September, 1993

HONOR ROLL

404th Session, Basic Law Enforcement Academy - May 3 through July 23, 1993

President:	*Officer Michael R. Griffin - Seattle Police Department*
Best Overall:	*Deputy Keith A. Peterson - Grays Harbor County*
Best Academic:	*Deputy Keith A. Peterson - Grays Harbor County*
Best Firearms:	*Officer Edwin Alba - Vancouver Police Department*
Best Mock Scenes:	*Team of Officer Bradford R. Borden - Fort Lewis Invest. Command*
	Officer Eric C. Norling - Fircrest Police Department

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Corrections Officer Academy - Class 185 - July 12 through August 6, 1993

Highest Overall:	*Officer James R. Palmer - Airway Heights Corrections Center*
Highest Academic:	*Officer Richard A. Gies - Washington State Penitentiary*
Highest Practical Test:	*Officer Dianne M. Lopez - Airway Heights Corrections Center*
Highest in Mock Scenes:	*Officer Stanley Edward Drumm, Jr. - Washington State Penitentiary*
Highest Defensive Tactics:	*Officer Robert J. Byrnes - Pine Lodge Correctional Center*

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1993 WASHINGTON LEGISLATIVE ENACTMENTS - PART III

LED EDITOR'S INTRODUCTORY NOTE: This is the third of what will be a four-part update digesting 1993 state legislative enactments of interest to Washington law enforcement officers and their agencies. Part I in June consisted only of a partial listing of the enactments to be covered. Part II last month consisted of the enactments which we believed to be of the greatest significance from an enforcement and investigation

perspective. Part III this month will contain most of the remaining enactments. Part IV in the October LED will contain the remaining enactments of interest, along with an index and follow-up comments on legislation previously digested in Parts II and III.

Law enforcement officers should also be aware that Elaine Hagseth, licensing services manager for driver responsibility with the Department of Licensing, sent an eleven-page "Legislative Update" on licensing-related laws to all law and justice agencies on July 21, 1993. We assume that her memo was posted or otherwise communicated to the officers in those agencies. Some of the information in her memo will not be duplicated in the LED.

NOTIFICATION TO LAW ENFORCEMENT AGENCIES OF DOC PRISONER RELEASE

CHAPTER 24 (HB 1130)

Effective Date: July 25, 1993

Amends RCW 43.43.745 to provide that it is the WSP, not DOC, that notifies affected local law enforcement agencies of DOC releases of prisoners on furlough or parole.

DESTRUCTION, USE OF SEIZED LIQUOR BY LOCAL LAW ENFORCEMENT AGENCIES

CHAPTER 26 (HB 1217)

Effective Date: July 25, 1993

Amends RCW 66.32.040 and 66.32.090 to allow local law enforcement agencies to dispose of forfeited liquor in certain circumstances, rather than delivering it to the Liquor Control Board. Also adds a section to Chapter 66.08 to allow the Board to provide free liquor (including forfeited liquor) to law enforcement agencies "for bona fide law enforcement training or investigation purposes."

RELEASE NOTICE TO VICTIMS OF JUVENILE OFFENDERS

CHAPTER 27 (HB 1238)

Effective Date: July 25, 1993

Amends RCW 13.40.215, which since 1990 has required notice by DSHS of the release of certain categories of juvenile offenders to local law enforcement, as well as to victims or witnesses who have requested such notice. "Stalking" is added to "violent offenses" and "sex offenses" as a crime for which such notice of release, furlough, etc. is required.

CORPORAL PUNISHMENT PROHIBITED IN PUBLIC K-12 SCHOOLS

CHAPTER 68 (HB 1064)

Effective Date: Unclear, apparently September 1, 1994

Adds a new section to chapter 28A.150 RCW reading as follows:

> The use of corporal punishment in the common schools is prohibited. The state

> board of education, in consultation with the superintendent of public instruction, shall develop and adopt a policy prohibiting the use of corporal punishment in the common schools. The policy shall be adopted by the state board of education no later than February 1, 1994, and shall take effect in all school districts September 1, 1994.

As noted above, we are unclear as to the effective date of this legislation, but we think that the Legislature is deferring to the State Board of Education to put local policies in place before the Act becomes effective. Law enforcement agencies will no doubt be asked to make assault arrests in K-12 corporal punishment situations in the interim. We believe that prior to September 1, 1994, not all corporal punishment situations will constitute assaults, but that almost all corporal punishment in K-12 public schools on or after that date will be criminal assaults. Private schools are not covered by the legislation.

INTERSTATE COMPACT COVERS WILDLIFE LAW VIOLATORS

CHAPTER 82 (HB 1484)

Effective Date: July 25, 1993

Adds a new chapter to Title 77 RCW under which Washington State participates in an interstate compact. The compact allows Washington wildlife officers to cite out-of-state wildlife violators from states which have also adopted the compact as if the out-of-state violators were from Washington state. The compact also allows Washington and respective member states to mutually recognize citations issued in the respective states for enforcement and wildlife license revocation purposes.

UNIFORM CRIMINAL PENALTIES FOR CITY, COUNTY ORDINANCE VIOLATIONS

CHAPTER 83 (HB 1544)

Effective Date July 1, 1994

Amends various existing sections and adds new sections to Titles 35 and 36 RCW to require that for a city and county criminal ordinances addressing conduct also covered by state criminal statutes, the local ordinances may not have penalties different from the penalties prescribed for the crimes by state statutes.

OVERWEIGHT PERMITS FOR TRUCKS

CHAPTER 102 (SB 5426)

Effective Date: July 25, 1993

Amends provisions of Title 46 relating to overweight permits for trucks.

MAXIMUM GROSS WEIGHT TIRE FACTORS FOR TRUCKS

CHAPTER 103 (SB 5427)

Effective Date: July 25, 1993

Amends RCW 46.44.042 to modify maximum gross weight tire factors for trucks.

TIME LIMITS ON USE OF PARKING SPACES SET ASIDE FOR DISABLED PERSONS

CHAPTER 106 (SB 5148)

Effective Date: July 25, 1993

Increases basic penalty to $50 for infraction of parking in disabled parking slot without the proper plate or placard. Also adds language to RCW 46.16.381, the handicap parking law, to provide that local jurisdictions "providing on-street parking places reserved for physically disabled persons may impose by ordinance time restrictions on the use of these parking places."

REST AREA RULES BY DOT AND WSP

CHAPTER 116 (SB 5229)

Effective Date: July 25, 1993

Amends RCW 47.38.010 and .030 to give WSP joint authority with the Department of Transportation in the adopting of special rules governing activities in rest areas; violations of these rules are misdemeanors.

TOW TRUCK LAW MODIFICATION

CHAPTER 121 (SB 5442)

Effective Date: July 25, 1993

Makes minor modifications in tow truck statutes at RCW 46.55.085, 46.55.115, 46.55.120, and 81.80.040; repeals RCW 46.90.103.

BATTERED MURDERERS (PRE-JULY '89) TO GET REVIEW OF SENTENCES

CHAPTER 144 (SHB 1343)

Effective Date: April 30, 1993

Amends various sentencing law provisions to allow person convicted of murder prior to July 23, 1989 to petition the Parole Board for a reduced sentence based on the allegation that the murder was in response to a continuing pattern of physical or sexual abuse against the murderer by the murder victim.

DRIVING WITH AN OUT-OF-STATE LEARNER'S PERMIT

CHAPTER 148 (ESB 5694)

Effective Date: July 25, 1993

Amends RCW 46.20.025 to exempt from the driver's license requirement an out-of-state driver who is at least 15 years of age, who has a valid learner's permit from that state, and who is accompanied by a licensed driver with at least five years of driving experience.

MOTOR VEHICLE BUYERS' AGENTS

CHAPTER 175 (HB 1893)

Effective Date: July 25, 1993

Amends RCW 46.70.011 by adding a term and definition as follows:

> "Buyer's agent" means any person, firm, partnership, association, or corporation retained or employed by a consumer to arrange for or to negotiate, or both, the purchase of a new motor vehicle on behalf of the consumer, and who is paid a fee or receives other compensation from the consumer for the services.

Amends RCW 46.70.180, making the following activities unlawful:

> For a vehicle dealer to pay to or receive from any person, firm, partnership, association, or corporation acting, either directly or through a subsidiary, as a buyer's agent for consumers, any compensation, fee, gratuity, or reward in connection with the purchase or sale of a new motor vehicle;
>
> For a buyer's agent acting directly or through a subsidiary to pay to or to receive from any motor vehicle dealer any compensation, fee, gratuity, or reward in connection with the purchase or sale of a new motor vehicle;
>
> For a buyer's agent to arrange for or to negotiate the purchase, or both, of a new motor vehicle through an out-of-state dealer without disclosing in writing to the customer that the new vehicle would not be subject to chapter 19.118 RCW. **[CHAPTER 19.118 covers motor vehicle warranties -- LED Ed.]**

Adds a new section to chapter 46.70 RCW declaring that the activities proscribed in RCW 46.70.180 (11)(12) and (13) are unfair or deceptive practices for purposes of civil actions under the Consumer Protection Act (Chapter 19.86 RCW).

PROTECTING ACCELERANT DETECTION DOGS

CHAPTER 180 (HB 1864)

Effective Date: July 25, 1993

Section 1 amends RCW 4.24.410 to define "accelerant detection dog" as "a dog used exclusively for accelerant detection by the state fire marshal or a fire department and under the control of the state fire marshal or his or her designee or a fire department handler." Section 1 also extends to handlers of accelerant detection dogs the civil immunity protection already provided for police dog handlers under RCW 4.24.410. Section 2 amends RCW 9A.76.200 to make it a crime to harm an

"accelerant detection dog", paralleling the existing crime under this section of harming a "police dog."

UNIFORM CONTROLLED SUBSTANCES ACT CLEANUP

CHAPTER 187 (SB 5520)

Effective Date: July 25, 1993

Sections 1 through 14 overhaul the provisions of chapter 69.50 RCW, establishing definitions and addressing the placement of categories of controlled substances in different schedules. Sections 15 through 18 relate to registration requirements, while sections 19 through 20 deal with the dispensing of controlled substances and drug-diversion prevention and control.

Section 21 makes clear that it is a violation of RCW 69.50.403 to "possess a false or a fraudulent prescription with intent to obtain a controlled substance." Section 22 adds a new counterfeit substances prohibition section to chapter 69.50 RCW, reading:

> COUNTERFEIT SUBSTANCES PROHIBITED--PENALTY. (a) It is unlawful for any person knowingly or intentionally to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser, other than the person who in fact manufactured, distributed, or dispensed the substance.
>
> (b) It is unlawful for any person knowingly or intentionally to make, distribute, or possess a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof.
>
> (c) A person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than two years, fined not more than two thousand dollars, or both.

EFFECT OF CITY ANNEXATION OR INCORPORATION ON SHERIFF'S OFFICE EMPLOYEE

CHAPTER 189 (HB 1156)

Effective Date: July 25, 1993

Adds five new sections to chapter 35.13 RCW and amends RCW 41.12.050 to require lateral transfer into a city police department in a probationary position of "any qualified sheriff's employee who, by reason of annexation or incorporation of an unincorporated area of a county, will or is likely to be laid off due to sheriff's department cutbacks resulting from the loss of the unincorporated law enforcement responsibility."

BUNGEE JUMPING REGULATION

CHAPTER 203 (SB 5145)

Effective Date: July 25, 1993

Amends "amusement ride" regulatory statutes in chapter 67.42 to provide that bungee jumping devices are "amusement rides" subject to regulation by the Washington Department of Labor and Industries.

REGISTRATION OF "AIRCRAFT DEALERS", "AIRMEN" AND "AIRWOMEN"

CHAPTER 208 (SSB 5337)

Effective Date: July 25, 1993

Amends RCW 14.20.020 making it a misdemeanor to act as an "aircraft dealer" without first obtaining a license from the Washington Department of Transportation (DOT); repeat violations within a five year period are gross misdemeanors. A new section added to chapter 47.68 RCW, when read together with other provisions in chapter 47.68 RCW, makes it a misdemeanor for a person to act as an "airman" or "airwomen", (as defined under the law) without first obtaining a license from DOT.

LIMITATIONS ON SEX CRIMES PROSECUTIONS

CHAPTER 214 (SB 5541)

Effective Date: July 25, 1993

Amends RCW 9A.04.080, the statute of limitations section of Title 9A, to provide that the limitation period for prosecuting the crimes of rape 1 (RCW 9A.44.040) and rape 2 (RCW 9A.44.050) is ten years where the rape is committed against a victim who is fourteen years of age or older and who reports the rape to the police within one year. The limitations period for rape 1 and rape 2 under this amendment varies in other circumstances, depending on whether the rape was reported within one year and depending on the age of the victim.

The amended statutory provision at RCW 9A.04.080 now reads in part:

> . . . The following offenses shall not be prosecuted more than ten years after their commission: . . . Violations of RCW 9A.44.040 or 9A.44.050 if the rape is reported to a law enforcement agency within one year of its commission; except that if the victim is under fourteen years of age when the rape is committed and the rape is reported to a law enforcement agency within one year of its commission, the violation may be prosecuted up to three years after the victim's eighteenth birthday or up to ten years after the rape's commission, whichever is later. If a violation of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape may not be prosecuted: (A) More than three years after its commission if the violation was committed against a victim fourteen years of age or older; or (B) more than three years after the victim's eighteenth birthday or more than seven years after the rape's commission, whichever is later, if the violation was committed against a victim under fourteen years of age.

This amendment extends the statute of limitations for all future rape 1 and rape 2 offenses as well as for rape 1 and rape 2 offenses which were previously committed but were not yet time-barred by the existing statute as of July 25, 1993. See State v. Hodgson, 108 Wn.2d 662 (1987).

ACCESS TO CHILD ABUSE REPORTS

CHAPTER 237 (HB 1115)

Effective Date: July 25, 1993

Amends RCW 26.44.030, which, among other things, mandates that health providers, school personnel and other categories of persons report suspect child abuse and neglect to DSHS or to the appropriate law enforcement agency; an amendment to subsection (11) of section .030 clarifies that an investigating law enforcement agency (along with DSHS) has a right of access to "all relevant records of the child in the possession of the mandated reporters and their employees."

EVASION OF LICENSE FEES FOR AIR, LAND, SEA TRANSPORT MODES

Chapter 238 (ESHB 1127)

Effective Date: July 25, 1993

Modifies RCW 46.16.010 which prohibits the licensing of motor vehicles by Washington residents in other states, among other things, by eliminating the "intent to evade" element of this gross misdemeanor crime. Also establishes criminal sanctions similar to those of RCW 46.16.010 for Washington residents who fail to obtain Washington licenses for vessels (chapter 88.02 RCW), aircraft (chapter 47.68 RCW), and travel trailers and campers (chapter 82.50 RCW).

FEES FOR BAC, BLOOD TESTS

CHAPTER 239 (HB 1128)

Effective Date: July 1, 1993

Amends RCW 46.61.515 to require that adults who (a) are convicted, sentenced to a lesser charge, or given deferred prosecution as a result of an arrest for violating RCW 46.61.502, 46.61.504, 46.61.520, 46.61.522 (and juveniles adjudicated in similar circumstances), and (b) are not indigent, may be assessed a $125.00 fee to help with funding the Washington state toxicology laboratory and the WSP breath test program.

NATIONAL GUARD ASSISTANCE IN COUNTER-DRUG ACTIVITIES

CHAPTER 263 (SB 5875)

Effective Date: July 25, 1993

Amendments to chapter 38.08 RCW allow the Washington National Guard to enter into mutual assistance compacts with other states to combat illegal drug activities, and also makes it easier for the Washington National Guard to assist Washington's own state and local law enforcement

agencies in this regard.

CITY AND COUNTY JAIL INDUSTRIES

CHAPTER 285 (EHB 1033)

Effective Date: July 25, 1993

Creates a statewide board to oversee the development of jail industries programs in city and county jails.

FORFEITING PROPERTY RELATED IN CERTAIN WAYS TO THE COMMISSION OF A FELONY

CHAPTER 288 (SHB 1069)

Effective Date: July 25, 1993

Adds a new chapter to Title 10 RCW allowing forfeiture, at the discretion of a law enforcement agency and after conviction, of personal property under the following specified circumstances:

> All personal property, including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, security, or negotiable instrument, which has been or was actually employed as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony, or which was furnished or was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, any felony, or which was acquired in whole or in part with proceeds traceable to the commission of a felony. No property may be forfeited under this section until after there has been a superior court conviction of the owner of the property for the felony in connection with which the property was employed, furnished or acquired.

Forfeiture procedures are identical to those at RCW 69.50.505 for personal property forfeiture for drug activity.

Also adds new "Son of Sam" sections to the Crime Victim's Compensation Act, chapter 7.68 RCW, to allow prosecutors to pursue forfeiture of the following:

> (1) All tangible or intangible property, including any right or interest in such property, acquired by a person convicted of a crime for which there is a victim of the crime and to the extent the acquisition is the direct or indirect result of the convicted person having committed the crime. Such property includes but is not limited to the convicted person's remuneration for, or contract interest in, any reenactment or depiction or account of the crime in a movie, book, magazine, newspaper or other publication, audio recording, radio or television presentation, live entertainment of any kind, or any expression of the convicted person's thoughts, feeling, opinions, or emotions regarding the crime.
>
> (2) Any property acquired through the traceable proceeds of property described in

subsection (1) of this section.

Proceeds of the forfeiture action go, in order, to: (1) the victim, (2) the prosecutor's costs, (3) the State Crime Victim's Compensation Fund.

JAIL EMPLOYEES -- MANDATORY ARBITRATON FOR SOME

CHAPTER 397 (EHB 1067)

Effective Date: July 25, 1993

Amends the definitions of "uniformed personnel" at RCW 41.56.030(7) to make mandatory arbitration applicable to the personnel of the jails of some counties. The added coverage of the statute extends to:

> correctional employees who are uniformed and non-uniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(5), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates.

MANDATORY ARBITRATION FOR SOME FIREFIGHTERS, PORT POLICE, OTHERS

CHAPTER 398 (EHB 1081)

Effective Date: Various

Amends RCW 41.56.030(7)(a) such that effective July 25, 1993 the following public employees will be "uniformed personnel" to whom mandatory arbitration applies:

> (iii) security forces established under RCW 43.52.520; (iv) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other fire fighting duties; (v) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (vi) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.

Also amends RCW 41.56.030(7) such that effective July 25, 1995 the following public employees will be "uniformed personnel" to whom mandatory arbitration applies:

> (b) Beginning on July 1, 1995, "uniformed personnel" means: (1) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of seven thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of thirty-five thousand or more; (ii) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (iii) security forces established under RCW 43.52.520; (iv) fire fighters as that term is defined in RCW 41.26.030; (v) employees of a port district in a county with a population of one million or more

whose duties include crash fire rescue or other fire fighting duties; (vi) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (vii) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.

MODEL TRAFFIC ORDINANCE IN DOL WAC REGULATIONS

CHAPTER 400 (SHB 1103)

Effective Date: Various

Amends several sections of chapter 46.90 RCW to, among other things, direct the Department of Licensing, in consultation with the Chief of WSP and with the Traffic Safety Commission, to adopt by WAC regulation a model traffic ordinance for use by local jurisdictions. The WAC regulation thereafter can be amended as necessary by DOL, through the same consultation process; this will eliminate the need for the Legislature to revisit the model traffic ordinance every year.

TRANSIT VEHICLES HAVE RIGHT-OF-WAY TO RE-ENTER TRAFFIC FLOW

CHAPTER 401 (EHB 1107)

Effective Date: July 25, 1993

Adds a new section to chapter 46.61, reading as follows:

(1) The driver of a vehicle shall yield the right of way to a transit vehicle traveling in the same direction that has signalled and is reentering the traffic flow.

(2) Nothing in this section shall operate to relieve the driver of a transit vehicle from the duty to drive with due regard for the safety of all persons using the roadway.

Also amends RCW 46.37.190 to allow emergency lights on DOT, city and county maintenance vehicles; also allows "optical strobe light devices" on "public transit vehicles," which devices will allow the transit vehicles to accelerate the cycle at traffic lights.

COMMERCIAL VEHICLE INSPECTION

CHAPTER 403 (SHB 1129)

Effective Date: July 25, 1993

Adds a new section to chapter 46.32 RCW defining "commercial motor vehicle" (expressly exempting recreational vehicles used for noncommercial purposes). Also makes what appear to be minor cleanup changes to various provisions of Chapters 46.32 and 46.44 RCW relating to commercial motor vehicle inspections by WSP.

NO STATE MONIES FOR EXTRADITION

CHAPTER 442 (SB 5975)

Effective Date: July 1, 1993

Amends RCW 10.34.030 to delete the requirement that the State pay the costs of extradition of persons from other states or territories. Local jurisdictions will now bear these costs.

ID REQUIREMENTS FOR DOL DRIVERS' LICENSES AND IDENTICARDS

CHAPTER 452 (HB 1444)

Effective Date: July 25, 1993

Adds a new section to chapter 46.20 RCW establishing the types of documentation which will be sufficient to obtain a Department of Licensing identicard or Washington state driver's license. Other provisions of chapter 452 amend various RCW sections to recognize that the documentation requirements are now established by statute rather than, as previously, by DOL rule.

REGULATION OF "GOING OUT OF BUSINESS" SALES

CHAPTER 456 (SHB 1631)

Effective Date: July 25, 1993

Adds a new chapter to Title 19 RCW establishing notice, inventory and other requirements, as well as a variety of restrictions, for the holding of "going out of business" sales. Section 13 provides for criminal sanctions as follows:

> A person who knowingly violates this chapter or who knowingly gives false or incorrect information in a notice required by this chapter is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

Section 14 authorizes either the Washington Attorney General or a local prosecutor to institute civil or criminal proceedings for this offense. Section 15 declares full state preemption of the legal area as follows:

> The state of Washington fully occupies and preempts the entire field of regulating going out of business sales.

MENTALLY RETARDED MAY NOT BE EXECUTED

CHAPTER 479 (SSB 5625)

Effective Date: July 25, 1993

Amends chapter 10.95 RCW to provide that "a person found to be mentally retarded [at the time of commission of the crime] ...may in no case be sentenced to death."

DWI VEHICLE FORFEITURE

CHAPTER 487 (ESSB 5815)

Effective Date: July 25, 1993

LED EDITOR'S NOTE:

We need another month to study this legislation and to learn the collective wisdom on it. Patrick Sainsbury, Chief Deputy Prosecuting Attorney, King County, has written to the Washington Association of Prosecuting Attorneys a multiple-page, incisive critique of the DWI-forfeiture provisions of this legislation. Readers wishing to obtain a copy may contact Mr. Sainsbury at 900 4th Ave., Suite 1002, Seattle, WA 98164, (206) 296-9010. We will digest this enactment next month. . .

HONOR BARS IN MOTELS

CHAPTER 511 (SB 5689)

Effective Date: July 25, 1993

Adds a new section to chapter 66.24 RCW of liquor laws allowing "honor bars" in motel rooms. Guests renting such rooms must execute an affidavit declaring that "no one under 21 years of age shall have access to the spirits, beer and wine in the honor bar."

"HAZING" AS A MISDEMEANOR

CHAPTER 514 (SSB 5075)

Effective Date: July 25, 1993

Section 1 defines "hazing" under a new section in chapter 28B.10 RCW as follows:

> "Hazing" includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary educational institution in this state. "Hazing" does not include customary athletic events or other similar contests or competitions.

Section 2 adds a new section to chapter 28B.10 RCW creating the crime of "hazing", as follows:

> (1) No student, or other person in attendance at any public or private institution of higher education, or any other postsecondary educational institution, may conspire to engage in hazing or participate in hazing of another.
>
> (2) A violation of this section is a misdemeanor, punishable as provided under RCW 9A.20.021.
>
> (3) Any organization, association, or student living group that knowingly permits

hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

Section 3 adds a new section to chapter 28B.10 RCW, providing:

(1) A person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the institution of higher education.

(2) Any organization, association, or student living group that knowingly permits hazing to be conducted by its member or by others subject to its directions to control shall be deprived of any official recognition or approval granted by a public institution of higher education.

(3) The public institutions of higher education shall adopt rules to implement this section.

Section 4 adds a new section to chapter 28B.10 RCW, providing:

Institutions of higher education shall adopt rules providing sanctions for conduct associated with initiation into a student organization or living group, or any pastime or amusement engaged in with respect to an organization or living group not amount to a violation of section 1 of this act. Conduct covered by this section may include embarrassment, ridicule, sleep deprivation, verbal abuse, or personal humiliation.

STATE FUNDING FOR LOCAL CRIMINAL JUSTICE AGENCIES

CHAPTER 21, 1ST EX. SESSION (ESB 5521)

Effective Date: Various

Provides substantial appropriations from the state treasury (funded by the state motor vehicle excise tax) to cities and counties. The funds are to be distributed under formulas based in significant part on population and crime rate, and the money is to be spent by the local government agencies exclusively for "criminal justice purposes," as defined in the act, and with no supplanting of existing funding.

This Act also authorizes each of the 39 counties to impose a .1% supplemental sales and use tax to accrue additional funds also to be expended exclusively for criminal justice purposes, and again with no supplanting of existing funding. The formula for distribution of these funds among the respective governmental entities of a county imposing the tax is based on population in the incorporated and unincorporated areas of the county.

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SUNSET FOR LAW ON CONFISCATION, LICENSE-MARKING ON SUSPENDED DRIVERS

On June 24, 1993, Elaine Hagseth, who was then administrator for DOL's "Law and Justice Liaison Program, Driver Services," and who is now "licensing services manager for driver responsibility" sent the following information to the Washington Association of Sheriffs and Police Chiefs:

> In 1987, the legislature passed a law (RCW 46.16.710-760) on confiscating vehicle registrations and placing decals on license plates when law enforcement issues citations for Driving While Suspended or Revoked. The legislature also provided that this law would only be in effect until July 1, 1993.
>
> Effective immediately, please stop issuing decals and confiscating the the vehicle registrations. Your remaining supplies of temporary registration cerrtificates and decals should be destroyed.
>
> DOL will take no action on reports received of confiscation from this date forward. If law enforcement stops someone who has a decal on their license plate, please instruct the individual to contact **DRIVER SERVICES, DEPARTMENT OF LICENSING HEADQUARTERS, AT (206) 586-2638.** Driver Services staff will provide instrucitons on how to obtain replacement tabs and/or plates.

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BRIEF NOTE FROM THE UNITED STATES SUPREME COURT

"PLAIN FEEL" DURING TERRY FRISK MAY JUSTIFY SEIZURE OF CONTRABAND BUT TEST WILL BE DIFFICULT TO MEET -- In Minnesota v. Dickerson, 53 CrL 2186 (1993) the U.S. Supreme Court rules that under appropriate circumstances an officer conducting a lawful frisk for weapons during a Terry stop may seize an item of contraband based on his sense of touch, but only if the officer immediately recognizes the character of the item while acting within the limited scope of his or her frisk authority. In response to the defendant's argument that the sense of touch is too unreliable to allow "plain feel" seizures, the Court explains:

> Even if it were true that the sense of touch is generally less reliable than the sense of sight, that only suggests that officers will less often be able to justify seizures of unseen contraband. Regardless of whether the officer detects the contraband by sight or by touch, however, the Fourth Amendment's requirement that the officer have probable cause to believe that the item is contraband before seizing it ensures against excessively speculative seizures.

[Footnote omitted]

The Court then goes on to apply its "plain feel" standard to the facts of this case, deciding that under the facts of Mr. Dickerson's case, the officer's seizure of the drugs did not meet the Court's "plain feel" test because the officer's tactile sense did not immediately tell him the identity of the substance. The Court's analysis is as follows:

> The Minnesota Supreme Court, after "a close examination of the record," held that the officer's own testimony "belies any notion that he 'immediately'" recognized the

lump as crack cocaine. Rather, the court concluded, the officer determined that the lump was contraband only after "squeezing, sliding and otherwise manipulating the contents of the defendant's pocket" -- a pocket which the officer already knew contained no weapon.

Under the State Supreme Court's interpretation of the record before it, it is clear that the court was correct in holding that the police officer in this case overstepped the bounds of the "strictly circumscribed" search for weapons allowed under Terry. Where, as here, "an officer who is executing a valid search for one item seizes a different item," this Court rightly "has been sensitive to the danger . . . that officers will enlarge a specific authorization, furnished by a warrant or an exigency, into the equivalent of a general warrant to rummage and seize at will." Here, the officer's continued exploration of respondent's pocket after having concluded that it contained no weapon was unrelated to "[t]he sole justification of the search [under Terry:] . . . the protection of the police officer and others nearby." It therefore amounted to the sort of evidentiary search that Terry expressly refused to authorize, and that we have condemned in subsequent cases.

Once again, the analogy to the plain-view doctrine is apt. In Arizona v. Hicks, 480 U.S. 321 (1987) **[May '87 LED:04]**, this Court held invalid the seizure of stolen stereo equipment found by police while executing a valid search warrant for other evidence. **[LED EDITOR'S NOTE: Actually, Hicks was a shots-fired, exigent circumstances case, not a search warrant case; nonetheless, the principle of the case is correctly noted here by the Supreme Court.]** Although the police were lawfully on the premises pursuant to the search warrant, they obtained probable cause to believe that the stereo equipment was contraband only after moving the equipment to permit officers to read its serial numbers. The subsequent seizure of the equipment could not be justified by the plain-view doctrine, this Court explained, because the incriminating character of the stereo equipment was not immediately apparent; rather, probable cause to believe that the equipment was stolen arose only as a result of a further search -- the moving of the equipment -- that was not authorized by the search warrant or by any exception to the warrant requirement. The facts of this case are very similar. Although the officer was lawfully in a position to feel the lump in respondent's pocket, because Terry entitled him to place his hands upon respondent's jacket, the court below determined that the incriminating character of the object was not immediately apparent to him. Rather, the officer determined that the item was contraband only after conducting a further search, one not authorized by Terry or by any other exception to the warrant requirement. Because this further search of respondent's pocket was constitutionally invalid, the seizure of the cocaine that followed is likewise unconstitutional.

[Citations omitted]

Result: Minnesota Supreme Court suppression ruling affirmed.

LED EDITOR'S COMMENT: The above analysis causes us to believe that there is a "Catch 22" here making it generally quite difficult for an officer to justify a "plain feel" seizure during a frisk. As soon as the officer discovers that the item is not a weapon, the officer

ceases to have authority to probe further to determine the item's character. Thus, ironically, the officer with non-expert fingers won't be able to convince the Court that he or she knew the item probed to be contraband before seizing it. And the more "expert" the officer claims his or her fingers to be, the more difficult it will be for the officer to explain why the probing did not stop as soon as the non-weapon character of the item was discovered on the initial pat, which usually will have occurred before its contraband character was determined.

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WASHINGTON STATE COURT OF APPEALS

PATTING OF POSSIBLE DRUGS DURING FRISK DID NOT JUSTIFY COKE SEIZURE

State v. Hudson, 69 Wn. App. 270 (Div. I, 1993)

Facts:

During the course of an undercover narcotics operation, police officers were confronted with a situation where they had justification (reasonable suspicion of criminal activity plus reasonable fear of danger posed by the suspect) to do a pat-down of a suspect. The facts relating to the pat-down search are briefly summarized by the Court of Appeals as follows:

> The officers then patted Hudson down for weapons . . . One officer had felt an unidentifiable hard object in Hudson's coat pocket. The officer reached in, felt an object he believed to be a pager, and a hard, irregular object in a plastic bag which he believed to be rock cocaine. The officer simultaneously removed the pager and the baggie of cocaine from Hudson's pocket.

Proceedings: (Excerpted from Court of Appeals opinion)

> Hudson was brought to trial August 29, 1991, on a violation of the Uniformed Controlled Substances Act, possession with the intent to deliver cocaine. RCW 69.50. At the CrR 3.6 hearing the officer who discovered the cocaine testified as to his knowledge of how cocaine feels. He indicated that:
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> He had been in law enforcement for 6 1/2 years; 3 years on patrol, 2 1/2 years in narcotics proactive work and for the past 10 months in the drug enforcement unit. In addition to the specialized narcotics training given to King County detectives, he had taken the Drug Enforcement Agency basic narcotics investigation class. He had seen and felt cocaine in various forms. The form that the cocaine comes in depends primarily on its size. The lowest level of sales are gram-sized powder bindles and chunks of rock cocaine; 1/6 and 1/8 ounces of cocaine are mostly powder with some small flakes and occasionally chunks of cocaine material; 1/2 ounces are powdery with chunks. An ounce size is a chunk that flakes distinctively when pressed. A kilo is hard and compressed. Chunks are hard-pressed material; they flake apart and are almost like sandstone in texture, but flakier. They won't come off just as powder, rather flake off in layers. It's a crystal-type material, very smooth and flaky. He could not think of anything else that feels quite like it.

> The officer further testified as to how the baggie of cocaine in Hudson's pocket felt. He stated that he believed that what he felt was very consistent with an ounce-size bag of cocaine and that he had handled that size 100 to 200 times. He said the baggie had little powder and shake, and that it was more compatible with a ragged-edge chunk, which would be consistent with a piece broken off of a kilo-sized amount of cocaine. "I removed my hand with what I saw was -- what I knew was there, a bag which was suspected cocaine, and placed [Hudson] under arrest". On redirect the officer stated "I knew immediately from feeling it that, that [it] was likely one large chunk of a hard substance, which was likely cocaine."
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> The trial court concluded that: (1) the officers had a reasonable suspicion to believe that Hudson was potentially involved in criminal activity warranting an investigative stop; (2) the officers had a reasonable suspicion that Hudson was armed and presently dangerous justifying a patdown for weapons; (3) the officer was justified as part of the patdown in reaching into Hudson's pocket after feeling an unidentifiable hard object; and (4) that "as a matter of law the sense of touch alone will not raise a reasonable suspicion to probable cause" and suppressed the evidence of cocaine. The case was dismissed below when the State was unable to proceed after the suppression hearing.

ISSUE AND RULING: Was the officer's conclusion based on his sense of touch sufficient to give him "immediate knowledge" for a "plain view" seizure of the rock cocaine? (ANSWER: No) Result: King County Superior Court dismissal of prosecution for possession of a controlled substance with intent to deliver affirmed. Status: prosecution's petition for review pending in State Supreme Court, petition docketed for consideration by the Court on October 6, 1993.

LED EDITOR'S COMMENT ON STATUS: In light of the Dickerson decision by the U.S. Supreme Court digested above at 15-17, we would be shocked if review of Hudson were not accepted by the State Supreme Court.

ANALYSIS:

After explaining that the "plain view" exception to the search warrant requirement requires, among other things, that the officer making a "view" have "immediate knowledge" of the evidentiary value of the object observed through his senses, the Court of Appeals then discusses Washington State case law relating to "plain feel" and concludes that the sense of touch alone is not sufficient for a "plain view" seizure of something other than a weapon:

> We find that since Washington has not recognized a plain touch exception to the search warrant requirement, the court's suppression of the cocaine was proper. **[LED EDITOR'S COMMENT: As we note in our comment below, contrary to the Court's implication in the foregoing sentence, the question here is not whether Washington court's recognize "plain feel" exception but whether the U.S. Supreme Court recognizes such an exception under the Fourth Amendment; it does, per the Dickerson case above.]** The officer's authority to intrude into Hudson's private affairs ceased upon his feeling the objects and forming the belief that they were not weapons. Thus, the subsequent removal of the baggie, to confirm it was cocaine, was an illegal search. [Emphasis added]

The Court of Appeals then notes in the alternative that even if "plain touch" alone could ever justify seizure of something other than a weapon, the frisking officer's testimony in this case did not establish "immediate knowledge." The Court explains:

> Here, even if Washington recognized a plain touch exception to the warrant requirement, which it does not, on these facts the trial court had substantial evidence supporting its finding that the officer did not have an immediate knowledge that what he was touching was cocaine. The lack of immediate knowledge is shown by the fact that the officer's testimony as to how this baggie felt was not consistent with his testimony as to how it should have felt. The officer described cocaine as having small porous holes in it, as being either very hard or soapy, and that it could flake apart. The officer described what he felt inside Hudson's pocket as a plastic bag with a chunk of some kind of substance, 2 inches by a little more than 1 1/2 inches across, with "kind of ragged edges". The officer did not testify that what he felt had small porous holes, flaked apart when he touched it or that it felt soapy. The officer stated that the substance in the baggie "crumbl[ed] a little bit". Crumbling is inconsistent with the officer's testimony that material will flake, rather than powder, off a chunk of cocaine.
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> Further, the officer's testimony was equivocal. He stated that what he felt in Hudson's pocket he believed to be very consistent with an ounce-size bag of cocaine and that "I removed my hand with what I saw was -- what I knew was there, a bag which was suspected cocaine, and placed [Hudson] under arrest". On redirect the officer stated "I knew immediately from feeling it that, that [it] was likely one large chunk of a hard substance, which was likely cocaine." An officer's belief that a hard substance is consistent with suspected cocaine or is likely to be cocaine is not the same as an immediate knowledge that it is cocaine. The item felt must not only be "consistent" with cocaine; the officer must have "immediately" recognized the item as cocaine. Stating that something is "consistent with" something else is not the same as identifying it. We take notice of the fact that the sense of touch is not as keen as the sense of smell, sight or even hearing. What the officer felt could be as consistent with hard rock candy, a food item, a small part to a car,or some other such item as it is with rock cocaine. Consequently, the officer by touch could only suspect cocaine and not immediately know the object he felt was cocaine. The officer merely suspected the baggie contained cocaine. Thus, the requirement that the item be immediately recognizable as contraband was not met, the officer did not have probable cause to arrest Hudson, and he exceeded the permissible scope of a Terry frisk by taking the plastic baggie out of Hudson's pocket.

LED EDITOR'S COMMENTS:

1. Article 1, Section 7 does not preclude "plain feel" seizure: Neither Hudson nor any prior Washington appellate court decision has held that the privacy clause of article 1, section 7 of the Washington Constitution establishes a greater restriction on pat-down seizures than does the Fourth Amendment of the U.S. Constitution. Accordingly, the Dickerson ruling by the U.S. Supreme Court digested above at pages 15-17 controls. "Plain feel" seizures may be made by Washington officers if their fingers tell them that an item is contraband before or at the same time that their fingers tell them that an item is not a weapon. However, as we noted in our comments on Dickerson above, this standard will be difficult to meet.

2. What officers expect to detect by touch must match what they do detect: The Hudson case illustrates that officer will be required to match their expert "plain feel" standard with what they actually detected by touch in the seizure at issue. While the test for the "immediately apparent" element of "plain view" is probable cause, not certainty (see Texas v. Brown, 460 U.S. 730 (1983) June '83 LED:01), officers will nonetheless need to prepare carefully for "plain feel" suppression hearings. If the tactile sense standard that they articulate based on their experience from prior pat-downs does not match what they say they immediately detected by the sense of touch in the incident at issue, then the suppression judge will no doubt suppress the contraband.

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NEXT MONTH

Along with the final part of our legislative update, we will digest a number of recent appellate court decisions in the October LED, including: (1) **State v. Cantrell, 70 Wn. App. 340 (Div. II, 1993)**, a decision which seems to hold that police who have articulable suspicions of criminal activity by a person cannot generally obtain a valid consent to search from that person if they ask for consent to search after completing a traffic stop; the Cantrell decision seems to suggest that if police with a hunch but no articulable suspicion wish to ask for consent to search contemporaneous with a traffic stop, they should do so either: (1) before completing the issuance of the traffic citation, or (2) after (a) completing issuance of the ticket and (b) explaining that the requestee is free to leave without responding to the request; and (2) **State v. McCrorey, 70 Wn. App. 103 (Div. I, 1993)** (holding that a police officer's deception as to the purpose of his request for entry can destroy the validity of a consent to entry). In McCrorey, the officer actually intended to arrest the suspect at the point that he asked for consent to enter, but the officer's response when the suspect had said he would allow the officer inside only if no arrest occurred, had been, "let me come in and we'll talk about it."

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