



Law Enforcement

July 2007

Digest

605th Basic Law Enforcement Academy – January 10, 2007 through May 17, 2007

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 Best Academic: Donald P. Rose – Tacoma Police Department
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PART THREE OF THE 2007 WASHINGTON LEGISLATIVE UPDATE

LED INTRODUCTORY EDITORIAL NOTE: This is Part Three of what likely will be a three-part compilation of 2007 State of Washington legislative enactments of interest to law enforcement. Part One appeared in the February 2007 LED. There will be a Part Four only if we learn that we need to follow up on an earlier entry or learn that we overlooked legislation that should have been included in the Update. At the end of this month's Part Three of the Update is an index to the three-part LED Update.

Note that unless a different effective date is specified in the legislation, acts adopted during the 2007 regular session take effect on July 22, 2007 (90 days after the end of the legislative session). For some acts, different sections have different effective dates. We have generally indicated the effective date applicable to the sections that we believe are most critical to law enforcement officers and their agencies.

Consistent with our past practice, our Legislative Updates will for the most part not digest legislation in the subject areas of sentencing, consumer protection, retirement, collective bargaining, civil service, tax, budget, and worker benefits.

Text of each of the 2007 Washington acts is available on the Internet at [<http://apps.leg.wa.gov/billinfo/>]. Use the bill number for access to the enactment.

Thank you to Tom McBride and Pam Loginsky of the Washington Association of Prosecuting Attorneys for providing helpful information. Thank you also to the WSP Government and Media Relations staff for also providing helpful information.

We will include some RCW references in our entries, but where new sections or chapters are created by the legislation, the State Code Reviser must assign the appropriate code numbers. Codification by the Code Reviser 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 regarding either legislation or court decisions do not constitute legal advice, express only 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.

PROTECTING CONSUMER PRIVACY IN EMPLOYMENT CONTEXT

Chapter 93 (ESSB 5827)

Effective Date: July 22, 2007

This amendment to RCW 19.182.020 applies to both job applicants and current employees. The Final Bill Report describes the amendment as follows:

An employer may not request a consumer credit report for employment purposes that contains information on the consumer's credit worthiness, credit standing, or credit capacity unless: (1) that credit information is substantially job related; and (2) the employer discloses to the consumer in writing the reasons the employer is using that information.

Employers may also request consumer reports that contain credit information about the consumer if such a request is required by other law.

Employers must disclose the following to both current employees and job applicants before taking adverse action based on the content of a consumer report: (1) contact information for the reporting agency that furnished the report; and (2) description of the consumer's rights under the state law regarding employment and consumer reports. Employers must also give both current employees and job applicants an opportunity to respond to information in the report that is disputed.

The Final Bill Report states “ “ but there is no express provisions to this effect in the statute. Law enforcement agencies should consult their legal advisors with any questions relating to this enactment.

CHANGING PROVISIONS CONCERNING DETENTION OF A PERSON WITH A MENTAL DISORDER OR CHEMICAL DEPENDENCY

Chapter 120 (ESB 6018)

Effective Date: April 18, 2007

The Final Bill Report summarizes the pre-enactment background and the contents of the enactment as follows:

[Pre-enactment background]

In 2005, the Legislature passed E2SSB 5763, the Omnibus Treatment of Mental and Substance Abuse Disorders Act of 2005. One aspect of this legislation was the creation of a pilot program in the Pierce County Regional Support Network and the North Sound Regional Support Network. The pilot program combines the initial detention process of adults with chemical dependency and mental disorders through the use of a designated crisis responder (DCR) with authority to initiate civil commitment proceedings. The pilot also includes secure detoxification facilities for detention.

Case law interpreting the mental health detention statute requires that an individual must be at "imminent risk" of grave disability or pose an "imminent" likelihood of substantial harm before a designated mental health professional (DMHP) can detain the individual. Once the individual is detained they must be seen by a mental health professional within three hours and a petition for detention must be filed within 12 hours of the detention. If the individual does not present an imminent risk the DMHP must obtain a summons from a judicial officer, including a finding that there is probable cause to detain the individual. The DMHP must then serve the summons on the individual. The individual then has 24 hours to report to a facility for evaluation and treatment.

[Summary of 2007 enactment]

The non-emergent detention process is modified. The use of a summons and a 24-hour reporting period is eliminated. Instead, DCRs are authorized to contact judicial officers to obtain an "order to detain." Judicial officers may consider sworn telephonic testimony or written affidavits in determining whether there is probable cause to detain the individual for a 72-hour period of evaluation and treatment. DCRs may notify law enforcement that an order to detain has been entered and request that the individual be escorted to an evaluation and treatment facility, a secure detoxification facility, or a certified chemical dependency provider.

CLARIFYING DV NO-CONTACT PROVISIONS

Chapter 173 (SHB 1642)

Effective Date: July 22, 2007

Amends RCW 26.50.110. The Legislature's Final Bill Report summarizes the amendment as follows:

The provision describing when it is a gross misdemeanor to violate a no-contact, protection, or restraining order is amended.

It is a gross misdemeanor when a person who is subject to a no-contact, protection, or restraining order knows of the order and violates a restraint provision prohibiting acts or threats of violence against, or stalking of, a protected party, or a restraint provision prohibiting contact with a protected party.

ATTACKING AUTO THEFT IN SEVERAL WAYS

Chapter 199 (E3SHB 1001)

Effective Date: July 22, 2007

Among numerous other things, this enactment amends several sections in chapter 9A.56 RCW and also adds some new sections to the chapter. In part, the Legislature's Final Bill Report describes this enactment as follows:

The act known as the Elizabeth Nowak-Washington Auto Theft Prevention Act provides for increased penalties and triple scoring of prior motor vehicle-related offenses (theft, possession of a stolen vehicle, and taking a vehicle without permission). Home detention is established as an option for first-time adult offenders. Juvenile offenders are subject to risk assessments, home detention, and increased penalties for the same motor vehicle-related offenses. New crimes are created to cover the making and possession of motor vehicle theft tools. A Statewide Auto Theft Prevention Authority is created to study motor vehicle theft in Washington.

Motor Vehicle Theft

A person is guilty of motor vehicle theft if the person commits theft of any motor vehicle regardless of the value of the vehicle. Theft of a motor vehicle is a seriousness level II, class B felony offense for adult offenders and a category B offense for juvenile offenders.

Possession of a Stolen Vehicle

A person is guilty of possession of a stolen motor vehicle if he or she possesses a stolen vehicle regardless of the value of the vehicle. Possession of a stolen motor vehicle is a seriousness level II, class B felony offense for adult offenders and a category B offense for juvenile offenders.

Taking a Motor Vehicle without Permission

The crime of taking a motor vehicle without permission in the first degree is redefined and expanded to include when an offender engages in a conspiracy and solicits a juvenile to participate in the theft of the vehicle. Under the JJA, the offense of taking a motor vehicle without permission in the first degree is increased to a category B offense.

Theft of Rental, Leased, or Loaned Property

The statute relating to rental, leased, or lease-purchased property is expanded to include loaned property. A person who, with intent to deprive the owner, wrongfully obtains, exerts, or gains unauthorized control over personal property that is loaned to the person is guilty of theft of rental, leased, lease-purchased, or loaned property.

Making or Possession of Auto Theft Tools

A person who makes, mends, uses, or possesses tools commonly used for the commission of vehicle theft is guilty of making or having vehicle theft tools, a gross misdemeanor offense. A motor vehicle theft tool includes, but is not limited

to, the following: slim jim, false master key, master purpose key, altered or shaved key, trial or jigglers keys, slide hammer, lock puller, picklock, bit, nippers, and any other implement shown by facts and circumstances that is intended to be used in the commission of a motor vehicle theft.

HAVING WASPC CREATE AUTOMATED SYSTEM FOR VICTIM INFORMATION AND NOTIFICATION

Chapter 204 (SB 5332)

Effective Date: July 22, 2007

Amends RCW 36.28A.040 to require that the Washington Association of Sheriffs and Police Chiefs develop a crime victim notification system to provide requesting crime victims with certain specified information.

AUTHORIZING LAW ENFORCEMENT AGENCIES TO DONATE UNCLAIMED PROPERTY TO NONPROFIT CHARITABLE ORGANIZATIONS

Chapter 219 (SSB 5193)

Effective Date: July 22, 2007

Amends RCW 63.32.050 and RCW 63.40.060, and adds a new section to chapter 63.35 RCW. The amendments authorize WSP and city and county law enforcement agencies to donate unclaimed personal property to nonprofit charitable organizations for the benefit of needy persons.

MODIFYING LAWS RELATING TO REPORTS OF CHILD ABUSE AND NEGLECT, AS WELL AS OTHER LAWS RELATING TO CHILD WELFARE

Chapter 220 (SSB 5321)

Effective Dates (see below): October 1, 2008; July 22, 2007

Amends sections in chapter 26.44 RCW, amends sections in Title 74 RCW, amends RCW 13.34.110, and adds a new section to chapter 74.13 RCW. The Final Bill Report summarizes this enactment as follows:

Screened-out, inconclusive, and founded reports of child abuse and neglect are defined, and the definition of an unfounded report is amended. A report of child abuse or neglect may no longer be designated as inconclusive. If there is insufficient evidence to determine that child abuse or neglect occurred, the report is unfounded. The definitions section is reorganized in alphabetical order.

DSHS must conduct an investigation of an alleged report of child abuse or neglect within 90 days. At the completion of an investigation, DSHS must make a finding that the report was founded or unfounded.

Time frames are established for the expungement of records, depending on the classification of the report. Records pertaining to an unfounded report of child abuse or neglect or a report designated as inconclusive prior to the effective date of this act must be destroyed within six years of completion of the investigation unless a prior or subsequent founded report has been received regarding the child who is the subject of the report, a sibling or half-sibling of the child, or a parent, guardian, or legal custodian of the child. A screened out report must be expunged within three years. An unfounded, screened-out, or inconclusive report of child abuse or neglect may not be disclosed to a child-placing agency, private adoption agency, or any other provider licensed by DSHS and may not be used to deny employment or a license to a foster parent.

A person who is the subject of a report of child abuse or neglect may seek relief from the court if the information is not expunged as required by law. If information is improperly disclosed, the court may award a penalty up to \$1,000.

[LED EDITORIAL NOTE: The provisions described in the four paragraphs above do not take effect until October 1, 2008]

The court is authorized in dependency fact-finding hearings to consider the history of past involvement with child protective services or law enforcement agencies for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of the child, or for the purpose of establishing that reasonable efforts have been made to prevent or eliminate the need for removing the child from the home.

DSHS must disclose information about the child to a foster parent including whether the child is a sexually reactive child, has high-risk behaviors, or is physically assaultive or physically aggressive. The terms sexually reactive child, high-risk behavior, and physically assaultive or aggressive are defined.

A foster parent may not be found to have abused or neglected a child or be denied a foster care license if the child was not within the reasonable control of the foster parent at the time of the incident or if prior known conduct of the child was not disclosed to the foster parent and the allegations arise from the child's conduct that is substantially similar to prior conduct of the child.

RESTRICTING THE KEEPING OF POTENTIALLY DANGEROUS WILD ANIMALS

Chapter 238 (HB 1418)

Effective Date: July 22, 2007

Adds a new chapter to Title 16 RCW. The Legislature's Final Bill Report summarizes the enactment as follows:

The possession and breeding of potentially dangerous wild animals is prohibited. "Potentially dangerous wild animal" is defined and includes, among others: large cats, wolves, bears, primates, certain snakes, and crocodiles.

A person who possesses a potentially dangerous wild animal prior to the effective date of the act may keep the animal for the duration of the animal's lifetime, provided the possessor maintains adequate records and can prove possession prior to the effective date of the act.

An animal control authority may confiscate a potentially dangerous wild animal if: (1) it is being kept in violation of the act, (2) it poses a public safety or health risk, or (3) it is in poor health and the animal's condition is attributable to the possessor. The possessor is responsible for the costs of caring for the animal during the confiscation. If the animal is not able to be returned to the possessor, the animal control authority may relocate the animal to a facility such as a zoo, wildlife sanctuary, or other exempted facility, such as a research facility or a circus. If relocation is not possible within a reasonable period of time, the animal control authority may euthanize the animal.

A violation of the act is a civil penalty subject to a fine of between \$200 to \$2,000 for each animal and each day of the violation. Local jurisdictions may adopt ordinances that are stricter than the act, but are not required to adopt ordinances to be in compliance with the act.

Certain entities and persons are exempt from the provisions of the act. These entities include: zoos and aquariums; facilities participating with an association of zoos and aquariums species survival plan; animal protection organizations; veterinary hospitals; wildlife sanctuaries; certain game farms; research facilities registered under the Animal Welfare Act; circuses; persons temporarily transporting animals through the state; and persons displaying animals at a fair approved by the Washington Department of Agriculture.

ADDRESSING CITIZEN ACCESS TO REAL PROPERTY DURING FOREST FIRES

Chapter 252 (SSB 5315)

Effective Date: July 22, 2007

The Washington Association of Sheriffs and Police Chiefs shall convene a policy group on citizen access to real property during forest fires, and in the interim each county sheriff shall create a registry to address this subject.

REMOVING DERELICT VESSELS

Chapter 342 (E2SSB 6044)

Effective Date: July 22, 2007 (and various other dates)

Modifies sections and adds sections to chapter 79.100 RCW relating to removal of derelict vessels.

BEEFING UP AQUATIC INVASIVE SPECIES ENFORCEMENT

Chapter 350 (E2SSB 5923)

Effective Date: July 22, 2007

Amends RCW 43.43.400 and numerous sections in several chapters in Title 77 RCW, and adds new sections to chapters 77.12, 77.15, and 77.120 RCW, as well as repealing some sections in chapter 77.120 RCW. The Final Bill Report for this enactment includes the following description:

Funds from the Aquatic Invasive Species Enforcement Account may also be appropriated to Department of Fish and Wildlife (DFW) to develop an aquatic invasive species enforcement program for recreational and commercial watercraft.

DFW is authorized to establish random check stations and require persons transporting recreational and commercial watercraft to stop at the check stations. Persons stopped at a check station who possess watercraft or equipment that is contaminated with an aquatic invasive species are exempted from certain criminal penalties if that person complies with all DFW directives for the proper decontamination of the watercraft or equipment. DFW will also provide inspection outside of check stations to persons requesting inspection and provide a receipt indicating the watercraft is not contaminated.

The new crime of unlawfully avoiding aquatic invasive species check stations is created. Persons who fail to obey check station signs, or who fail to stop and report at a check station if directed to do so by a uniformed fish and wildlife officer, are guilty of a gross misdemeanor.

DFW must post signs warning vessels of the threat of aquatic invasive species, the penalties associated with introduction of an invasive species, and proper contact information for obtaining a free vessel inspection. The signs must be posted at all ports of entry and at all boat launches owned or leased by DFW. DFW must also provide signs to all port districts, privately or publicly owned marinas, state parks, and other state agencies or political subdivisions that own or lease boat launches.

DFW is directed to develop a plan for treatment and immediate response to the introduction of prohibited aquatic invasive species into Washington waters. This plan will be reviewed under the State Environmental Policy Act.

ADDRESSING DANGER OF HOME VISITS FOR MENTAL HEALTH PROFESSIONALS

Chapter 360 (SHB 1456)

Effective Date: July 22, 2007

The act is the “Marty Smith” law. It addresses designated mental health professionals (DMHPs) who sometimes go to private homes to evaluate persons for involuntary detention or to provide crisis outreach services.

The Final Bill Report summarizes the contents of the act as follows:

DMHPs or other mental health crisis outreach workers will not be required to conduct home visits alone. Employers will equip mental health workers who engage in home visits with a communication device. Mental health workers dispatched on crisis outreach visits will have prompt access to any history of dangerousness or potential dangerousness on the client they are visiting, if available. All community mental health workers who work directly with clients will be provided with annual training on safety and violence prevention.

REVISING CRIMES RELATING TO COMMERCIAL SEXUAL ABUSE OF MINORS

Chapter 368 (SSB 5718)

Effective Date: July 22, 2007

Amends RCW 9.68A.001, 9.68A.100, 9.68A.110, 19.138.340, 9.68A.105, 9A.88.120, 9A.88.070, 9.94A.533, and 9.94A.515. Also adds new sections to chapter 9.68A RCW and adds a new section to chapter 9.94A RCW. What was previously known as “patronizing a juvenile prostitute” is now part of a more broadly defined crime of “commercial sexual abuse of a minor.”

The Legislature’s Final Bill Report summarizes this enactment in part as follows:

A person is guilty of commercial sexual abuse of a minor if the person pays a fee to engage in sexual conduct with a minor, pays or agrees to pay a fee pursuant to an understanding that the minor will engage in sexual conduct with him or her, or he or she solicits, offers, or requests to engage in sexual conduct with a minor. This crime is a class C felony.

A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances or profits from a minor engaged in sexual conduct. This crime is a class B felony. A person commits the offense of promoting travel for commercial sexual abuse of a minor if he or she knowingly sells or offers to sell travel services to facilitate commercial sexual abuse of a minor. This crime is a class C felony.

A person is guilty of permitting commercial sexual abuse of a minor if the person has control of premises which he or she knows are being used for commercial sexual abuse of a minor. This crime is a gross misdemeanor.

Promoting commercial sexual abuse of a minor and promoting travel for the commercial sexual abuse of a minor are added to those crimes for which lack of knowledge as to the age of the victim is not a defense.

A one-year sentence enhancement for Rape of a Child and Child Molestation is imposed when the perpetrator engaged, agreed or offered to engage the victim in sexual conduct for a fee after the effective date of the act.

REVISING THE LAW ON MEDICAL USE OF MARIJUANA

Chapter 371 (ESSB 6032)

Effective Date: July 22, 2007

Among other things, this enactment adds a new section to chapter 69.51A RCW, subsection (1) of which reads as follows:

(1) By July 1, 2008, the department of health shall adopt rules defining the quantity of marijuana that could reasonably be presumed to be a sixty-day supply for qualifying patients; this presumption may be overcome with evidence of a qualifying patient's necessary medical use.

The Legislature's Final Bill Report summarizes this enactment as follows:

Qualifying patients and any designated provider who assists them in the medical use of marijuana will be deemed to have established an affirmative defense if he or she complies with the requirements under this act. Designated provider replaces "primary caregiver" and is defined as a person who is over 18 years of age, has been designated in writing by a patient to serve as a designated provider and serves as a designated provider to only one patient at a time.

Department of Health (DOH) will adopt rules defining the presumptive quantity of marijuana that could reasonably be presumed to be a 60-day supply. DOH will make recommendations to the Legislature addressing access to an adequate, safe, consistent, and secure source of medical marijuana for qualifying patients by July 1, 2008.

Crohn's disease, hepatitis C, and other diseases are added to the existing list of terminal and debilitating medical conditions.

Valid documentation must state that in the physician's professional opinion, the patient may benefit from the medical use of marijuana.

A copy of a physician statement has the same force and effect as the signed original . . .

If a law enforcement officer determines that a person's possession of marijuana satisfies the requirements under this act, the officer may take a representative sample of the marijuana. The officer is not liable for failure to seize marijuana in this circumstance.

RELIEVING RENTAL CAR COMPANIES FROM RESPONSIBILITY FOR INFRACTION CITATIONS THAT ARE BASED ON A VEHICLE'S IDENTIFICATION/REGISTRATION

Chapter 372 (HB 1371)

Effective Date: July 22, 2007

The Final Bill Report describes as follows the pre-existing provisions of RCW 46.63.073 prior to amendment by this act:

In the event a traffic infraction is based on a vehicle's identification, and the vehicle's registered owner is a rental car business, [and a law enforcement entity provides notice of the occurrence of a violation to the rental agency,] the

business has 30 days before receiving a notice of infraction to submit to the issuing law enforcement agency either: (1) a sworn statement stating the name and address of the driver or renter of the vehicle when the infraction occurred; or (2) a sworn statement that the business is unable to determine who was driving or renting the vehicle when the infraction occurred. Timely mailing of the statement relieves the business of any liability for the infraction. Alternatively, the rental car business may pay the applicable penalty in lieu of identifying the vehicle operator.

The process for relieving a rental car business of liability for certain traffic violations that occur while the vehicle is being rented [established by the Legislature in 2005] does not apply to private parking facilities issuing parking infractions.

[Bracketed text supplied by **LED** Editors]

The Final Bill Report describes as follows the 2007 amendment to RCW 46.63.073:

A process is established for relieving a rental car business of liability for certain parking infractions at private parking facilities that occur while the vehicle was being rented. The process is identical to the one available for infractions issued by law enforcement agencies.

Language is clarified requiring that when a rental car business claims that the business is unable to determine who was driving or renting the vehicle when the infraction occurred, the business must submit a filed police report indicating the vehicle was stolen.

REVISING PROCEDURES FOR HANDLING MENTALLY ILL PERSONS COMMITTING CRIMES

Chapter 375 (SSB 5533)

Effective Date: July 22, 2007

The extensive provisions of the enactment revise chapters 10.31, 10.77, 49.19, 71.05, 71.24, and 71.34 RCW.

In a new section in chapter 10.31 RCW, the act authorizes pre-arrest diversion by law enforcement officers based upon "reasonable cause to believe that the individual has committed acts constituting a nonfelony crime that is not a serious offense as identified in RCW 10.77.092 and the individual is known by history or consultation with the regional support network to suffer from a mental disorder."

The diversion will be one of three alternatives, described in the new section in chapter 10.31 RCW as follows:

(a) Take the individual to a crisis stabilization unit as defined in RCW 71.05.020(6). Individuals delivered to a crisis stabilization unit pursuant to this section may be held by the facility for a period of up to twelve hours: PROVIDED, that they are examined by a mental health professional within three hours of their arrival;

(b) Refer the individual to a mental health professional for evaluation for initial detention and proceeding under chapter 71.05 RCW; or

(c) Release the individual upon agreement to voluntary participation in outpatient treatment.

This process will require local prosecutors and law enforcement to agree upon the criteria for identifying which known mentally ill persons will be handled in this manner.

The act provides law enforcement with immunity “from liability for any good faith conduct” under the new law.

The Legislature’s Final Bill Report summarizes this enactment as follows:

The legislative intent section of this bill states that the needs of individuals with mental illness and the public safety needs of society are better served when individuals with mental illness are provided with an opportunity to obtain treatment and support.

Police officers are permitted to divert individuals with mental illness who have been alleged to have committed misdemeanor crimes, which are not serious crimes, to mental health treatment. The general statutory provisions regarding competency evaluation and restoration of individuals with mental disorders are consolidated into one new section. New sections are created to address specific procedures in misdemeanor and felony restoration cases. Mental health professionals are permitted to return individuals to court at any time during the restoration period if they determine that the individual will not regain competency. Only individuals who have been alleged to have committed misdemeanor crimes that are serious in nature may be referred for competency restoration.

A crisis stabilization unit is defined as a short-term facility for individuals who require only stabilization and intervention. The Department of Social and Health Services is required to certify and to establish minimum standards for crisis stabilization units, such as:

- 1) physical separation from the general offender population if in a jail;
- 2) administering treatment by mental health professionals; and
- 3) securing appropriately, given the nature of the crime involved.

The procedure for non-emergent detentions is modified and a definition of imminent is added. The summons process and 24-hour reporting period in non-emergent Involuntary Treatment Act cases is eliminated and replaced with an "order to detain" process. The individual who poses a likelihood of serious harm or grave disability may be detained if a judicial officer makes a probable cause finding based on the sworn statement of a mental health professional. It is expressly stated that no jail or correctional facility may be considered a less restrictive alternative.

EXPANDING THE CRIMINALIZING OF ANIMAL ABANDONMENT

Chapter 376 (SSB 5227)

Effective Date: July 22, 2007

Amends RCW 16.52.027 and 16.52.011. The Legislature’s Final Bill Report summarizes this enactment as follows:

The crime of second-degree animal cruelty, if committed by an owner who abandons the animal, is a gross misdemeanor offense. If the abandonment results in bodily harm to the animal or creates an imminent and substantial risk of substantial bodily harm to the animal, the affirmative defense of economic distress does not apply to second degree animal cruelty when committed by abandoning the animal.

"Abandons" is defined as the knowing or reckless desertion of an animal by its owner or the causing of the animal to be abandoned by its owner, in any place, without making provision for the animal's adequate care.

ADDRESSING THEFT OF METAL PROPERTY

Chapter 377 (ESSB 5312)

Effective Date: July 22, 2007

Adopts a new chapter in Title 19 RCW. The Legislature's Final Bill Report summarizes this comprehensive enactment as follows:

The term "recycler" is defined. Recyclers doing business in this state must produce an accurate and legible record of information pertaining to the parties and items involved in the transaction. The records must be open to inspection by law enforcement at all times during regular business hours and these records must be maintained for up to one year after the date of transaction.

Recyclers must require the party with whom a transaction is made to sign a declaration if the property involved is worth more than \$100. Transactions involving metal property worth more than \$30 must be paid by nontransferable check no sooner than ten days after the transaction. Transactions involving metal property worth less than \$30 may be made in cash.

Once law enforcement notifies a recycler that they reasonably believe an item of metal property has been stolen, the recycler is required to hold that property for no more than ten business days from the date of notification.

It is a gross misdemeanor for any person to: (1) remove or alter a make, model, or serial number, personal identification number, or identifying marks engraved or etched upon metal property purchased or received in pledge; (2) accept for purchase any metal property where someone has removed or altered a make, model, or serial number, personal identification number, or identifying marks have been engraved or etched; (3) knowingly make or allow for a false entry to be made in any record required to be kept under this chapter; (4) receive metal property from someone under the age of 18 or under the influence of intoxicating liquor or drugs; (5) receive metal property from someone who is known to the recycler to have been convicted of burglary, robbery, theft, or possession of receiving stolen property, manufacturing, delivering, or possessing with intent to deliver methamphetamine, or possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, or anhydrous ammonia with intent to manufacture methamphetamine within the past ten years whether the person is acting in his or her own behalf or as the agent of another; (6) sign the declaration required knowing that the metal property is stolen; (7) possess metal property not lawfully purchased or received; or (8) engage in a series of transaction valued at less than \$30 with the same seller to avoid record keeping requirements.

Civil penalties are imposed for violations not subject to the criminal penalties. The first violation carries a penalty of not more than \$1,000. Each subsequent violation, within a two year period, carries a fine of not more than \$2,000.

The provisions of this chapter do not apply to: motor vehicle dealers; vehicle wreckers or hulk haulers; automotive repair businesses; and those in the business of buying or selling empty food and beverage containers, including metal food and beverage containers, or nonmetal junk.

AUTHORIZING LAW ENFORCEMENT OFFICERS TO POSSESS SPRING BLADE KNIVES WHILE ON DUTY OR WHILE TRANSPORTING KNIVES TO STORAGE

Chapter 379 (SSB 5202)

Effective Date: July 22, 2007

Amends the unlawful weapons statute, RCW 9.41.250 to add a subsection providing as follows:

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

(a) The possession of a spring blade knife by a law enforcement officer while the officer:

(i) Is on official duty; or

(ii) Is transporting the knife to or from the place where the knife is stored when the officer is not on official duty; or

(b) The storage of a spring blade knife by a law enforcement officer.

MODIFYING AND REVIEWING LAWS ON SPECIALIZED FOREST PRODUCTS

Chapter 392 (SHB 1909)

Effective Date: July 22, 2007

Amends RCW 76.48.020, RCW 76.48.030 and RCW 76.48.130. The Legislature's House Bill Report on the substitute bill summarizes this enactment as follows:

Affirmative Defense

An affirmative defense is available to a person being prosecuted under the Specialized Forest Products (SFP) laws if the SFPs in question were harvested from the defendant's own land or if the SFPs in question were harvested with the permission of the landowner. The burden of proving the defense rests with the defendant, who must establish the defense by a preponderance of the evidence.

Specialized Forest Products Work Group

The SFP Work Group (Work Group) is established to be staffed by the DNR and to consist of representation from the DNR, county sheriffs, prosecutors, forest landowners, tribes, wood carvers, cedar processors, and other participants invited by the Commissioner of Public Lands.

The Work Group must review the SFP statutes and current law dealing with theft and make recommendations relating to SFP regulations. The recommendations must provide tools for law enforcement, provide protection for landowners, not be overly burdensome, be clear, and be able to be administered consistently statewide.

A report from the Work Group, along with draft legislation, is due by December 1, 2007.

Huckleberries

The use of a rake or other mechanical device for the harvest of huckleberries is prohibited. The DNR is required to review the uses of the state's huckleberry resources. The review must include an analysis of the demand, whether current use levels are sustainable, and whether the various uses of the resource are compatible. Based on the review, the DNR must report findings and recommendations by the end of the year as to whether there should be a state permitting requirement for huckleberry harvest, whether huckleberries should be considered an SFP, and what conditions should be placed on huckleberry harvests.

CREATING A CIVIL ACTION FOR MV THEFT VICTIMS

Chapter 393 (HB 2034)

Effective Date: July 22, 2007

The Legislature's Final Bill Report summarizes this enactment as follows:

A person who is deprived of his or her car because of a violation of one of the four car theft statutes may sue the perpetrator. In addition to actual damages, the plaintiff is entitled to recover civil damages of up to \$5,000 and the costs of the suit, including reasonable attorneys' fees.

Summons is to be served on the defendant personally, unless he or she cannot be found after a diligent search, in which case service may be made on the Secretary of State. The plaintiff must file affidavits indicating compliance with the service requirements. The court may order a continuance as needed to allow the defendant a reasonable chance to defend the action.

The Department of Licensing is to suspend the driver's license of the defendant until all monetary obligations imposed as a result of a lawsuit are paid in full. An exception to the mandatory suspension is provided if the defendant has entered into a payment plan with the court.

ADDRESSING SAFE SCHOOL PLANS

Chapter 406 (SSB 5097)

Effective Date: July 22, 2007

Amends provisions in Title 28A RCW relating to safe school plans.

REGARDING PHYSICAL EXAM OF WRECKED VEHICLES RETAINED BY OWNERS

Chapter 420 (HB 1343)

Effective Date: July 22, 2007

Amends RCW 46.12.030 and 46.12.040 to provide that a physical examination of a motor vehicle is not required before DOL may reissue a title while the vehicle is retained by the owner of records after being destroyed or declared a total loss.

REGULATING BEHAVIOR RELATED TO VEHICLE WAITING LINES FOR FERRIES

Chapter 423 (SB 5088)

Effective Date: July 22, 2007

Adds a new section to chapter 46.61 RCW. The Final Bill Report summarizes the enactment as follows:

It is a traffic infraction for a driver of a motor vehicle intending to board a Washington State ferry, other than the Keller Ferry, to: (1) block a residential driveway while waiting to board the ferry; or (2) move in front of another vehicle in a queue already waiting to board the ferry without the authorization of a state ferry system employee. Vehicles qualifying for preferential loading privileges are exempt from these requirements. For a vehicle which moves in front of another vehicle, there is an additional penalty that requires the driver to move his or her vehicle to the end of the ferry queue. Violations of this act are not part of a driver's driving record.

EXTENDING CLERGY-PENITENT PRIVILEGE FOR COMMUNICATIONS INVOLVING CHRISTIAN SCIENCE PRACTITIONER COMMUNICATIONS

Chapter 472 (HB 1939)

Effective Date: July 22, 2007

Amends RCW 5.60.060(3) to clarify that the clergy-penitent privilege of that subsection extends to confessions and sacred confidences to Christian Science practitioners listed in the Christian Science Journal.

REGARDING OBJECTIONS BY LOCAL JURISDICTIONS RELATING TO LIQUOR LICENSES

Chapter 473 (EHB 2113)

Effective Date: July 22, 2007

Amends RCW 66.24.010 to give local jurisdictions more input in relation to liquor licenses where "chronic illegal activity" (as defined in the act) is reported.

CLARIFYING LAW ON RECIDIVIST DUI VIOLATORS

Chapter 474 (SHB 2130)

Effective Date: July 22, 2007

In 2006, the Legislature amended RCW 46.61.5055 to make DUI a Class C felony for four or more "prior offenses within ten years." This 2007 enactment amends the statute to clarify that "within ten years" means that the arrest for a prior offense occurred within ten years of the arrest for the current offense.

CHANGING PROVISIONS AFFECTING OFFENDERS WHO ARE LEAVING CONFINEMENT

Chapter 483 (ESSB 6157)

Effective Date: July 22, 2007

The Final Bill Report contains the following very brief summary of this lengthy enactment:

- The Department of Corrections and local governments are encouraged to collaborate in establishing networks and providing services to offenders returning to the community.
- DOC is required to address offender risks and deficits through assessment and the provision of programming such as education, employment services and treatment.
- Offenders are provided greater opportunities for employment and housing to assist in their transition from prison to the community.

LICENSING AND REGULATING USE OF MEDIUM-SPEED ELECTRIC VEHICLES

Chapter 510 (HB 1820)

Effective Date: August 1, 2007

Amends RCW 46.61.688, 46.04.320, and 46.61.687; also adds new sections to chapters 46.04 and 46.61 RCW. The Legislature's Senate Bill Report summarizes this enactment as follows:

Medium-speed electric vehicles are added to the definition of motor vehicles. As with neighborhood electric vehicles, they must be equipped with a roll cage or crush proof body, must conform to federal regulations, and are permitted on public highways having a speed limit of 35 mph or less but are not permitted on state highways. They must be registered, and drivers must have a valid driver's license and insurance. Seat belt and child restraint laws apply. Local authorities may regulate these vehicles on roads under their jurisdiction provided the regulations are consistent with state law, but may not require additional registration or licensing.

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NOTE RE: 2005 AMENDMENT (WITH JUNE 1, 2007 EFFECTIVE DATE) REGARDING MOTOR VEHICLE CHILD RESTRAINTS

As we reported in the July 2005 LED, chapter 415, Laws of 2005, amended RCW 46.61.687, with an effective date of June 1, 2007, to read as follows:

(1) Whenever a child who is less than sixteen years of age is being transported in a motor vehicle that is in operation and that is required by RCW 46.37.510 to be equipped with a safety belt system in a passenger seating position, or is being transported in a neighborhood electric vehicle that is in operation, the driver of the vehicle shall keep the child properly restrained as follows:

(a) A child must be restrained in a child restraint system, if the passenger seating position equipped with a safety belt system allows sufficient space for installation, until the child is eight years old, unless the child is four feet nine inches or taller. The child restraint system must comply with standards of the United States department of transportation and must be secured in the vehicle in accordance with instructions of the vehicle manufacturer and the child restraint system manufacturer.

(b) A child who is eight years of age or older or four feet nine inches or taller shall be properly restrained with the motor vehicle's safety belt properly adjusted and fastened around the child's body or an appropriately fitting child restraint system.

(c) The driver of a vehicle transporting a child who is under thirteen years old shall transport the child in the back seat positions in the vehicle where it is practical to do so.

(2) Enforcement of subsection (1) of this section is subject to a visual inspection by law enforcement to determine if the child restraint system in use is appropriate for the child's individual height, weight, and age. The visual inspection for usage of a child restraint system must ensure that the child restraint system is being used in accordance with the instruction of the vehicle and the child restraint system manufacturers. The driver of a vehicle transporting a child who is under thirteen years old shall transport the child in the back seat positions in the vehicle where it is practical to do so.

(3) A person violating subsection (1) of this section may be issued a notice of traffic infraction under chapter 46.63 RCW. If the person to whom the notice was issued presents proof of acquisition of an approved child passenger restraint system or a child booster seat, as appropriate, within seven days to the jurisdiction issuing the notice and the person has not previously had a violation of this section dismissed, the jurisdiction shall dismiss the notice of traffic infraction.

(4) Failure to comply with the requirements of this section shall not constitute negligence by a parent or legal guardian. Failure to use a child restraint system shall not be admissible as evidence of negligence in any civil action.

(5) This section does not apply to: (a) For hire vehicles, (b) vehicles designed to transport sixteen or less passengers, including the driver, operated by auto transportation companies, as defined in RCW 81.68.010(c) providing customer shuttle service between parking, convention, and hotel facilities, and airport terminals, and (d) school buses.

(6) As used in this section, "child restraint system" means a child passenger restraint system that meets the Federal Motor Vehicle Safety Standards set forth in 49 C.F.R. 571.213.

WAPA STAFF ATTORNEY PAM LOGINSKY'S UPDATED SPRING 2007 SUMMARY ON SEARCH AND SEIZURE AND OTHER TOPICS IS ACCESSIBLE ON THE CJTC LED PAGE

Many LED readers are familiar with the excellent and comprehensive summary on law enforcement related law topics by Pam Loginsky, staff attorney for the Washington Association of Prosecuting Attorneys. Ms. Loginsky updates the summary annually. The 2007 version of her summary is accessible on the internet on the Criminal Justice Training Commission's internet LED page under a link at: "**Confessions, Search, Seizure and Arrest: A Guide for Police Officers and Prosecutors,**" May 2007 By Pamela B. Loginsky, Staff Attorney, Washington Association of Prosecuting Attorneys.

WASHINGTON STATE SUPREME COURT

MOTEL GUEST REGISTRIES HELD PRIVATE UNDER SEARCH WARRANT REQUIREMENT OF ARTICLE 1, SECTION 7 OF WASHINGTON CONSTITUTION

State v. Jorden, ___ Wn.2d ___, 156 P.3d 893 (2007)

Facts and Proceedings below: (Excerpted from Supreme Court majority opinion)

The Pierce County Sheriff's Department takes part in the "Lakewood Crime-Free Hotel Motel Program." The program offers assistance to motels and hotels that have a history of significant criminal activity, providing training on methods of crime reduction. The program also encourages officers to review the guest registries of hotels and motels on a random basis and without individualized or particularized suspicion. Officers often conduct random criminal checks of the names in guest registries at motels with reputations for frequent criminal activity. When checking into a participating motel, guests are advised that a valid

identification is required for check-in and that the identification information is kept on file, but the guests are not told of the possibility for random, suspicionless searches of the registry by law enforcement.

On March 15, 2003, [the deputy] conducted a random check of the guest registry at the Golden Lion. [The deputy] testified that he visited the motel that day as part of a routine check of the motel. He also testified that because of the motel's high volume of criminal incidents, it was not unusual for officers to visit the Golden Lion once per shift of their own accord. When [the deputy] ran the name of guest Timothy Jordan through the mobile data computer in his vehicle, he found there were outstanding felony warrants for Jordan. [The deputy] called for backup and confirmed Jordan's room number using motel records. When backup arrived, [the deputy] and his fellow officers knocked at Jordan's door. After a couple of minutes, the door was answered by a female occupant. [The deputy] immediately removed the woman from the doorway and entered the room, whereupon an unclothed Jordan was discovered in the bed. Drug paraphernalia and a tin containing a substance later identified as crack cocaine were on a table nearby. Jordan was arrested and charged with unlawful possession of a controlled substance.

Prior to trial, Jordan moved to suppress evidence of the drugs and drug paraphernalia, arguing it was based on an illegal search. Jordan argued that [the deputy]'s search of the motel registry violated Jordan's privacy rights under the state and federal constitutions, though Jordan's argument primarily focused on the federal constitution. After considering federal case law, testimony from [the deputy] on the practices surrounding the random registry checks, and argument from both parties, the trial court denied the motion. Evidence of the drugs and drug paraphernalia was introduced at trial. Jordan was convicted and sentenced to 22 months in prison for unlawful possession of a controlled substance.

Jordan appealed, arguing that although the random registry check does not violate federal constitutional protections, it does violate state constitutional protections. The Court of Appeals concluded that the act of checking into a motel and the information required to do so-the same information found on a driver's license-does not constitute a private affair protected by article I, section 7. State v. Jordan, 126 Wn. App. 70 (2005) **April 05 LED:07**.

[Footnote omitted]

ISSUE AND RULING: Does article 1, section 7 of the Washington constitution prohibit random warrantless checks of motel and hotel registries? (**ANSWER:** Yes, rules a 7-2 majority)

Result: Reversal of Court of Appeals decision (see April 05 **LED:07**) and of Pierce County Superior Court conviction of Timothy Enrique Jordan for unlawful possession of cocaine.

ANALYSIS BY MAJORITY:

After preliminary analysis of whether the Washington constitution provides greater protection of information in motel and hotel registries than does the Fourth Amendment of the federal constitution (which permits random checks of such registries), the majority opinion explains as

follows the majority justices' view that the random warrantless check of the registry here intruded on privacy rights protected by the Washington constitution:

Our most important inquiry then becomes whether a random and suspicionless search of a guest registry reveals intimate details of one's life. We first consider that here there is more information at stake than simply a guest's registration information: an individual's very presence in a motel or hotel may in itself be a sensitive piece of information. There are a variety of lawful reasons why an individual may not wish to reveal his or her presence at a motel. As the amicus American Civil Liberties Union (ACLU) points out, couples engaging in extramarital affairs may not wish to share their presence at the hotel with others, just as a closeted same-sex couple forced to meet at the motel also would not. The desire for privacy may extend to business people engaged in confidential negotiations, or celebrities seeking respite from life in the public eye. One could also imagine a scenario, as Jorden's trial attorney pointed out during the motion to suppress, where a domestic violence victim flees to a hotel in hopes of remaining hidden from an abuser.

Additionally, we note the sensitivity of the registry information in and of itself. Not only does it reveal one's presence at the motel, it may also reveal co-guests in the room, divulging yet another person's personal or business associates. Thus, it appears that the information gleaned from random, suspicionless searches of a guest registry may indeed provide "intimate details about a person's activities and associations."

[Court's footnote: In State v. McKinney, 148 Wn.2d 20 (2002) Jan 03 LED:05, we upheld random checks by law enforcement of plainly visible vehicle license plates. But there, numerous statutes revealed that DOL records are kept for law enforcement purposes, indicating that Washington citizens have not held such records to be free from government trespass. In addition, we explained that the information contained in a driver's license record merely reveals one's name, address, and limited physical characteristics, and therefore does not reveal intimate and discrete details about one's life. We concluded that no search had occurred under article I, section 7. Thus, McKinney is clearly distinguishable from this case.]

Therefore, the information contained in a motel registry-including one's whereabouts at the motel-is a private affair under our state constitution, and a government trespass into such information is a search. We hesitate to allow a search of a citizen's private affairs where the government cannot express at least an individualized or particularized suspicion about the search subject or present a valid exception to a warrantless search. A random, suspicionless search is a fishing expedition, and we have indicated displeasure with such practices on many occasions.

Consequently, we hold that the practice of checking the names in a motel registry for outstanding warrants without individualized or particularized suspicion violated the defendant's article I, section 7 rights.

We are not insensitive to the difficulties facing law enforcement in ensuring our motels and hotels remain relatively crime-free, but as a practical matter our

holding does not unduly restrict the investigative powers of the police. Random, suspicionless registry checks are but one part of the Lakewood Crime-Free Hotel Motel Program. Law enforcement may continue to randomly run checks of the license plates of cars parked at the motels, provide training to motel owners, and encourage motel owners to be watchful of behavior evincing criminal activity. Reports of such observations may engender the requisite individualized suspicion that is notably missing from current program techniques.

[Some citations omitted]

Concurring opinion:

Justice James Johnson concurs with the majority's result, but he argues that if disclosure by motel and hotel staff to prospective patrons were more full regarding the openness of the registries to law enforcement, the disclosures to law enforcement would be lawful. He summarizes his view as follows:

I concur with the majority, but write to further explain that a similar program could be easily implemented which would be valid. A hotel owner may constitutionally require that prospective patrons consent at registration to a fully disclosed waiver of their claim to registry privacy as a condition of renting a room. This may be done as part of a cooperative program with police, which will serve to protect all guests. After disclosure of the owner's agreement to make the registry available to the police, any patron may refuse to register. He would then be welcome to find other accommodations. This approach recognizes the interests of hotel owners, other guests, and of law enforcement, while protecting each patron's recognized privacy right to be free of a random suspicionless search. Since there was no such full disclosure of the program here, I concur.

Dissenting opinion:

Justice Madsen authors a dissent joined by Justice Charles Johnson. The dissent argues in vain that registry information in this case is more like the DOL information in McKinney than the majority recognizes. The dissent also contrasts the disclosure of registry information with GPS tracking addressed in State v. Jackson, 150 Wn.2d 521 (2003) **Nov 03 LED:02**:

In this respect, this case is in sharp contrast to Jackson, where we held that citizens of this state have a right to be free from governmental placement of a global positioning system (GPS) device on the citizen's vehicle. We rejected the argument that the GPS device merely augmented the senses of police officers and disclosed information that the suspect already exposed to public view. We concluded that when a GPS device is attached to a person's vehicle, there is a massive intrusion into private affairs because it enables uninterrupted 24-hour-a-day surveillance of the driver-surveillance that cannot be sustained by following the suspect. Absolutely every trip taken by the individual would be monitored, yielding an enormous amount of information about associations, preferences (religious and political, for example), alignments, and personal ails and foibles. We held that a GPS device may not be affixed to someone's vehicle without a warrant.

Here, in contrast, the guest registry discloses nothing about a person's life, interests, associations, and preferences. Unlike Jackson, where the surveillance

itself disclosed the information we found protected under article I, section 7, here much of the “sensitive” information the majority mistakenly believes might be learned from a guest registry is in fact acquired through some other source.

LED EDITORIAL COMMENT: The majority opinion contains terms such as “random” and “suspicionless” when addressing the privacy issue before it. We believe, however, that the Supreme Court’s Jorden decision means that a search warrant is required under the circumstances of the case. Probable cause will support a warrant of course, but generally will not support a warrantless search unless there exists consent or exigent circumstances.

WASHINGTON STATE COURT OF APPEALS

WHERE OFFICER MAKING TRAFFIC STOP KNEW ABOUT A NO-CONTACT ORDER PROTECTING DRIVER, BUT KNEW NO IDENTIFYING INFORMATION OTHER THAN THE GENDER-AMBIGUOUS NAME OF THE PROHIBITED PERSON ON THAT ORDER, OFFICER COULD NOT LAWFULLY ASK EITHER THE PASSENGER OR THE DRIVER FOR THE PASSENGER’S ID OR IDENTIFYING INFORMATION

State v. Allen, ___ Wn. App. ___, 157 P.3d 893 (Div. II, 2007)

Facts and Proceedings below: (Excerpted from Court of Appeals decision)

On the night of June 9, 2005, [a police officer] stopped a car for failure to have a working license plate light. Peggy Allen drove the car and Allen rode as a passenger. [The officer] asked Peggy for her driver's license and vehicle registration, which she provided.

[The officer] could see Allen but did not recognize him. [The officer] returned to his patrol car and checked Peggy's information. He learned that “she was ... a [petitioner] in a protection order.” [The officer] also learned that the no-contact order applied to Allen. Although [the officer] assumed the order named a male, he later admitted that he did not know the gender, or description of the party restrained.

When he returned to the car, [the officer] asked Allen for identification. At the pretrial suppression hearing, [the officer] indicated, and the State argued, that he asked Allen for identification because he was investigating a potential violation of the no-contact order, the reasonable suspicion being that the passenger was a male and that the respondent to the no-contact order was presumably a male. *[Court’s footnote: During the suppression hearing, [the officer] testified that he assumed the respondent to the no-contact order was male because of the name Ryan, but he admitted on cross-examination that the name Ryan could also be a female name.]*

Allen replied that he did not have identification, and [the officer] then asked Allen's name. Both Peggy and Allen said that Allen's name was Ben Haney. [The officer] also obtained a birth date and the last four digits of a social security number from Allen.

With this information, [the officer] returned to his patrol car and checked the name Ben Haney and the date of birth in the Oregon and Washington Computer

Aided Dispatch (CAD) databases. The computer disclosed no record for that name and date of birth.

While waiting for a return on the information, [the officer] saw the passenger reach under the passenger seat. At this point, [the officer] returned to the vehicle driver's side and asked Peggy to leave the car, which she did. The two walked to the rear of the vehicle.

[The officer] told Peggy that he knew she had given a false name for the passenger and asked why. She said that there was a valid no-contact order against the passenger in the car. [The officer] asked Peggy for the passenger's name, and she stated that [the officer] already knew the name. When [the officer] asked again, she named Allen.

After confirming the validity of the no-contact order, another officer placed Allen under arrest and put him into a patrol car. A search of the car incident to arrest revealed a bag of methamphetamine under the front passenger seat.

The State charged Allen with one count of unlawful possession of a controlled substance, a felony, and one count of violation of a no-contact order, a gross misdemeanor. On November 18, the trial court held a pretrial CrR 3.6 hearing to determine what evidence, if any, should be suppressed. The trial court granted Allen's motion to suppress in part, ruling that (1) [the officer] lacked reasonable suspicion to investigate whether Allen was the restrained party in a no-contact order; (2) consequently, [the officer]'s request for identification from Allen constituted an unlawful seizure under article I, section 7 of the Washington State Constitution; (3) [the officer]'s later questioning of Peggy and her identification became an independent source of Allen's identification; (4) Allen did not have standing to assert Peggy's constitutional rights or violation thereof; and (5) excepting all evidence obtained directly or derivatively from Allen's unlawful seizure, [the officer] had probable cause to arrest Allen for violation of a no-contact order.

During the trial court's oral ruling on the matter, it noted that it found [the officer]'s questioning of Peggy did not exploit the false name [the officer] obtained from Allen. Rather, the trial court reasoned that [the officer] was going to return to Peggy to issue a citation or release her, therefore, the inquiry formed an independent source of the identity evidence.

Allen waived his right to a jury trial. He stipulated to the facts of the case, and the trial court found him guilty as charged.

[Some footnotes omitted]

ISSUE AND RULING: The State conceded in this case that, because there existed no reasonable suspicion that the passenger in the car stopped for a traffic violation had committed a violation of law, the law enforcement officer violated the constitutional ruling of State v. Rankin, 151 Wn.2d 689 (2004) **Aug 04 LED:07** in asking the passenger for identifying information. Where the officer lacked reasonable suspicion that the passenger was the prohibited person on a no-contact order protecting the driver, did the officer lawfully ask the driver for identifying information regarding the passenger in the officer's attempt to determine if the passenger was that prohibited person? If so, did the information obtained provide the officer with an "independent source" justifying the arrest of the passenger? (**ANSWER:** A 2-1 majority

rules that the officer's question to the driver unlawfully expanded the scope of the traffic stop without reasonable suspicion of criminal activity, and this unlawfulness requires invalidation of the arrest of the defendant.)

Result: Reversal of Lewis County Superior Court conviction of Ryan Weston Allen for the unlawful possession of a controlled substance and violation of a no-contact order.

ANALYSIS BY MAJORITY:

As noted in the ISSUE statement above, the prosecutor conceded on appeal that the initial questioning of passenger Allen violated the rule of the Washington Supreme Court's Rankin decision. In Rankin, the Supreme Court held, based on an independent grounds interpretation of article 1, section 7 of the Washington constitution that a request for identification or identifying information, during a traffic stop, from a non-violator passenger is unlawful except where justified by special circumstances, such as where the officer has reasonable suspicion of criminal activity involving the passenger. See **August 2004 LED:07**.

The prosecutor in the Allen case argued a two-step logic to support the arrest of the passenger. First, it was lawful to question the driver about the passenger. Second, the "lawful" discovery of Allen's identity during that questioning provided what is known in Exclusionary Rule vocabulary as an "independent source" separately justifying an otherwise unlawful seizure or search. The Allen majority rejects the prosecutor's argument, however, concluding as follows that the questioning of the driver about the passenger was unlawful:

[The officer] did not have a lawful basis for a reasonable suspicion that the passenger was Allen when he asked Peggy to come to the rear of the vehicle. At this point, [the officer] had a reasonable suspicion because the false name Ben Haney did not register on the CAD databases. But this evidence was derived from Allen's unlawful seizure and inquiry and, therefore, it must be excised from the review of [the officer]'s reasonable suspicion. Without knowledge that the passenger provided a false name, [the officer] did not possess reasonable articulable facts to believe that the no-contact order referred to the passenger. For these reasons, the identifying information [the officer] obtained from Peggy does not qualify as a lawful independent source of evidence that gave rise to the probable cause needed to arrest Allen.

In a footnote, the Allen majority explains further its view that Rankin precludes asking the driver about the passenger(s) in circumstances where identity inquiries to passengers would be lawful under Rankin:

Although the dissent correctly notes that our Supreme Court has not yet addressed the legality of a police officer questioning a driver about a passenger after a traffic stop, the Rankin holding provides guidance. In Rankin, "a police officer asked a passenger for identification for the sole purpose of conducting a criminal investigation, notwithstanding the fact that the officer lacked any articulable suspicion of criminal activity." The notion that an officer could question a driver in a traffic stop about a passenger for the sole purpose of conducting a criminal investigation with no articulable suspicion of criminal activity runs contrary to the Rankin holding that protects a passenger's private affairs under article I, section 7. Without this protection, police could have a backdoor route into conducting a criminal investigation that Rankin prohibits.

DISSENT:

Judge Hunt's dissenting opinion primarily focuses on the Exclusionary Rule doctrinal question that she summarizes as follows (the details of her analysis of this arcane question will not be addressed in the LED):

For purposes of the independent source exception to the exclusionary rule, must the independent information be obtained from a lawful source in a universal sense or must it be obtained only in a manner that is not unlawful with respect to the defendant against whom the independent information or evidence is used? In my view, the law supports the latter result.

LED EDITORIAL COMMENT: We think that, if the officer in Allen had first obtained a description of Allen through another source before asking him and the driver for his ID of identification information, and if that description had met the reasonable suspicion standard for a match to the vehicle passenger, then the Court of Appeals would have held that the identity inquiry was lawful.

NEXT MONTH

Last month we stated that, if space permitted (in light of the need to complete our Legislative Update in the July LED), we would digest four recent appellate court decisions in the July 2007 LED. We had room for only two of those cases in this month's LED. So we plan to include the other two entries in future LEDs. Those cases are as follows:

(1) On April 26, 2007, the Washington Supreme Court ruled unanimously in State v. Miles, ___ Wn.2d ___, 156 P.3d 864 (2007) that a person's banking records are generally protected against non-consenting, non-exigent, warrantless searches by law enforcement. The Court ruled that, even though the Securities Act of Washington, chapter 21.20 RCW, authorizes the Director of the State Division of Financial Institutions to issue subpoenas to banks in the investigation of possible violations of chapter 21.20 RCW, such subpoena power violates the constitutional protections of article 1, section 7 of the Washington constitution, which generally requires a search warrant, rather than a subpoena, for government agencies to obtain bank records. The State has requested reconsideration in Miles and we will wait until that motion is resolved to report on Miles.

(2) On May 10, 2007, the Washington Supreme Court ruled, 6-3, in State v. Athan, ___ Wn.2d ___, 158 P.3d 27 (2007) that when detectives, fictitiously posing as a law firm, induced a murder suspect to send the fictitious firm an envelope, from which the suspect's DNA sample was extracted (from his saliva), the detectives did not violate article 1, section 7 of the Washington constitution or engage in such outrageous behavior that the evidence should be suppressed or the case dismissed. Justices Fairhurst, Chambers and Sanders dissented.

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

The Washington Office of the Administrator for the Courts maintains a website with appellate court information, including recent court opinions by the Court of Appeals and State Supreme Court. The address is [<http://www.courts.wa.gov/>]. Decisions issued in the preceding 90 days may be accessed by entering search terms, and decisions issued in the preceding 14 days may be more simply accessed through a separate link clearly designated. A website at [<http://legalwa.org/>] includes all Washington Court of Appeals opinions, as well as Washington State Supreme Court opinions 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/court-rules>].

Many United States Supreme Court opinions can be accessed at [<http://supct.law.cornell.edu/supct/index.html>]. This website contains all U.S. Supreme Court opinions issued since 1990 and many significant opinions of the Court issued before 1990. Another website for U.S. Supreme Court opinions is the Court's website at [<http://www.supremecourtus.gov/opinions/opinions.html>]. Decisions of the Ninth Circuit of the U.S. Court of Appeals since January 2000 can be accessed (by date of decision only) by going to the Ninth Circuit home page at [<http://www.ca9.uscourts.gov/>] and clicking on "Opinions." Opinions from other U.S. circuit courts can be accessed by substituting the circuit number for "9" in this address. Federal statutes can be accessed at [<http://www.law.cornell.edu/uscode/>].

Access to relatively current Washington state agency administrative rules (including DOL rules in Title 308 WAC, WSP equipment rules at Title 204 WAC, and State Toxicologist rules at WAC 448-15), as well as all RCW's current through January 2006, is at [<http://www1.leg.wa.gov/legislature>]. Information about bills filed since 1997 in the Washington Legislature is at the same address. "Washington State Legislature," "bill info," "house bill information/senate bill information," and use bill numbers to access information. Access to the "Washington State Register" for the most recent proposed WAC amendments is at this address too. In addition, a wide range of state government information can be accessed at [<http://access.wa.gov>]. The address for the Criminal Justice Training Commission's home page is [<https://fortress.wa.gov/cjtc/www/led/ledpage.html>], while the address for the Attorney General's Office home page is [<http://insideago>].

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. **LEDs** from January 1992 forward are available via a link on the CJTC Internet Home Page [<https://fortress.wa.gov/cjtc/www/led/ledpage.html>]