WASHINGTON STATE CRIMINAL JUSTICE TRAINING COMMISSION

Law Enforcement Digest

July 1999

HONOR ROLL

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491st Session, Basic Law Enforcement Academy – February 18th through May 12th, 1999

President:	Douglas McLean – Mossyrock Police Department
Best Overall:	Ryan Raulerson – Langley Police Department
Best Academic:	Ryan Raulerson – Langley Police Department
Best Firearms:	Dean Lindberg – Kent Police Department
Tac Officer:	Clark Wilcox – Renton Police Department

492nd Session, Basic Law Enforcement Academy – March 16th through June 8th, 1999

President:	Karen Sotace – Tukwila Police Department
Best Overall:	John W. VanderYacht – Ferndale Police Department
Best Academic:	Christian G. Walters – Kennewick Police Department
Best Firearms:	Steven M. Stipe – Spokane County Sheriff's Office
Tac Officer:	Dan Fatt – Bremerton Police Department

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Corrections Officer Academy - Class 290 – April 12th through May 7, 1999

Highest Overall:	Sean Gannon – Renton City Jail
Highest Academic:	Cathy Board – Snohomish County Corrections
	James Fullwood – Thurston County Corrections
Highest Practical Test:	Richard Mroos – McNeil Island Corrections Center
Highest in Mock Scenes:	William Griffin – McNeil Island Corrections Center
	Aaron Johnson - McNeil Island Corrections Center
	Elizabeth Lovett – Monroe Corrections Center
	Lex Prose – Clallam Bay Corrections Center
	Dennis Wilson – Yakima Police Department
Highest Defensive Tactics:	Sean Gannon – Renton City Jail

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1999 LEGISLATIVE UPDATE—PART ONE

LED Editor's Introductory Notes: This is Part One of what we expect to be a two-part update of 1999 Washington State legislative enactments of special interest to law enforcement. We have tried to include in Part One most of the significant enactments which take effect on or before July 25, 1999 (note that unless a different effective date is specified in the legislation, enactments adopted during the regular session take effect on July 25, 1999, i.e., 90 days after the end of the regular session). A few of the 1999 enactments adopted during the regular session specify an effective date later than July 25, 1999. We will cover several delayed-effect laws in Part Two next month, along with legislation which we believe to be less significant to law enforcement.

Consistent with our past practice, our update will for the most part not digest legislation in the subject areas of sentencing, civil consumer protection, retirement, collective bargaining, civil service, tax, budget, and worker benefits. Part Two next month will conclude with a cumulative index of 1999 enactments covered in the two parts. The text of the 1999 legislation, along with bill reports and other legislative history, is available on the Internet at the following address -- [http://www.leg.wa.gov] -- look under "bill info," "house bill information/senate bill information," and use bill numbers to access information.

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

EXEMPTING SOME DUI'S FROM ELECTRONIC HOME MONITORING

CHAPTER 5 (SHB 1124) Effective Date: July 25, 1999

Amends RCW 46.61.5055 to, among other things, exempt homeless persons and out-of-state DUI offenders from electronic home monitoring sentencing under some circumstances. [Note: The Washington Association of Sheriffs and Police Chiefs recently sent out an update to chiefs and sheriffs on this act.]

CUSTODIAL SEXUAL MISCONDUCT—CREATION OF NEW CRIME

CHAPTER 45 (SSB 5234) Effective Date: July 25, 1999

Adds new sections to chapter 9A.44 RCW creating new crimes of "custodial sexual misconduct" in the first and second degrees, as follows:

> NEW SECTION: (1) **A person is guilty of custodial sexual misconduct in the first degree** when the person has sexual *intercourse* with another person:

(a) When:

(i) The victim is a resident of a state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision; and

(ii) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or

(b) When the victim is being detained, under arrest or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.

(2) Consent of the victim is not a defense to a prosecution under this section.

(3) Custodial sexual misconduct in the first degree is a class C felony.

NEW SECTION: (1) **A person is guilty of custodial sexual misconduct in the second degree** when the person has sexual *contact* with another person:

(a) When:

(i) The victim is a resident of a state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision; and

(ii) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or

(b) When the victim is being detained, under arrest, or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.

(2) Consent of the victim is not a defense to a prosecution under this section.

(3) Custodial sexual misconduct in the second degree is a gross misdemeanor.

It is an affirmative defense to prosecution under section 1 or 2 of this act, to be proven by the defendant by a preponderance of the evidence, that the act of sexual intercourse or sexual contact resulted from forcible compulsion by the other person.

Adds a new section to chapter 72.09 RCW to require in the case of DOC employees or contract personnel that DOC first investigate allegations under this new law to determine probable cause before reporting the allegations to a prosecuting attorney.

CUSTODIAL SEXUAL MISCONDUCT—REQUIRED RESPONSE BY DOC, DSHS

CHAPTER 72 (SSB 5010) Effective Date: July 25, 1999

Establishes personnel procedures to be followed by DOC, DSHS when custodial sexual misconduct is alleged against employees or contract personnel of DOC, DSHS.

TRAFFIC LAW VIOLATION RECORDS

CHAPTER 86 (SB 5301) Effective Date: July 25, 1999

Among other things, adds a new section to chapter 46.52 RCW to prescribe for courts a certain method of keeping records of all traffic offenses and transmitting same to DOL; this new section also requires as to DUI and physical control offenses that such records be kept permanently by the courts; and the new section also requires that an officer, prosecutor or city attorney signing a "charge" or "information" in a case involving a charge of DUI immediately request from DOL an abstract of convictions and forfeitures.

CRIMINAL JUSTICE TRAINING COMMISSION—ADDING TWO "LINE OFFICER" MEMBERS
CHAPTER 97 (HB 1027) Effective Date: July 25, 1999

Amends RCW 43.101.060 to expand membership of the CJTC from 12 to 14 as follows:

> The governor shall appoint one officer at or below the level of first line supervisor from a county law enforcement agency and one officer at or below the level of first line supervisor from a municipal law enforcement agency. Each appointee under this subsection (2) shall have at least ten years experience as a law enforcement officer.

DUI MANDATORY APPEARANCE –1-DAY RULE MAY BE MODIFIED LOCALLY
CHAPTER 114 (HB 2205) Effective Date: July 25, 1999

Amends RCW 46.61.5057's provision addressing mandatory appearance for violators of RCW 46.61.502-504 to allow a court by local rule to "waive the requirement for appearance within one judicial day" if the court "provides for the appearance at the earliest practicable day following the arrest and establishes the method for identifying that day in the rule."

STATUTORY DOUBLE JEOPARDY AND MILITARY PENALTIES
CHAPTER 141 (SHB 1067) Effective Date: July 25, 1999

Amends the statutory double jeopardy provisions of RCW 10.43.040 to close the loophole discovered by the Washington Supreme Court in its ruling in State v. Ivie, 136 Wn.2d 173 (1998) Jan. 99 LED:09. The amendment to RCW 10.43.040 provides, among other things:

> Nothing in this section affects or prevents a prosecution in a court of this state of any person who has received administrative or nonjudicial punishment, civilian or military, in another state or county based upon the same act or omission.

DETENTION, MENTAL EVALUATION FOR MINORS WITH GUNS AT K-12 SCHOOLS
CHAPTER 167 (SSB 5214) Effective Date: July 25, 1999

Amends RCW 9.41.280, which currently prohibits the bringing of a variety of weapons onto K-12 school grounds. The amendment adds a subsection addressing situations where persons of age 12 to 21 are caught brining *firearms* onto school grounds. The amendment to RCW 9.41.280 establishes a requirement in this circumstance for mandatory detention and evaluation of the gun-toting minors as follows:

> Upon the arrest of a person at least twelve years of age and not more than twenty-one years of age for violating subsection (1)(a) of this section [i.e., possessing a firearm], the person shall be detained or confined in a juvenile or

> adult facility for up to seventy-two hours. The person shall not be released within the seventy-two hours until after the person has been examined and evaluated by the county-designated mental health professional unless the court in its discretion releases the person sooner after a determination regarding probable cause or on probation bond or bail. Within twenty-four hours of the arrest, the arresting law enforcement agency shall refer the person to the county-designated mental health professional for examination and evaluation under chapter 71.05 or 71.34 RCW and inform a parent or guardian of the person of the arrest, detention, and examination. The county-designated mental health professional shall examine and evaluate the person subject to the provisions of chapter 71.05 or 71.34 RCW. The examination shall occur at the facility in which the person is detained or confined. If the person has been released on probation, bond, or bail, the examination shall occur wherever is appropriate. The county-designated mental health professional may determine whether to refer the person to the county-designated chemical dependency specialist for examination and evaluation in accordance with chapter 70.96A RCW. The county-designated chemical dependency specialist shall examine the person subject to the provisions of chapter 70.96A RCW. The examination shall occur at the facility in which the person is detained or confined. If the person has been released on probation, bond, or bail, the examination shall occur wherever is appropriate. Upon completion of any examination by the county-designated mental health professional or the county-designated chemical dependency specialist, the results of the examination shall be sent to the court, and the court shall consider those results in making any determination about the person. The county-designated mental health professional and county- designated chemical dependency specialist shall, to the extent permitted by law, notify a parent or guardian of the person that an examination and evaluation has taken place and the results of the examination. Nothing in this subsection prohibits the delivery of additional, appropriate mental health examinations to the person while the person is detained or confined. If the county-designated mental health professional determines it is appropriate, the county-designated mental health professional may refer the person to the local regional support network for follow-up services or the department of social and health services or other community providers for other services to the family and individual.

Another section of the act amends RCW 28A.600.230, the statute which gives K-12 school authorities discretionary authority to conduct searches of students, their possessions, and their lockers based on "reasonable grounds to suspect" (note: for purposes of this statute, this is a more relaxed standard than "probable cause to believe") that the search will yield evidence of the student's violation of the law or school rules. The 1999 act amends this latter section of chapter 28A.600 by inserting the following mandate to school authorities:

> A search is mandatory if there are reasonable grounds to suspect a student has illegally possessed a firearm in violation of RCW 9.41.280.

"TEEKAH LEWIS ACT": WSP HEADS UP TASK FORCE RE MISSING CHILDREN

CHAPTER 168 (2SSB 5108) Effective Date: July 25, 1999

Adds new sections to chapter 13.60 RCW to create a task force (the makeup of which is set forth in the act), under the direction of the WSP chief, to assist law enforcement agencies in cases involving missing or exploited children. "Exploited children" means "children under the

age of eighteen who are employed, used, persuade, induced, enticed, or coerced to engage in, or assist another person to engage in, sexually explicit conduct"; the term also means "the rape, molestation, or use for prostitution of children under the age of eighteen."

UNLAWFUL DISCHARGE OF LASERS - NEW CRIME CREATED

CHAPTER 180 (SHB 2086) Effective Date: July 25, 1999

Adds a new chapter to Title 9A RCW. Section 1 is a statement of legislative purpose. Section 2 contains the following definitions:

> The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.
>
> (1) "Aircraft" means any contrivance known or hereafter invented, used, or designed for navigation of or flight in air.
>
> (2) "Laser" means any device designed or used to amplify electromagnetic radiation by simulated emission which is visible to the human eye.
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> 3) "Laser sighting system or device" means any system or device which is integrated with or affixed to a firearm and which emits a laser light beam that is used by the shooter to assist in the sight alignment of that firearm.

Section 3 creates the crime of "unlawful discharge of a laser in the first degree:

> (1) A person is guilty of unlawful discharge of a laser in the first degree if he or she knowingly and maliciously discharges a laser, under circumstances not amounting to malicious mischief in the first degree:
>
> (a) At a law enforcement officer or other employee of a law enforcement agency who is performing his or her official duties in uniform or exhibiting evidence of his or her authority, and in a manner that would support that officer's or employee's reasonable belief that he or she is targeted with a laser sighting device or system; or
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> (b) At a law enforcement officer or other employee of a law enforcement agency who is performing his or her official duties, causing an impairment of the safety or operation of a law enforcement vehicle or causing an interruption or impairment of service rendered to the public by negatively affecting the officer or employee; or
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> (c) At a pilot, causing an impairment of the safety or operation of an aircraft or causing an interruption or impairment of service rendered to the public by negatively affecting the pilot; or
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> (d) At a fire fighter or other employee of a fire department, county fire marshal's office, county fire prevention bureau, or fire protection district who is performing his or her official duties, causing an impairment of the safety or operation of an emergency vehicle or causing an interruption or impairment of service rendered to the public by negatively affecting the fire fighter or employee; or
>
> (e) At a transit operator or driver of a public or private transit company while that person is performing his or her official duties, causing an impairment of the safety or operation of a transit vehicle or causing an interruption or impairment of service rendered to the public by negatively affecting the operator or driver; or

(f) At a school bus driver employed by a school district or private company while the driver is performing his or her official duties, causing an impairment of the safety or operation of a school bus or causing an interruption or impairment of service by negatively affecting the bus driver.

(2) Except as provided in section 5 of this act, unlawful discharge of a laser in the first degree is a class C felony

Section 4 creates the crime of "unlawful discharge of a laser in the second degree:

(1) A person is guilty of unlawful discharge of a laser in the second degree if he or she knowingly and maliciously discharges a laser, under circumstances not amounting to unlawful discharge of a laser in the first degree or malicious mischief in the first or second degree:

(a) At a person, not described in section 3(1) (a) through (f) of this act, who is operating a motor vehicle at the time, causing an impairment of the safety or operation of a motor vehicle by negatively affecting the driver; or

(b) At a person described in section 3(1) (b) through (f) of this act, causing a substantial risk of an impairment or interruption as described in section 3(1) (b) through (f) of this act; or (c) At a person in order to intimidate or threaten that person.

(2) Except as provided in section 5 of this act, unlawful discharge of a laser in the second degree is a gross misdemeanor.

Section 5 gives a break to first-time juvenile offenders:

Unlawful discharge of a laser in the first degree or second degree is a civil infraction if committed by a juvenile who has not before committed either offense. The monetary penalty imposed upon a juvenile may not exceed one hundred dollars.

FOREIGN PROTECTION ORDER FULL FAITH AND CREDIT ACT

CHAPTER 184 (SSB 5134) Effective Date: July 25, 1999

Among other things, this enactment adds a new chapter to Title 26 RCW and declares in section 1 that the act will be known as the "Foreign Protection Order Full Faith and Credit Act." Section 2 of the Act explains that its purpose is to protect persons moving across state lines to escape abusers.

Section 3 provides definitions of the following terms: "domestic or family violence;" "family or household members;" "foreign protection order;" "harassment;" "judicial day;" "person under restraint;" "sexual abuse'" "stalking;" and "Washington court."

Section 4 sets the standards for determining validity of foreign protection order as follows:

A foreign protection order is valid if the issuing court had jurisdiction over the parties and matter under the law of the state, territory, possession, tribe, or United States military tribunal. There is a presumption in favor of validity where an order appears authentic on its face.

A person under restraint must be given reasonable notice and the opportunity to be heard before the order of the foreign state, territory, possession, tribe, or United States military tribunal was issued, provided, in the case of ex parte

orders, notice and opportunity to be heard was given as soon as possible after the order was issued, consistent with due process.

Section 5 sets forth detailed responsibilities of Washington courts (including Superior, district, and municipal courts) in the processing of requests to file foreign protection orders.

Section 6 provides as follows for entry of information concerning the order, enforceable statewide, into the law enforcement computer-based information system:

> (1) The clerk of the court shall forward a copy of a foreign protection order that is filed under this chapter on or before the next judicial day to the county sheriff along with the completed information form. The clerk may forward the foreign protection order to the county sheriff by facsimile or electronic transmission. Upon receipt of a filed foreign protection order, the county sheriff shall immediately enter the foreign protection order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The foreign protection order must remain in the computer for the period stated in the order. The county sheriff shall only expunge from the computer-based criminal intelligence information system foreign protection orders that are expired, vacated, or superseded. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the foreign protection order. The foreign protection order is fully enforceable in any county in the state.
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> (2) The information entered into the computer-based criminal intelligence information system must include, if available, notice to law enforcement whether the foreign protection order was served and the method of service.

Section 7 provides civil and criminal immunity for peace officers and their legal advisors where good faith arrests are made under the act. Section 8 provides that fees for filling or necessary copying may not be charged to persons entitled to protection under the act.

Section 9 makes it a crime to knowingly violate a foreign protection order and also declares in subsection (2) that arrest is mandatory for certain violations of such orders. Subsection 9 provides as follows:

> (1) Whenever a foreign protection order is granted to a person entitled to protection and the person under restraint knows of the foreign protection order, a violation of a provision prohibiting the person under restraint from contacting or communicating with another person, or of a provision excluding the person under restraint from a residence, workplace, school, or day care, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime, is a gross misdemeanor except as provided in subsections (3) and (4) of this section. Upon conviction, and in addition to any other penalties provided by law, the court may require the person under restraint to submit to electronic monitoring. The court shall specify who will provide the electronic monitoring services, and the terms under which the monitoring will be performed. The order also may include a requirement that the person under restraint pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.
>
> (2) A peace officer shall arrest without a warrant and take into custody a person when the peace officer has probable cause to believe that a foreign protection order has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order

that prohibits the person under restraint from contacting or communicating with another person, or a provision that excludes the person under restraint from a residence, workplace, school, or day care, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) An assault that is a violation of a valid foreign protection order that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and conduct in violation of a valid foreign protection order issued under this chapter that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(4) A violation of a valid foreign protection order is a class C felony if the offender has at least two previous convictions for violating the provisions of a no-contact order issued under chapter 10.99 RCW, a domestic violence protection order issued under chapter 26.09, 26.10, 26.26, or 26.50 RCW, or a federal or out-of-state order that is comparable to a no-contact or protection order issued under Washington law. The previous convictions may involve the same person entitled to protection or other person entitled to protection specifically protected by the no-contact orders or protection orders the offender violated.

Section 10 addresses child custody dispute situations, limiting law enforcement's role as follows:

(1) Any disputes regarding provisions in foreign protection orders dealing with custody of children, residential placement of children, or visitation with children shall be resolved judicially. The proper venue and jurisdiction for such judicial proceedings shall be determined in accordance with chapter 26.27 RCW and in accordance with the parental kidnapping prevention act, 28 U.S.C. 1738A.

(2) A peace officer shall not remove a child from his or her current placement unless:
(a) A writ of habeas corpus to produce the child has been issued by a superior court of this state; or
(b) There is probable cause to believe that the child is abused or neglected and the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050.

Sections 11 through 13 make minor modifications to the existing law relating to violations of orders issued by Washington courts. Sections 11 and 12 amend RCW 26.10.220(1) and 26.26.138(1) respectively, to reclassify Washington restraining order violations under those statutes as gross misdemeanors (formerly such violations were misdemeanors). Section 13 amends RCW 26.50.010 to make a technical correction of the definition of "family or household members" in relation to teenagers in dating relationships, making this definition identical to the definition of the same term at RCW 10.99.020(1).

Section 14 amends RCW 10.31.100 to incorporate the Foreign Protection Order legislation into that section by adding the following subsection (b) to the mandatory arrest provisions of subsection (2). This language mirrors that in subsection (2) of section 9 set forth above. Under the new RCW 10.31.100(2)(b), arrest is mandatory where an officer has probable cause to believe that:

(b) A foreign protection order, as defined in section 3 of this act, has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order prohibiting the person under restraint from contacting or communicating with another person, or of a provision excluding the person under restraint from a residence, workplace, school, or day care, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime;…

COMMUNITY PROTECTION ACT—PAROLE EXPANDED; ALSO, SOME SEX OFFENDER REGISTRATION DUTIES GO TO POLICE DEPARTMENTS

CHAPTER 196 (E2SSB 5421) Effective dates: July 25, 1999; July 1, 2000 for parole expansion

Among other things, this act (A) greatly expands, effective July 1, 2000, the pool of offenders who will be subject to parole supervision following release from confinement; (B) makes it easier for parole officers to tailor the conditions of what will now be known as "community custody" to the needs of the particular offender; and (C) makes it easier to revoke parole. Also, effective July 25, 1999, the act amends RCW 9A.44.135, making some changes in the duties of sheriffs and police chiefs to notify each other regarding registered sex offenders and to attempt to verify the current addresses of such registered sex offenders.

DSHS HAS DUTY TO PROVIDE JUVENILE OFFENDER INFORMATION TO SCHOOLS; DISCRETION GIVEN TO LAW ENFORCEMENT TO PROVIDE SOME SUCH INFORMATION

CHAPTER 198 (SHB 1153) Effective Date: July 25, 1999

Increases responsibility of DSHS to provide information to K-12 schools about juvenile offenders, and also requires that schools in certain circumstances share such information with teachers and security personnel. Also amends RCW 13.50.050 to give discretionary authority to law enforcement agencies to share information with schools as follows:

Upon the decision to arrest or the arrest, law enforcement and prosecuting attorneys may cooperate with schools in releasing information to a school pertaining to the investigation, diversion, and prosecution of a juvenile attending the school. Upon the decision to arrest or the arrest, incident reports may be released unless releasing the records would jeopardize the investigation or prosecution or endanger witnesses. If release of incident reports would jeopardize the investigation or prosecution or endanger witnesses, law enforcement and prosecuting attorneys may release information to the maximum extent possible to assist schools in protecting other students, staff, and school property.

STOP REQUIRED AT CONTROLLED INTERSECTION WITH NON-FUNCTIONING SIGNAL

CHAPTER 200 (HB 1321) Effective Date: July 25, 1999

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

Except when directed to proceed by a flagger, police officer, or fire fighter, the driver of a vehicle approaching an intersection controlled by a traffic control signal that is temporarily without power on all approaches or is not displaying any green, red, or yellow indication to the approach the vehicle is on, shall consider the intersection to be an all-way stop. After stopping, the driver shall yield the right of way in accordance with RCW 46.61.180(1) and 46.61.185.

LICENSE FRAUD: DECRIMINALIZING & ESTABLISHING TASK FORCE IN WSP
CHAPTER 277 (SSB 5706) Effective Date: July 25, 1999

This act decriminalizes the fraud committed by residents of Washington who register motor vehicles, boats and airplanes in other states to evade payment of Washington taxes and fees, but it increases the civil penalties which may be imposed for this conduct. The act creates a license fraud task force to be coordinated by the WSP, with staff from WSP, the AGO, and the Department of Revenue.

COMMERCIAL E-MAIL ("SPAM" LAW) MODIFICATIONS
CHAPTER 289 (2SHB 1037) Effective Date: July 25, 1999

Modifies various provisions in the laws relating to sending commercial electronic mail (one abuse of which is sometimes referred to as "E-mail spamming"). Those who have questions after reviewing the new legislation and those who receive complaints which may be actionable as civil actions under the Consumer Protection Act may wish to contact the "Consumer Protection Division" of the Attorney General's Office at 1-800-551-4636.

PERSONAL FLOTATION DEVICES FOR CHILDREN
CHAPTER 310 (EHB 1014) Effective Date: July 25, 1999

Amends RCW 88.12.115 to require, with limited exceptions, that children under the age of 12 wear life jackets when on boats which are under 19 feet in length and are underway. The two new subsections added to RCW 88.12.115 provide as follows:

> (4) No person shall operate a vessel under nineteen feet in length on the waters of this state with a child twelve years old and under, unless the child is wearing a personal flotation device that meets or exceeds the United States coast guard approval standards of the appropriate size, while the vessel is underway. For the purposes of this section, a personal flotation device is not considered readily accessible for children twelve years old and under unless the device is worn by the child while the vessel is underway. The personal flotation device must be worn at all times by a child twelve years old and under whenever the vessel is underway and the child is on an open deck or open cockpit of the vessel. The following circumstances are excepted:
>
> (a) While a child is below deck or in the cabin of a boat with an enclosed cabin;
>
> (b) While a child is on a United States coast guard inspected passenger-carrying vessel operating on the navigable waters of the United States; or
>
> (c) While on board a vessel at a time and place where no person would reasonably expect a danger of drowning to occur.
>
> (5) Except as provided in RCW 88.12.015, a violation of subsection (4) of this section is an infraction under chapter 7.84 RCW. Enforcement of subsection (4) of this section by law enforcement officers may be accomplished as a primary action, and need not be accompanied by the suspected violation of some other offense.

COUNTERFEIT GOODS AND SERVICES
CHAPTER 322 (EHB 1007) Effective Date: July 25, 1999

Amends chapter 9.16 RCW by amending 9.16.030, adding three new sections, and repealing 9.16.040. The revisions to chapter 9.16 RCW address "counterfeiting" of goods and services.

Section 1 is a new section in chapter 9.16, providing definitions of the terms, "counterfeit mark," "intellectual property," and "retail value." Then section 2 establishes the crime of "counterfeiting" (in goods and services) as follows:

> Any person who willfully and knowingly, and for financial gain, manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses with intent to sell or distribute any item, or offers any services, bearing or identified by a counterfeit mark, is guilty of the crime of counterfeiting.
>
> Any state or federal certificate of registration of any intellectual property is prima facie evidence of the facts stated in the certificate.

Section 3 of the act sets the classifications for the crime. Depending on the circumstances (prior offenses under the act, number of items involved, $ value of items, offender's knowledge of danger in mislabeling to health or safety of others), the crime can be a Class C felony, a gross misdemeanor, or misdemeanor. Section 4 provides for seizure and forfeiture in certain circumstances.

INMATE FUNDS AT DOC; ALSO, $10 FEES AT CITY AND COUNTY JAILS
CHAPTER 325 (E2SHB 1143) Effective Date: July 25, 1999

Along with provisions relating to inmate funds for those house in DOC institutions, this act also contains the following authority for jails to charge a $10 booking fee:

> A governing unit may require that each person who is booked at a city, county, or regional jail pay a fee of ten dollars to the sheriff's department of the county or police chief of the city in which the jail is located. The fee is payable immediately from any money then possessed by the person being booked, or any money deposited with the sheriff's department or city jail administration on the person's behalf. If the person has no funds at the time of booking or during the period of incarceration, the sheriff or police chief may notify the court in the county or city where the charges related to the booking are pending, and may request the assessment of the fee. Unless the person is held on other criminal matters, if the person is not charged, is acquitted, or if all charges are dismissed, the sheriff or police chief shall return the fee to the person at the last known address listed in the booking records.

WASPC AS PERMANENT REPOSITORY FOR SEX OFFENDER RECORDS
CHAPTER 326 (2SHB 1176) Effective Date: July 25, 1999

Amends RCW 40.14.070 to make the Washington Association of Sheriffs and Police Chiefs (WASPC) the final and permanent repository of "records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenders …" WASPC will keep the records in electronic form only.

IMPOUNDING VEHICLES OF REPEAT PATRONS OF PROSTITUTES
CHAPTER 327 (ESHB 1131) Effective Date: July 25, 1999

Amends provisions of chapter 9A.88 (patronizing adult prostitutes) and chapter 9.68A RCW (patronizing child prostitutes) to give courts the authority to order those convicted of patronizing prostitutes to stay out of the areas where they violated. In addition, a new section is added to chapter 9A.88 RCW, reading as follows:

> (1) Upon an arrest for a suspected violation of patronizing a prostitute or patronizing a juvenile prostitute, the arresting law enforcement officer may impound the person's vehicle if (a) the motor vehicle was used in the commission of the crime; (b) the person arrested is the owner of the vehicle; and (c) the person arrested has previously been convicted of patronizing a prostitute, under RCW 9A.88.110, or patronizing a juvenile prostitute, under RCW 9.68A.100.
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> (2) Impoundments performed under this section shall be in accordance with chapter 46.55 RCW.

AIR CRIMES

CHAPTER 349 (HB 1388) Effective Date: July 25, 1999

Amends RCW 9A.04.030 by adding the following subsection to extend jurisdiction of the Washington criminal courts over persons who commit crimes in the air:

> (7) A person who commits an act onboard a conveyance within the state of Washington, including the airspace over the state of Washington, that subsequently lands, docks, or stops within the state which, if committed within the state, would be a crime.

The legislation does not address venue questions; presumably, there will be a need for the prosecutor to establish which county the airplane was over when the crime occurred.

IDENTITY THEFT—PRIVACY OF FINANCIAL INFORMATION

CHAPTER 368 (SHB 1250) Effective Date: January 1, 2000

Adds a new chapter to Title 9 RCW, making it a crime to: (1) unlawfully obtain or attempt to obtain financial information, or (2) commit identity theft. [*LED EDITOR'S NOTE: Because this act does not take effect until January 1, 2000, we will digest it in next month's LED.]*

CHILD ABUSE INVESTIGATION

CHAPTER 389 (SB 5127) Effective Date: July 25, 1999 (With varying due dates specified for development of guidelines and protocols)

Section 2 adds a new section to chapter 43.101 requiring the Criminal Justice Training Commission, together with DSHS, WASPC, and WAPA, to design and implement state-wide training for interviewing children in child sexual abuse cases, including training focused on the needs of law enforcement personnel, prosecutors, and child protective services. Section 3 directs the Washington State Institute for Public Policy to convene a work group made up of representatives of DSHS, WASPC and WAPA to "develop state guidelines for the development of [local] child sexual abuse investigations protocols;" the guidelines must be presented to the Washington Legislature by December 1, 1999. Section 4 requires each county prosecutor to work together with certain specified groups to establish a written protocol for handling criminal child sexual abuse investigations; every county must have a written local protocol in place by July 1, 2000 and submit it to the Legislature prior to that date.

Additional provisions require training of DSHS investigators, as well as pilot projects to be set up by DSHS to test various methods of preserving interviews with alleged child victims of sexual abuse.

Finally, sections 8 and 9 of the act preclude as follows a law enforcement officer from investigating cases where his or her child or ward is the alleged victim of abuse:

> The legislature finds that the parent, guardian, or foster parent of a child who may be the victim of abuse or neglect may become involved in the investigation of the abuse or neglect. The parent, guardian, or foster parent may also be made a party to later court proceedings and be subject to a court-ordered examination by a physician, psychologist, or psychiatrist. It is the intent of the legislature by enacting section 9 of this act to avoid actual or perceived conflicts of interest that may occur when the parent, guardian, or foster parent is also a law enforcement officer and is assigned to conduct the investigation of alleged abuse or neglect concerning the child.
>
> A law enforcement agency shall not allow a law enforcement officer to participate as an investigator in the investigation of alleged abuse or neglect concerning a child for whom the law enforcement officer is, or has been, a parent, guardian, or foster parent. This section is not intended to limit the authority or duty of a law enforcement officer to report, testify, or be examined as authorized or required by this chapter, or to perform other official duties as a law enforcement officer.

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HOMELESS SEX OFFENDERS MUST REGISTER
CHAPTER 6, 1ST SP. SESS. (ESHB 1004) Effective Date: June 7, 1999

Section 1 of this Special Session enactment explains that the intent of the Legislature is to close the loophole discovered by Division One of the Court of Appeals in its May 3, 1999 decision in State v. Pickett. The Pickett Court held that homeless sex offenders need not register while they are in transient status. Section 1 thus declares that "the lack of a residential address is not to be construed to preclude registration as a sex or kidnapping offender."

Section 2 amends RCW 9A.44.130 by adding subsection (3)(b) reading as follows:

> (b) Any person who lacks a fixed residence shall provide the following information when registering: (i) Name; (ii) date and place of birth; (iii) place of employment; (iv) crime for which convicted; (v) date and place of conviction; (vi) aliases used; (vii) social security number; (viii) photograph; (ix) fingerprints; and (x) where he or she plans to stay.

Section 2 also adds the following subsections (4)(a)(vii) and (viii) for RCW 9A.44.130 reading as follows:

> (vii) OFFENDERS WHO LACK A FIXED RESIDENCE. Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than twenty-four hours after entering the county and provide the information required in subsection (3)(b) of this section.
>
> (viii) OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION. Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

Section 2 also adds adding subsection (6) to RCW 9A.44.130 reading as follows:

> (6) (a) Any person required to register under this section who lacks a fixed residence shall provide written notice to the sheriff of the county where he or she last registered within fourteen days after ceasing to have a fixed residence. The notice shall include the information required by subsection (3)(b) of this section, except the photograph and fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.
>
> (b) A person who lacks a fixed residence must report in person to the sheriff of the county where he or she is registered. If he or she has been classified as a risk level I sex or kidnapping offender, he or she must report monthly. If he or she has been classified as a risk level II or III sex or kidnapping offender, he or she must report weekly. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.
>
> (c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within fourteen days after ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

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ARTICLE: IS CUSTODIAL ARREST LAWFUL FOR A "MINOR OFFENDER" WHO IS UNABLE TO REASONABLY ID HIMSELF OR HERSELF TO AN INVESTIGATING OFFICER?

LED EDITOR'S INTRODUCTORY NOTE: As a general rule, due to personal time and brain limitations, LED space limits, uncertainties in the law, and concerns about our own bureaucratic boundaries, we confine our efforts to reporting individually on recent court decisions and recent legislative enactments, and we do not ordinarily attempt comprehensive articles synthesizing various areas of the law. For all of these reasons, we regret having promised in the LED several months ago to write an article on whether and when custodial arrest is permitted as to those who are detained for minor offenses and who are unable to reasonably identify themselves. However, we did make the promise, and we will now follow through, though in limited fashion. We will provide in this LED entry only a framework for analysis, plus a summary of our conclusions and a few citations on the thorny issues in this relatively uncharted legal territory. We do have some additional materials on this topic which we would be happy to supply by mail to readers who make a request (see the address and phone number listed below at page 21 of this LED). As always, all opinions expressed herein are the LED Editor's alone, despite our use of the "royal we" in the LED. And, while we make some "recommendations" in this article, this does not constitute legal advice. Each law enforcement agency must obtain its legal advice from the attorney(s) for that agency.

I. DEFINITIONS FOR PURPOSES OF THE "GENERAL RULES" IN PARTS II-IV

A. Definition of "custodial arrest"

In Knowles v. Iowa, 142 L.Ed.2d 492 (1998) Feb. 99 LED:02, the U.S. Supreme Court held that, once an officer has issued a citation for a traffic offense, the officer may not make a "search

incident to arrest" (of the violator and of the passenger area of the violator's vehicle). That is because there has been no "custodial arrest" in this situation. The Knowles Court indicated that a "custodial arrest" occurs when a suspect is taken into custody for purposes of transporting the suspect to the police station or jail. Search incident to this latter process is permitted, primarily because, once the custodial arrest process has begun, there is increased risk (in comparison to the cite-and-release situation) that the detainee will act in a hostile manner to the officer or attempt to destroy evidence. [NOTE: It is of interest in discussion of the topic of this article that the Knowles Court expressly noted that, whatever the limits may be on making custodial arrests, a violator's inability to satisfactorily identify him- or herself "may" provide a basis for making a custodial arrest.]

B. Definition of "minor offense"

In State v. Hehman, 90 Wn. App. 45 (1978), at a time when all traffic offenses in Washington were criminal, the Washington Supreme Court held as a matter of "public policy" (though not as a matter of constitutional law) that, for certain minor traffic offenses (including the offense of driving without a valid license), police should cite-and-release, rather than make a custodial arrest of the offender. Citing with approval certain law reform project papers, the 1978 Hehman Court indicated that exceptions to its new rule would exist where: (A) the offender could not satisfactorily identify himself or herself; or (B) the offender gave police good reason to believe that the offender would not comply with a promise to appear. [NOTE: subsequent Washington appellate court decisions, such as the Barwick decision discussed in Part I. C. below, have recognized that these two circumstances provide exceptions to requirements for cite-and-release, though more recent decisions blur the lines between these two discrete and independently sufficient bases for custodial arrest of a minor offender.]

The year after Hehman was decided, the Washington Legislature decriminalized much of the traffic code and declared in RCW 46.64.015 that the "arrest" for traffic offenses is to be cite-and-release, rather than *custodial* arrest, unless: (1) the person "refuses to sign a written promise to appear in court…"; (2) the offense is one of the traffic crimes "enumerated in RCW 10.31.100(3)…"; or (3) the detainee is a nonresident and "is therefore being detained for a hearing under RCW 46.64.035." Over a decade later, the Washington Supreme Court ruled in State v. Reding, 119 Wn.2d 685 (1992) Dec. 92 LED:17 that police have automatic statutory authority under RCW 46.64.015 to make a custodial arrest for any of the traffic crimes listed in RCW 10.31.100(3), including the reckless driving offense at issue in Reding. [NOTE: the Reding decision also expressly recognized the current authority of officers to arrest minor offenders who commit traffic offenses not listed in RCW 10.31.100(3), but who cannot satisfactorily identify themselves.] Other Washington cases have implied (with little analysis on the point) that officers here, as do officers in most other jurisdictions, have automatic authority to make a custodial arrest for any non-traffic misdemeanor crime on which they otherwise have authority to make an arrest. See e.g., State v. Brantigan, 59 Wn. App. 481 (Div. I, 1990) Feb. 91 LED:05.

With the foregoing in mind, our special definition of "minor offense" in the following notes is as follows: (1) any traffic misdemeanor not enumerated in RCW 10.31.100(3); (2) any traffic infraction; and (3) any non-traffic civil infraction.

C. Definition of "reasonably identify" oneself

In State v. Barwick, 66 Wn. App. 706 (Div. III, 1992) Feb. 93 LED:07, Division Three of the Washington Court of Appeals addressed a case involving a passenger of a car who, when investigated for possible violation of the open container infraction statute, provided the officer with a Costco card with the passenger's picture on it (the original LED entry in 1993 erroneously reported that the card did *not* have a picture) . When Mr. Barwick denied having any other ID

and seemed excessively nervous, the officer took Mr. Barwick's wallet from him (not as a safety measure but to search for ID), at which time illegal drugs fell out of the wallet into plain view. The Barwick Court held the wallet search unlawful.

Some might argue that the Barwick decision is a holding that an officer should accept a picture credit card as sufficient identification for issuance of a citation, but we believe that Barwick means only that an officer cannot reject such evidence of identification out of hand. The Court of Appeals in Barwick likely would have allowed the officer to continue to question Mr. Barwick about his identification after Mr. Barwick produced the picture credit card. Suppose the officer then had turned up inconsistencies in Mr. Barwick's identity claims (based, for example, upon internal inconsistencies in his claims, or upon information in appropriate government data bases obtained by radio, or upon information obtained from Mr. Barwick's companions). In that event, the officer could have at least taken Mr. Barwick to the stationhouse for "administrative booking" (see Part I.D. below), based on the open container infraction, in spite of the picture credit card. [NOTE: Of course, if the officer had developed probable cause to believe that Mr. Barwick was lying, the officer would have been justified in making a custodial arrest under RCW 9A.76.175 for "making a false or misleading statement to a public servant".]

However, we do believe that Barwick stands for the proposition that officers should act cautiously in their efforts to identify their detainees. Even if the detainee does not have a driver's license (or other governmental ID document) on his or her person, officers probably should seek answers to some or all of the following questions prior to arrest: (A) Can the detainee verbally give identification information that can be verified by radio? (B) Is there is at least a semi-plausible explanation why no governmental data bank can verify ID information on the detainee? (C) If the detainee has companions present, do they give consistent accounts as to the detainee's identity?

D. Definition of "administrative booking" (the preferred "arrest" mechanism for minor offenders who cannot reasonably identify themselves)

Legally, a person has been subjected to a "custodial arrest" if forcibly transported to the stationhouse or jail, whether for booking into a jail cell, for questioning, or merely for administrative procedures like photographing and fingerprinting. We know of no legal bar to police using an "administrative booking" process (i.e., transport to stationhouse, photograph, fingerprint, and release) in lieu of jail for "minor offense" arrestees. In addition, while the issue has not been tested and the question is a close one, we believe that such a transport for "administrative booking" would justify a "search incident to arrest" (of the detainee and his/her vehicle) prior to transport based on the "increased risk" rationale of Knowles v. Iowa. See Part I. A. above.

In the discussion below of several categorical scenarios concerning custodial arrest of unidentifiable minor offenders, we are suggesting, based on our best guess as to how the Washington appellate courts would rule, that law enforcement agencies choosing to exercise custodial arrest authority over "minor offenders" (as defined in Part I.B. above) use the option of "administrative booking" for identification purposes, rather than booking the person into jail. While the statutes noted in the discussion below authorize the "detaining" of a person committing an infraction for the period of time necessary to identify that person (see RCW 46.61.021 for traffic infractions and RCW 7.80.060 for certain non-traffic infractions), in our view the Washington courts would likely place a limit on the duration and nature of such "detentions." Particularly where only an infraction is at issue, there is a substantial likelihood, in our personal view, that the Washington appellate courts would hold, either as a matter of statutory construction of

the term "detain," or as a matter of constitutional interpretation, that the detention authority does not extend to jailing, as opposed to administrative booking. Even where a misdemeanor traffic violation is involved, if the misdemeanor is not one of those listed in RCW 10.31.100(3), we think there is a significant possibility that the Hehman and Reding decisions noted above in Part I.B. would be interpreted to limit the duration and nature of detention of such minor offenders.

As a final note on the subject of alternatives to jailing a unidentifiable minor violator, we believe it would be lawful for an officer to take the minimally intrusive step of detaining the unidentified minor offender for a reasonable period of time for purposes of taking a photograph at the scene of the stop. Of course, such action at the scene would not constitute custodial arrest and hence would not justify "search incident" to arrest.

II. CUSTODIAL ARREST OF DRIVER WHO CAN'T SATISFACTORILY ID SELF AFTER STOP FOR MINOR TRAFFIC OFFENSE?

Where a law enforcement officer detains a driver on probable cause to believe the driver has committed a "minor" traffic misdemeanor (see Part I.B. above for our definition of "minor offender") or traffic infraction, the officer may make a custodial arrest of any such person (and therefore a search incident to arrest) if the person is unable to reasonably identify himself or herself. However, see the bolded second paragraph of Part I.D. above. We believe there is a substantial probability in the case of traffic infraction (non-criminal) violators who cannot reasonably identify themselves (and a significant possibility in the case of those detained for traffic misdemeanors not listed in RCW 10.31.100(3)), that the Washington courts would hold that the "arrest" of the infraction-committing person in this circumstance should be limited to a trip to the stationhouse for administrative booking purposes (see discussion of this option above in Part I.D.).

Legal Authority In Part: State v. Hehman and State v. Reding; RCW 46.64.015; RCW 46.61.021; RCW 10.31.100; State v. Johnson, 65 Wn. App. 716 (Div. II, 1992; State v. Watson, 56 Wn. App. 665 (Div. II, 1990) April 90 LED:07; State v. McIntosh, 42 Wn. App. 573 (Div. I, 1986) June 86 LED:19; and State v. Jordan, 50 Wn. App. 170 (Div. I, 1987).

III. CUSTODIAL ARREST OF VEHICLE PASSENGER WHO CAN'T ID SELF SATISFACTORILY WHERE OFFICER HAS PC RE MINOR TRAFFIC OFFENSE?

In terms of the applicable laws, the only difference between a passenger-violator of the traffic laws who cannot satisfactorily identify himself or herself and a driver-violator in the same situation is that the driver is required to have driver's license in his or her possession. See RCW 46.20.005, .015. Where the same class of offense is at issue, a person's status as a driver or passenger should not make a legal difference on the issue of whether custodial arrest is permitted as to the violator who cannot be reasonably identified. However, the difference appears to have affected the approach of Division Three of the Court of Appeals in the few Washington cases reviewing custodial arrests or identification procedures involving passengers suspected of committing traffic infractions. See State v. Barwick, 66 Wn. App. 706 (Div. III, 1992) Feb. 93 LED:07 (open container violation); State v. Cole, 73 Wn. App. 844 (Div. III, 1994) Sept. 94 LED:10 (seatbelt violation). Even more troubling is the suggestion of the Cole Court that the provisions of RCW 46.64.015 don't apply to traffic infraction situations.

While we believe that the Cole Court was clearly mistaken in the latter respect, and that in both cases the Court was mistaken in approaching the identification issue differently where passengers, as opposed to drivers, were the persons who committed minor offenses, officers may need to take the Division Three concerns into account in evaluating whether the

identification information provided by the suspect is sufficient. In addition, as we have suggested above in Part II in discussing unidentifiable driver-violators, we would again suggest that, if custodial arrest is to be done, officers probably should make exclusive use of administrative booking, as opposed to booking into jail, in all cases involving passengers who are "minor offenders" as defined in Part I.B. above. See the concerns we have expressed in the bolded second paragraph of Part I. D. above.

IV. CUSTODIAL ARREST OF PERSON WHO CAN'T ID SELF SATISFACTORILY WHERE OFFICER HAS PROBABLE CAUSE RE NON-TRAFFIC INFRACTION?

For non-traffic civil infractions, of course, Title 46 RCW does not apply. Chapter 7.80 RCW is the general statute governing issuance of most non-traffic infractions. RCW 7.80.060 provides:

> A person who is to receive a notice of civil infraction under RCW 7.80.050 is required to identify himself or herself to the enforcement officer by giving his or her name, address, and date of birth. Upon the request of the officer, the person shall produce reasonable identification, including a driver's license or identicard.
>
> *A person who is unable or unwilling to reasonably identify himself or herself to an enforcement officer may be detained for a period of time* not longer than is reasonably necessary to identify the person for purposes of issuing a civil infraction. [Italics added by LED Ed.]
>
> Each agency authorized to issue civil infractions shall adopt rules on identification and detention of persons committing civil infractions.

This statute does not state that the person who cannot be reasonably identified, after a diligent and thorough inquiry by the officer, may ultimately be subjected to arrest, whether in the form of an "administrative booking" identification procedure at the stationhouse. However, we think that is a plausible reading of the statute's express authority to "detain." But, as with all three of the situations discussed in this article, our personal view is that agencies probably should exclusively use an "administrative booking" option in lieu of booking into jail for civil infraction violators who cannot satisfactorily identify themselves.

Chapter 7.84 RCW governs enforcement of laws establishing "natural resources infractions." That chapter does not contain a parallel provision to RCW 7.80.060 set forth above. While we believe that here, as well, officers should be able to take the civil law violator in for "administrative booking," the absence of express supporting authority for an extended detention for identification purposes makes it even less likely that the Washington courts would allow jailing of such civil law violators based only on their inability to satisfactorily identify themselves.

V. CONCLUSION

With the significant qualifying exceptions set forth above, we believe that "custodial arrest" is lawful for minor offenders who cannot satisfactorily identify themselves to officers who have detained them on PC as to a violation of law. It would certainly be helpful, however, for the Washington Legislature to provide more detailed express authority to fill in the statutory gaps reflected in the discussion in this article. Of course, one could make the same statement about many other areas of Washington law, and we will not attempt to place this problem on a legislative priorities list.

Note finally that in 1995 the California Legislature adopted a law that allows an officer to obtain a thumbprint or fingerprint on the citation. See discussion in 27 Pacific Law Journal, Winter, 1996. An on-scene identification procedure such as photographing and/or fingerprinting, followed by release at the scene, would not justify a "search incident to arrest," however. See Knowles v. Iowa, cited above in Part A. I. Similar legislation here, anyone?

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NEXT MONTH

The August 99 LED will include Part Two of the 1999 Legislative Update, along with entries on recent court decisions, including: 1) the U.S. Supreme Court decision in Wilson v. Layne, 1999 WL 320817 (unanimous decision barring police under the Fourth Amendment from taking media into a private home while police execute an arrest or search); 2) the U.S. Supreme Court decision in Florida v. White, 119 S.Ct. 1555 (1999) (holding 7-2 that the Fourth Amendment does not require that police get a search warrant before seizing a vehicle subject to forfeiture under a drug statute); 3) the U.S. Supreme Court decision in Chicago v. Morales, 1999 WL 373152 (holding 6-3 that Chicago's gang-loitering ordinance is unconstitutional because it does not provide sufficient limitation on police discretion to restrain the personal liberties of citizens); and 4) State v. Anaya, ___ Wn. App. ___ (Div. I, 1999) [1999 WL 326265] (holding that a DV pre-trial "no contact" order issued under chapter 10.99 RCW automatically ceases to have any effect when the underlying charge is dismissed).

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