service to deliver cigarettes without verifying proof of age.

Adds the unlawful delivery sales of cigarettes to the Criminal Profiteering Act, Chapter 9A.82 RCW and makes cigarettes sold, delivered, or attempted to be delivered in violation of the bill subject to seizure and forfeiture under RCW 82.24.130.

PROHIBITING THE MANUFACTURE, SALES, OR POSSESSION OF COUNTERFEIT CIGARETTES AND PROVIDING FOR THE SEIZURE AND FORFEITURE OF CIGARETTES MANUFACTURED, SOLD, AND POSSESSED IN VIOLATION THEREOF

CHAPTER 114 (SB 1943)

Effective Date: July 27, 2003

Adds a new section to chapter 82.24 RCW making it unlawful for any person to knowingly manufacture, sell, or possess counterfeit cigarettes. A cigarette is counterfeit if:

- (a) The cigarette or its packaging bears any reproduction or copy of a trademark, service mark, trade name, label, term, design, or work adopted or used by a manufacturer to identify its own cigarettes; and
- (b) The cigarette is not manufactured by the owner or holder of that trademark, service mark, trade name, label, term, design, or work, or by any authorized licensee of that person.

Amends RCW 82.24.030 and .040 to provide that only wholesalers may purchase or obtain cigarette stamps, and no person other than a licensed wholesaler shall possess unstamped cigarettes in this state.

Cigarettes that are manufactured, sold, or possessed in violation of the act are subject to seizure and forfeiture under RCW 82.24.130.

PROHIBITING INSURERS FROM CANCELING, DENYING, OR REFUSING TO RENEW PROPERTY INSURANCE POLICIES DUE TO CLAIMS FOR MALICIOUS HARASSMENT; INSURED MUST TIMELY REPORT TO LAW ENFORCEMENT

CHAPTER 117 (SHB 1128)

Effective Date: July 27, 2003

Adds a new section to chapter 48.18 RCW that prohibits insurance companies from taking an action on an insurance policy because the “insured has made one or more insurance claims for any loss that occurred during the preceding sixty months that is the result of malicious harassment.”

The new section also provides:

(4) If an insured sustains a loss that is the result of malicious harassment, the insured must file a report with the police or other law enforcement authority within thirty days of discovery of the incident, and a law enforcement authority must determine that a crime has occurred. The report must contain sufficient information to provide an insurer with reasonable notice that the loss was the result of malicious harassment. The insured has a duty to cooperate with any law enforcement official or insurer investigation. For incidents of malicious harassment occurring prior to the effective date of this act, the insured must file the report within six months of the discovery of the incident.

CREATING SIX FINANCIAL FRAUD CRIMES RELATING TO THE USE, POSSESSION, OR PRODUCTION OF PAYMENT INSTRUMENTS, IDENTIFICATION, OR DEVICES USED TO PRODUCE FRAUDULENT DOCUMENTS

CHAPTER 119 (ESHB 1844)

Effective Date: July 27, 2003

Adds six new crimes to chapter 9A.56 RCW. The first five are felonies, and are also added to the criminal profiteering act. A new section in chapter 9A.56 RCW adds five new felonies, the names of which we have underlined in the following new statutory text:

(1) A person is guilty of unlawful production of payment instruments if he or she prints or produces a check or other payment instrument in the name of a person or entity, or with the routing number or account number of a person or entity, without the permission of the person or entity to manufacture or reproduce such payment instrument with such name, routing number, or account number.

(2)(a) A person is guilty of unlawful possession of payment instruments if he or she possesses two or more checks or other payment instruments, alone or in combination:

(i) In the name of a person or entity, or with the routing number or account number of a person or entity, without the permission of the person or entity to possess such payment instrument, and with intent either to deprive the person of possession of such payment instrument or to commit theft, forgery, or identity theft; or

(ii) In the name of a fictitious person or entity, or with a fictitious routing number or account number of a person or entity, with intent to use the payment instruments to commit theft, forgery, or identity theft.

(b) (a)(i) of this subsection does not apply to:

(i) A person or financial institution that has lawful possession of a check, which is endorsed to that person or financial institution; and

(ii) A person or financial institution that processes checks for a lawful business purpose.

(3) A person is guilty of unlawful possession of a personal identification device if the person possesses a personal identification device with intent to use such device to commit theft, forgery, or identity theft. "Personal identification device" includes any machine or instrument whose purpose is to manufacture or print any driver's license or identification card issued by any state or the federal government, or any employee identification issued by any employer, public or private, including but not limited to badges and identification cards, or any credit or debit card.

(4) A person is guilty of unlawful possession of fictitious identification if the person possesses a personal identification card with a fictitious person's identification with intent to use such identification card to commit theft, forgery, or identity theft, when the possession does not amount to a violation of RCW 9.35.020.

(5) A person is guilty of unlawful possession of instruments of financial fraud if the person possesses a check-making machine, equipment, or software, with intent to use or distribute checks for purposes of defrauding an account holder, business, financial institution, or any other person or organization.

(6) This section does not apply to:

(a) A person, business, or other entity, that has lawful possession of a check, which is endorsed to that person, business, or other entity;

(b) A financial institution or other entity that processes checks for a lawful business purpose;

(c) A person engaged in a lawful business who obtains another person's personal identification in the ordinary course of that lawful business;

(d) A person who obtains another person's personal identification for the sole purpose of misrepresenting his or her age; and

(e) A law enforcement agency that produces or displays counterfeit credit or debit cards, checks or other payment instruments, or personal identification devices for investigative or educational purposes.

...

[Emphasis added]

A new section in chapter 9A.56 RCW establishes a gross misdemeanor, the name of which we have underlined in the following new statutory text:

(1) A person is guilty of possession of another's identification if the person knowingly possesses personal identification bearing another person's identity, when the person possessing the personal identification does not have the other person's permission to possess it, and when the possession does not amount to a violation of RCW 9.35.020.

(2) This section does not apply to:

(a) A person who obtains, by means other than theft, another person's personal identification for the sole purpose of misrepresenting his or her age;

(b) A person engaged in a lawful business who obtains another person's personal identification in the ordinary course of business;

(c) A person who finds another person's lost personal identification, does not intend to deprive the other person of the personal identification or to use it to commit a crime, and takes reasonably prompt steps to return it to its owner; and

(d) A law enforcement agency that produces or displays counterfeit credit or debit cards, checks or other payment instruments, or personal identification for investigative or educational purposes.

...

[Emphasis added]

If related to identify theft, these crimes (as well as unlawful factoring of a credit card, and forgery under RCW 9A.56.290 and 9A.60.020) will be considered to have been committed in any locality where the victim resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

EXEMPTING BANK AND CREDIT CARD NUMBERS FROM PUBLIC DISCLOSURE

CHAPTER 124 (ESHB 1845)

Effective Date: July 27, 2003

Amends and broadens the exemption to public disclosure under RCW 42.17.310(1) for credit card numbers as follows:

(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers (~~((supplied to an agency for the purpose of electronic transfer of funds))~~), except when disclosure is expressly required by or governed by other law.

PROHIBITING BUSINESSES FROM SENDING ELECTRONIC COMMERCIAL TEXT MESSAGES TO CELLULAR TELEPHONES AND PAGERS

CHAPTER 137 (SHB 2007)

Effective Date: July 27, 2003

Amends RCW 19.190.010 to define “commercial electronic text message” as “an electronic text message sent to promote real property, goods, or services for sale or lease,” and “electronic text message” as “a text message sent to a cellular telephone or pager equipped with short message service or any similar capability, whether the message is initiated as a short message service message or as an electronic mail message.”

Adds new sections to chapter 19.190 RCW prohibiting any person conducting business in the state from initiating or assisting “in the transmission of an electronic commercial text message to a telephone number assigned to a Washington resident for cellular telephone or pager service that is equipped with short message capability or any similar capability allowing the transmission of text messages.” Violations are subject to enforcement by civil action.

POWER WHEELCHAIRS ARE NOT MOTOR VEHICLES

CHAPTER 141 (HB 1937)

Effective Date: July 27, 2003

Amends various provisions in RCW Title 46 to clarify that a “power wheelchair” user is a pedestrian who may lawfully use the power wheelchair on sidewalks.

Defines a “power wheelchair” as a self-propelled vehicle capable of traveling no more than 15 miles per hour, usable indoors, and designed as a mobility aid operated by an individual with mobility impairments. Definitions of motor vehicles, motorcycles, motor-drive cycles, and vehicles are revised to exclude power wheelchairs and the definition of pedestrian is altered to include anyone who is using a power wheelchair. The bill specifies that no driver’s license is required to drive a power wheelchair.

AMENDING RCW 46.55.113 AND .120 RELATING TO THE IMPOUND AND RELEASE OF VEHICLES (RESPONSE TO ALL AROUND UNDERGROUND DECISION)

CHAPTER 177 (SHB 1074)

Effective Date: July 27, 2003

Amends RCW 46.55.113 as follows:

(1) Whenever the driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 or of RCW 46.20.342 or (~~46.20.420~~) 46.20.345, the vehicle is subject to summary impoundment, pursuant to the terms and conditions of an applicable local ordinance or state agency rule at the direction of a law enforcement officer.

(2) In addition, a police officer may take custody of a vehicle, at his or her discretion, and provide for its prompt removal to a place of safety under any of the following circumstances:

~~((1))~~(a) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;

~~((2))~~(b) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

~~((3))~~(c) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;

~~((4))~~(d) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

~~((5))~~(e) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

~~((6))~~(f) Whenever a vehicle without a special license plate, card, or decal indicating that the vehicle is being used to transport a disabled person under RCW 46.16.381 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property;

~~((7))~~(g) Upon determining that a person is operating a motor vehicle without a valid driver's license in violation of RCW 46.20.005 or with a license that has been expired for ninety days or more.

(3) When an arrest is made for a violation of RCW 46.20.342, if the vehicle is a commercial vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest and the owner has not received a prior release under this subsection or RCW 46.55.120(1)(a)(ii).

(4) Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator.

The bill also amends RCW 46.55.120 as follows:

(1) Vehicles or other items of personal property registered or titled with the department that are impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, or 9A.88.140 may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle or other item of personal property registered or titled with the department, or one who has purchased a vehicle or item of personal property registered or titled with the department from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor, may redeem an impounded vehicle or items of personal property registered or titled with the department. In addition, a vehicle impounded because the operator is in violation of RCW 46.20.342(1)(c) shall not be released until a person eligible to redeem it

under this subsection (1)(a) satisfies the requirements of (e) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency. If the department's records show that the operator has been convicted of a violation of RCW 46.20.342 or a similar local ordinance within the past five years, the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. A vehicle impounded because the operator is arrested for a violation of RCW 46.20.342 may be released only pursuant to a written order from the agency that ordered the vehicle impounded or from the court having jurisdiction. An agency may issue a written order to release pursuant to a provision of an applicable state agency rule or local ordinance authorizing release on the basis of the following:

(i) Economic or personal hardship to the spouse of the operator, taking into consideration public safety factors, including the operator's criminal history and driving record; or

(ii) The owner of the vehicle was not the driver, the owner did not know that the driver's license was suspended or revoked, and the owner has not received a prior release under this subsection or RCW 46.55.113(3).

In order to avoid discriminatory application, other than for the reasons for release set forth in (a)(i) and (ii) of this subsection, an agency shall, under a provision of an applicable state agency rule or local ordinance, deny release in all other circumstances without discretion.

...

This bill is an apparent response to the State Supreme Court decision in All Around Underground v. Washington State Patrol, 148 Wn.2d 145 (2002) **Feb 03 LED:02**. When an arrest is made for driving while license suspended, the vehicle is a commercial vehicle, and the driver is not the owner, then the bill requires that law enforcement attempt to contact the owner before impounding the vehicle. It also adds a similar provision to the circumstances where an impounded vehicle can be released.

LED EDITORIAL NOTE: Because local ordinances, policies and procedures vary, you should contact your legal advisor for specific advice on this amendment.

AUTHORIZING IMPOUND OF ILLEGALLY PARKED VEHICLES IN CERTAIN CIRCUMSTANCES

CHAPTER 178 (HB 1088)

Effective Date: July 27, 2003

Amends RCW 46.55.113 as follows:

Whenever the driver of a vehicle is arrested for a violation of RCW 46.61.502 ((~~er~~), 46.61.504 ((~~er of RCW~~), 46.20.342, or ((~~46.20.420~~)) 46.20.345, the vehicle is subject to impoundment, pursuant to applicable local ordinance or state agency rule at the direction of a law enforcement officer. In addition, a police officer may take custody of a vehicle and provide for its prompt removal to a place of safety under any of the following circumstances:

(1) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;

(2) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

(3) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;

(4) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

(5) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

(6) Whenever a vehicle without a special license plate, card, or decal indicating that the vehicle is being used to transport a disabled person under RCW 46.16.381 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property;

(7) Upon determining that a person is operating a motor vehicle without a valid driver's license in violation of RCW 46.20.005 or with a license that has been expired for ninety days or more;

(8) When a vehicle is illegally occupying a truck, commercial loading zone, restricted parking zone, bus, loading, hooded-meter, taxi, street construction or maintenance, or other similar zone where, by order of the director of transportation or chiefs of police or fire or their designees, parking is limited to designated classes of vehicles or is prohibited during certain hours, on designated days or at all times, if the zone has been established with signage for at least twenty-four hours and where the vehicle is interfering with the proper and intended use of the zone. Signage must give notice to the public that a vehicle will be removed if illegally parked in the zone.

LED EDITORIAL NOTE: *Again, contact your legal advisor for specific advice on this amendment.*

ADMISSIBILITY OF CONFESSIONS AND ADMISSIONS IN CRIMINAL AND JUVENILE PROCEEDINGS – CORPUS DELICTI RULE RELAXED

CHAPTER 179 (EHB 1427)

Effective Date: July 27, 2003

Adds a new section to chapter 10.58 RCW reading as follows:

(1) In criminal and juvenile offense proceedings where independent proof of the corpus delicti is absent, and the alleged victim of the crime is dead or incompetent to testify, a lawfully obtained and otherwise admissible confession, admission, or other statement of the defendant shall be admissible into evidence if there is substantial independent evidence that would tend to establish the trustworthiness of the confession, admission, or other statement of the defendant.

(2) In determining whether there is substantial independent evidence that the confession, admission, or other statement of the defendant is trustworthy, the court shall consider, but is not limited to:

(a) Whether there is any evidence corroborating or contradicting the facts set out in the statement, including the elements of the offense;

(b) The character of the witness reporting the statement and the number of witnesses to the statement;

(c) Whether a record of the statement was made and the timing of the making of the record in relation to the making of the statement; and/or

(d) The relationship between the witness and the defendant.

(3) Where the court finds that the confession, admission, or other statement of

the defendant is sufficiently trustworthy to be admitted, the court shall issue a written order setting forth the rationale for admission.

(4) Nothing in this section may be construed to prevent the defendant from arguing to the jury or judge in a bench trial that the statement is not trustworthy or that the evidence is otherwise insufficient to convict.

AUTHORIZING COUNTIES AND CITIES TO CREATE SCHOOL OR PLAYGROUND SPEED ZONES ON HIGHWAYS BORDERING SUCH SCHOOLS OR PLAYGROUNDS

CHAPTER 192 (HB 1114)

Effective Date: July 27, 2003

Amends RCW 46.61.440 to add a subsection reading as follows:

(2) A county or incorporated city or town may create a school or playground speed zone on a highway bordering a marked school or playground, in which zone it is unlawful for a person to operate a vehicle at a speed in excess of twenty miles per hour. The school or playground speed zone may extend three hundred feet from the border of the school or playground property; however, the speed zone may only include area consistent with active school or playground use.

AUTHORIZING STATE, COUNTY, OR LOCAL TRAFFIC CONTROL ON PRIVATE ROADS BY AGREEMENT

CHAPTER 193 (HB 1379)

Effective Date: July 27, 2003

Adds a new section to chapter 46.61 reading as follows:

State, local, or county law enforcement personnel may enforce speeding violations under RCW 46.61.400 on private roads within a community organized under chapter 64.38 RCW if:

(1) A majority of the homeowner's association's board of directors votes to authorize the issuance of speeding infractions on its private roads, and declares a speed limit not lower than twenty miles per hour;

(2) A written agreement regarding the speeding enforcement is signed by the homeowner's association president and the chief law enforcement official of the city or county within whose jurisdiction the private road is located;

(3) The homeowner's association has provided written notice to all of the homeowners describing the new authority to issue speeding infractions; and

(4) Signs have been posted declaring the speed limit at all vehicle entrances to the community.

DEFINING MOTORCYCLE HELMET

CHAPTER 197 (SSB 5335)

Effective Date: July 27, 2003

Amends RCW 46.37.530 to: 1) delete provisions relating to WSP responsibility to determine by administrative rule the type of helmet to be worn while operating a motorcycle; and 2) add the following definition of "motorcycle helmet":

"Motorcycle helmet" means a protective covering for the head consisting of a hard outer shell, padding adjacent to and inside the outer shell, and a neck or chin strap type retention system, with a sticker indicating that the motorcycle helmet meets standards established by the United States Department of Transportation.

FIX TO VOYEURISM STATUTE

CHAPTER 213 (ESHB 1001)

Effective Date: May 12, 2003

Amends the voyeurism statute, RCW 9A.44.115, to address up-skirt filming or photographing in public areas, among other things.

The amendments add the act of viewing, photographing, or filming – with the mental states provided under the act – “the intimate areas of another person without that person’s knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.”

“Intimate areas” is defined under the amendment as follows: “Intimate areas’ means any portion of a person’s body or undergarments that is covered by clothing and intended to be protected from public view...”

PROHIBITING THE SALE OR DELIVERY OF STOLEN DRIVER’S LICENSES, AND THE MANUFACTURE, SALE, OR DELIVERY OF FORGED, FICTITIOUS, COUNTERFEIT, FRAUDULENTLY ALTERED, OR UNLAWFULLY ISSUED DRIVER’S LICENSES

CHAPTER 214 (SSB 5716)

Effective Date: July 27, 2003

Amends RCW 46.20.0921 by adding the following subsections:

(2) It is a class C felony for any person to sell or deliver a stolen driver's license or identicard.

(3) It is unlawful for any person to manufacture, sell, or deliver a forged, fictitious, counterfeit, fraudulently altered, or unlawfully issued driver's license or identicard, or to manufacture, sell, or deliver a blank driver's license or identicard except under the direction of the department. A violation of this subsection is:

(a) A class C felony if committed (i) for financial gain or (ii) with intent to commit forgery, theft, or identity theft; or

(b) A gross misdemeanor if the conduct does not violate (a) of this subsection.

(4) Notwithstanding subsection (3) of this section, it is a misdemeanor for any person under the age of twenty-one to manufacture or deliver fewer than four forged, fictitious, counterfeit, or fraudulently altered driver's licenses or identicards for the sole purpose of misrepresenting a person's age.

(5) In a proceeding under subsection (2), (3), or (4) of this section that is related to an identity theft under RCW 9.35.020, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

SEX OFFENDERS MUST NOTIFY SHERIFF OF EMPLOYMENT AT PUBLIC OR PRIVATE INSTITUTION OF HIGHER EDUCATION

CHAPTER 215 (HB 1712)

Effective Date: July 27, 2003

Amends RCW 9A.44.130(1) to require a registered sex or kidnapping offender who is employed by an institution of higher education to inform the county sheriff; and to require a registered sex or kidnapping offender whose enrollment or employment at an institution of higher education is terminated to inform the county sheriff.

REVISING INFORMATION AVAILABLE ON SEX OFFENDER WEBSITE

CHAPTER 217 (SB 5410)

Effective Date: July 27, 2003

Amends RCW 4.24.550 to provide that information on level II sex offenders may be included with information on level III sex offenders on the WASPC-administered statewide registered sex offender web site.

CREATING CRIMINAL AND CIVIL DEFENSE TO ALLEGATIONS OF UNLAWFUL DETENTION OF SUSPECTED DRUG AND ALCOHOL VIOLATORS AT OUTDOOR MUSIC FESTIVALS AND RELATED CAMPGROUNDS

CHAPTER 219 (SHB 2094)

Effective Date: July 27, 2003

Adds new sections to chapters 9A.16 and 4.24 RCW to address the need at outdoor music festivals (and related campgrounds) to authorize temporary detentions of suspected drug and alcohol violators. The new sections are analogous to longstanding provisions in those chapters giving merchants qualified protection against criminal or civil actions related to detaining suspected shoplifters. The new sections add defenses to criminal and civil actions brought by reason of a person being temporarily detained (for no more than one hour) at outdoor music festivals by a law enforcement officer or by an agent or employee of the outdoor music festival to facilitate law enforcement investigation of suspected unlawful possession or consumption of alcohol or illegal drugs on the premises.

MANDATED REPORTING OF ABANDONMENT, ABUSE, FINANCIAL EXPLOITATION, OR NEGLECT OF VULNERABLE ADULTS

CHAPTER 230 (ESHB 1904)

Effective Date: July 27, 2003

Amends RCW 74.34.035 by adding new provisions relating to mandatory reporting (or not) to DSHS and law enforcement of abuse and neglect of "vulnerable adults."

The House Bill Report for the final bill describes the contents of the new provisions as follows:

When there is reason to suspect that physical assault has occurred or there is reasonable cause to believe that an act has caused fear of imminent harm:

Mandated reports must immediately report to the DSHS; and
Mandated reporters must immediately report to the appropriate law enforcement agency, unless provided exclusions apply.

A mandated reporter is not required to report to a law enforcement agency, unless requested by the injured vulnerable adult or his or her legal representative or family member, an incident of physical assault between vulnerable adults that causes minor bodily injury and does not require more than basic first aid, unless:

The injury appears on the back, face, head, neck, chest, breast, groin, inner thigh, buttock, genital, or anal area;
There is a fracture;
There is a pattern of physical assault between the same vulnerable adults or involving the same vulnerable adults; or
There is an attempt to choke a vulnerable adult.

UNLAWFUL TRANSACTION OF INSURANCE

CHAPTER 250 (SSB 5641)

Effective Date: July 27, 2003

(Except section 14, which becomes effective July 1, 2004)

Amends existing provisions in RCW Title 48 and adds new sections to that Title. Also amends sentencing provisions in chapter 9.94A RCW correlating with these insurance law changes.

Civil and criminal penalties and remedies are enhanced for unlawful solicitation of insurance business. The penalties apply to unlicensed persons acting as agents, brokers, solicitors or adjusters; failure of agents to make a good faith determination of the validity of an insurance company; and unregistered persons selling contracts involving health care services or health maintenance organizations. Penalties include class B felony liability for specified knowing violations, and class C felony liability for conspiracy to violate insurance sales laws. Some insurance crimes under the amendments to Title 48 are penalized as gross misdemeanors. Criminal penalties are in addition to any other civil or administrative penalties.

EXTENDING TASK FORCE AGAINST THE TRAFFICKING OF PERSONS

CHAPTER 266 (EHB 1090)

Effective Date: May 14, 2003

The expiration date of the Washington State Task Force Against the Trafficking of Persons is extended to June 30, 2004.

MAKING IT UNLAWFUL TO TRAFFIC IN PERSONS

CHAPTER 267 (SHB 1175)

Effective Date: July 27, 2003

Adds a new section to chapter 9A.40 RCW providing as follows:

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

Also amends sentencing laws (chapter 9.94A) and the Criminal Profiteering Act (chapter 9A.82 RCW) to incorporate these new crimes of trafficking of persons.

REQUIRING INTERNATIONAL MATCHMAKING ORGANIZATIONS TO PROVIDE CERTAIN INFORMATION INCLUDING FOUNDED ALLEGATIONS OF CHILD ABUSE AND EXISTING NO CONTACT ORDERS

CHAPTER 268 (SHB 1826)

Effective Date: July 27, 2003

Amendments to the non-criminal provisions of RCW 19.220.010 are described in the Legislature's "Final Bill Report" as follows:

International matchmaking organizations doing business in Washington State must notify foreign recruits stating that they may have access to background and personal (instead of solely marital) information about Washington state resident using the matchmaking services. In addition, international matchmaking organizations must make personal (instead of solely marital) history information available to foreign recruits that request such information.

Personal history information includes the person's current marital status, the number of previous marriages, annulments, and dissolutions for the person, whether any previous marriages occurred as a result of receiving services from an international matchmaking organization; any founded allegations of child abuse or neglect; and whether there are any existing antiharassment protection

orders, domestic violence protection orders, and domestic violence no-contact orders against the person.

PROHIBITING INJURY OF POLICE HORSES

CHAPTER 269 (HB 1108)

Effective Date: July 27, 2003

Amends RCW 9A.76.200 by adding a prohibition against harming a police horse to existing prohibitions against harming a police dog or accelerant detection dog.

“Police horse” is defined to mean “any horse used or kept for use by a law enforcement officer in discharging any legal duty or power of his or her office.”

REQUIRING TRAINING ON INTERACTING WITH DEVELOPMENTALLY DISABLED AND MENTALLY ILL INDIVIDUALS

CHAPTER 270 (SHB 5473)

Effective Date: July 27, 2003

Adds a new section to RCW 43.101 which requires the Criminal Justice Training Commission to offer training on interacting with persons with developmental disabilities or mental illness, which training should include the following topics:

- (a) The cause and nature of mental illnesses and developmental disabilities;
- (b) How to identify indicators of mental illness and developmental disability and how to respond appropriately in a variety of common situations;
- (c) Conflict resolution and de-escalation techniques for potentially dangerous situations involving persons with a developmental disability or mental illness;
- (d) Appropriate language usage when interacting with persons with a developmental disability or mental illness;
- (e) Alternatives to lethal force when interacting with potentially dangerous persons with a developmental disability or mental illness; and
- (f) Community and state resources available to serve persons with a developmental disability or mental illness and how these resources can be best used by law enforcement to benefit persons with a developmental disability or mental illness in their communities.

SEX OFFENDER DEATH CERTIFICATES MUST BE SUPPLIED TO LAW ENFORCEMENT AGENCIES FREE OF CHARGE

CHAPTER 272 (HB 1727)

Effective Date: July 27, 2003

Amends RCW 70.58.107 to require the Washington Department of Health to provide law enforcement agencies with certified copies of death certificates of registered sex offenders at no cost.

AUTHORIZING DISPOSITION OF GOVERNMENT PROPERTY TO FOREIGN ENTITIES

CHAPTER 303 (SHB 1494)

Effective Date: July 27, 2003

Amends RCW 39.33.010 to authorize state and local governments to transfer personal property, except weapons, to a foreign entity.

CRIMINALIZING MINERAL TRESPASS

CHAPTER 335 (SHB 1380)

Effective Date: July 27, 2003

Adds new sections to chapter 78.44 RCW making it a class C felony to commit criminal trespass by intentionally doing certain specified acts that interfere with operations and items at a mining operation or posted mining claim. Definitions of certain terms are provided, as are exceptions for public servants and others under certain circumstances.

CREATING MISDEMEANOR OF “RETAIL FISH SELLER’S FAILURE TO ACCOUNT FOR COMMERCIAL HARVEST”

CHAPTER 336 (HB 1972)

Effective Date: July 27, 2003

Adds a new section to chapter 77.15 RCW reading in relevant part as follows:

(1) A retail fish seller is guilty of retail fish seller's failure to account for commercial harvest if the retail seller sells fish or shellfish at retail, the fish or shellfish were required to be entered on a Washington state fish receiving ticket, the seller is not a wholesale fish dealer or fisher selling under a direct retail sale endorsement, and the seller fails to maintain sufficient records at the location where the fish or shellfish are being sold to determine the following:

(a) The name of the wholesale fish dealer or fisher selling under a direct retail sale endorsement from whom the fish were purchased;

(b) The wholesale fish dealer's license number or the number of the fisher's sale under a direct retail sale endorsement;

(c) The fish receiving ticket number documenting original receipt, if known;

(d) The date of purchase; and

(e) The amount of fish or shellfish originally purchased from the wholesale dealer or fisher selling under a direct retail sale endorsement.

(2) A retail fish seller's failure to account for commercial harvest is a misdemeanor.

CREATING A CLASS OF “POTENTIALLY DANGEROUS LITTER”

CHAPTER 337 (SHB 1409)

Effective Date: July 27, 2003

The act creates a new class of “potentially dangerous litter” which is defined in RCW 70.93.030 as:

[L]itter that is likely to injure a person or cause damage to a vehicle or other property. “Potentially dangerous litter” means:

(a) Cigarettes, cigars, or other tobacco products that are capable of starting a fire;

(b) Glass;

(c) A container or other product made predominantly or entirely of glass;

(d) A hypodermic needle or other medical instrument designed to cut or pierce;

(e) Raw human waste, including soiled baby diapers, regardless of whether or not the waste is in a container of any sort; and

(f) Nails or tacks.

The act also amends RCW 70.93.060 to make “[i]t . . . a class 1 civil infraction as provided in RCW 7.80.120 for a person to discard, in violation of this section, ~~((a cigarette, cigar, or other tobacco product that is capable of starting a fire))~~ potentially dangerous litter in any amount.”

The act also amends RCW 36.32.120 to authorize counties to: 1) declare by ordinance that litter and potentially dangerous litter constitute a nuisance, and 2) provide for litter abatement.

REVISING TRAFFIC CODE TO ADDRESS “NEIGHBORHOOD ELECTRIC VEHICLES” AND “MOTORIZED FOOT SCOOTERS”

CHAPTER 353 (ESB 5450)

Effective Date: August 1, 2003

Adds new sections to RCW Title 46 and amends several existing sections in Title 46. The Legislature’s “Final Bill Report” summarizes the legislation as follows:

NEVs ["Neighborhood electric vehicles"] are defined as four-wheeled motor vehicles that are self-propelled and electrically powered that reach a speed between 20 and 25 miles per hour and conform to federal regulations. Drivers and passengers of NEVs must wear seatbelts and comply with the state's child restraint system requirements.

NEVs may be operated on state highways that have a speed limit of 35 miles per hour or less if the person operating the vehicle: (a) is not driving the NEV on a state highway route; (b) has a vehicle license for the NEV and displays vehicle license number plates; (c) has a valid driver's license; (d) is insured under a motor vehicle liability policy; and (e) does not cross a roadway with a speed limit over 35 miles per hour, unless the crossing begins and ends on a roadway with a speed limit of 35 miles or less and occurs at an intersection of approximately 90 degrees. A NEV must not cross an uncontrolled intersection of streets and highways that are part of the state highway system (which includes state highway routes and interstates), unless that intersection has been authorized by local authorities accordingly.

If a person operates a NEV and violates any of the above provisions, he or she is guilty of a traffic infraction.

With respect to streets and highways under their jurisdiction and within the reasonable exercises of their police power, local authorities may regulate the operation of NEVs by resolution or ordinance of the governing body; however, such authorities may not: (a) authorize the operation of NEVs on state highway routes, interstates, and other limited access facilities; (b) prohibit the operation of NEVs on public roadways with a speed limit of 25 Senate Bill Report ESB 5450 - 1 - miles per hour or less; and (c) prohibit the establishment of any requirement for registration and licensing of NEVs.

Motorized foot scooters are defined as: 1) having handlebars and two wheels that are no more than ten inches or smaller in diameter; 2) designed to be stood or sat upon; and 3) are powered by an internal combustion engine or electric motor. Vehicle licensing and registration provisions do not apply to motorized foot scooters, and operators are not required to have a drivers' license. Motorized foot scooters may be operated during daylight hours and before sunrise and after sunset if they have reflectors approved by the Washington State Patrol. Most provisions regulating mopeds do not apply to motorized foot scooters.

Motorized foot-scooters have the same highway access as bicycles and may be operated on a multi-purpose trail or in bicycle lanes; however, local jurisdictions may restrict access. The Parks and Recreation Commission may regulate the use of motorized foot scooters within the boundaries of a park. Motorized scooters may not have access to bicycle paths, trails, or bikeways built with federal funding.

DECriminalizing Failure to Use Required Traction Equipment

CHAPTER 356 (SB 5284)

Effective Date: July 27, 2003

Amends 47.36.250 to reclassify failure to use required traction equipment from misdemeanor to traffic infraction status. The maximum fine is \$500.00. Statutory terminology is revised to reflect current DOT terminology for road conditions.

MAKING IT UNLAWFUL TO SELL VIOLENT VIDEO OR COMPUTER GAMES – I.E., GAMES DEPICTING VIOLENCE AGAINST LAW ENFORCEMENT OFFICERS – TO MINORS

CHAPTER 365 (ESHB 1009)

Effective Date: July 27, 2003

Adds a new section to chapter 9.91 RCW which provides:

(1) A person who sells, rents, or permits to be sold or rented, any video or computer game they know to be a violent video or computer game to any minor has committed a class 1 civil infraction as provided in RCW 7.80.120.

(2) "Minor" means a person under seventeen years of age.

(3) "Person" means a retailer engaged in the business of selling or renting video or computer games including any individual, partnership, corporation, or association who is subject to the tax on retailers under RCW 82.04.250.

(4) "Violent video or computer game" means a video or computer game that contains realistic or photographic-like depictions of aggressive conflict in which the player kills, injures, or otherwise causes physical harm to a human form in the game who is depicted, by dress or other recognizable symbols, as a public law enforcement officer.

LED EDITORIAL NOTE: A lawsuit challenging the constitutionality of this law has already been filed.

CHANGING PROVISIONS RELATING TO IGNITION INTERLOCK DEVICES

CHAPTER 366 (SB 5120)

Effective Date: July 27, 2003

Amends RCW 46.20.720 and RCW 46.20.311 to, in the worlds of the Legislature's "Final Bill Report," require as to ignition interlock sentencing statutes that:

[T]he Department of Licensing must impose the restriction instead of the courts. The situations when the restriction must be imposed are: (1) if it is the person's first DUI conviction or an alcohol-related deferred prosecution and, in each case, the blood alcohol concentration involved was at least .15 or the person refused to take a breathalyzer test; (2) a second or subsequent conviction of DUI; or (3) a first DUI conviction but the person has a previous alcohol-related deferred prosecution or it is an alcohol-related deferred prosecution but the person has a previous DUI conviction ...

When a person's driver's license has been suspended or revoked due to a DUI conviction, and the person is restricted to driving only a vehicle with an ignition interlock, the Department of Licensing may not reinstate the person's license unless written verification of installment of the required device on a vehicle owned and/or operated by the person seeking reinstatement is provided by an ignition interlock company doing business in the state of Washington.

PROVIDING ADDITIONAL SENTENCING ALTERNATIVES FOR JUVENILE OFFENDERS

CHAPTER 378 (ESSB 5903)

Effective Date: July 27, 2003

Amends provisions in chapter 13.40 RCW and adds new sections to the chapter. The Legislature's "Final Bill Report" summarizes the amendments in part as follows:

Two sentencing alternatives are created: a suspended disposition alternative, and a mental health disposition alternative.

Under the suspended disposition alternative, the court may impose and suspend a standard range disposition upon the condition that the offender comply with one or more local sanctions.

Under the mental health disposition alternative, the court may suspend a disposition of 15 to 65 weeks on the condition that the offender comply with a court-ordered mental health treatment plan.

A community commitment disposition alternative is created as a pilot project.

CHANGING TIMES AND SUPERVISION STANDARDS FOR RELEASE OF OFFENDERS

CHAPTER 379 (ESSB 5990)

Effective Date: July 1, 2003

Among other things, amends various sentencing law provisions in chapter 9.94A RCW addressing supervision standards for offenders and release times (including "earned release time") for offenders.

INCREASING TRAFFIC INFRACTION AND OTHER ASSESSMENTS AND PENALTIES IMPOSED BY COURTS

CHAPTER 380 (ESSB 6023)

Effective Date: July 27, 2003

Amends RCW 3.62.090 and 46.63.110 to address certain court-imposed assessments and penalties. The Legislature's "Final Bill Report" describes the changes as follows:

The additional penalty on all traffic infractions is increased from \$10 to \$20. Of the total \$20, \$8.50 is distributed entirely to the state PSEA. The remaining amount is distributed 68 percent to local governments and 32 percent to the state PSEA.

The first penalty assessment on all fines, forfeitures, and penalties by courts of limited jurisdiction is increased from 60 percent to 70 percent. The existing distribution of the 32 percent of the revenue to the state PSEA and 68 percent to local governments is retained.

FIRE AND LAW ENFORCEMENT MOBILIZATION

CHAPTER 405 (SB 5935)

Effective Date: July 27, 2003

Amends various sections of chapter 38.54 RCW and adds new sections to chapter 43.43 RCW addressing fire service and law enforcement mobilization where a coordinated response to emergency is required on a regional or statewide basis. The Legislature's "Final Bill Report" summarizes the legislation as follows:

The duties for fire mobilization are transferred from the Military Department to the Washington State Patrol. The Military Department consults with the patrol in developing the procedures to facilitate as prompt as possible reimbursement to the jurisdictions and state agencies mobilized pursuant to the state fire mobilization plan.

A state law enforcement mobilization board is created with the responsibility to create a state law enforcement mobilization plan that is consistent with the incident command system. The state board consists of one representative from each of nine regional law enforcement mobilization committees. The regional committees develop regional plans consistent with the incident command system, the state plan and any regional plans already in effect. Each regional plan must be approved by the state board.

The purpose of the state plan is to achieve reimbursement to the host jurisdiction and the law enforcement agencies that are mobilized by command of the Chief of the Washington State Patrol in times of emergency.

UNITED STATES SUPREME COURT

3 A.M. TRIP FROM HOME TO POLICE STATION IN BOXER SHORTS WAS AN “ARREST;” SINCE POLICE LACKED PC TO ARREST, CONFESSION MAY NEED TO BE SUPPRESSED

Kaupp v. Texas, 123 S.Ct. 1843 (2003)

Facts and Proceedings below: (Excerpted from U.S. Supreme Court opinion)

After a 14-year-old girl disappeared in January 1999, the Harris County Sheriff's Department learned she had had a sexual relationship with her 19-year-old half brother, who had been in the company of petitioner Robert Kaupp, then 17 years old, on the day of the girl's disappearance. On January 26th, deputy sheriffs questioned the brother and Kaupp at headquarters; Kaupp was cooperative and was permitted to leave, but the brother failed a polygraph examination (his third such failure). Eventually he confessed that he had fatally stabbed his half sister and placed her body in a drainage ditch. He implicated Kaupp in the crime.

Detectives immediately tried but failed to obtain a warrant to question Kaupp. Detective Gregory Pinkins nevertheless decided (in his words) to "get [Kaupp] in and confront him with what [the brother] had said." In the company of two other plain clothes detectives and three uniformed officers, Pinkins went to Kaupp's house at approximately 3 a.m. on January 27th. After Kaupp's father let them in, Pinkins, with at least two other officers, went to Kaupp's bedroom, awakened him with a flashlight, identified himself, and said, " 'we need to go and talk.' " Kaupp said " 'Okay.' " The two officers then handcuffed Kaupp and led him, shoeless and dressed only in boxer shorts and a T-shirt, out of his house and into a patrol car. The state points to nothing in the record indicating Kaupp was told that he was free to decline to go with the officers.

They stopped for 5 or 10 minutes where the victim's body had just been found, in anticipation of confronting Kaupp with the brother's confession, and then went on to the sheriff's headquarters. There, they took Kaupp to an interview room, removed his handcuffs, and advised him of his rights under Miranda v. Arizona. Kaupp first denied any involvement in the victim's disappearance, but 10 or 15 minutes into the interrogation, told of the brother's confession, he admitted having some part in the crime. He did not, however, acknowledge causing the fatal wound or confess to murder, for which he was later indicted.

After moving unsuccessfully to suppress his confession as the fruit of an illegal arrest, Kaupp was convicted and sentenced to 55 years' imprisonment. The State Court of Appeals affirmed the conviction by unpublished opinion, concluding that no arrest had occurred until after the confession. The state court said that Kaupp consented to go with the officers when he answered " 'Okay' " to Pinkins's statement that " 'we need to go and talk.' " The court saw no contrary significance in the subsequent handcuffing and removal to the patrol car, given the practice of the sheriff's department in "routinely" using handcuffs for safety purposes when transporting individuals, as officers had done with Kaupp only the day before. The court observed that "a reasonable person in [Kaupp's] position would not believe that being put in handcuffs was a significant restriction on his freedom of movement." Finally, the state court noted that Kaupp "did not resist the use of handcuffs or act in a manner consistent with anything other than full cooperation." Kaupp appealed, but the Court of Criminal Appeals of Texas denied discretionary review.

ISSUES AND RULINGS: 1) Under all of the circumstances, was the 3 a.m. trip to the police station an “arrest”? (ANSWER: Yes; nonconsenting transport to the police station is an “arrest”); 2) In light of the State’s concession that the officers lacked probable cause to arrest Kaupp, must the confession be suppressed? (ANSWER: It looks likely that suppression will be required, but the case is remanded for hearings on whether the confession was tainted by the unlawful arrest)

Result: Reversal of Texas intermediate appellate court decision; case remanded for hearings on the question of whether the taint of defendant’s unlawful arrest was purged by the subsequent events at the police station.

ANALYSIS: (Excerpted from the opinion for the unanimous Supreme Court)

1) Arrest without probable cause

Although certain seizures may be justified on something less than probable cause, see, e.g., Terry v. Ohio, 392 U.S. 1 (1968), we have never “sustained against Fourth Amendment challenge the involuntary removal of a suspect from his home to a police station and his detention there for investigative purposes ... absent probable cause or judicial authorization.” Hayes v. Florida, 470 U.S. 811 (1985) ... Such involuntary transport to a police station for questioning is “sufficiently like arres[t] to invoke the traditional rule that arrests may constitutionally be made only on probable cause.”

The state does not claim to have had probable cause here, and a straightforward application of the test just mentioned shows beyond cavil that Kaupp was arrested within the meaning of the Fourth Amendment, there being evidence of every one of the probative circumstances mentioned [in U.S. v. Mendenhall, 446 U.S. 544 (1980)]. A 17-year-old boy was awakened in his bedroom at three in the morning by at least three police officers, one of whom stated “we need to go and talk.” He was taken out in handcuffs, without shoes, dressed only in his underwear in January, placed in a patrol car, driven to the scene of a crime and then to the sheriff’s offices, where he was taken into an interrogation room and questioned. This evidence points to arrest even more starkly than the facts in Dunaway v. New York, 442 U.S. 200 (1979), where the petitioner “was taken from a neighbor’s home to a police car, transported to a police station, and placed in an interrogation room.” ... There we held it clear that the detention was “in important respects indistinguishable from a traditional arrest” and therefore required probable cause or judicial authorization to be legal. The same is, if anything, even clearer here.

Contrary reasons mentioned by the state courts are no answer to the facts. Kaupp’s “Okay” in response to Pinkins’s statement is no showing of consent under the circumstances. Pinkins offered Kaupp no choice, and a group of police officers rousing an adolescent out of bed in the middle of the night with the words “we need to go and talk” presents no option but “to go.” There is no reason to think Kaupp’s answer was anything more than “a mere submission to a claim of lawful authority.” If reasonable doubt were possible on this point, the ensuing events would resolve it: removal from one’s house in handcuffs on a January night with nothing on but underwear for a trip to a crime scene on the way to an interview room at law enforcement headquarters. Even “an initially consensual encounter ... can be transformed into a seizure or detention within the meaning of the Fourth Amendment.” ... It cannot seriously be suggested that when the detectives began to question Kaupp, a reasonable person in his situation would have thought he was sitting in the interview room as a matter of choice, free to change his mind and go home to bed.

Nor is it significant, as the state court thought, that the sheriff's department "routinely" transported individuals, including Kaupp on one prior occasion, while handcuffed for safety of the officers, or that Kaupp "did not resist the use of handcuffs or act in a manner consistent with anything other than full cooperation." The test is an objective one, and stressing the officers' motivation of self-protection does not speak to how their actions would reasonably be understood. As for the lack of resistance, failure to struggle with a cohort of deputy sheriffs is not a waiver of Fourth Amendment protection, which does not require the perversity of resisting arrest or assaulting a police officer.

2) Taint of unlawful arrest on stationhouse confession

Since Kaupp was arrested before he was questioned, and because the state does not even claim that the sheriff's department had probable cause to detain him at that point, well-established precedent requires suppression of the confession unless that confession was "an act of free will [sufficient] to purge the primary taint of the unlawful invasion." ... Demonstrating such purgation is, of course, a function of circumstantial evidence, with the burden of persuasion on the state. Relevant considerations include observance of Miranda, "[t]he temporal proximity of the arrest and the confession, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct." ...

The record before us shows that only one of these considerations, the giving of Miranda warnings, supports the state, and we held in [a prior decision] that "Miranda warnings, alone and per se, cannot always ... break, for Fourth Amendment purposes, the causal connection between the illegality and the confession."

All other factors point the opposite way. There is no indication from the record that any substantial time passed between Kaupp's removal from his home in handcuffs and his confession after only 10 or 15 minutes of interrogation. In the interim, he remained in his partially clothed state in the physical custody of a number of officers, some of whom, at least, were conscious that they lacked probable cause to arrest. In fact, the state has not even alleged "any meaningful intervening event" between the illegal arrest and Kaupp's confession. Unless, on remand, the state can point to testimony undisclosed on the record before us, and weighty enough to carry the state's burden despite the clear force of the evidence shown here, the confession must be suppressed.

The judgment of the State Court of Appeals is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

[Some citations and footnotes omitted]

BRIEF NOTES FROM THE WASHINGTON STATE COURT OF APPEALS

IN CONSPIRACY CASE INVOLVING PAWNSHOP OWNER AND HOME-INVASION ROBBERS, COURT ADDRESSES ISSUES OF: (1) KNOWLEDGE ELEMENT OF ACCOMPLICE LIABILITY; (2) ADMISSIBILITY OF CO-CONSPIRATOR HEARSAY; (3) TOLLING OF STATUTE OF LIMITATIONS FOR PERSONS OUT OF STATE; AND (4) SCOPE OF RESTITUTION IN CONSPIRACY CASES -- In State v. King, 113 Wn. App. 243 (Div. I, 2002), the Court of Appeals the following four issues, among others, in a case involving a conspiracy-to-commit-home-invasion-robberies between a pawnshop operator and several home-invasion robbers.

(1) Knowledge element in accomplice liability instruction

The King Court rules that the trial court erred in instructing the jury on accomplice liability. The jury was instructed that one can be an accomplice if he aids the commission of the crime with knowledge that his actions will aid the commission of a crime. Recent Washington case law establishes that a jury must be instructed that the knowledge element of accomplice liability is more exacting, requiring defendant's knowledge at the time of the crime that his actions would aid the commission of the crime charged. The King Court rules, however (under analysis not described in this LED entry) that, under the facts of this particular case, the jury could not have reached an erroneous verdict based on the incorrect wording of the instruction, and therefore the Court does not reverse any of the multiple convictions based on that wording.

(2) Co-conspirator hearsay (which the Rules of Evidence exclude from the "hearsay" definition)

Evidence Rule (ER) 801 defines "hearsay" and declares that certain statements are not hearsay even if they would otherwise meet the definition. One such exception is for a "statement by a co-conspirator of a party during the course and in furtherance of the conspiracy." ER 801(d)(2)(ii). The King Court addresses one co-conspirator's statement to a second co-conspirator while in the presence of a third co-conspirator. The second co-conspirator later testified for the State. The first co-conspirator told the second co-conspirator that, while the second co-conspirator was away in California, the first and third co-conspirators had committed a robbery in which they obtained a lot of cash and jewelry. This statement was made during the course of and in furtherance of the conspiracy, the King Court rules. The statement, which was accompanied by the first co-conspirator's loan to the second co-conspirator of several hundred dollars of robbery proceeds, strongly suggested that the first co-conspirator was assuring the second-conspirator that he was still welcome in the conspiracy. The statement also advised the second co-conspirator of the conspiracy's progress and that it was still operating.

The King Court also rules that the out-of-court statement by the first co-conspirator was admissible against the third co-conspirator who stood in silence as the first co-conspirator made the statement. The third co-conspirator's silence under the circumstances was an "adoptive admission" of the first co-conspirator's statement.

The King Court also rejects a challenge under the Sixth Amendment confrontation clause to admission of the first co-conspirator's statement – the Court notes that the rule on admissibility of statements of a party made during the course and in furtherance of the conspiracy is a firmly-rooted exception to the hearsay rule, and thus, the confrontation clause does not require additional indicators of reliability.

(3) Tolling of the statute of limitations for persons out of state

The King Court upholds the trial court's ruling that Washington's criminal code statute of limitations is tolled during the entire time that a person is located outside the state of Washington. RCW 9A.04.080(2). This rule applies even where law enforcement officers or other agents of the State of Washington know where the suspect is located.

(4) Restitution remedy against co-conspirators

The King Court rules that a defendant convicted of conspiracy may be ordered to pay restitution for any and all injury or damages resulting from the conspiracy, regardless of whether the injury or damages occurred before the defendant joined the conspiracy.

Results: Affirmance of King County Superior Court convictions of Willie James King (one of the home-invaders) for conspiracy to commit robbery in the first degree (several counts); reversal (on grounds not addressed in this LED entry) of King's convictions for first degree robbery and kidnapping; remand to Superior Court on the latter charges for possible re-trial.

Affirmance of King County Superior Court convictions of David R. Israel (the pawnshop owner) for money laundering and conspiracy to commit robbery in the first degree; reversal (on grounds not addressed in this LED entry) of Israel's convictions for two counts of first degree robbery and remand of those charges for possible re-trial; reversal (on grounds not addressed in this LED entry) and dismissal of Israel's conviction for kidnapping.

NEXT MONTH

The August 2003 LED will include an entry on the June 5, 2003 Washington Supreme Court decision in State v. Khounvichai, where the Supreme Court ruled 7-2 that law enforcement officers were not required to give "Ferrier" warnings when asking for consent to enter a residence in order merely to talk to a suspect. The Khounvichai majority opinion states, however, that if, once inside based on a non-Ferrier consent to enter and talk to a suspect, officers wish to search for evidence or contraband under non-exigent circumstances, they must apply for a search warrant, rather than seeking consent to search.

INTERNET ACCESS TO COURT RULES & DECISIONS, TO RCW'S, AND TO WAC RULES

The Washington Office of the Administrator for the Courts maintains a web site with appellate court information, including recent court opinions by the Court of Appeals and State Supreme Court. The address is [<http://www.courts.wa.gov/>]. Decisions issued in the preceding 90 days may be accessed by entering search terms, and decisions issued in the preceding 14 days may be more simply accessed through a separate link clearly designated. A website at [<http://legalwa.org/>] includes all Washington Court of Appeals opinions, as well as Washington State Supreme Court opinions from 1939 to the present. The site also includes links to the full text of the RCW, WAC, and many Washington city and county municipal codes (the site is accessible directly at the address above or via a link on the Washington Courts' website). Washington Rules of Court (including rules for appellate courts, superior courts, and courts of limited jurisdiction) are accessible via links on the Courts' website or by going directly to [<http://www.courts.wa.gov/rules/>].

Many 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 many significant opinions of the Court issued before 1990.

Easy access to relatively current Washington state agency administrative rules (including DOL rules in Title 308 WAC, WSP equipment rules at Title 204 WAC and State Toxicologist rules at WAC 448-15), as well as all RCW's current through January 2003, is at [<http://slc.leg.wa.gov/>]. Information about bills filed in 2003 Washington Legislature is at the same address -- look under "Washington State Legislature," "bill info," "house bill information/senate bill information," and use bill numbers to access information. Access to the "Washington State Register" for the most recent WAC amendments is at [<http://slc.leg.wa.gov/wsr/register.htm>]. In addition, a wide range of state government information can be accessed at [<http://access.wa.gov>]. The address for the Criminal Justice Training Commission's home page is [<http://www.cjtc.state.wa.us>], while the address for the Attorney General's Office home page is [<http://www.wa/ago>].

The Law Enforcement Digest is co-edited by Senior Counsel John Wasberg and Assistant Attorney General Shannon Inglis, both of the Washington Attorney General's Office. Questions and comments regarding the content of the **LED** should be directed to Mr. Wasberg at (206) 464-6039; Fax (206) 587-4290; E Mail [johnw1@atg.wa.gov]. Questions regarding the distribution list or delivery of the **LED** should be directed to [ledemail@cjtc.state.wa.us]. **LED** editorial commentary and analysis of statutes and court decisions express the thinking of the writers and do not necessarily reflect the views of the Office of the Attorney General or the CJTC. The **LED** is published as a research source only. The **LED** does not purport to furnish legal advice. **LED**'s from January 1992 forward are available via a link on the Commission's Internet Home Page at: [<http://www.cjtc.state.wa.us>].